UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

CENTRAL MAINE POWER COMPANY, VERSANT POWER and ENMAX CORP., MAINE PRESS ASSOCIATION and MAINE ASSOCIATION OF BROADCASTERS, AND JANE P. PRINGLE, KENNETH FLETCHER, BONNIE S. GOULD, BRENDA GARRAND and LAWRENCE WOLD, Plaintiffs v. MAINE COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES, ET AL. Defendants.	Civil Action No. 1:23-cv-00450-NT

JANE P. PRINGLE, KENNETH FLETCHER, BONNIE S. GOULD, BRENDA GARRAND AND LAWRENCE WOLD'S MOTION FOR JUDGMENT ON THE PLEADINGS—AMENDED MOTION

Plaintiffs, Jane R. Pringle, Kenneth Fletcher, Bonnie S. Gould, Brenda Garrand, and Lawrence Wold, hereby move pursuant to Rule 12(c) of the Federal Rule of Civil Procedure, for judgment on the pleadings on Counts I through XI of Plaintiffs' Complaint on the grounds set forth in the following memorandum of law.

STATEMENT OF THE CASE

On November 7, 2023, Maine voters approved an initiative barring any "Foreign Government-Influenced entity" ("FGIE") "directly or indirectly" seeking "to influence the nomination or election of a candidate or initiation or approval of a referendum." Following its enactment, the initiative was codified at 21-A M.R.S. § 1064 ("Section 1064" or 'FIGE Act").

Section 1064 sweeps broadly silencing FGIEs from expressions of any kind relating to candidates for public office or the entirety of the legislative process for any lawmaking proposal requiring the approval of Maine voters (hereinafter, at times, "Electors"). Although Section 1064's ostensible primary targets are FGIE's, including Plaintiffs, Central Maine Power and ENMAX/Versant, its true target is Maine citizens in their capacities as individuals and voters (hereinafter, at times, "Electors").

In service of this illicit goal, Section 1064 exposes Plaintiffs, as individuals and as Maine voters, to civil and criminal sanctions should they "knowingly" or "recklessly" engage in conduct that causes communications barred by Section 1064(2) to "influence" the "initiation or approval" of any Ballot Measure. 21-A M.R.S. §§ 1064(2)-(4), 1064(8)-(9).

Withal, the Section 1064 denies Plaintiffs, as individuals and as Electors, of their right to petition the government and, as Electors, to be petitioned as well as their rights to freedom of speech and freedom of assembly, and the associational rights implicit in each of these rights, as

guaranteed by the First Amendment to the U.S. Constitution and by Article I, Sections 4 and 15 of the Maine Constitution.

In addition, Section 1064(6) of the FGIE Act imposes investigative and reporting duties on entities engaged in receiving and disseminating communications covered by Section 1064(2). The purpose of this is, by coercion, to enlist the media to screen and report Section 1064(2) communications. These burdens and duties could chill members of the press in fulfilling their traditional role of fearlessly informing the public, including Plaintiffs, on the full range of issues and opinions on proposed popularly approved legislation including, even, proposed constitutional amendments. Therefore, Plaintiffs challenge Section 1064(6) as threatening their ability to be informed by the press on such ballot measures.

Finally, to accomplish its ends, Section 1064 employs vague terms the violation of which can result in grave civil and criminal sanctions.

PLAINTIFFS' CLAIMS AGAINST SECTION 1064

Each Plaintiff, Jane Pringle, Kenneth Fletcher, Bonnie S. Gould, Brenda Garrand and Lawrence Wold, are registered Maine voters. Cmpl. ¶¶ 1-5.

Although Plaintiffs oppose Section 1064's application to candidate elections, they have limited their claims for declaratory and injunctive relief to Section 1064's application to "Referenda," ("Ballot Measures")[1] alleging that Section 1064 denies them their rights under First Amendment to the U.S. Constitution and under Article I, Sections 4 and 15 of the Maine

[1] "Referendum" is defined as 1) the people's veto (Article I, Pt.3d, § 17, Me. Const.); 2) a "direct initiative of legislation" (Article, IV, Pt.3d, §18); 3) popular approval of an amendment to the Maine Constitution (Article X, §4, Me. Const.); 4 conditional legislation (Article IV, Pt. 3d, § 19); 5) popular approval of bonds (Article IX, § 14; and 6) any county or municipal referendum. See, 21-A M.R.S. § 1064(1)(I).

Constitution[2], including their right to solicit, obtain, consider and decide for themselves, the merit of communications covered by Section 1064(2). Cmpl. ¶¶79-167.

Section 1064 would bar both Foreign Government Entities ("FGIEs") from providing any information on the initiation or approval of Ballot Measures. Plaintiffs challenge constitutionality of Section 1064's oppressive, punitive regime which exposes them, and, indeed, all persons, to civil fines and criminal felony-level sanctions if they "knowingly" or "recklessly" engage in communications intended "to influence" the "initiation or approval" of Ballot Measures in violation of the First Amendment, Article I, Sections 4 and 15 of the Maine Constitution, and, Due Process Clauses of the United States and Maine Constitutions.[3] Cmpl. ¶¶79-167.

As noted above, in limiting their challenge to Section 1064's application to Ballot Measures, Plaintiffs do not imply tacit approval of its application to candidate nominations and elections. To the contrary, they oppose those aspects of the FGIE Act as well and support the legal points raised by the other parties-plaintiff in challenging that aspect of the Act. Plaintiffs' claims concentrate on view Section 1064's application to Ballot Measures because it poses a mortal threat to the integrity of every exercise of the lawmaking authority by the Maine voters. Because of this danger, Plaintiffs concluded that Section 1064's application to Ballot Measures warranted a distinct and focused challenge.

Section 1064 would interfere with, impede, and even frustrate Plaintiffs' right to petition the government in two ways. First, it impedes their rights as lawmakers exercising the sovereign power to enact or reject Ballot Measures to make their own decisions as to what information and

[2] All of Plaintiffs' claims under the Maine Constitution are premised on the contention that, for each such claim, the Maine Constitution provides at least as much if not more protection as do analogous provisions of the U.S. Constitution.

[3] Plaintiffs' Due Process claim under Article I, Section 6-A of the Maine Constitution also includes their claim under the Law of the Land clause of the Maine Constitution, Article I, Section 6.

sources of information they choose to consider in deciding the merits of each Ballot Measure—both when considered for initiation and when considered for electoral approval. Second, and equally important, it bars or inhibits others from seeking their consideration, as Electors, of information from the banned sources in considering either the initiation or final approval of any Ballot Measure. These restrictions and prohibitions violate their right to petition the government and, as lawmakers, to be petitioned all in violation of the Right to Petition the Government as protected by the First Amendment of the U.S. Constitution and Article I, Section 15 of the Maine Constitution.

In addition to curtailing Plaintiffs' right to petition the government (and to be petitioned), by silencing FGIEs and imposing substantial civil and criminal sanctions for violations of its terms Section 1064 also violates their right to Freedom of Speech and related associational rights, as guaranteed by the First Amendment of the U.S. Constitution and Article I, Section 4 of the Maine Constitution, including the right to receive and consider information as well as their right to share such communications and even advocate to others their merits with respect to a given Ballot Measure.

