STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-21-31

PORTLAND REGIONAL CHAMBER OF COMMERCE; ALLIANCE FOR ADDICTION AND MENTAL HEALTH SERVICES, MAINE; SLAB, LLC; NOSH, LLC; GRITTY MCDUFF'S; and PLAY IT AGAIN SPORTS,
Plaintiff-Appellants

v.

CITY OF PORTLAND AND JON JENNINGS, in his official capacity as City Manager for the City of Portland
Defendant-Appellees

CALEB HORTON AND MARIO ROBERGE-REYES,
Intervenor-Appellees

On Appeal from Cumberland County Superior Court
Docket No. CV-2020-518

REPLY BRIEF OF APPELLANTS

April 5, 2021

John J. Aromando, Bar No. 3099
James R. Erwin, Bar No. 1856
Joshua D. Dunlap, Bar No. 4477
Sara A. Murphy, Bar No. 5423
PIERCE ATWOOD LLP
Merrill's Wharf, 254 Commercial Street
Portland, Maine 04101
jaromando@pierceatwood.com
jerwin@pierceatwood.com
jdunlap@pierceatwood.com
smurphy@pierceatwood.com
(207) 791-1100

Attorneys for Plaintiff-Appellants Portland Regional Chamber of Commerce; Alliance for Addiction and Mental Health Services, Maine; Slab, LLC; Nosh, LLC; Gritty McDuff's; and Play it Again Sports

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

Page(s)

Page(s)

Page(s)

STATUTES

Page(s)

MUNICIPAL CHARTERS AND CODES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

INTRODUCTION

This case presents two straightforward questions. First, does the Emergency Provision of the Initiative, which provides for a sharply-escalated emergency wage in times of City- or State-declared emergencies, exceed the scope of municipal voters' initiative power under the Maine Constitution and Portland's Initiative and Referendum Ordinance because it does not address "municipal affairs" but instead addresses statewide issues extending beyond Portland's borders? Second, and only if the answer to the first question is no, is the Emergency Provision operative before January 1, 2022?

Contrary to the City's principal brief, this case does not present the question of whether a *municipality* could adopt the Emergency Provision pursuant to its independent and distinct "home rule" authority under article VIII, part 2, section 1 of the Maine Constitution and the provisions of Title 30-A that broaden those home rule powers of a municipality itself. This case does not concern a municipality's "home rule" powers; instead, it is about preserving the integrity of the municipal initiative process by enforcing its constitutional boundaries. If authorized under a municipality's ordinances, voters may utilize the municipal initiative process only for exclusively municipal affairs. For issues that implicate statewide concerns and have extraterritorial impact, however, as the Emergency Provision does here, voters must resort to the statewide initiative process. Because the Emergency Provision is not exclusively municipal, this Court must declare it invalid. To hold otherwise would be

to conflate two independent and distinct constitutional provisions; to allow municipal voters in a single municipality to address statewide policy issues and strain state resources; and to depart from this Court's established precedent.

Even if valid, the Emergency Provision is not operative before January 1, 2022. All Parties agree that the plain language of the Initiative is unambiguous. This Court should interpret the Emergency Provision pursuant to that plain meaning, without reference to legislative history. There is no minimum wage rate "*established by this ordinance*" as amended by the Initiative until January 1, 2022, and thus the time-and-a-half provision does not apply before then. To reach a contrary "plain meaning," Intervenors rely on a tortured reading of the Initiative to incorporate the minimum wage rate *established by the State*—entirely independent of the amended Ordinance itself. It is not this Court's role to rewrite the Initiative. Moreover, even if legislative history could be consulted, the only potentially relevant legislative history – the ballot question and a published study from the Maine Center for Economic Policy – demonstrates that the Emergency Provision takes effect on January 1, 2022.

ARGUMENT

I. This Appeal Does Not Implicate a Municipality's Home Rule Authority.

Contrary to the City's principal brief, it is neither "undisputed" nor even relevant to this appeal whether "*a municipality* has authority to declare a local state of emergency and set an increased minimum wage to address resident needs during that emergency." Red Br. at 8 (emphasis added). Quite simply, the authority of a

municipality itself to set wages or declare emergencies is not implicated by this case. The issue before this Court is whether the Emergency Provision exceeds the scope of *municipal voters'* initiative power, under article IV, part 3, section 21 of the Maine Constitution, and Portland's Initiative and Referendum Ordinance, Portland Code § 9-36, as alleged in Counts I and II of Plaintiff-Appellants' Verified Complaint.

A. The Emergency Provision exceeds the scope of municipal voters' initiative power under the Constitution.

The City's argument on appeal concerning the viability of the Initiative entirely misses the mark. All of the authority cited by the City expressly relates to the legislative authority of *a municipality* – not municipal *voters*. *See, e.g.*, 30-A M.R.S. § 3001 ("Any *municipality* . . . may exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication . . . ." (emphasis added)); *id.* § 3001(2) (rebuttable presumption that an ordinance enacted by "a *municipality*" is a valid exercise of "a *municipality's* home rule authority" (emphases added)); *id.* § 3001(3) ("The Legislature shall not be held to have implicitly denied any power granted *to municipalities* under this section . . . ." (emphasis added)); *Sch. Comm. of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993) (recognizing a "plenary grant of power to *municipalities*"—as creatures of the Legislature—"to legislate on matters beyond those exclusively 'local and municipal'") (emphasis added) (quoting Me. Const. art. VIII, pt. 2, § 1); 37-B M.R.S. §§ 701(2), (3) (conferring emergency powers upon the "Governor and the ex*ecutive heads of governing bodies of the political*

subdivisions of the State" (emphasis added)). This authority is immaterial to the question actually on appeal.

The initiative power of municipal *voters* is far more limited, as the City conceded before the Superior Court. *Albert v. Town of Fairfield*, 597 A.2d 1353, 1355 (Me. 1991); *Burkett v. Youngs*, 135 Me. 459, 199 A. 619, 621-22 (1938); *see* Tr. 21:16-22:1 (counsel for the City stating that "under the Constitution, the citizens' powers under – to initiate a referendum of this nature is certainly limited"). For municipalities that exist at the pleasure of the Legislature, the Legislature has the inherent authority to expand or restrict those municipalities' powers at its leisure. *Town of York*, 626 A.2d at 939 (the Constitution does not restrict the Legislature's ability to grant additional home rule authority "to municipalities" as "political subdivisions" of the State). The Legislature has therefore granted municipalities—not municipal voters—significant authority, as political subdivisions of the State. *See* 30-A M.R.S. § 3001; *Cent. Me. Power Co. v. Town of Lebanon*, 571 A.2d 1189, 1192 (Me. 1990) ("[A] state is free to delegate any power it possesses to its political subdivisions."); 30-A M.R.S. § 2252 (defining "political subdivisions" as "any municipality, plantation, county, quasi-municipal corporation and special purpose district"). In contrast, municipal *voters* are not "political subdivisions of the state," to which the Legislature is "free to delegate" powers. *Cent. Me. Power Co.*, 571 A.2d at 1192. The Legislature has no power to broaden the substantive scope of the initiative power of municipal voters absent a constitutional grant of such authority – of which there is none. *Town of York*, 626

