

OFFICE OF THE SECRETARY OF STATE

**AMENDED DETERMINATION
OF THE VALIDITY OF A PETITION FOR INITIATED LEGISLATION ENTITLED:**

“Resolve, To Reject the New England Clean Energy Connect Transmission Project”

1. On March 23, 2020, the Superior Court issued an order in *Delbert Reed v. Secretary of State Mathew Dunlap*, Docket No. BCD-AP-20-02, remanding this matter to the Secretary of State for the purpose of taking additional evidence, pursuant to 5 M.R.S. § 11006(1)(B), and making further factual findings regarding the activities of eight notaries who administered oaths to the circulators of petitions containing over 17,000 voter signatures, as well as allegations of forgery by one circulator. Allegations that certain notaries had provided other services to initiate or promote the initiative, in violation of 21-A M.R.S. § 903-E, was presented via correspondence with attached documentation sent to me on February 24 and 27, 2020; however, there was insufficient time to explore those allegations before the March 4th statutory deadline to issue a determination of validity. *See* March 4th Determination, n. 1. In the remand order, the Court denied petitioner Reed’s request to conduct depositions of the notaries and recognized the Secretary’s plenary authority and obligation to investigate all issues material to determining the validity of the petitions.

Procedural Issues:

2. Challenger Reed and Industrial Energy Consumer Group (“IECG”), an intervenor in the Court proceeding that is aligned with the challenger in opposing the citizen initiative petition, asserted a right to an evidentiary hearing on remand in the manner authorized by statute for challenges to the validity of nominating petitions for candidates, pursuant to 21-A M.R.S. § 356. As the Court noted in its remand order, however, the review of citizen initiative petitions by the Secretary of State “is not an adjudicatory proceeding, and does not include a right to a hearing by those supporting or opposing the petition.” Our office did review all of the evidence and arguments submitted by the challenger and intervenor Mainers for Local Power on remand, in addition to gathering information on the notary and circulator issues submitted by the parties to the court proceeding on remand.

Notaries:

3. Correspondence submitted to my office on February 24 and 27, 2020, alleged that three of the notaries (Leah Flumerfelt, David McGovern, Sr., and Michael Underhill) may have worked as circulators, since their names are listed on the petition registration form filed by Revolution Field Strategies; that four others (Melissa Letarte, Jacob Kiesman, Victoria Tapley, and Christina Potter) may have delivered or collected petitions to or from town offices since their names appeared on municipal petition logs; and that Brittany Skidmore was observed performing work at the field office on several days during the last week of January, after the time period for completing notarizations had passed.

4. On March 25, 2020, Deputy Secretary of State Flynn sent letters to each of these eight notaries asking them to submit a signed statement, sworn if possible, explaining the details of their engagement and involvement in the petition drive. Each notary was also asked to produce documents, including copies of their notary logs, any agreement to provide services for the petition drive, paystubs or cancelled checks reflecting compensation for their services, and any instructions provided by the entity that hired them. All eight notaries responded promptly and made themselves available to answer follow-up questions as needed to clarify. Elections Division staff made further inquiry of a ninth notary, Wesley Ryan Huckey, whose activities Mr. Reed called into question in correspondence submitted on March 25, 2020.

5. Pursuant to the Maine Constitution Article IV, Part 3, Section 20, “the oath of the circulator [of each petition] must be sworn to in the presence of a person authorized by law to administer oaths.” Although a notary public is generally authorized by law to administer oaths or affirmations, pursuant to 21-A M.R.S. § 903-E, a notary is not authorized to administer an oath to the circulator of an initiative petition if the notary public is:

- A. Providing any other services, regardless of compensation, to initiate the direct initiative or people’s veto referendum for which the petition is being circulated. For the purpose of this paragraph, “initiate” has the same meaning as section 1052, subsection 4-B; or
- B. Providing services other than notarial acts, regardless of compensation, to promote the direct initiative or people’s veto referendum for which the petition is being circulated.

See also 4 M.R.S. § 954-A.¹ Accordingly, evidence concerning activities that these nine notaries performed for this petition drive is material.