Moreover, by barring the generation and dissemination of prohibited information from prohibited sources, Section 1064 also violates Plaintiffs' right to Freedom of Assembly and related associational rights as provided for in the First Amendment to the U.S. Constitution and Article I, Section 15 of the Maine Constitution. This is a limitation that is particularly acute due to the proliferation of the myriad ways of communicating through social media.

Undergirding all of Section 1064's suffocating provisions are onerous criminal and civil sanctions, all triggered by the felonious sin of employing prohibited communications from prohibited sources "to influence" others on the merits of a given Ballot Measure. Worse still,

Section 1064's operative terms are so sweeping and broadly framed that neither Plaintiffs nor anyone else, which means everyone else, required to comply with its punitive regime, can be confident when they will have run afoul of its strictures, both chilling their exercise of First Amendment rights as well as their right to fair notice of the law and freedom from its arbitrary enforcement in violation of the Due Process Clause.[4] Here, Section 1064's of the term "to influence" deserves special recognition for its pernicious implications. In effect, Section 1064 would this essential purpose of political discourse into a weapon against certain voices and all those that wish to hear, consider, and share communications on Ballot Measures coming from those sources.

Finally, Section 1064 imposes duties of censorship and publication on a broad spectrum of members of the media in a manner that risks chilling their essential role in fearlessly informing Maine voters and the public at large of information and perspectives on policy choices presented by Ballot Measures; measures which are often potentially far reaching and hotly contested; measures as to which the need for Maine voters and the public at large to be informed is at a premium.

For these reasons, and as is discussed further below, Section 1064 violates the most fundamental and essential of political rights and in so doing goes much further than violating the Plaintiffs' rights as individuals and as Electors with respect to their consideration of Ballot Measures; it strikes at the very essence of Maine's political discourse and exercise and the peoples'

[4] From this point forward, Plaintiffs' reference to the First Amendment will incorporate the comparable rights set forth in Article I, Sections 4 and 15 of the Maine Constitution and their reference to the Due Process Clause of the Fourteenth Amendment will incorporate the comparable rights set forth in the Maine Constitution at Article I, Section 6 and 6-A. As noted above, Plaintiffs contend that the rights guaranteed by the Maine Constitution provide at least as much protection and may provide more protection than the analogous provisions in the U.S. Constitution.

right to fully exercise the rights and responsibilities attendant on and essential to popular sovereignty.

LEGAL AND FACTUAL BACKGROUND—TERMS OF SECTION 1064—BALLOT MEASURES RESTRICTED

To understand the FGIE Act's implications for Maine voters' exercise of the lawmaking power, a detailed review of its terms is imperative. Section 1064 bars the use of information generated through contributions or donations to, or expenditures or disbursements by, designated foreign entities "to influence…the initiation or approval of a referendum." 21-A M.R.S. § 1064(2).[5]

Section 1064 is directed at "foreign governments", "foreign government-influenced" entities" and "foreign government-owned entities." *Id.* at § 1064(D, (E), (F).[6] It also defines "foreign government-influenced entity" to include a "foreign government" or an entity in which a "foreign government" or "foreign government-owned entity" either "holds, owns, [or] controls . . . 5% or more of the total equity, outstanding voting shares, membership units or other applicable ownership interests" or "directs, dictates, controls or directly or indirectly participates in the decision-making process" of the entity.

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[5] As proposed, Section 1064 included a second section—Section 2—which did not enact a law but, rather, urged members of the Maine Congressional Delegation to support an "anticorruption" amendment to the United States Constitution. Complaint, Ex. A, § 2, ¶¶ 1-3. Section 2 did not enact a law and, therefore, was not the proper subject of an initiative. *See*, *Moulton v. Scully*, 111 Me. 428, 89 A. 944, 952-953 (1914). Even so, Plaintiffs do not challenge the constitutionality of Section 2. See, also, *Central Maine Power Co. v. Maine Comm'n on Governmental Ethics and Election Prac.*, 144 F.4th 9,14, n.1 (1st Cir. 2025).

[6] "Foreign government" is broadly defined as including "any person or group of persons exercising sovereign de facto or de jure jurisdiction over any country other than the United States or over any part of such country[.]" 21-A M.R.S. § 1064(1)(D). It extends to "any faction or body of insurgents within a country assuming to exercise governmental authority, whether or not such faction or body of insurgents has been recognized by the United States." "Foreign government-influenced entities" includes 'foreign governments" and "partnerships" and other corporate-type entities in which an FGIE either owns 5% of the total equity or voting shares" (or other measure) or "participates in the decision-making process" for that entity. *Id.* at § 1064(1)(E)(2). A "Foreign government-owned entity" also includes "any entity in which a foreign government owns or controls more than 50% of its equity or voting shares." *Id.* at § 1064(1)(F)

Section 1064(1)(I) applies to six forms of popular sovereignty defined in Section 1064(1)(I)(1)-(6): (1) the people's veto under Article IV, Part Third, Section 17; (2) the "direct initiative"[7] under Article IV, Part Third, Section 18; (3) the ratification of a constitutional amendment under Article X, Section 4; (4) a legislative proposal issued to the Electors bv the Legislature under Article IV, Part Third, Section 19; (5) the ratification of the issue of bonds under Article IX, Section 14; and (6) any county or municipal referendum.[8] *See* Article IV, Part Third, Section 21. 21-A M.R.S. § 1064(1)(I)(1)-(6) (hereinafter "Referendum" or "Ballot Measures").

Section 1064(2) is the core of the Section 1064. Its sweeping prohibitive terms permeate every aspect of the Section 1064 and provide the foundation for the imposition of criminal and civil sanctions to which Plaintiffs and all others are exposed. Section 1064(2) bars FGIEs from: "mak[ing], directly or indirectly, a contribution, expenditure…or any other donation or disbursement of funds to influence…the **initiation or approval of a referendum**." *Id.*, § 1064(2) (emphasis supplied).

Initiation and Approval: Section 1064(2) applies to the "initiation or approval" of any of the Ballot Measures listed at Section 1064(1)(I)(1)-(6).[9] Section 1064 applies to a Ballot Measure's incipient state through and including its eventual "approval" (or rejection) by Maine voters. But depending on their constitutional prerequisites, Ballot Measures may either be "initiated" by citizen petition or by the Legislature. As will be seen, for those Ballot Measures initiated by petition, Section 1064 applies to the earliest stages of that process; for those initiated

[7] See discussion, infra, at infra at 37.
[8] Given the number of Maine municipalities and variations in their initiative processes, this memorandum is limited to discussion of the five statewide Ballot Measures listed in Section 1064(1)(I)(1)-(5).
[9] Five of the Ballot Measures listed in Section 1064(1)(I) are in the Maine Constitution: 1) the people's veto, art. IV, Pt.3d, § 17; 2) the direct initiative art. IV, Pt. 3d, § 18; 3) Constitutional amendments, art. X, §4; and 4) bond approvals, art. IX, § 14. 21-A M.R.S. § 1064(1)(I)(1)-(5). The last category covers country and municipal Ballot Measures. *Id.,* at § 1064(1)(I)(6).

by the Legislature, it applies to the first point at which Legislators begin their consideration of a given Ballot Measure.