A.2d at 939 (statutes are "restricted by the underlying constitutional provision"). Thus, the analyses for whether municipal voters exceed their constitutionally authorized initiative power versus whether a municipality exceeds its plenary powers granted to it by the Legislature are distinct and separate.[1]

This appeal concerns only the power of municipal voters. Neither the City nor the Intervenors can point to any case from this Court interpreting municipal voters' initiative power as commensurate with a municipality's home rule powers. None exists. The authority of voters lies in selecting their form of government, 30-A M.R.S. § 2102; electing their municipal officials, 30-A M.R.S. §§ 2526, 2555; exercising their direct initiative power for matters related to statewide affairs, Me. Const. art. IV, pt. 3, § 18; 21-A M.R.S. §§ 901-907; and, if authorized by the municipality, exercising their

[1] Amici Curiae League of Women Voters of Maine and American Civil Liberties Union of Maine Foundation ignore entirely the broad and separate *legislative* grant of authority to municipalities pursuant to Title 30-A, and erroneously contend that the Home Rule Amendment of the Constitution in article VIII is co-extensive with the municipal initiative power in article IV, part 3, section 21, both of which somehow now grant authority beyond "municipal affairs." League of Women Voters of Maine / ACLU Amici Curiae Br. at 9-13. As explained by Plaintiff-Appellants in their principal brief and as this Court has held, both constitutional provisions are in fact narrow in scope. *See Town of York*, 626 A.2d at 939 (describing the Home Rule Amendment as limiting a municipality to legislating in areas "exclusively local and municipal"); *Burkett*, 199 A. at 621-23. Moreover, contrary to Amici's contention, this Court did not analyze the municipal initiative authority as commensurate with that authority reserved to the City in *Farris ex rel. Anderson v. Colley*, 145 Me. 95, 73 A.2d 37 (1950). The issue in *Anderson* was whether the City had, in fact, "adopted an initiative and referendum ordinance under the constitution." *Id.* at 99, 73 A.2d at 39. The City had not done so. *Id.* The *Anderson* Court expressly stated that it "need not enter into a discussion whether the proposal is legislative or administrative in nature . . . , or whether the Constitution prohibits the exercise of the initiative on the proposal here presented. Such questions have been well and ably argued by counsel for relators and respondents, but in our view need not and should not be here decided." *Id.* at 101, 73 A.2d at 40.

municipal initiative power for matters pertaining to exclusively local affairs, Me. Const. art. IV, pt. 3, § 21; *Albert*, 597 A.2d at 1355; *Burkett*, 199 A. at 621-22.[2]

In no sense is the Emergency Provision limited to local affairs. It concerns matters over which the State has extensive authority; it has the potential to interfere with the Governor's ability to manage statewide emergencies, such as the COVID-19 pandemic; and it has significant extraterritorial effects that could strain the resources of neighboring communities, other local governments, and the State of Maine. *See, e.g.*, Brief of Amicus Curiae Me. Ass'n of Cmty. Serv. Providers at 18 ("The increase in the cost of direct care services caused by the Emergency Wage Provision has dire consequences for service providers, who have resorted to reducing staff hours, reducing services, layoffs, and even relocating services altogether to manage the financial burden it imposes. . . . Ultimately, other municipal governments, the State of Maine, and other state governments will pay the costs of a decision made exclusively by Portland voters."); Brief of Amicus Curiae Me. State Chamber of Commerce at 11-

[2] There are no First Amendment concerns, as Amici League of Women Voters Maine and ACLU contend, when Portland voters have all of these processes available to them to "encourage civic engagement" and "to enhance citizens' confidence in the responsiveness of their government." League of Women Voters of Maine / ACLU Amici Curiae Br. at 28. Although "[a]ll power is inherent in the people," Me. Const. art. I, § 2, the people established and delegated all lawmaking power to the Legislature, Me. Const. art. IV, pt. 3, § 1, with the exception of the state initiative power for matters affecting state policies, *id.* § 18, and the municipal initiative power for exclusively municipal affairs, *id.* § 21; *Burkett*, 199 A. at 621-22; *Albert*, 597 A.2d at 1355. *Accord Howard Jarvis Taxpayers Ass'n v. Padilla*, 363 P.3d 628, 646 (Cal. 2016) ("When the people established the Legislature, they conveyed to it the full breadth of their sovereign legislative powers. When they adopted the initiative power in 1911, they restored to themselves only a shared piece of that power. There is nothing incongruous in reading the state Constitution as allocating broader powers to the deliberative body representing the people than to the people directly. Such is the nature of a republic.").

12 ("The Initiative is not regulation of Portland's municipal affairs but regulation of all sorts of employers' business affairs, when some of their employees are working within the City of Portland, without regard to where the affected businesses are principally located, and without regard to where else they may be operating."). Because the Emergency Provision is not limited to Portland's internal affairs, it exceeds the scope of municipal initiative authority granted by article IV, part 3, section 21 of the Constitution. *Albert,* 597 A.2d at 1355; *LaFleur ex rel. Anderson v. Frost*, 146 Me. 270, 80 A.2d 407, 409-12 (1951); *Burkett*, 199 A. at 621-22.

B. The Emergency Provision exceeds the scope of municipal voters' initiative power granted by the City of Portland.

As to whether the Initiative exceeds the scope of authority granted by the City to its voters, the City "takes no position," Red. Br. at 7 n.1, not even to correct the Superior Court's failure to recognize that Portland's Initiative and Referendum Ordinance was enacted by the Portland City Council in 1950, not four decades later in 1991. (A. 15.) The relevant language of the Ordinance, which has not been modified since its adoption, restricts municipal initiatives in Portland to exclusively municipal affairs, independently of the Constitution. *LaFleur*, 146 Me. at 278, 80 A.2d at 412; Portland Code § 102.1 (1957) (authorizing any proposed citizens' initiative "dealing with legislative matters on municipal affairs").

In the Superior Court, Plaintiff-Appellants argued that the Emergency Provision exceeds the scope of authority granted by Portland's Code both because it

is administrative and not "legislative" in nature, and because it is not a "municipal affair." *See* Tr. 6:19-8:10 ("And it's important to note that the City decided to make the initiative authority allowed to its voters even narrower than the maximum scope allowed under Article IV, Part 3, Section 21 by limiting it to legislative matters as contrasted to administrative matters, which I'll come back to, but of course, you know, limited to municipal affairs."). On appeal, Plaintiff-Appellants focus on whether the Emergency Provision exceeds the "municipal affairs" limitation adopted in Portland's Code in 1950.[3] *See* Plaintiff-Appellants' Blue Br. at 26-29.