6. Based on review of the additional evidence, I find as follows with respect to each of the notaries whose authority to administer oaths to circulators of this petition has been questioned:

A. Melissa Letarte volunteered as a notary for this petition drive, and the only work that she performed was as a notary. Although her name appears on a petition log for the town of Jay, attached as an exhibit to the February 24, 2020 letter from Newell Augur, Esq., Ms. Letarte reported that she has not been to the Jay town office since approximately two years ago when she delivered a marriage certificate for a wedding she had performed there. Ms. Letarte did not perform any work for the petition drive other than notarizing petitions, having been advised in writing on October 24, 2019, shortly after the petition drive began that it was “strictly prohibited” for her to collect signatures.

B. Jacob Kiesman works for the University Credit Union, which offers notary services at no charge. He notarized a number of petitions for a circulator named Steven Roper, who appeared before him at the Credit Union offices. Mr. Kiesman asked Mr. Roper for identification, read him the oath and then had Mr. Roper sign the petitions in front of him. Mr. Kiesman then signed, dated and added his notary seal to the petitions. He did not record this in his notary log, not realizing that such an obligation existed for anything besides marriages performed in Maine. He performed no other services for the petition drive other than notarizing Mr. Roper’s petitions.

C. Victoria Tapley also works for the University Credit Union. She notarized petitions at the Credit Union office but did not deliver any petitions to the town of Bradley or any other town offices. She did not perform any other services for the petition drive.

D. Christina Potter works for the Waterboro branch of Gorham Savings Bank and frequently notarizes documents for bank customers. She recalls that a few customers

¹ This statute defining what constitutes a conflict of interest for notaries also provides:

It is a conflict of interest for a notary public to administer an oath or affirmation to a circulator of a petition for a direct initiative or people’s veto referendum under Title 21-A, section 902 if the notary public also provides services that are not notarial acts to initiate or promote that direct initiative or people’s veto referendum.

came to her at the bank to notarize petitions in the fall of 2019. She notarized their petitions but did not record any entries in her log, believing this was only required for marriages performed.

E. David McGovern, Sr. circulated petitions during the first week of January, 2020, and subsequently volunteered to, and did, notarize petitions for other circulators. He was not authorized to do so, pursuant to 21-A M.R.S. § 903-E, and accordingly the petitions he notarized are invalid. This means that 110 signatures counted as valid in the March 4th Determination must now be rejected as invalid.

F. Michael Underhill also circulated petitions on two days in December, 2019, after which he notarized the petitions of another circulator. He clearly was not authorized to do so, pursuant to 21-A M.R.S. § 903-E, and accordingly the petitions he notarized are invalid. This means that 69 signatures counted as valid in the March 4th Determination must now be rejected as invalid.

G. Wesley Ryan Huckey works in the city clerk's office in Augusta and was hired by Revolution Field Strategies to notarize petitions for circulators in the evenings and on weekends in January 2020. Before accepting the job, he checked with his employer who indicated that serving as a notary would not pose any conflict with Huckey's duties for the City. Mr. Huckey was only hired as a notary and not to perform any other services. On one occasion, he carried a batch of petitions that his colleagues in the city of Augusta's clerk's office had just finished certifying, to the campaign field office where he was headed in the evening to notarize petitions. Mr. Huckey's best recollection is that this occurred on January 17 or 18, 2020. While delivering petitions could be construed as performing other services in violation of section 903-E, this one instance reflects a *de minimis* violation, and I find that it does not disqualify Mr. Huckey from administering oaths to circulators after that date. If the petitions notarized by Mr. Huckey after January 17, 2020 were deemed invalid on the grounds that he was no longer authorized to administer oaths to circulators after he delivered petitions to the field office, then an additional 2,555 signatures would be invalid for lack of notary authorization.

H. Leah Flumerfelt's name appears on the list of circulators hired by Revolution Field Strategies to work on this petition drive. She was originally recruited for this role by her father, John Flumerfelt, but when the campaign learned that she was a

notary public, they hired her as a notary instead. Ms. Flumerfelt provided copies of her notary logs showing that she administered oaths to circulators beginning on January 12 and continuing until January 24, 2020. She administered oaths to circulators on the morning of Friday, January 24, and was packing up her things to leave the Revolution Field Strategies office at about 1:30 pm that day when she was asked if she would be willing to deliver petitions to town offices and to perform additional office work over the weekend. She agreed and delivered petitions to several towns later that afternoon. She worked on Saturday morning, January 25th, organizing petitions in the office, and also cleaned the office later that day and the following day. Because she was not hired to perform (and did not perform) any of these additional services until after she had finished administering oaths to circulators, however, I find that the oaths she administered before she began performing these other services are valid.