Petition-Originated Legislation: Section 1064(2)'s use of the word "initiation," itself, must be compared to the broad range of Ballot Measures Section 1064(1)((I) covers.[10] Section 1052 of Title 21-A describes rather than defines "initiation," advising that it "includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot." 21-A M.R.S. § 1052(4-B). This description applies to those Ballot Measures that are commenced by petition, but only two of the statewide Ballot Measures listed in Section 1064(1)(I)—the people's veto and the direct initiative—are commenced by petition. *See*, Me. Const., art. IV, Pt. 3d, §§ 17-18.

Legislature-Originated Legislation: The three other statewide Ballot Measures listed in Section 1064(1)(I)—popular approval of an amendment to the Constitution, conditional legislation issued by the Legislature for voter approval, and the ratification of bonds—all are "initiated" exclusively by the Legislature. *See*, Me. Const., art. X, § 4 (constitutional amendments), art. IV, Pt. 3d, § 19 (conditional legislation), art. IX, § 14 (bonds). Therefore, Section 1052(4-B)'s definition does not apply to them. As to Ballot Measures originated by the Legislature, Section 1064(2) applies to the very earliest point at which any individual member of the Legislature may propose a constitutional amendment, a law or a bond for possible submission to the voters at large for approval.[11]

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[10] The FGIE Act does not define "initiation". Therefore, a dictionary must be consulted. *See McDonald v. City of Portland*, 2020 ME 119, ¶¶ 20-21, 239 A. 3d 662. The definition of "initiation" is tied to the definition of "initiate" which means "to cause or facilitate the beginning of: set going." Merriam-Webster's Collegiate Dictionary (ed. 2003).

[11] See, n. 11, supra.

Contributions/Expenditures/Donations/Disbursements: Section 1064(2) prohibits "contributions" and "expenditures" as well as "any other donations or disbursement of funds," if they are made "to influence…the initiation or approval of a referendum."[12] For these terms, Section 1064 expressly incorporates by reference Section 1052's definitions of "contribution" and "expenditure." 21-A M.R.S. § 1064(1)(A), (C).

The statutory definition of "contribution" is expansive applying in pertinent part to, "[a] gift, subscription, loan, advance or deposit of money or anything of value by a committee for the purpose of initiating or influencing a campaign."[13] The statutory definition of "expenditure" is likewise broad, applying in pertinent part to "[a] purchase, payment distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign." *Id*., § 1052(4)(1); *see also*, *id.* at § 1052((1-A)-(3).

Although the meanings of "contribution" and "expenditure" have been defined by statute, that is not true of the terms "any other donation" or "any…disbursement of funds." Therefore, accepted dictionary definitions must be consulted. *McDonald v. City of Portland,* 2020 ME 119, ¶¶ 20-21, 239 A.3d 662. At this point, it is sufficient to note that both terms are modified by the word "any" which means they must be applied broadly. *National Council on Compensation Insurance v. Superintendent of Insurance*, 481 A.2d 775, 780 (Me. 1984) (common meaning of "any" is "no matter which one"). These terms must, therefore, be broadly construed.

[12] Section 1064 expressly incorporates by reference the definitions of "contribution" and "expenditure" in Section 1052 of Title 21-A. 21-A M.R.S. § 1052(A) and (C). The terms "any other donation" and "any…disbursement of funds" are not defined either in the Initiative or in Title 21-A of the Maine Revised Statutes.

[13] The definition of "contribution" is supplemented by more a particular list of acts that constitute contributions. 21-A M.R.S. § 1052(3)(A)-(D).

Influence: Critical to Section 1064(2)—the FGIE Act's core provision—is the word "influence.". Section 1064(2) bars FGIEs from making contributions, donations, expenditures or disbursements "to influence" the initiation or approval of a referendum.

Section 1064 does not define "influence," but its common meaning reaches a breathtakingly broad spectrum of conduct.[14] Section 1052(4-A) of Title 21-A defines "influence" as meaning "to promote, support, oppose or defeat." 21-A M.R.S. § 1052(4-A).[15] These four words are sufficiently broad to encompass the entirety of activities associated with the Electors' consideration of a given Ballot Measure as well as that of interested parties and the public at large. They cover everything from highly organized and well-funded campaigns to approve or defeat such a measure, with all the myriad ways of communicating internally and to the public such campaigns necessarily entail, to highly individual attempts to communicate with neighbors, friends, and family.

The common concept that knits these four Section 1052(4-A) words together is that of persuasion. Persuasion, in turn, assumes communication from one to another, or to many others, through a seemingly limitless array of instruments and media now so readily available. In sum, "influence", as used in Section 1062(4), applies to all the means people may employ when they communicate for the purpose of persuading others to promote, support, oppose or defeat a Ballot Measure. In the arguments that follow, this memorandum uses "influence" in this sense. *See also*, infra, 23-25.

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[14] See, *e.g.,* "**Influence**": "The act or power of producing an effect without apparent exertion of force or direct exercise of command." Merriam-Webster's Collegiate Dictionary (ed. 2003)

[15] "Influencing" appears within the definition of "contribution" and "expenditure". 21-A M.R.S. §§ 1052(3), (4). As noted, Section 1064(2)'s additional terms "any other donation" and "any…disbursement" are not statutorily defined, and, therefore, it is unclear whether Section 1052(4-A)'s definition of "influence" applies to them. Irrespective of which definition is applied, Section 1064's use of "influence" is fatally overbroad under the First Amendment and the Due Process Clause.

Persons Influenced: Coupled with "initiation or approval", the prohibition on the use of FGIEs' monies to "influence" necessarily applies to those using FGIE communications to promote, support, oppose or defeat a Ballot Measure from very earliest point of its commencement all the way through to its eventual consideration by the voters at the polls. that Ballot Measure. As has been seen, only two Ballot Measures may be initiated by petition—the people's veto and the direct initiative—the remaining three—constitutional amendments, conditional legislation, and bonds—are initiated by the Legislature. Therefore, depending on whether a citizen- or legislature-initiated Ballot Measure is at issue, Section 1064 bars FGIEs from contributing or expending monies to "influence" would-be petition originators or circulators or Legislators.

Ultimately, qualifying Ballot Measures are submitted to the Electors or voters at large for approval. Therefore, Section 1064 bars FGIEs from contributing or expending monies to influence Electors or voters at large in the approval of a given Ballot Measure.

Directly or Indirectly: Finally, Section 1064(2) bars FGIEs from seeking to influence "directly or indirectly." This phrase is comprehensive and, in effect, encompasses all manner and means by which the FGIEs might seek to communicate—that is, "influence"—legislators or Electors in their exercise of their lawmaking powers with respect to Ballot Measures.