It does. As stated in Plaintiff-Appellants' principal brief, the scope of "municipal affairs" in Portland's Initiative and Referendum Ordinance cannot be interpreted by reference to laws that did not exist at the time it was enacted – specifically, the Home Rule Amendment to the Constitution or Title 30-A of the Maine Revised Statutes. Instead, it must be interpreted based on the construction of "municipal affairs" then prevailing – in other words, the interpretation provided in *Burkett*. *See Stockly v. Doil*, 2005 ME 47, ¶ 14, 870 A.3d 1208 (a legislature is presumed to be aware of the state of the law when it passes an act). Whereas section 3001 of Title 30-A does not limit municipal home rule powers to "municipal affairs," the City's Initiative and Referendum Ordinance does so limit Portland voters' initiative

[3] As opposed to whether the Emergency Provision is "administrative" rather than "legislative" in nature, as also argued in the Superior Court.

power. Portland voters cannot ignore the limitations placed upon them by the City's grant of initiative authority from 1950, in favor of a later-enacted legislative grant of authority to municipalities. In other words, regardless of whether or not the Emergency Provision exceeds the scope of the initiative power authorized by article IV, part 3, section 21 of the Constitution after any modification purportedly effected by the Home Rule Amendment and Title 30-A (and, to be clear, there was none), the Emergency Provision separately exceeds the scope of the initiative power granted to voters by the City's Initiative and Referendum Ordinance because it is not exclusively municipal in nature. Portland Code § 9-36; *Burkett*, 199 A. at 621-22.

II. If Valid, The Emergency Provision Is Not Operative Until January 1, 2022.

The City agrees with Plaintiff-Appellants that the Initiative unambiguously states it is not operative until January 1, 2022. Red Br. at 14-16. Intervenors, relying on a "plain language" analysis previously rejected by this Court in the context of citizens' initiatives, selectively string together quotations from distinguishable cases; misstate what the Superior Court found while ignoring other key portions of the Superior Court's analysis; and rely on irrelevant materials, some outside of the record, as competent "proof" of legislative intent. Intervenors' Br. at 20-34. This Court should reject Intervenors' strained interpretation and enforce the Initiative's plain language.

As in every other instance of statutory interpretation, this Court need not look past the plain language of the Initiative to determine its effective date if it is unambiguous. If, and only if, this Court *first* determines that the plain language of the Initiative is ambiguous may this Court consider legislative history of the Initiative to ascertain legislative intent. There is no need to reach these extrinsic sources here. Even if there were, the only legislative history that could properly be considered by this Court—the ballot question and a published study by the Maine Center for Economic Policy analyzing the estimated impact of the Emergency Provision—supports the Superior Court's conclusion that the Emergency Provision is not operative until January 1, 2022, the earliest date by which there is any local minimum wage rate "established by this ordinance."

A. The Superior Court correctly concluded that the Initiative unambiguously provides that the Emergency Provision is not operative until January 1, 2022.

If a statute's meaning is unambiguous, the Court "must interpret the statute to mean exactly what it says." *City of Saco v. Pulsifer*, 2000 ME 74, ¶ 5, 749 A.2d 153; *see Corinth Pellets, LLC v. Arch Specialty Ins. Co.*, 2021 ME 10, ¶ 21, ---A.3d--- ("We begin with the statutory terms . . .."). There are only two instances in which this Court may look beyond the language of the Initiative, as viewed in its overall statutory context: (1) if interpreting the Initiative according to its unambiguous language produces an absurd or illogical result; or (2) if the Initiative is ambiguous, *i.e.*, it "can be reasonably interpreted in more than one way *without departing from the language of the [Initiative]*."

Corinth Pellets, LLC, 2021 ME 10, ¶¶ 21, 30, ---A.3d--- (emphasis added); *Wawenock, LLC v. Dep't of Transp.*, 2018 ME 83, ¶ 7, 187 A.3d 609. Neither exception applies here. Because the plain language of the Initiative unambiguously provides that the Emergency Provision is not operative until January 1, 2022, this Court need go no further.

Under the plain language of the Initiative, the Emergency Provision can only mean that the minimum wage multiplier increases the wage set by the Ordinance itself—not by the State. As amended by the Initiative, there is no such wage set by the Ordinance until January 1, 2022 – and, thus, the Emergency Provision cannot be effective before then. The Emergency Provision of the Initiative provides:

> (g) *Effect of Emergency Proclamation*. For work performed during a declared emergency, the effective Minimum Wage rate *established by this ordinance* shall be calculated as 1.5 times the *regular minimum wage rate under subsection (b) above*.

(A. 67-68 (emphases added).) In turn, the Initiative made the following changes to subsection (b) of the Ordinance, eliminating any minimum wage set by the Ordinance prior to January 1, 2022:

> (b) *Minimum Wage rate*:
>
> (i) Beginning on January 1, 2022~~2016~~, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to $13.00~~10.10~~ per hour;
>
> (ii) Beginning on January 1, 2023~~2017~~, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to $14.00~~10.68~~ per hour;

(iii) Beginning on January 1, 2024, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to $15.00 per hour; and ~~Beginning on every first day of July following January 1, 2018, and every first day of July thereafter, the Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be increased according to the Consumer Price Index – All Urban Consumers (CPI-U) percentage increase from the prior year, unless the Minimum Wage equals the State Minimum Wage as set forth below. If there is no increase, the Minimum Wage will be unchanged. The percentage increase in the annual CPI-U for the previous calendar year from the annual CPI-U for the calendar year preceding that shall be the percentage by which the Minimum Wage is increased on the first day of July 2018 and every July 1 thereafter.~~

(iv) On January 1, 2025 and each January 1st thereafter, the minimum hourly wage rate then in effect must be increased by the increase, if any, in the cost of living. The increase in the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for All Urban Consumers, CPI-U, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢. If the state minimum wage established by 26 M.R.S. § 664 is increased in excess of the minimum wage in effect under this ordinance, the minimum wage under this ordinance is increased to the same amount, effective on the same date as the increase in the state minimum wage, and must be increased in accordance with this ordinance thereafter. ~~If the State Minimum Wage established by 26 M.R.S. § 664 is equal to or greater than the Minimum Wage established herein, the Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to equal the State Minimum Wage.~~

(A. 66-67 (alterations in original).)

In a strained attempt to undermine this plain language, Intervenors argue (1) that the Superior Court erroneously concluded "that the initiative had *implicitly* but unambiguously repealed the local minimum wage" until January 1, 2022, Intervenors'

Br. at 15 (emphasis added); (2) that the local minimum wage rate is "set" by "cross reference" to the minimum wage established and supplied by the State, *id.* at 17-18; (3) that the word "raised" in subsection (b)(i) of the Initiative "conveys the ordinary meaning that a minimum wage [established by the Ordinance] is already in effect," *id.* at 18; and (4) that a contrary reading "would also render several other provisions of the ordinance ineffective and mere surplusage because they rely on the local minimum wage set by the ordinance," *id.* at 19. None of these arguments is meritorious.

First, there is nothing *implicit* about the Initiative's repeal of Portland's former minimum wage rate: as illustrated above, the Initiative *explicitly* strikes all those provisions relating to a local minimum wage established by the Ordinance until January 1, 2022. (A. 66-67.) Had the Initiative left any provision in subsection (b) establishing a local minimum wage rate prior to January 1, 2022, subsection (g) would have mandated 1.5 times that rate during periods of City- or State-declared emergencies. For example, had the Initiative left subsection (b) as is and merely added additional subsections establishing a higher wage "[b]eginning on January 1, 2022," there would have been a local minimum wage rate "established by" Portland's Ordinance prior to that date. But it did not.

