

FINAL  
REPORT



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## Maine's Citizen Initiative and People's Veto Process – Trends in Activity and Characteristics and Potential Opportunities for Improvement

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2021

a report to the  
**Government Oversight Committee**  
from the  
**Office of Program Evaluation & Government Accountability  
of the Maine State Legislature**

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## Maine's Citizen Initiative and People's Veto Process

## Introduction

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The Maine Legislature's Office of Program Evaluation and Government Accountability (OPEGA) has completed a review of the State of Maine's citizen initiative and people's veto process. This review was assigned to OPEGA by the Government Oversight Committee (GOC) of the 128<sup>th</sup> Legislature, following limited research by OPEGA related to the 2017 citizen initiative, An Act to Allow Slot Machines or a Casino in York County and a subsequent request for a review of the citizen initiative process. At that time, GOC members identified several areas of interest, which provided the foundation for a broader review of the citizen initiative process, along with the people's veto process. Following preliminary research by OPEGA (see Appendix D) the GOC approved the following five scope questions for this review:

1. What are the trends in activity and characteristics for citizen initiative and people's veto efforts over time?
2. What has been the geographic distribution for signatures collected on people's vetoes and citizen initiatives that qualified on the ballot?
3. To what extent have citizen initiatives that qualified for the ballot in the last twenty years dealt with matters that had previously been before the Legislature?
4. What opportunities exist to improve the efficiency, effectiveness, and economical use of resources in the citizen initiative and people's veto process?
5. What opportunities exist to improve transparency and accountability in the citizen initiative and people's veto process?

To answer the scope questions, OPEGA used various methodologies and data sources. In particular, we:

- Obtained, reviewed, and analyzed data from the Department of the Secretary of State (SOS) and the Maine Commission on Governmental Ethics and Election Practices (Commission);
- Interviewed public employees and stakeholders involved in the process, including individuals from the SOS, the Commission, the Maine Attorney General's (AG) Office, nonpartisan legislative offices, municipal registrars, and notaries public;
- Interviewed representatives of Ballot Question Committees (BQCs) and Political Action Committees (PACs);
- Reviewed relevant state statutes and the Maine Constitution; and
- Reviewed aspects of initiative processes in other states.

For the analysis of trends and characteristics, OPEGA selected the 20-year period spanning from January 1, 1999 to December 31, 2018 as the period of study to align with the timeframe specified in the third scope question. In this analysis, OPEGA examined the frequency with which the public uses the citizen initiative and people’s veto process, the types of subject matter that are addressed through this process, the number of petitions issued by the SOS, the number and types of initiatives that qualify for the ballot, the results of referendum votes and related legislative activity, as well as the use of paid signature gatherers, and the expenditures and contributions supporting or opposing a particular citizen initiative or people’s veto attempts. Table 1 provides a high-level overview of the 20-year sample of citizen initiative and people’s veto activity. The detailed results of our analysis of trends in activity and characteristics are presented on Pages 10 through 19.

<b>Table 1: Citizen Initiative and People's Veto Applications (1/1/1999 to 12/31/2018) and Related Activity</b>			
<b>Activity</b>	<b>Citizen's Initiative</b>	<b>People's Veto</b>	<b>Total</b>
Applications	135	27	162
Petitions Issued	93	13	106
Certified by SOS	29	6	35
Enacted by Legislature	2*	-	2
Voted at Ballot	27	6	33
Passed at Ballot	11	5	16
Note: *An additional citizen initiative was enacted by the Legislature, but vetoed by the Governor, which sent it to referendum. This instance is captured in the "Voted at Ballot" total. Source: OPEGA analysis of application, petition, and voting data obtained from the SOS and the Maine Legislative Law Library			

Through this review, OPEGA identified eight opportunities to improve one or more of the key attributes of the initiative process specified in the scope questions: efficiency, effectiveness, economical use of resources, transparency and accountability. It is important to note that each identified opportunity for improvement may be subject to competing interests and inherent tradeoffs (even between different attributes) and may be associated with additional burdens for some participants or stakeholders in the process. As such, decisions regarding the implementation of any of these eight potential opportunities for improvement depends on weighing competing policy values and priorities. As a result, OPEGA presents these as areas for consideration and policy decision making by the Legislature, not as recommendations. The eight potential opportunities for improvement—described in greater detail on pages 22 through 33—are as follows:

- Improve transparency and accountability in the signature collection process through the identification and reporting of all individuals participating in that process to the SOS.
- Improve accountability in the signature collection process through the development of mechanisms to ensure that signatures are collected in accordance with current requirements and that potential violations may be reported to and investigated by the SOS.
- Improve the efficiency of the signature validation process through the implementation and use of a fully functioning Central Voter Registration (CVR) system by municipal registrars and the SOS.