Application of Prohibited Conduct to all Persons: Although Section 1064(2) is directed at the FGIEs as defined in Section 1064(1)(E) and (F), Section 1064's reach is much broader—indeed, it is limitless. Section 1064(11), which is headed "Applicability", expressly eschews the limitations set forth at 21- A M.R.S. § 1051 (governing Ballot Measures) and, instead, provides that the FGIE Act applies to "all persons." 21-A M.R.S. § 1064(11). In addition, Section 1064(3) through Section 1064(5) describes specific prohibited conduct—all tied by to Section 1064(2)—

which apply to **any** person. 21-A M.R.S. § 1064(3)-(5). *National Council on Compensation Insurance,* 481 A.2d at 780.

First, Section 1064(3) provides that a person may not "knowingly solicit, accept, or receive a contribution or donation prohibited by [Section 1064(2)]." 21-A M.R.S. § 1064(3). Although not cited, the word "knowingly" is derived from the Maine Criminal Code. 17-A M.R.S. § 35(2).

Second, Section 1064(4) provides that a person may not "knowingly or recklessly provide substantial assistance, with or without compensation" for either of the following: A) "the making, solicitation, acceptance or receipt of a contribution or donation prohibited by [Section 1064(2)]" or B) "the making of an expenditure…or disbursement prohibited by [Section 1064(2)]." Although not cited, the word "recklessly" is derived from the Maine Criminal Code. 17-A M.R.S. § 35(3); 21-A M.R.S § 1064(4).

Section 1064(4) extends the reach of Sections 1064(2) and 1064(3) by including not only individuals seeking Section 1064(2) communications but those who provide "substantial assistance" to such individuals.

Third, Section 1064(5) provides that a person "may not structure or attempt to structure a solicitation, contribution, expenditure…or disbursement or other transaction to evade[16] the prohibitions and requirements of [the Initiative in its entirety.]." 21-A M.R.S. § 1064(5).

Sections 1064(3)-(5) apply in full to the Plaintiffs in their personal and individual capacities and in their capacities as registered voters and Electors. Section 1064(3) bars Plaintiffs, and all other persons, from making a contribution or a donation or an expenditure or disbursement to influence the initiation or approval of a Ballot Measure in violation of Section 1064(2). Section

[16] Though not singled out for briefing below, it should be noted that the word "evade" as it appears in Section 1064(5) is ambiguous. It does not necessarily connote wrongful conduct. When coupled with the word "attempt", it is more ambiguous still. Yet, a violation of Section 1064(5) could result in the civil or criminal penalties provided in Sections 1064(8) and 1064(9).

1064(4) bars Plaintiffs, and all other persons, from providing "substantial assistance" with respect to a contribution or donation or expenditure or disbursement to influence the initiation or approval of a Ballot Measure in violation of Section 1064(2). Section 1064(5) is framed even more broadly than the other prohibitory provisions, barring any "attempt to structure", not only contributions, donations, expenditures, and disbursements, but also "solicitations" or any "other transaction" for the purpose of "evad[ing] the prohibitions and requirements of [the Initiative]." *Id.* at § 1064(5).

Civil and Criminal Sanctions: The FGIE Act subjects all persons, including Plaintiffs, to severe civil and criminal sanctions for transgressing its terms. Section 1064(8) authorizes the Commission to impose penalties of "not more than $5,000 or double the amount of the contribution, expenditure…donation or disbursement involved in the violation, whichever is greater for a violation of [the Initiative]." *Id.*, at § 1064(8). An aggravating factor is whether the violation was "intentional." *Id.*

In addition, Section 1064(9) provides that any violation of Section 1064(2) (barring FGIEs from making contributions, donations, expenditures, or disbursements to influence the initiation or approval of an Initiative) is a Class C crime.[17] *Id*. at § 1064(9). It provides further that any violation of Sections 1064(3)-(5), which apply to all persons, including Plaintiffs, is also a Class C crime. *Id*.

Section 1064(6) imposes limitations and duties on a broad range of media, including traditional broadcast and print journalism. Those limitations and duties carry the real risk of chilling the willingness of the press to present Section 1064(2) communications on Ballot

[17] Under Maine criminal law, a Class C crime is a felony and is punishable by imprisonment for to five years and a fine of up to $5,000. 17-A M.R.S. § 1604(C), 17-A M.R.S. § 1704(3). "Organizations" can be fined up to $20,000. 17-A M.R.S. § 1705(4).

Measures to the public. Plaintiffs, in their capacities and individuals and as Electors, are entitled to receive such communications in their consideration of the merits of the initiation and approval of any Ballot Measures and, accordingly, in their own right challenge the constitutionality of Section 1064(6) as violative of their First Amendment rights.

ARGUMENT

I. Section 1064 violates the Electors' right to petition the government and to be petitioned with respect to the initiation and approval of Ballot Measures.

The Right to Petition the Government is set forth in the First Amendment in unambiguous and unqualified terms. "Congress shall make no law…abridging…the right of the people…to petition the Government for a redress of grievances." U.S. Const., Am. I. The Right to Petition is accompanied in the First Amendment by Freedom of Speech and Freedom of Assembly which also may not be "abridge[ed]." *Id.* All of these rights are reinforced by an unstated but necessarily implied right of association. *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 135 (2003).

In *DeJonge v. Oregon*, 299 U.S. 353 (1938), the Supreme Court observed that, "[f]reedom of speech and of the press are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution." *Id.* at 364 (citations omitted). The Court then went on to explain that "[t]he right to peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental." *Id.*; *accord Thomas v. Collins*, 323 U.S. 516, 530 (1945).

DeJonge quoted *United States v. Cruikshank*, 92 US. 542, 552 (1875): "**The very idea of government in republican form**, implies a right on the part of its citizens to meet peaceably for consultation and in respect to public affairs and to petition for redress of grievances." *Id.* (emphasis supplied). *DeJonge* recognized that these First Amendment rights—Freedom of Speech, Freedom of Assembly, Freedom of Press, and the Right to Petition—served so many complementary, even

shared purposes that they were "cognate" rights; interdependent and mutually reinforcing, while also different and distinct. *See United Mine Workers v. Illinois Bar Ass'n*, 389 U.S. 217, 222 (1967); see also, *McDonald v. Smith*, 472 U.S. 479, 490 (1985) (Brennan, J., concurring) ("we have recurrently treated the right to petition similarly to, and frequently overlapping with, the First Amendment's other guarantees of free expression."). As has been noted, both *DeJonge* and *Cruikshank* tied all the First Amendment's rights of free expression to individual and civic rights essential to representative government.

As the *McDonald* Court put it, "The First Amendment guarantees 'the right of the people…to petition the Government for a redress of grievances.' The right to petition is cut from the same cloth as other guarantees of that Amendment and is the assurance of a particular freedom of expression." *McDonald v. Smith*, 472 U.S. at 482. *McDonald* traced the origins of the right to petition at least as far back as the English Bill of Rights of 1689, noting that it was included in Declarations of Rights of several states. *Id.* *McDonald* observed that the right to petition can take many forms ranging from litigation (*United Mine Workers*, 389 U.S. at 221-22) to challenging a potential executive nomination. *Id.* at 484.