Second, subsection (b)(iv) does not "set a minimum wage rate" by "cross reference to the state's wage." Intervenors' Br. at 17. The minimum wage in effect in Portland until January 1, 2022 is a minimum wage rate "set" or "established by" the State under Title 26 – not Portland's Ordinance. Subsection (b)(iv) does not alter this

result. Similar to the triggering dates applicable to every other section in subsection (b), subsection (b)(iv) applies starting "[o]n January 1, 2025 and each January 1st thereafter . . .." (A. 66.) By its terms, subsection (b)(iv) does not apply before January 1, 2025. *Id.* Moreover, subsection (b)(iv) of the Initiative states that "[i]f the state minimum wage established by 26 M.R.S. § 664 is increased in excess of the minimum wage *in effect under this ordinance*, the minimum wage under this ordinance is increased to the same amount . . . ." (A. 67 (emphasis added).) But there is *no* "minimum wage in effect under this ordinance" until January 1, 2022.[4] Intervenors' reading of subsection (b)(iv) would lead to an entirely circular analysis: if the minimum wage rate "established by" Portland is the same as the minimum wage rate "established by" the State, as Intervenors contend, then the minimum wage rate under the Ordinance as amended by the Initiative would never need to be "increased to the same amount" under subsection (b)(iv). In other words, Intervenors' reading amounts to "if the State minimum wage established by 26 M.R.S. § 664 is increased in

[4] In an attempted sleight of hand, Amicus Curiae AFL-CIO falsely recasts Plaintiff-Appellants' argument on the effective date as implying "there is no minimum wage in the City of Portland until January 1, 2022, and thus the hazard pay provision has nothing to modify until that date." Brief of Amicus Curiae AFL-CIO at 12. What Plaintiff-Appellants actually argue, and the plain language of the Initiative supports, is that there is no "minimum wage established by this ordinance" until that date. Of course the minimum wage set by the State applies in Portland and elsewhere until that date, but according to the express language of the Initiative the emergency wage enhancement applies only to a minimum wage "established by this ordinance," not one set independently by the State. No such locally established minimum wage will exist in Portland until January 1, 2022.

excess of the State minimum wage established by 26 M.R.S. § 664, the State minimum wage applies." Such an interpretation is absurd.[5]

Third, the single word "raised" in subsection (b)(i) does not convey that a local minimum wage under the Ordinance as amended by the Initiative "is already in effect." Intervenors' Br. at 18. To state the obvious, to go from nothing to something is to "raise" the applicable wage established by Portland. Moreover, "rais[ing]" the local minimum wage rate applicable in Portland as of January 1, 2022 from the State's wage established by 26 M.R.S. § 664 does not change the fact that subsection (g) is only applicable when there is an "effective Minimum Wage rate *established by this ordinance . . . under subsection (b) above."* (A. 67 (emphasis added).) As described above, there is no minimum wage rate "established" by the Ordinance as amended by the Initiative until January 1, 2022. Before that date, the only minimum wage rate is established by the State. 26 M.R.S. § 664.

Finally, the Superior Court's interpretation based on the plain and unambiguous language of the Ordinance as amended by the Initiative does not render other provisions of the Ordinance "mere surplusage" that would "no longer exist."

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[5] For the first time on appeal, Intervenors argue in a footnote that "when the state minimum wage increased to $12.15 an hour on January 1, 2021, that was more than any 'minimum wage in effect under this ordinance,' so the City minimum wage increased to $12.15 an hour, which triggered the hazard pay rate of $18.23 as of January 1, 2021." Intevenors' Br. at 18 n.7. Not only is this argument without merit, as there still is no local minimum wage rate "established by" Portland's Ordinance, as amended by the Initiative, as opposed to 26 M.R.S. § 664, it is black letter law that issues addressed for the first time on appeal or "in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." *Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290; *see Bayview Loan Servicing v. Bartlett, LLC*, 2014 ME 37, ¶ 15 n.5, 87 A.3d 741; *MP Assocs. v. Liberty*, 2001 ME 22, ¶ 18, 771 A.2d 1040.

Intervenors' Br. at 19. Intervenors resort to sophistry. As with the Emergency Provision, the *one* tip credit provision of the Ordinance amended by the Initiative, stating that the tip credit "shall be no greater than half the Minimum Wage rate established by this ordinance" (A. 67), will be phased in at the same time as the new local minimum wage rate in January 1, 2022. Moreover, until then, the tip credit provisions under the amended Ordinance plainly state that "[t]he meaning of the language used in this section shall be interpreted consistently with the interpretation of the language of 26 M.R.S. § 663 and 26 M.R.S. § 664." (A. 60-61; A. 67, § 33.7(c)(v).) Section 664, in turn, states that "a tip credit may not exceed 50% of the minimum hourly wage" established by the State. 26 M.R.S. § 664(2). Similarly, posting the minimum wage notice as required under the Ordinance is not contrary to Plaintiff-Appellants' and the City's position that there is no minimum wage rate "established by" the amended Ordinance to calculate an emergency wage. The Ordinance merely requires notice informing Employees of current minimum wage rates. (A. 62, § 33.8.) For the City to provide notice of the State minimum wage rate currently applicable in Portland (and elsewhere) does not render that subsection "mere surplusage," nor does it change the plain language of subsection (g), calculating the Emergency Provision based on the minimum wage rate "established by" the City of Portland, not the State.

* * *

Intervenors go to great lengths trying to rewrite the plain language of the amended Ordinance. This Court "will not rewrite [an ordinance] where its meaning is plain." *State v. Conroy*, 2020 ME 22, ¶ 19, 225 A.3d 1011 (citing *Fissmer v. Smith*, 2019 ME 130, ¶ 27, 214 A.3d 1054). Assuming the Emergency Provision is valid, the Superior Court correctly concluded that because there is no minimum wage rate "established by" the Ordinance as amended by the Initiative until January 1, 2022, the Emergency Provision does not become effective before that date. (A. 26-27.)

B. This Court does not review the ballot question before determining ambiguity.

Given the weakness of their contrarian plain language argument, Intervenors next resort to a statutory construction framework rejected by this Court in *Wawenock*, arguing that the Superior Court erred by not reviewing the ballot question presented to voters *before* reviewing the Initiative's language to determine if it is ambiguous. Intervenors' Br. at 21-24. Such an approach finds no support in the law.