- Improve the transparency and effectiveness of data related to the organizers and financial supporters of petition circulation efforts at the beginning of those efforts through better communication between the SOS and the Commission.
- Improve the transparency and effectiveness of data on contributions to citizen initiative and people's veto efforts through better alignment of contributions to committees with expenditures made in support or opposition of a specific initiative or people's veto attempt.
- Improve the transparency and effectiveness of expenditure data through the development of an additional expenditure purpose category within the Commission's electronic filing system to capture expenditures for paid signature gathering.
- Improve the transparency and effectiveness of expenditure data by developing a means of delineating committee-to-committee transfers from total expenditures to better reflect funds directly spent on services and goods in the Commission's publicly available data.
- Improve the efficiency and economical use of resources by committees engaged in the initiative process and the Commission through adjustments to committee reporting requirements to limit additional reports to those elections in which a committee is participating.

In addition to the opportunities for improvement, we identified one issue in our review. Specifically, we found that the SOS's established procedure for signature validation does not adequately address a scenario in which signatures for a single citizen initiative or people's veto attempt are received by the SOS in more than one discrete submission of signatures made at different points in time. Under current procedures, such a scenario presents the risk that an initiative could qualify for the ballot with less than the required number of valid signatures. This issue and associated recommendation are described in greater detail on page 20.

The remainder of this report is organized in three key sections as follows:

- An overview of the citizen initiative and people's veto process, which provides valuable context for the analysis of trends and characteristics and opportunities for improvement;
- Results of our research and analysis regarding the trends and characteristics, including geographic and legislative characteristics of initiatives (questions 1-3); and
- Identified opportunities for improvement, and one issue, to improve specific attributes of the initiative process (questions 4-5).

# Overview of Citizen Initiative and People's Veto Process

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The process for citizen initiatives and people's vetoes is guided by the Maine Constitution and state law. The process is administered in part by the SOS and in part the Commission. The SOS, through the Elections Division of the Bureau of Corporations, Elections and Commissions, has the primary role in working with the party or parties pursuing an initiative and ensuring compliance with the established requirements for getting an initiative onto the ballot for a popular vote. The Commission, as the administrator of the State's campaign finance laws, has the role of monitoring and ensuring required registrations and finance reports are made by groups who support or oppose ballot measures, as well as maintaining publicly accessible data detailing contributions and expenditures made to or by these groups.

There is a substantial amount of activity and multiple steps involved in the initiative process. In this report, OPEGA has divided the process into six components, which are addressed in the sections below.

## **Application, Review, and Issuance of the Petition**

To commence a citizen initiative or a people's veto, a registered Maine voter must submit a written application to the SOS using the appropriate form provided by the office. In both cases, an application must be signed by the applicant, as well as five additional registered Maine voters.

Applications for citizen initiatives may be submitted at any time. According to the SOS, applications are often submitted in late summer in order to be ready for the applicant to collect signatures at the polls in November. In contrast, an application for a people's veto petition has more restrictive timing requirements. The application must be filed within ten business days of adjournment of the legislative session in which the Act proposed to be repealed was passed.

Applications for citizen initiatives must include the full text of the proposed law and a summary of the purpose and intent. People's veto applications, however, are not required to contain the text of the legislation to accomplish the veto nor a summary of the purpose and intent. The SOS is required to provide the ballot question to the applicant for a people's veto within ten business days after receipt of a properly completed application.

Upon receipt of a completed application for a citizen initiative petition, the SOS—with assistance from the AG's Office and the Revisor of Statutes (ROS)—has up to 15 business days to review the proposed legislation for non-conformance with drafting conventions for the Maine Revised Statutes.<sup>1</sup> If the proposed legislation needs revision to conform, the redrafted legislation as well as a letter summarizing all changes made by the ROS, questions that were raised by the ROS or the SOS, and a proposed title for the initiative is sent to the applicants.