I. Brittany Skidmore was hired by Revolution Field Strategies in mid-December to serve as a notary public for the petition drive, and she notarized petitions almost daily – after work and on weekends from December 17, 2019 through January 24, 2020. She did not provide any other services related to the petitions until the last week of that month – January 27-30, 2020. During that week, she worked in the field office at 449 Forest Avenue, reviewing her petitions to see that they were in order and filling in gaps in her notary log. She also notarized circulator affidavits for some of the circulators. Both of these are notarial activities with respect to the petitions. In checking over the petitions, Ms. Skidmore was also asked to make sure that the circulator’s name and number had been properly placed in the box at the upper corner of the petition, front and back, as required under 21-A M.R.S. § 901-A(2). She recalled finding one petition that she had not signed as notary, and that was placed in the stack of invalid petitions. She stated that she did not make any changes to the notary portion (or circulator’s oath portion) of the petitions. The only non-notarial services that Ms. Skidmore performed during the last week of January seems to have involved filling in the circulator’s name and number in the boxes on the petition forms.

As with Ms. Flumerfelt, I find that there is no evidence that Ms. Skidmore performed any services other than as a notary until after she had finished administering

oaths to circulators on the petitions. I therefore find that the oaths she administered before she began performing these other services are not invalid under section 903-E.

Our staff interview with Ms. Skidmore clearly revealed, however, that in the first two weeks that she served as notary for the petition drive, Ms. Skidmore did not administer the oath to circulators in an authorized manner. She had not performed as a notary before this and was not aware of some of the requirements. Accordingly, she acknowledged that in December, 2019, she did not read the oath to the circulators first, nor did she ask for their identification. When circulators came to her office at State Farm Insurance, she might be busy at her desk and not always able to observe the circulators sign their names to the oath, although they did so a few feet away from her desk. She often did not sign their petitions as notary until after the circulators had left her office. (Her account is corroborated by the affidavit of Michael Underhill, provided on March 31, 2020. The petitions that he circulated were signed by Ms. Skidmore as notary on December 27 and 29, 2019.) After January 1st, however, another employee of Revolution Field Strategies instructed Ms. Skidmore that she was required to read the oath to each circulator, watch the circulator sign his or her name to the oath, and then sign her name as notary in the circulator's presence – in accordance with 21-A M.R.S. § 902. She followed this practice from the beginning of January until the end of her work as a notary on the petition drive.

In light of this new evidence, I find that the petitions notarized by Ms. Skidmore before January 2, 2020, are invalid because the oath was not properly administered to the circulator. This means that 1,873 signatures counted as valid in the March 4th decision must now be invalidated.

Fraud allegations:

8. In support of his motion to take additional evidence, Mr. Reed submitted sworn affidavits from two individuals (Warren Winslow and Nina Fisher) attesting that they did not sign petition #743 (Bate stamped PET0001485) circulated by Megan St. Peter, and either never lived at the address listed or had not lived there for many years. Because the municipal registrar rejected both signatures as “not registered,” neither one was counted as valid in the March 4th determination. Indeed, almost all of the signatures on petition #743 were rejected as either not registered or signed by another person. The evidence persuades me that the oath of this circulator

cannot be relied upon, and, accordingly, I conclude that all of her petitions must be rejected as invalid. This means that 174 signatures counted as valid in the March 4th decision must now be invalidated.

10. Although counsel for Mr. Reed and others have argued that the evidence of forgery on petition #743 warrants a full-scale investigation of potential fraud in this petition drive, they have not pointed to any other indications of fraud after several weeks of carefully scrutinizing the petitions. Moreover, our office did not receive any reports from municipal officials, who are required by law (21-A M.R.S. § 902-A) to provide us with copies of any petitions that they suspect are in violation of any statutory or constitutional requirements.