"Citizen initiatives are reviewed according to the same rules of construction as statutes enacted by vote of the Legislature." *Wawenock*, 2018 ME 83, ¶ 16, 187 A.3d 609 (quoting *Opinion of the Justices*, 2017 ME 100, ¶ 59, 162 A.3d 188). The *only* difference in interpreting citizens' initiatives is that it "requires [this Court] to 'ascertain the will of the people' rather than the will of the Legislature." *Id.* (quoting *Opinion of the Justices*, 2017 ME 100, ¶ 7, 162 A.3d 188). As this Court has repeatedly stated, "[o]nly if the meaning of a statute" – whether citizen initiated or not – "is not

clear will [this Court] look beyond the words of the statute to examine other potential indicia of the Legislature's intent, such as the legislative history." *Conroy*, 2020 ME 22, ¶ 19, 225 A.3d 1011; *see State v. Legassie*, 2017 ME 202, ¶ 13, 171 A.3d 589) ("We look to legislative history and other extraneous aids in interpretation of a statute only when we have determined that the statute is ambiguous."). Indeed, in *Wawenock*, when interpreting a citizen-initiated statute, this Court held that "[b]ecause the plain language of the [act] resolves the question . . . [this Court] need not look beyond that language to discern legislative intent." 2018 ME 83, ¶ 12, 187 A.3d 609.[6]

This Court's approach to interpreting citizen-initiated legislation is in accord with the majority of jurisdictions. *See, e.g.*, *Dwyer v. Colorado*, 357 P.3d 185, 191 (Colo. 2015) ("If the language of an [initiated] amendment is clear and unambiguous, then it must be enforced as written. Only where the amendment's language is susceptible to multiple interpretations do we look beyond it to ascertain the voters' intent."); *State v. McQueen*, 828 N.W.2d 644, 650 (Mich. 2013) ("The first step in interpreting a statute is to examine the statute's plain language, which provides the most reliable evidence of . . . intent. . . . If the statutory language is unambiguous, no further judicial construction is required or permitted because we must conclude that the electors intended the meaning clearly expressed." (internal quotation marks omitted)); *Eyman v. Ferguson*, 433 P.3d 863, 869 (Wash. Ct. App. 2019) ("If the language of an initiative

[6] As discussed further in Part II(c), *infra*, this Court reviewed the legislative history in *Wawenock* only "in the interest of clarifying the means of determining legislative intent for citizen-enacted legislation." *Id.*

enactment is plain and unambiguous, and in harmony with its natural and ordinary meaning, the enactment is not subject to judicial interpretation."); *People v. Saelee*, 239 Cal. Rptr. 3d 475, 479 (Cal. Ct. App. 2018) ("In interpreting a voter initiative, we apply the same principles that govern statutory construction. . . . We look first to the plain meaning of the words used, giving effect to the usual and ordinary import of those words." (internal citations and quotation marks omitted)); *State v. Matlock*, 350 P.3d 835, 838 (Ariz. Ct. App. 2015) ("Our primary objective in construing statutes adopted by initiative is to give effect to the intent of the electorate. If a statute's language is clear and unambiguous, it is the best indicator of that intent, and we apply it as written without resorting to other methods of statutory interpretation." (citing *State v. Gomez*, 127 P.3d 873, 875 (Ariz. 2006))).

Thus, in Maine as elsewhere, the plain language controls and courts need not resort to extrinsic aids unless the language is unclear.

> Absent ambiguity, a court may presume that voters intend the meaning apparent upon the face of an initiative measure, and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language. Thus, the *intent behind the language of a voter's initiative only becomes relevant if the language is ambiguous.*

42 Am. Jur. 2d Initiative and Referendum § 49 (emphasis added) (citing cases).[7]

[7] *Accord League of Women Voters of Mich. v. Sec'y of State*, No. 353654, 2020 WL 3980216, at *22 (Gleicher, J., concurring) (Mich. Ct. App. July 14, 2020) ("The words at issue here are not ambiguous, and the ballot summary is utterly irrelevant."), *appeal denied*, 946 N.W.2d 307 (Mich. 2020), *reconsideration denied*, 948 N.W.2d 70 (Mich. 2020).

Ignoring black letter law on statutory construction, Intervenors weave together selective quotations from various cases, out of context, to arrive at the remarkable proposition that "this Court does not first examine the plain language alone and conclude that the statute is ambiguous before looking to the ballot question; it uses the ballot question as an essential part of its construction of the language of the voter-approved provision, searching for an interpretation that is not in conflict with the language of the question placed before voters." Intervenors' Br. at 23. Not a single case cited by Intervenors supports their argument.

For example, the Superior Court did not limit itself to the plain language of the Initiative based on a misreading ("in its view") of the *Opinion of the Justices*, 283 A.2d 234 (Me. 1971). Intervenors' Br. at 23. In that case, the Justices considered the question placed before the voters in interpreting the language of the initiative. *Opinion of the Justices*, 283 A.2d at 236. In doing so, however, the Justices expressed their view – consistent with the Superior Court's reading of that case – that it is proper to resort to a ballot question when the statutory language is ambiguous. As the Justices wrote, "although the [referendum] question prepared by the Legislature for submission to the electorate forms no part of the [initiated] amendment, it may properly be considered as an aid to the construction of an ambiguous amendment." *Id.* at 236.[8]

[8] Intervenors cite to *Wright's Case*, 156 N.E.3d 161, 175 (Mass. 2020), as support for their untenable position that the ballot question must be considered before determining ambiguity. *Wright* is of no help to them. There, the Supreme Court of Massachusetts determined that the plain language of the citizen-initiated medical marijuana act limited reimbursements from health care providers for medical expenses incurred for
(footnote continued)

Intervenors' reliance on *Dickau v. Vermont Mutual Insurance Company*, 2014 ME 158, 107 A.3d 621, is similarly misplaced. Intervenors attempt to use *Dickau* to ignore plain statutory language. *Dickau*, however, merely stands for the proposition that statutes must be interpreted logically – not read strictly in a manner that would "create[] absurd, illogical, unreasonable, inconsistent, or anomalous results if an alternative interpretation avoids such results." *Id.* ¶ 21. *Dickau* does not support the proposition that this Court looks beyond the plain language when there is no ambiguity or illogical result. *See id.* ¶¶ 21, 23. The over-arching point of interpretation is to ascertain a logical reading of the statute itself. *Farris ex rel. Dorsky v. Goss*, 143 Me. 227, 230, 60 A.2d 908, 910 (1948) ("Justice Holmes, before he became a member of the Supreme Court, made a statement which is peculiarly applicable here: 'We do not inquire what the legislature meant, we ask only what the statute means.'"). *Dickau* acknowledges that the starting point for statutory interpretation is determining whether the language is unambiguous. 2014 ME 158, ¶ 19, 107 A.3d 621. In this case, the answer to that question is yes – and such an interpretation does not create

(continued footnote)
the use of marijuana. *Id.* at 172. In a footnote, the court merely noted that the summary of the initiative prepared by the Massachusetts Attorney General and disseminated to voters was in accord with the unambiguous plain language of the act. *Id.* 175 n.13. This is no different from what this Court did in *Wawenock* or what the Superior Court did here: stating in dicta that the legislative history supports or "does not conflict with the plain language of the initiative." (A. 28; *Wawenock*, 2018 ME 83, ¶ 26, 187 A.3d 609 (stating that the legislative history of the initiative supported the plain language interpretation that no private right of action was created by the Sensible Transportation Policy Act).)

any absurdities or illogical results.[9] As the Superior Court concluded, "it is neither illogical or absurd for the ordinance, interpreted based on its plain language, to provide a delay in the effective date of both the emergency minimum wage provision and the new regular minimum wage provision so that both are phased in at the same time." (A. 29.)[10]

In short, there is no "special rule" of statutory interpretation applicable to citizen' initiatives. On the contrary, "[c]itizen initiatives are reviewed according to the same rules of construction as statutes enacted by vote of the Legislature." *Wawenock*, 2018 ME 83, ¶ 16, 187 A.3d 609. For the reasons stated in Part II(a), *supra*, because the language of the Initiative is plain and unambiguous and does not lead to an absurd or illogical result, this Court does not look behind the plain language of the Initiative, including the ballot question, in interpreting its meaning. *Corinth Pellets, LLC*, 2021 ME 10, ¶ 30, ---A.3d---; *Conroy*, 2020 ME 22, ¶ 19, 225 A.3d 1011.