In *First Nat'l Bank of Bos*. v. *Bellotti,*435 U.S. 765 (1978), the Supreme Court considered another way in which the government may be petitioned—that is, by seeking to influence those with lawmaking authority to enact, change or repeal a law.[18] The Massachusetts law in question barred a broad spectrum of corporations from "influencing or affecting the vote" on most initiatives and referenda. 435 U.S. at 768, n. 2.[19]

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[18] *Bellotti* apparently did not involve a challenge to the Massachusetts law based on the right to petition the government. Nonetheless, the Court noted that, in exercising the initiative power, Massachusetts voters were acting in their "sovereign capacity." *First Nat's Bank of Bos. v. Bellotti,* 435 U.S. 765, 790-91, n. 31.

[19] With an exception for initiatives and referenda "materially affecting" their interests, the law barred the listed corporations from "influencing or affecting any question submitted to the voters." 435 U.S. at 768, n.2. The Massachusetts law was less restrictive than the FGIE Act in that it applied to "any question

At the outset, *Bellotti* rejected the lower court's emphasis on the corporate status of the restricted parties saying that approach "posed the **wrong question**" "[because] [t]he First Amendment, in particular, serves societal interests." *Id*. at 776 (emphasis supplied). *Bellotti* explained that "[t]herefore, the question is **not** whether corporations 'have' First Amendment rights and, if so, whether they are coextensive with those of natural persons. **Instead**, the question must be **whether [the Massachusetts law] abridges expression that the First Amendment was meant to protect**." *Id.* at 776 (emphases supplied).

This being so, the Court observed that, "[t]he inherent worth of the speech in terms of its capacity for **informing the public** does not depend upon the identity of its source, whether corporation, association, union or individual." *Id.* at 777 (emphasis supplied). For that reason, "in the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address the public issue." *Id.* at 784-85.

While recognizing the importance of "[p]reserving the integrity of the electoral process", the *Bellotti* noted that initiatives and referenda considered by the voters at large posed much more limited dangers: The risk of corruption perceived in cases involving candidate elections [citation omitted] is simply not present in a popular vote on a public issue." *Id.* at 790.[20]; accord, *Citizens Against Rent Control v. City of Berkeley,* 454 U.S. 290, 298 (1981). The Court also characterized the Massachusetts law's attempt to insulate the voting public from communications from corporations on Ballot Measures as manifesting "paternalism." *Id.* at 791, n. 13.

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submitted to the voters" whereas, by contrast, the Initiative applies to the entirety of legislative process for Ballot Measures from "initiation" through "approval." 21-A M.R.S. § 1064(2).

[20] Although *Bellotti* noted that the Massachusetts law implicated the voters "tak[ing] action in their sovereign capacity (435 U.S. at 791, n. 31) it does not appear that the parties challenging that law included their right to petition the government in their challenge to that law.

Bellotti was squarely consistent with the Supreme Court's decisions in two immediately preceding cases—*Buckley v. F.E.C.,* 424 U.S. 1 (1976) and *Virginia Bd of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976).

In *Buckley*, the Court observed that "[t]he First Amendment affords the broadest protection to…political expression in order to 'ensure [the] unfettered interchange of ideas for bringing about political and social changes desired by the people.'" 424 U.S. at 14 (*quoting Roth v. United States*, 354 U.S. 476, 484 (1957)). *Buckley* added that "there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs…of course includ[ing] the discussion of candidates." *Id.* (*quoting Mills v. Alabama*, 384 U.S. 214, 218 (1966)).[21] The indispensable precondition was "informed public opinion [which] is the most potent of all restraints on misgovernment." *Id.* at 67, n. 79 (quoting *Grosjean v. American Press Co*., 297 U.S. 233, 250 (1936)); *see also Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring) ("the remedy to be applied [to an apprehended evil] is more speech, not enforced silence").

In *Virginia Board*, the Supreme Court overruled precedent restricting the First Amendment protections for "commercial speech" emphasizing instead the right of the public to receive and evaluate for itself the value of such speech. 425 U.S. at 770. In reaching this conclusion, the Court observed that although, "[f]reedom of speech presupposes a willing speaker[,]…where such a

[21] The full quote from *Mills v. Alabama* reads as follows: "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes." 384 U.S. 214, 218-19 (1966); *see also First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. at 777 (quoting *Thornhill v. Alabama*).

speaker exists…the protection is afforded to the communication, to its source, and to its recipients both." *Id.* at 756 (citations omitted).[22]

In his concurring opinion, Justice Stewart observed, "[f]reedom of information, if it would fulfill its historic function in this nation, must embrace **all** issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." *Id.* at 776 (emphasis supplied) (*quoting Thornhill v. Alabama*, 310 U.S. 88, 102 (1940)). Justice Stewart then amplified this point by observing: "'Under the First Amendment there is no such thing as a false idea,' and the only way that ideas can be suppressed is through the 'competition of other ideas.'" *Id.* at 780 (*quoting Gertz v. Robert Welch, Inc*., 418 U.S. 323, 339-340 (1974)).

A. The Ballot Measures to which Section 1064 applies are all authorities for the popular exercise of the sovereign's lawmaking power.

By its application to the Ballot Measures listed in Section 1064(1)(I), Section 1064 inserted itself into a very particular category of constitutionally-protected petitioning—that is, the right to petition the voters, themselves, **as the lawmaking body**, in their consideration of whether or not to enact a law.

From its inception as a State, the Maine Constitution has provided that, while **only** the Legislature has the power to propose constitutional amendments, **only** the voters at large have the power to approve them. *Marshall J. Tinkle*, *The Maine State Constitution*, 180-81(2d ed. 2013); *see*, Me. Const., art. X, § 4. As has been noted, Section 1064 applies to the Constitution's amending process. 21-A M.R.S. § 1064(1)(I)(3). The same is true of bonds.

When the Maine Constitution was amended to provide voters with the right to approve proposed bond proposals which, the authority to originate bond proposals was also limited to the

[22] *Virginia Board* characterized the State's restrictions on advertisements of pharmaceutical pricing at issue in that case as a "highly paternalistic approach". 425 U.S. at 770.

Legislature. Me. Const, art. IX, § 14; *see also Tinkle, The Maine State Constitution*, 165-66 (2d ed. 2013). See, 21-A M.R.S. § 1064(1)(I)(5) (applying Section 1064 to bond proposals).

In 1909, Maine voters amended the State's Constitution to add the people's veto, the direct initiative, conditional legislation, and authorization for municipal Ballot Measures. Me. Const., art. IV, Pt. 3d, §§ 17-22. The Initiative applies to all these popular lawmaking measures. 21-A M.R.S. § 1064(1)(I)(1)-(2), (4), (6).