Review of Alleged Errors “Intrinsic” to the Petitions:

11. In his Rule 80C petition, Mr. Reed alleged that a number of signatures were improperly counted as valid in the initial determination of March 4th, including alleged duplicate voter signatures and issues regarding voter registration status. On March 24, 2020, Deputy Secretary of State Flynn invited counsel for Mr. Reed to submit information specifically identifying these alleged errors by the close of business on March 25th to permit consideration on remand. Deputy Flynn simultaneously requested that if any intervenors supporting the initiative intended to assert that petitions (or signatures on petitions) were invalidated in error, they should so indicate by the same deadline.

12. Counsel for Mr. Reed submitted letters and emails on March 25, along with a number of exhibits depicting the petition number and line number of all alleged errors. Mainers for Local Power (“MLP”), the intervening organization supporting the initiative submitted a letter the same day, with attached exhibits in support of its allegations that certain circulators’ petitions were improperly disqualified. Additional correspondence with more charts and exhibits were submitted by counsel for Mr. Reed on March 27, 2020.

13. Our office has carefully examined all of the charts and exhibits, re-reviewed the petitions at issue, as shown on annotated copies now in the agency record, and made corrections as appropriate.

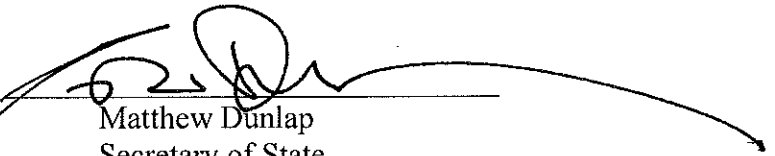
14. Following a review of these 15,785 petitions and consideration of all evidence in the record on remand, based on the findings set forth above, I find the following signatures to be invalid for the following reasons:

- A. 6,260 signatures are invalid because they were not certified by the registrar as belonging to a registered voter in that municipality. (REG)
- B. 3,217 signatures are invalid because they are duplicates of signatures already counted. (DUP)
- C. 811 signatures are invalid because the status of the circulators as residents of Maine could not be confirmed. (RES)
- D. 744 signatures are invalid because the circulator did not file a circulator's affidavit at the time the petitions were filed with the Secretary of State. (AFF)
- E. 713 signatures are invalid because the circulator collected signatures prior to becoming registered to vote in the State of Maine. (CIRC)
- F. 584 signatures are invalid because the voter dated his or her signature after the date of the circulator's oath before the notary or the voter's signature was not dated and it could not be determined that the voter signed the petition before the circulator took the oath. (DATE)
- G. 2,383 signatures are invalid because the circulator's oath was not complete or not administered properly, or is deemed invalid based on evidence of forgeries by the circulator. (OATH)
- H. 370 signatures are invalid because the petition was submitted to the municipal registrar for determination of whether the petitioners were qualified voters after the deadline set by the Maine Constitution, Article IV, Part Third, Section 20. (AMD)
- I. 241 signatures are invalid because the voter's signature was crossed out on the petition form. (WD)
- J. 233 signatures are invalid because the circulator's oath was not completed prior to submitting the petition to the registrar for certification. (PRIOR)
- K. 160 signatures are invalid because of material alterations to the petition. (ALT)
- L. 102 signatures are invalid because the voter failed to provide a signature. (SIG)
- M. 58 signatures are invalid because the registered voter's signature was made by another. (ANO)
- N. 11 signatures are invalid because the certification of the registrar was not completed. (CERT)
- O. 2 signatures are invalid because the notary was related to the circulator. (OWN)

- P. 1 signature is invalid because the petition was not on the approved form. (FORM)
- Q. 179 signatures are invalid because the notary was not authorized to administer the circulator's oath. (NNA)
- R. 89 signatures were incorrectly recorded as valid in the March 4, 2020 Determination and are invalid.

15. For the reasons set forth above, on the 15,785 petition forms filed with the Secretary of State, I find that 16,332 signatures are invalid and 66,117 signatures are valid. The number of signatures required to determine the petition to be valid is 63,067. Because the number of valid signatures exceeds the required number by 3,050 signatures, I find the petition to be valid.

Dated: April 1, 2020



Matthew Dunlap
Secretary of State