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[9] Amicus Curiae AFL-CIO argues in conclusory fashion that "the result sought by Plaintiffs is absurd," Brief of Amicus Curiae AFL-CIO at 14, without any effort to explain why. Most notably, AFL-CIO fails to respond to the Superior Court's specific findings about why the January 1, 2022 effective date not only is not "absurd," but is entirely logical and consistent with the stated purpose of the Ordinance to implement wage increases gradually and with sufficient advance notice to employers. (*See* A. 29.)

[10] For the first time on appeal, Intervenors argue that interpreting the Emergency Provision not to take effect until January 1, 2022 implicates "due process concerns . . . by a misleading ballot question." Intervenors' Br. at 23. Intervenors never raised this argument in opposition to summary judgment before the Superior Court. The argument is therefore waived. *See* Alexander, *Maine Appellate Practice* § 402(a) at 311 (5th ed. 2018) ("The Law Court will not reach an issue . . . if the issue is raised for the first time on appeal."); *Estate of Jennings v. Cumming*, 2013 ME 103, ¶ 10 n.5, 82 A.3d 132; *Foster v. Oral Surgery Assocs.*, 2008 ME 21, ¶ 22, 940 A.2d 1102; *MP Assocs. v. Liberty*, 2001 ME 22, ¶ 18, 771 A.2d 1040; *Stickney v. City of Saco*, 2001 ME 69, ¶ 30 n.11, 770 A.2d 592.

C. Even if this Court determined that the Emergency Provision is ambiguous, the legislative history supports an effective date of January 1, 2022.

Only if this Court disagrees with the Superior Court and determines that "the plain language of [the Initiative] is ambiguous—that is, susceptible of different meanings—[will this Court] then go on to consider the [Initiative's] meaning in light of its legislative history and other indicia of legislative intent." *MaineToday Media, Inc. v. State*, 2013 ME 100, ¶ 6, 82 A.3d 104. The legislative history of the Initiative supports the interpretation, adopted by the Superior Court, that the Emergency Provision does not take effect until January 1, 2022. (A. 28.)

In *Wawenock,* this Court took the opportunity to "clarify[] the means of determining legislative intent for citizen-enacted legislation." 2018 ME 83, ¶ 12, 187 A.3d 609. The only potentially relevant legislative history of the Initiative is the ballot question presented to voters and other objective analyses or summaries available to all registered Portland voters. *Id.* ¶¶ 15-24. Contrary to Intervenors' contention, the legislative history of the Initiative does not include partisan editorials, newspaper clippings, social media ads, or *ad hoc* statements by proponents or opponents of the Initiative, which may reflect little more than an effort to gain political leverage.

1. Facebook, YouTube, and newspaper articles are not "legislative history" of the Initiative.

There are no Maine cases adopting the use of newspaper articles, *ad hoc* statements from proponents or opponents of a citizen initiative, or social media posts

such as Facebook or YouTube, as legislative history relevant to discerning voters' intent in enacting an ambiguous citizens' initiative. (A. 28 ("[T]he court can find no Law Court precedent suggesting that it can consider or rely on newspaper articles, post hoc statements, or post hoc legislative history offered by the drafters of an initiative.").) This Court in *Wawenock* was confronted with the opportunity to identify these categories of documents as "legislative history," yet it did not.[11] 2018 ME 83, ¶¶ 15-24, 187 A.3d 609. This is for good reason.

"Statements from nonofficial sources having no special connection with the preparation and proposal of a bill are not generally considered for interpretation purposes." Sutherland Stat. Const. § 48.11 (5th ed.). Newspaper articles, editorials, and other media sources are inherently unreliable and amorphous in nature. *See People v. Olsaver*, 204 Cal. Rptr. 479, 489 (Cal. Ct. App. 1984).[12] Nor have Intervenors put forth any competent proof that any single news story or editorial reached any

[11] The *Wawenock* Court did approve of reviewing "published arguments made in support or opposition to determine what meaning voters may have attached to the Initiative," *id.* ¶¶ 17-18, referencing materials provided to *all* voters prior to the election or at the ballot box, such as the Attorney General's official explanation or explanatory statement "attached to a referendum question," *id.* ¶ 18 (citing *League of Women Voters v. Sec'y of State*, 683 A.2d 769, 773-74 (Me. 1996)); summaries of arguments in favor or in opposition to an initiative presented with the ballot measure, *id.* (citing *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 193-94 (Alaska 2007)); official explanatory publications from state legislatures distributed to all voters prior to the election, *id.* (citing *Colorado v. Clendendin*, 232 P.3d 210, 215 (Colo. App. 2009); and "Information for Voters" guides prepared by the secretary of state, *id.* (citing *Barbuto v. Advantage Sales & Marketing, LLC,* 78 N.E.3d 37, 49 (Mass. 2017). The extrinsic materials relied on by Intervenors are not comparable to any of these categories.

[12] *Accord Takahashi v. Fish & Game Comm'n*, 185 P.2d 805, 813 (Cal. 1947), *rev'd on other grounds*, 334 U.S. 410 (1948); *Brooks v. Miller*, 158 F.3d 1230, 1242 (11th Cir. 1998); *Hulcher v. Commonwealth*, 575 S.E.2d 579, 582 n.3 (Va. Ct. App. 2003).

particular segment of Portland voters. *See id.* ("Neither the *opinion* of the legislative analysts, whether proponents or opponents of the measure, nor the opinion of the editorial staff of any single newspaper . . . can be considered a factor in the intent of the voters unless such opinions were made known to *all* voters." (footnote omitted)); *Wawenock*, 2018 ME 83, ¶ 18, 187 A.3d 609 (referencing reliable materials disseminated to *all* voters). There are no cases relying on social media posts such as Facebook or YouTube for indicia of legislative intent to interpret an ambiguous citizens' initiative. *See* Intervenors' Br. at 30 (relying on the same).

Nor are statements by the drafters of the Initiative or opponents of the Initiative "legislative history." "[T]he drafter of a voter initiative is not competent to testify about the voters' intent in passing that initiative." *Ariz. Citizens Clean Elections Comm'n v. Brain*, 322 P.3d 139, 142 (Ariz. 2014). After-the-fact statements by drafters are unreliable, as drafters might seek to accomplish retrospectively something they did not place before the voting public. Accordingly, "courts generally do not look to the drafter's view or understanding of a statute for assistance to interpret the law." Sutherland Statutory Construction § 48:12 (7th ed.). Proponents' statements are likewise irrelevant, as they may make extravagant claims or try to soothe expressed fears via public statements. Similarly, opponents of the Initiative may make dire predictions about the application and effect of an initiative, or may indulge in wishful thinking about the meaning of certain limitations or restrictions to gain tactical political advantages. None of those expressions is a reliable source of voters' intent in

passing an initiative. *See In re Jason W.*, 837 A.2d 168, 176 (Md. 2003) (Harrell, J., concurring) ("Too often the court has not differentiated the reliable from the unreliable, evidence that genuinely might reflect the legislative purpose underlying the enacted bill from evidence that reflects little more than someone's effort to gain leverage in the process." (internal quotation marks omitted)).