Applicants can either accept the redrafted legislation as provided or submit additional changes to the legislation to the SOS. If the applicants choose to make additional edits to the legislation, the requested changes are submitted by the SOS to ROS for another review. For a second (or

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<sup>1</sup> 21-A MRSA §901(3-A)



subsequent review), the SOS has 10 business days to provide a new revised draft of the legislation to the applicant.

Ultimately, applicants must give written consent to the final language of the proposed law to the SOS before the petition form is prepared by the SOS. It is important to note that the SOS, the ROS, and the AG have no control over the content of the legislation as they can only suggest technical changes to bring it into conformance with drafting conventions. Thus, a citizen initiative may have significant constitutional or other defects. These issues may be pointed out to the applicants, but it is the applicants' decision whether or not to address them.

The SOS then prepares petition forms in accordance with the requirements specified by Maine Constitution and state statute. Petition forms include the full text of the legislation, a fiscal impact statement provided by the Legislature's Office of Fiscal and Program Review (OFPR), summary of the legislation, date of issuance, instructions to signers, circulators and registrars, a section for the circulator's name and a unique number for each petition that is assigned by the circulator, and sections for the Circulator's Oath and Registrar's Certification.<sup>2</sup> The SOS also meets with the lead applicant on the petition and potentially other members of the petitioners' group to review the petition form and all laws and rules related to petition circulation. Those members, in turn, inform petition circulators of these requirements.

### **Petition-related Registrations**

Once a petition is issued, there are certain registration requirements which depend on who is involved in petition circulation. If applicants for an initiative petition hire or intend to hire a private company or other type of business entity to organize, supervise, or manage the circulation of petitions for a citizen initiative or a people's veto referendum, that "petition organization" is required to file a registration form with the SOS prior to organizing, supervising or managing the circulation of petitions. The registration form must include the ballot question or title, contact information for the organization, the signature of a designated agent for the organization, and a list of individuals assisting in the circulation of petitions. If petitioners do not hire a private company or other type of business entity to organize or manage the circulation of petitions, the petition organization registration does not apply.

Each individual petition circulator is, however, required to register with the SOS. A circulator is defined in the Maine Constitution as "a person who solicits signatures for written petitions, and who must be a resident of this State and whose name must appear on the voting list of the city, town or plantation of the circulator's residence as qualified to vote for Governor."<sup>3</sup> Circulators must provide a signed form to the SOS registering as a Citizen Initiative Petition Circulator and attach a copy of their voter registration card. They must also complete and provide to the SOS a "Circulator Affidavit and Certificate of Registration," to demonstrate that they are a Maine resident and registered voter, and that they understand the circulator requirements and penalties for violating laws governing the circulation of petitions. The identification of people who are not registered petition

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<sup>2</sup> Me. Const. Art. IV, Pt. 3, §20 & 21-A MRSA §901-A, §901(5), §903

<sup>3</sup> Me. Const. Art. IV, Pt. 3

circulators and their involvement in signature collection is described in further detail on page 23 (OFI 1).

### **Petition Circulation, Oaths and Municipal Registrar Certifications**

State statute requires that when asking for signatures, petitioners must give the voters the opportunity to read the summary, fiscal impact statement, and the full text of the legislation. Currently available reporting mechanisms and enforcement of violations of these requirements are described in further detail on page 25 (OFI 2).

Once signatures are collected, the circulators verify by oath before a notary public (or other person authorized by law to administer oaths) that the circulator personally witnessed all of the signatures on the petition and that to the best of the circulator's knowledge and belief, each signature is the signature of the person whose name it purports to be.<sup>2</sup> The circulators must then submit the notarized petition forms to the municipal registrar of the municipality in which the signers of that petition reside. The registrar or clerk reviews the petition signatures to determine if the signatures are of registered voters of that municipality and then completes the Registrar's Certification on the petition form. A registrar or clerk who suspects that a petition was submitted in violation of statutory requirements must notify the SOS immediately.<sup>4</sup>

### **Petition Submission and Certification**

In order to qualify for the ballot, a petition for a citizen initiative or people's veto must be submitted to the SOS in accordance with the deadlines established by the Maine Constitution and must include enough valid signatures, as certified by the SOS, that on a statewide basis equal 10% or greater of the vote for Governor in the last gubernatorial election. For the period of this review, the required number of signatures ranged from 42,100 to 61,123 with a mean of 53,221.