These amendments vested the Electors with lawmaking powers that were comparable to, but not coterminous with, those possessed by the Legislature. The Law Court has consistently recognized that these amendments invested the Electors with **legislative** power: "the people reserved to themselves the power to propose laws and to enact or reject the same at the polls independent of the legislature." *Farris ex rel. Dorsky v. Goss,* 143 Me. 227, 230 (1948). Explaining further, the Law Court stated, "[i]n short, the **sovereign**, which is the people, has taken back, subject to the terms and limitations of the amendment, a power which the people vested in the legislature when Maine became a state." *Id*. at 230-31 (emphasis supplied).

Subject to the terms and conditions of those amendments, the people's power to enact laws is "absolute and all embracing." *Town of Warren v. Norwood*, 138 Me. 180, 192-193 (1941); *see also Opinion of the Justices*, 623 A.2d 1258, 1262 (Me. 1993).

In *Moulton v. Scully*, the Court held that the initiative power applied "only [to] the legislation, to the making of laws, whether it be a public act or a private resolve, having the force of law." 111 Me. 428, 89 A. 944, 953 (1914); *see also*, *Opinion of Justices*, 118 Me. 544, 107 A. 673, 674-676 (1919) (concluding that popular ratification of an amendment to the federal constitution was "in no sense legislation" and was invalid). Therefore, the powers of popular

sovereignty set forth in amendments 17-22 of Article IV, Part Third of the Maine Constitution all concern the Electors' collective exercise of the sovereign's lawmaking powers.

Thus, when, individually and collectively, Electors exercise the powers set forth in these amendments, as well as the more longstanding power to ratify constitutional amendments and approve bonds, they are "the government" within the meaning of the First Amendment's guarantee of "the right to petition the Government for redress of grievances." U.S. Const, 1st Am.[23] Moreover, when acting in their capacities in the exercise of each of these powers, the Electors not only have the right to petition one another, they have the right to be petitioned by one another.

It is apparent, then, that the lawmaking power with respect to Ballot Measures held by Maine voters individually and collectively is same as that held by their elected representatives in the Legislature. Therefore, the Supreme Court's protection of political speech concerning the election of candidates for legislative office is equally applicable to political discourse on the merits of Ballot Measures.

All discussion on such matters, whether private or highly public, is "core political speech." *F.E.C. v. Wisc. Rt. to Life, Inc*., 551 U.S. 449, 477-78 (2007). And, as the Supreme Court has observed, [t]he civic discourse **belongs to the people,** and the Government may not prescribe the means used to conduct it." *Citizens United v. F.E.C.,* 558 U.S. at 372 (emphasis supplied) (*quoting McConnell v. Federal Election Commission*, 540 U.S. 93, 341 (2003) (opinion of Kennedy, J.)).

Indeed, public discourse on Ballot Measures, which in no way involves candidate nominations and elections, is more closely akin to "issue advocacy." *Id* at 469 (*citing Bellotti,* 435 U.S. at 776); *see also Bluman v. F.E.C,* 800 F.Supp.2d 281, 290 (D.D.C 2011) ("speak[ing] on

[23] The following arguments apply equally to Plaintiffs' claims in Count VI that the Initiative violates their right to petition the government under Article I, Section 15 of the Maine Constitution and, as noted above, Plaintiffs assert that the protections afforded in the Maine Constitution are at least equal to and may more extensive than those provided in the First Amendment.

issues of general public interest" is a "quite different context" from "participation in a political campaign for election to public office" (*quoting Bellotti*, 435 U.S. at 788, n. 26)). Indeed, "speech is an essential mechanism of democracy—it is **the means** to hold officials accountable to the people—political speech must prevail against laws that would suppress it by design or inadvertence. *Citizens United v. F.E.C*. 558 U.S, 310, 339 (2010).

It necessarily follows, therefore, as the Supreme Court has observed "[i] n a republic where the people are sovereign, the ability of the citizenry to make **informed** choices among candidates for office is essential". *Citizens United*, 558 U.S. at 339 (*quoting Buckley,* 424 U.S. at 14-15 (emphasis supplied)); *cf. Virginia Board*, 425 U.S. at 770. Against this background, Section 1064's comprehensive reach must be considered in the context of the constitutional procedures for governing Maine initiatives. The Initiative applies to "direct initiatives". 21-A M.R.S. § 1064(1)(I)(2).

Article IV, Part Third, Section 18 of the Maine Constitution authorizes Electors at large to initiate proposed legislation for consideration by Electors at a general election. Although this initiative process is often described as a "direct initiative", it is, in fact, an indirect initiative. That is because, once petitioners have obtained the requisite number of valid signatures, the proposed legislation is not presented directly to the voters; instead, it must first be presented to the Legislature. Me. Const., art. IV, pt. 3d, § 18(2). [24] Under Section 18, when presented with citizen-initiated legislation, the Legislature has three options: it may enact the proposed legislation without

[24] Popular initiatives that must be presented to the legislature before being sent to the voters are termed 'indirect initiatives.' See, James D. Gordon, III & David B. Magleby, Pre-Election Judicial Review of Initiatives and Referendums, 64 Notre Dame L. Rev. 298, 299 (1989); see also, Tinkle, The Maine Constitution, 103 (2d ed. 2013) ("This type of initiative has been categorized as 'modified-direct' legislation.")

change; it may propose legislation of its own to the voters as a competing measure; or it may take no action. *Id.*

Where the Section 1064 is concerned, the indirect character of Maine's initiative process is no mere technical distinction. It means that the Legislature's consideration of its three options in accordance with Article IV, Part Third, Section 18 initiative is an integral part of the "initiation and approval" process for such proposals.

Because Section 1064(2) applies to the entirety of the legislative process from "initiation to approval", it bars the Electors (and all others) from using Section 1064(2) communications to "influence" legislators and it bars all legislators from doing the same.[25] Use of such communications to that end would run afoul of Sections 1064(3)-(5) and the civil and criminal sanctions in Section 1064(8)-(9).

The same would apply to the use of such communications "to influence" the Governor to veto (or not) a proposed initiative that the Legislature sends out for a popular vote. In short, when the Legislature considers an initiative, the Section 1064's comprehensive reach and sanctions and even criminalizes the Electors' use of communications covered by Section 1064(2) when seeking "to influence" their legislators to support or oppose. It even applies to the legislators, themselves, if they would use such communications to attempt to "to influence" one another on a proposed initiative. Finally, it would apply to all of them if they were to use such communications in attempting "to influence" the Governor.

This illustration starkly demonstrates that the Section 1064 runs counter to the most fundamental First Amendment tenets. Rather than enhancing the public's knowledge on Ballot Measures, it **bans** the employment of Section 1064(2) communications "to influence" the

[25] Plaintiffs' use of the term "Section 1064(2) communications" includes the prohibitions on contributions and expenditures made to generate those communications. *See* 21-A M.R.S. § 1064(2).

"initiation and approval" of Ballot Measures. 21-A M.R.S. §§ 1064(2)-(5). And, not content with that, it subjects FGIEs, interested parties, Electors, and the public at large to civil and criminal sanctions for transgressing that prohibition. 21-A M.R.S. §§ 1064(8)-(9). This is unlawful.