Intervenors repeatedly emphasize that the Superior Court's interpretation of the Initiative "deviates from the clear will of the voters." Intervenors' Br. at 27. However, Intervenors offer no competent proof to support such a statement. Mere repetition does not make Intervenors' argument any less conclusory, or any more persuasive.

2. The only relevant legislative history supports the Superior Court's conclusion that the Emergency Provision is not effective until January 1, 2022.

As recognized by this Court in *Wawenock,* there are two pieces of legislative materials that qualify as "legislative history" of the Initiative, both of which support the Superior Court's conclusion that the Emergency Provision is not effective before January 1, 2022: (1) the ballot language and summary, and (2) a published objective study by the Maine Center for Economic Policy commissioned by the drafters of the Initiative. *Wawenock*, 2018 ME 83, ¶¶ 17-18, 187 A.3d 609; A. 250; A. 143-44, ¶ 30.

The ballot language, as the Superior Court found, simply provides an example of how the Emergency Provision would work in future periods of declared emergency

resulting from issues like the pandemic. The ballot question presented to Portland voters stated the following:

> An act to increase the Minimum Wage in Portland will increase the minimum wage in Portland to $15.00 an hour over three years: It increases the minimum that tipped employees must be paid by their employer to 50% of the minimum wage, although employers must make up the difference if tipped employees do not earn at least minimum wage when their tips are added in. It moves the effective date of annual cost-of-living increases to the minimum wage from July 1 to Jan. 1 to maintain consistency with state law. It also requires that employees be paid 1.5 times the minimum wage rate for any work performed during an emergency declared by the state or the municipality if that emergency applies to the employees' geographical workplace. *For instance*, *if* the minimum wage were $12/hr, and the State of Maine or the City of Portland issued emergency proclamations *such as* the emergency orders declared during the COVID-19 pandemic, work performed during that emergency *would be* paid at 1.5 times the minimum wage, or $18/hr. This higher rate of pay would not apply to employees being allowed to work from home.

(A. 250 (emphases added).) The ballot question conspicuously does not state that the Emergency Provision would become effective immediately, but instead speaks in terms of future hypotheticals while referencing the current pandemic as an example.

Intervenors boldly misstate the Superior Court's analysis of the ballot question, stating that "the superior court found that the hazard pay ballot question indicated an immediate effective date." Intervenors' Br. at 6-7. The Superior Court made no such finding. The Superior Court noted that "the ballot question *might have* led voters to believe that the emergency wage provision would take effect during the existing state of emergency." (A. 29 (emphasis added).) The Superior Court then correctly found, after review of the ballot question, that the language merely "gives an example of how

the emergency wage provision would apply" and "does not specify that the emergency wage will take effect earlier than January 1, 2022." (A. 28.)

Nor does the "wording of the ballet question directly conflict[]" with the Superior Court's interpretation of the Initiative. Intervenors' Br. at 24. First, Intervenors argue that the Superior Court's interpretation conflicts with the ballot statement that the Initiative "will increase the minimum wage in Portland to $15.00 an hour over *three* years." *Id.*; A. 250. No conflict exists: at year one, January 1, 2022, the minimum wage in Portland will be $13.00/hour; at year two, January 1, 2023, the minimum wage in Portland will be $14.00/hour; and at year three, January 1, 2024, the minimum wage will be $15.00/hour. Second, the mere fact that the ballot question does not "mention January 2022" does not render it in conflict with the scheme provided for in the Initiative. Intervenors' Br. at 25. Finally, it is irrelevant that the example from the ballot—illustrating how the emergency wage would operate in periods of declared emergencies, "such as the emergency orders declared during the COVID-19 pandemic" (A. 250)—would be "entirely impossible if the provision could go into effect only in January 2022," Intervenors' Br. at 25. The example is just that—an example. Nowhere does the ballot provide that the Emergency Provision *would apply* during the COVID-19 emergency.[13]

[13] Further, it is not "undisputed that the full text of the initiative was not provided to voters who voted in person unless they requested it." Intervenors' Br. at 26 n.10. Pursuant to Portland's Code, a copy of the complete title, text, and summary of the Initiative was posted at each polling place on Election Day, where any voter voting in person could review it. Portland Code § 9-40(b). Moreover, the full language of the (footnote continued)

Not only is the ballot question consistent with the Superior Court's interpretation of the Initiative, but the only other relevant extrinsic information provides additional support for that reading. On August 29, 2020, the drafters of the Initiative requested a study from the Maine Center for Economic Policy ("MCEP") to analyze the estimated economic impact of the Initiative—both the minimum wage increase and the Emergency Provision. (A. 143-44, ¶ 30 at Ex. A.) The MCEP study, which was available to the voters for over two months before the election, began its analysis of the impact of the Emergency Provision *in 2022*. *Id.* at 2. The MCEP table states:

Table 2: Number of Impacted Workers (Emergency)

Frontline workers	**2022**	**2023**	**2024**
Minimum wage	$19.50	$21.00	$22.50
Directly impacted	7,700 (12%)	8,100 (12%)	8,500 (13%)
Indirectly impacted	2,000 (3%)	2,100 (3%)	1,900 (3%)
Total potential impacted	9,700 (15%)	10,100 (15%)	10,400 (16%)
Remaining workers			
Minimum wage	$13.00	$14.00	$15.00
Directly impacted	8,000 (12%)	9,300 (14%)	10,500 (16%)
Indirectly impacted	6,300 (10%)	6,300 (10%)	6,200 (9%)
Total impacted	14,300 (22%)	15,600 (24%)	16,700 (25%)

Source: MECEP analysis of US Census Bureau, American Community Survey, 2014-2018 5-year estimates, public use microdata; US Bureau of Labor Statistics, Quarterly Census of Employment and Wages, 2019.

(continued footnote)
Initiative was provided to any voter voting absentee in November 2020. (A. 112, ¶ 14; A. 131, ¶ 14.) Approximately 78% of Portland voters voted absentee in the November 2020 election. *See* Maine Secretary of State, MAINE.GOV, *Statewide Absentee Voter Data File*, https://www.maine.gov/sos/cec/elec/data/1120-absentee-voter-file.txt (last visited March 29, 2021) (detailing 31,589 absentee votes accepted for Portland voters); City of Portland, Maine, MAINE.GOV, *Amended Official Election Results on 11/3/2020*, http://portlandmaine.gov/DocumentCenter/View/29464/Amended-Official-Referendum-Results-Nov-3-2020-Election (last visited March 29, 2021) (tallying 40,430 total votes in Portland on the Initiative).

