

United States Court of Appeals For the First Circuit

No. 21-1149

WE THE PEOPLE PAC; BILLY BOB FAULKINGHAM, State Representative;
LIBERTY INITIATIVE FUND; NICHOLAS KOWALSKI,

Plaintiffs, Appellees,

v.

SHENNA BELLOWS,* in her official capacity as the Secretary of
State of Maine, JULIE FLYNN, in her official capacity as the
Deputy Secretary of State of Maine for the Bureau of
Corporations, Elections and Commissions,

Defendants, Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. John A. Woodcock, Jr., U.S. District Judge]

Before

Barron, Chief Judge,
Kayatta, Circuit Judge,
and Saris,** District Judge.

Jason Anton, Assistant Attorney General, with whom Aaron M. Frey, Attorney General, Thomas A. Knowlton, Deputy Attorney General, and Jonathan Bolton, Assistant Attorney General, were on

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Shenna Bellows was substituted for Matthew Dunlap on February 23, 2021.

** Of the United States District Court for the District of Massachusetts, sitting by designation.

brief, for appellants.

Paul A. Rossi, with whom IMPG Advocates was on brief,
for appellees.

July 7, 2022

BARRON, Chief Judge. Maine allows for direct popular participation in the state's lawmaking process through two distinct means: a "people's veto," as it is commonly known, and a "direct initiative." Me. Const. art. IV, pt. 3, §§ 17-18. To place either type of measure on the state ballot, a "written petition" that contains a minimum number of signatures from those who are "qualified to vote for Governor" in Maine must be filed with the Secretary of State of Maine. Id. § 20.

Maine law refers to a person who "solicits signatures for the petition by presenting the petition to the voter, asking the voter to sign the petition and personally witnessing the voter affixing the voter's signature to the petition" as a "circulator." Me. Stat. tit. 21-A, § 903-A. Maine law further provides that the "circulator" must be a Maine resident who is also registered to vote in Maine. Id.

This appeal arises from a suit that challenges both the residency and the voter-registration requirements. The suit alleges that each requirement, by restricting who may be a circulator, violates the First Amendment to the United States Constitution as incorporated against the states by the Due Process Clause of the Fourteenth Amendment. See Grosjean v. Am. Press Co., 297 U.S. 233, 245 (1936).

The suit was brought in 2020 in the United States District Court for the District of Maine by a nonprofit organization, a political action committee, a Maine State Representative, and a professional collector of signatures for petitions who resides in Michigan. The plaintiffs named as the defendants the Secretary of State of Maine in his official capacity and the Deputy Secretary of State of Maine for the Bureau of Corporations in hers.

On the same day that the plaintiffs filed their suit, they also moved for a temporary restraining order and/or a preliminary injunction to prevent the residency requirement and the voter-registration requirement from being enforced. The District Court denied the request for the temporary restraining order but ultimately granted the motion for the preliminary injunction. The defendants now appeal from that latter ruling. We affirm.

I.

A.

The portions of the Maine Constitution that pertain to the "people's veto" provide that "[t]he effect of any Act, bill, resolve or resolution or part or parts thereof" that the Maine Legislature passes "shall be suspended upon the filing" of a "written petition," and that the measure thereafter must be "voted

on by the people." Me. Const. art. IV, pt. 3, § 17 (emphasis added); see also Me. Senate v. Sec'y of State, 183 A.3d 749, 753 (Me. 2018) (describing the "people's veto"). The portions of the Maine Constitution that pertain to "direct initiative[s]" state that "[t]he electors may propose to the Legislature for its consideration any bill, resolve or resolution," though "not an amendment of the State Constitution, by written petition." Me. Const. art. IV, pt. 3, § 18(1) (emphasis added). These provisions also state that, unless the proposed direct initiative is "enacted without change by the Legislature," it must be "submitted to the electors together with any amended form, substitute, or recommendation of the Legislature," who then may "choose between the competing measures or reject both." Id. § 18(2).

Under the Maine Constitution, the "written petition" referred to in the provisions quoted above must contain a specified number of valid signatures of eligible Maine voters and be filed with the Maine Secretary of State ("the Secretary"). The total number of signatures "shall not be less than 10% of the total vote for Governor cast in the last gubernatorial election." Id. §§ 17(1), 18(2).

The Maine Constitution defines a "circulator" as "a person who solicits signatures for written petitions." Id. § 20. It states that a circulator "must be a resident of [Maine] and

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