"When Government seeks to use its full power, including the criminal law, to command **where** a person may get his or her information or **what distrusted source** he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves." *Citizens United v. F.E.C.*, 558 U.S. 310, 356 (2010) (emphases supplied).

B. Section 1064 is subject to and fails the application strict scrutiny.

Based on the foregoing discussion, Section 1064 is subject to strict scrutiny under the First Amendment because it trenches on Plaintiffs' right to petition the government and their correlative rights of freedom of speech, freedom of assembly, and freedom of the press, as well as the associational rights inherent in each. To meet the strict scrutiny standard, Section 1064 must advance a compelling state interest and must be narrowly tailored to serve that interest. *Sindicato Puertorriqueno de Trajadoes, SEIU v. Fortuno*, 699 F.3d 1, 11 (1st Cir. 2012) (*quoting Citizens United*, 558 U.S. at 340).

The State has asserted that the "compelling government interest" supporting Section 1064 sweeping ban of communications originating with FGIE's are excluding "foreign government influence" and the "appearance of foreign government influence." *Central Maine Power*, 144 F.4th at 22-23. The First Circuit "assumed without deciding" that each of Maine's proposed interests is sufficiently compelling." *Id.* at 23.[26] But, as applied to Ballot Measures, neither interest suffices.

[26] In his concurring opinion, Judge Aframe observed that he "would not assume that Maine's interest in limiting 'foreign government influence' or 'the appearance of such influence' is compelling or even an important government interest." *Central Maine Power*, 144 F.4th at 32 (Aframe, J., concurring).

As a threshold matter, "influence", by itself, much less the "appearance" thereof, is simply an unworkable as a First Amendment standard applied to elections, both Ballot Measures and candidate elections. That is because, unlike quid pro quo influence, "influencing" lawmakers on public policy is not inherently wrongful. To the contrary, seeking to influence lawmakers is integral and, indeed, indispensable to policymaking in a democracy. The Supreme Court spoken directly to this precise point: "[f]avoritism and influence are…not avoidable in representative government." *Citizens United*, 558 U.S. at 359. Indeed, such influence is "in the nature of" representative democracy. *Id.* Indeed, far from being inherently pernicious, "[t]he fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that **the people** have the ultimate influence **over** elected officials." *Id*. at 360. (emphases supplied) This is especially the case when the voters themselves are the lawmakers.

For this reason, the Court cautioned "[r]eliance on a 'generic favoritism or influence theory…is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle.'" *Id.* (*quoting McConnell,* 540 U.S. at 296). *Bellotti* recognized this very point when it matter-of-factly observed, "[t]o be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it." 435 U.S. at 790. [27]

As tenuous as FGIE "influence" and the "appearance" thereof clearly are in justifying the FGIE Act's application to candidate nominations and elections, these claimed interests are wholly inapposite as a justification to **ban** communications covered by Section 1064(2) with respect to the "initiation and approval" of Ballot Measures. This incompatibility arises from the nature of proposals that are approved by the voters at large because, as has been discussed above and as

[27] The district court "assume[d] without deciding that limiting foreign government influence in referenda elections is a compelling government interest." 721 F.Supp.3d 31, 51 (D. Me. 20215).

Bellotti explained, "[t]he risk of quid pro corruption perceived in cases involving candidate elections [citations omitted] simply is not present in a popular vote on a public issue." 435 U.S. at 790; *accord Citizens Against Rent Control*, 454 U.S. at 297-98 (1981); *see also Bluman v. Federal Election Commission,* 800 F.Supp.2d 281, 290 (D.D.C. 2011) (quoting *Bellotti,* 435, U.S. at 788, n. 26) ("speak[ing] on issues of general public interest" is a "quite different context" from "participation in a political campaign for election to public office").[28]

Section 1064 fails, then, because does not seek to permissibly regulate "core political speech" but, rather, seeks to ban it through oppressive criminal and civil regimes calculated to intimidate and discourage and silence those who might generate such communications and those who, like the Plaintiffs, wish to have the option to consider and, as they choose, disseminate them.

C. Section 1064 violates the Electors' First Amendment right to Freedom of Speech including their rights to disseminate and receive information baring on Ballot Measures

In addition to the reasons set forth above, Section 1064 fails because it violates Plaintiffs' First Amendment rights to freedom of speech in that it severely restricts their ability to disseminate and receive information prohibited by Section 1064(2). The blanket prohibition that Section 1064 imposes on the Electors' ability to discuss and disseminate FGIE communications has been discussed at length above. In addition, Section 1064 also bars Plaintiffs' right to receive information.

In *Virginia Board*, the Supreme Court discussed the right to receive in considerable detail. 425 U.S. at 756-57. Among other things, the Court cited decisions in which it found that citizens had a right to receive information from hostile governments, *Lamont v. Postmaster General,* 318

[28] As it did on appeal, the State may seek to rely on the three-judge court's decision in *Bluman*. *Central Maine Power*, 144 F.4th at 33-34. But, where Ballot Measures are concerned, *Bluman* is simply inapposite. Ballot measures were not at issue in that case, and the *Bluman* Court made it clear that it holding did not extend to "issue advocacy." *Bluman,* 800 F.Supp.2d at 292.

U.S. 301 (1965), and found that persons communicating with inmates had the right to receive correspondence from them. *Procunier v. Martinez,* 416 U.S. 396, 408-409 (1974).

In the context of political discussion, the Supreme Court has observed that, "[i]n a republic where the people are sovereign, the ability of the citizenry **to make informed choices** among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation." *McIntyre v. Ohio Elections Commission,* 514 U.S. 334, 346 (1995) (emphasis supplied). Where the initiation and approval of Ballot Measures is concerned, this same principle applies with full force.

In addition, Section 1064 is underinclusive in that it does not bar FGIE communications intended "to influence" the "initiation and approval" of proposed legislation by other lawmaking authority—**the Legislature**. *cf., Bellotti*, 435 U.S at 793.

An example of Section 1064's overbreadth may be found in Avangrid's opposition to the original initiative intended to stop the CMP Corridor. As has been seen, Section 1064(2) applies to the "initiation and approval" of any Ballot Measure. Avangrid opposed that initiative in several different ways including, ultimately, successfully challenging its constitutionality before the Law Court. *Avangrid Networks, Inc. v. Secretary of State*, 2020 ME 109, 237 A.3d 882.

Although, through Avangrid's efforts, this initiative was declared unconstitutional and the Secretary of State declined to submit it to the voters, it appears certain that some or all of Avangrid's opposition to this initiative would have come within the comprehensive embrace of Section 1064(2), opening Avangrid and those who disseminated Avangrid's Section 1064(2) communications to civil and criminal sanctions.

D. Section 1064 violates the Electors' First Amendment right to freedom of assembly with respect to the initiation and approval of Ballot Measures

For the reasons set forth above, Section 1064 also violates Plaintiffs' First Amendment right freedom of assembly. The criminalized ban on the consumption and dissemination of the prohibited information, severely curtails Plaintiffs' ability to share FGIE Act information with others, including with groups over social media.