(A. 143-44, ¶ 30 at Ex. A.) Any voter reviewing the MCEP study would have had no reason to believe that the Emergency Provision would take effect before 2022.[14]

Finally, the Initiative did nothing to change one of the express purposes of Portland's Minimum Wage Ordinance, which is to provide incremental increases in wages to allow businesses time to adjust and adapt to the consequent increase in expenses. (A. 57 ("WHEREAS, phasing in the wage increase over time will allow businesses to adjust and result in reasonable annual increases in expenses"); *see Wawenock*, 2018 ME 83, ¶ 15, 187 A.3d 609 ("In evaluating legislative intent using information beyond the language of the provision, we have relied on a variety of materials, including the statutory scheme in which the relevant section is found."). Plaintiff-Appellants advocate for an interpretation that aligns with this stated purpose; Intervenors advocate for an interpretation that conflicts with it.

Accordingly, even if this Court determines that the Initiative is ambiguous, the only legislative history properly considered by this Court supports the Superior Court's conclusion that the Emergency Provision does not take effect until January 1, 2022.[15]

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[14] Amicus Curiae AFL-CIO, which is joined in its brief by MCEP, ignores entirely both the ballot example language and the MCEP study analyzing the Emergency Provision starting in 2022, urging this Court instead to rely on "opening the front door, reading the newspaper, or clicking on the evening news" for issues of statutory interpretation. Brief of Amicus Curiae AFL-CIO at 14. This Court does not interpret statutes according to such vague and illusory concepts.

[15] *See Puritan Med. Prod. Co. LLC v. Copan Italia S.p.A.*, 2018 ME 90, ¶¶ 1, 28, 188 A.3d 853 (affirming summary judgment in favor of defendant on other grounds than that stated by the trial court); *see also Bakal v.*

(footnote continued)

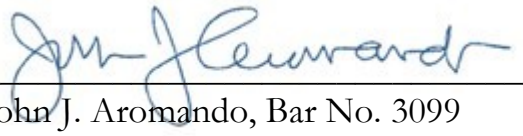
CONCLUSION

This matter does not involve the scope of a municipality's power to enact or amend municipal ordinances pursuant to home rule, but instead implicates the scope of municipal *voters'* initiative power under article IV, part 3, section 21 of the Maine Constitution and Portland's Initiative and Referendum Ordinance. That power is limited to those matters which are exclusively municipal affairs. *See* Me. Const. art. IV, pt. 3, § 21; *Albert*, 597 A.2d at 1355; *Burkett*, 199 A. at 621-22. Because of its subject matter and extra-territorial effects, the Emergency Provision is *ultra vires*.

If this Court does not grant Appellants' requested relief on Counts I and II, it should nonetheless affirm the Superior Court's judgment on Count III that the Emergency Provision takes effect on January 1, 2022.

(continued footnote)
Weare, 583 A.2d 1028, 1030 (Me. 1990) (explaining that "even though the basis for the court's entry of summary judgment for [defendant] was erroneous, we affirm the judgment because there exists another reason why [defendant] is entitled to judgment as a matter of law.").

Dated this 5th of April, 2021



John J. Aromando, Bar No. 3099
James R. Erwin, Bar No. 1856
Joshua D. Dunlap, Bar No. 4477
Sara A. Murphy, Bar No. 5423
PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
Tel: (207) 791-1100
jaromando@pierceatwood.com
jerwin@pierceatwood.com
jdunlap@pierceatwood.com
smurphy@pierceatwood.com

Attorneys for Plaintiff-Appellants Portland Regional Chamber of Commerce; Alliance for Addiction and Mental Health Services, Maine; Slab, LLC; Nosh, LLC; Gritty McDuff's; and Play it Again Sports

CERTIFICATE OF COMPLIANCE

As required by M.R. App. P. 7A(g)(1)(A), I certify that this Reply Brief of Appellants does not exceed the 40 page limit set for reply briefs in the Order on Plaintiff-Appellants' Consented-to Motion for Expedited Consideration of Appeal, dated February 11, 2021.

Dated: April 5, 2021

John J. Aromando, Bar No. 3099
PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
Tel: (207) 791-1100
jaromando@pierceatwood.com

Attorney for Plaintiff-Appellants Portland Regional Chamber of Commerce; Alliance for Addiction and Mental Health Services, Maine; Slab, LLC; Nosh, LLC; Gritty McDuff's; and Play it Again Sports

CERTIFICATE OF SERVICE

I hereby certify that a copy of Appellants' Rely Brief, was served upon the parties listed below by email only, per agreement of counsel, on April 5, 2021:

Dawn M. Harmon, Bar No. 9612
Perkins Thompson, P.A.
dharmon@perkinsthompson.com

Attorney for Defendant-Appellees City of Portland and Jon Jennings, in his official capacity as City Manager for the City of Portland

Shelby H. Leighton, Bar No. 6228
Valerie Z. Wicks, Bar No. 5606
David G. Webbert, Bar No. 7334
Johnson, Webbert & Garvan, LLP
sleighton@work.law
vwicks@work.law
dwebbert@work.law

Attorneys for Intervenor-Appellees Caleb Horton and Mario Roberge-Reyes

Christopher C. Taub, Bar No. 8416
Office of the Attorney General
Christopher.C.Taub@maine.gov

Attorney for Aaron Frey in his official capacity as Attorney General for the State of Maine

Gerald F. Petruccelli, Bar No. 1245
Petruccelli, Martin & Haddow, LLP
gpetruccelli@pmhlegal.com

Attorney for Amicus Curiae Maine State Chamber of Commerce

Kasia S. Park, Bar No. 5232
Jeana M. McCormick, Bar No. 5230
Sara P. Cressey, Bar No. 6201
Drummond Woodsum
kpark@dwmlaw.com
jmccormick@dwmlaw.com
scressey@dwmlaw.com

Attorney for Amicus Curiae Maine Association for Community Service Providers

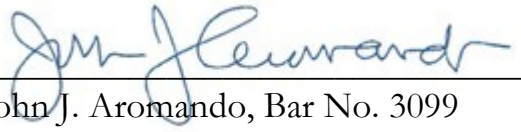
John R. Brautigam, Bar No. 8223
John R. Brautigam, Esq., LLC
johnbrautigam@gmail.com
Benjamin Gaines, Bar No. 5933
Gaines Law, LLC
ben@gaines-law.com
Zachary L. Heiden, Bar No. 9476
Emma E. Bond, Bar No. 5211
American Civil Liberties Union of Maine Foundation
zheiden@aclumaine.org
ebond@aclumaine.org

Attorneys for Amici Curiae American Civil Liberties Union of Maine Foundation and League of Women Voters of Maine

Benjamin K. Grant, Bar No. 4328
McTeague Higbee
bgrant@mcteaguehigbee.com

Attorney for Amici Curiae Maine AFL-CIO, Maine Center for Economic Policy, The Proper Cup, Maine State Building & Construction Trades Council, Southern Maine Workers' Center, People First Portland, Maine Small Business Coalition, and Portland Hunt and Alpine Club

Dated: April 5, 2021



John J. Aromando, Bar No. 3099
PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
Tel: (207) 791-1100
jaromando@@pierceatwood.com

Attorney for Plaintiff-Appellants Portland Regional Chamber of Commerce; Alliance for Addiction and Mental Health Services, Maine; Slab, LLC; Nosh, LLC; Gritty McDuff's; and Play it Again Sports