E. Section 1064 violates Plaintiffs' First Amendment right to freedom of press.

By placing duties and restrictions on television, radio broadcasting stations, providers of cable or satellite television, print news outlets, and Internet platforms, Section 1064 is intended to and will have the effect of chilling the press, discouraging them from proving information from Foreign Entities prohibited by Section 1064(2) to the public. 21-A M.R.S. § 1064(7).

The Supreme Court has long held that information is essential to a vital and robust public discussion, but this premise assumes that the public has access to the information and materials essential to that discussion. *See*, *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 390 (1969) ("It is the right of the public to receive suitable access to social, political, aesthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC."). Section 7 of the Section 1064 violates Plaintiffs' right to a free press, both in their individual capacities and in the exercise of their duties and responsibilities as Electors.

F. Section 1064 violates First Amendment vagueness standards and the Electors' rights to due process of law.

Section 1064 places all persons, including Plaintiffs, at risk for serious criminal and civil sanctions. As such, Section 1064 must be sufficiently precise to avoid, through the vagueness of its terms, chilling the exercise of First Amendment rights. *Reno v. ACLU*, 521 844, 871-872 (1997). They must also be sufficiently clear to satisfy basic notice standards imposed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution as well as the Due Process

and Law of the Land provisions of the Constitution of Maine. U.S. Const., XIV Am.; Me Const., art. I, §§ 6, 6-A. In particular, it articulate standards with sufficient clarity so that the general public, including Plaintiffs, have "fair notice of what is prohibited", and prevents discriminatory, standardless enforcement. *Federal Communications Commission v. Fox Television Stations*, Inc., 567 U.S. 239, 253-254 (2012); *see also*, *Connally v. General Construction*, 269 U.S. 385, 393 (1926).

Section 1064 presents fails both standards. Due process "demands … that [a] law shall not be unreasonable arbitrary, or capricious and that the means selected shall have a real and substantial relation to the object sought to be attained." *Nebbia v. New York*, 291 U.S. 502, 510-11 (1934). With no means of predicting when an Elector may run afoul of the Initiative, a Class C crime, the Initiative is facially arbitrary and violates due process.

As Judge Aframe noted in his concurring opinion, Section 1064(1)(D)'s definition is so broad as to unascertainable. *Central Maine Power*, 144 F.4th at 34-37. In its unquenchable quest for breadth, Section 1064 has included all manner of groups who, at one moment or another, may exercise some semblance of temporal power over some patch of earth and those unfortunate enough to reside there. *Id.* Section 1064 provides no means by which Plaintiffs, as private citizens, could with even a modicum of reliability, track such groups over time. Without such a mechanism, Section 1064 is "arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt …." *Teneco Oil Co., Inc. v. Dep't of Consumer Affairs*, 876 F.2d 1013 1021 (1st Cir. 1989) (quoting, *Pennell v. City of San Jose*, 390 U.S. 485 U.S. 1, 11 (1988)).

Section 1064's ambiguous and undefined terms as well as the impossible to ascertain threshold for criminality, leave the Initiative unconstitutionally vague as "it subjects the exercise of the right of assembly to an unascertainable standard, and unconstitutionally broad because it

authorizes the punishment of constitutionally protected conduct." *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971). These same failings render it violative of the First Amendment when held against First Amendment vagueness standards. *Reno,* 521 U.S. at 871-872.

G. The Initiative is not Severable

"Severability is a matter of state law." *Rhode Island Med. Soc. v. Whitehouse*, 239 F.3d 104, 106 (1st Cir. 2001) (citing *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996) (per curiam)). In Maine, courts review the statute as a whole to determine whether "the remainder [of the statute] can be given effect without the invalid provision." *Bayside Enters., Inc. v. Maine Agr. Bargaining Bd*., 513 A.2d 1355, 1360 (Me. 1986). "If the invalid provision is such an integral part of the statute that the Legislature would only have enacted the statute as a whole, then the entire statute is invalid." *Id*. (citing *Town of Windham v. LaPointe*, 308 A.2d 286, 291 (Me. 1973)); *see In re Opinion of the Justs.*,132 Me. 502, 167 A. 174, 175 (1933) ("When legislative provisions are so related in substance and object that it is impossible to suppose that the statute would have been enacted except as an entirety, if one portion offends the Constitution, the whole must fall."); *Ayotte v. Planned Parenthood of N. New Engl.*, 546 U.S. 320, 329, 330 (2006) (court must ask "[w]ould the legislature have preferred what is left of its statute to no statute at all") (internal citations omitted); *Villas at Parkside Partners v. City of Farmers Branch*, 496 F. Supp. 2d 757 (N.D. Tex. 2007) (declining to rely on *Ayotte* where enjoining only the unconstitutional applications involved, among other things, reading "eligible immigration status" as "immigration status"). The *Ayotte* Court noted, a court cannot rewrite a law to "conform it to constitutional requirements" in order to "salvage it." *Ayotte*, 546 U.S. at 329. Section 1064(2) is the heart of the Initiative and, for the reasons set forth above, it violates the right to petition the government, the right to freedom of speech, the right to freedom of assembly, freedom of the press, and the related associational rights

of each of these rights as well violating the due process clause. Without Section 1064(2), the Initiative cannot be applied and its remaining provisions, all of which are dependent on it, fail.

H. A comprehensive injunction barring enforcement of the Initiative in its entirety is required.

In *Ayotte v. Planned Parenthood* of *N. New England*, 546 U.S. 320 (2006), the Supreme Court considered the circumstances under which a selective, as opposed to a comprehensive, injunction may issue. In sum, *Ayotte* required that fashioning the tailored injunction determine "how easily we can articulate the remedy" *Id.* at 329. Next, it required that any such limited remedy be "faithful to legislative intent"; that is, "whether [the] legislature intended the statute to be susceptible to such a remedy." *Id.* at 331. A selective injunction would not be easy to fashion and would not be consistent with the intent of the Maine Electors who approved it. For the reasons set forth above, the Initiative meets neither standard.

SUMMARY

For the reasons set forth above, Section 1064's ban on the Plaintiffs consideration and dissemination of information from certain sources where the initiation and approval of Ballot Measures are before the public violates Plaintiffs' rights and duties as Electors, including their right to petition the government and, in their exercise of the sovereign lawmaking power, to be petitioned. In addition, Section 1064 violates their rights to freedom of speech, freedom of assembly, and their right to freedom of the press, including freedom of the institutional press. Finally, Section 1064 is so vague that it chills Plaintiffs exercise of their First Amendment rights and correlative State Constitutional rights and denies them notice when their conduct may transgress Section 1064 in violation of the Due Process Clause and the Federal and State constitutions. Accordingly, Plaintiffs move for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure on Counts I-XI of their verified complaint.

Dated this 24th day of November, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2025, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send the notification of such filing to all counsel of record via email.

/s/ *Timothy C. Woodcock*