The deadlines for submitting petitions are as follows:

- Citizen initiative petitions must be submitted within 18 months of the application date; and
- People's veto petitions must be submitted to the SOS by 5 p.m. on the 90th day after adjournment of the legislative session at which the Act proposed to be repealed was passed. The effect of any Act or Resolve, or any part or parts of the Act or Resolve, that are specified in the people's veto petition application are automatically suspended upon filing of the people's veto petition.

The SOS has 30 days after receipt of the petitions to complete the certification process, which involves determining the validity of the petition and issuing a written decision stating the reasons for the decision. The SOS carries out a multi-step process to certify each petition as outlined in Table 2. This process entails checking specific aspects of the petition to ensure that all requirements of the Maine Constitution as set forth in Article IV, Part Third, Section 20 are met. If any information surfaces during the SOS petition review process that warrants further investigation, the SOS may refer the matter to the AG's Investigations Division for further investigation.

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<sup>4</sup> 21-A MRSA §902-A

<b>Table 2. Summary of the Secretary of State's Petition Certification Process</b>	
1.	Check for duplicate signatures. This is a multi-step manual process, which includes entering the name and municipality of residence of all individual signers certified as registered voters by local registrars into a database, generating printouts listing names of individual signers and teams of staff manually reviewing printouts for duplicates. This process is described in further detail on page 26 (OFI 3).
2.	Create the "Certification Database" by entering petition form information, including the circulator's name and municipality of residence, and the name of the notary and date the petition was notarized.
3.	Check that each petition is in the approved printed form, that all pages of the text of the proposed legislation are included in each petition, and that pages are not missing, damaged or altered in a manner inconsistent with the approved form.
4.	Confirm the circulator's residency and registered voter status by reviewing the petitioner's "certificate of registration" and attached copy of their voter registration card.
5.	Confirm that the circulator's oath is properly signed and notarized with an original signature of a circulator in the circulator's oath section of the petition form, and that a properly commissioned Maine notary public signed and dated the Circulator's oath section after the date of all the signatures of voters appearing on the petition.
6.	Confirm that the notary signature is by someone who has a valid notary commission, is not the circulator or related to the circulator, and is consistent with the official signature on file.
7.	Confirm that the registrar's certification is valid by reviewing the date and time stamp on each petition to make sure that it was filed with the registrar by the deadline.
8.	Review the signatures of voters by verifying the registrar's count of valid signatures of registered voters, checking for any indications that someone other than the voter may have signed the voter's name, and confirming that the voter signed the petition during the period approved for circulation. Signatures made greater than one year before the filing date are invalid.
9.	Review any alterations to names or dates on the petition form.
10.	Record the determinations regarding requirements described above in the SOS's certification block of each petition and enters results in the Certification Database.
11.	Confirm the number of valid and invalid signatures, to be used to prepare the Secretary's "determination of validity" letter.
Source: "Overview of Secretary of State's Role in the Initiative Process," prepared by the Office of the Secretary of State, January 2018; Revised April 2019.	

After the SOS completes its review of the submitted petitions, the Secretary contacts the applicant and publicly issues the "determination of validity" letter stating whether the petition is approved or rejected based on the number of valid signatures. The SOS's determination of validity may be challenged by commencing an action in the Maine Superior Court, pursuant to Rule 80C of the Maine Rules of Civil Procedure within ten days of the issuance of the determination of validity. The court has 40 days to issue a decision from the date of the SOS's determination of validity.

When a citizen initiative is determined to be valid and there is no court challenge (or a court challenge upholds the SOS's finding of validity), the SOS certifies the petition as valid and transmits the citizen initiative to the Clerk of the House of Representatives. If a petition for a people's veto is determined to be valid it goes directly to the ballot at the next statewide or general election 60 days or more after the final determination of validity. If a petition for a people's veto is determined to be

invalid by SOS (or the Court if appealed), the Act or Resolve which had been suspended upon filing the petition goes into effect on the day following the final determination.

### **Legislative Actions and Referendum**

Once a certified citizen initiative is transmitted by the SOS to the Clerk of the House, there are several steps before getting to the ballot. First, the citizen initiative is assigned an Initiated Bill (IB) number and a Legislative Document (LD) number by the Legislature's Office of the Revisor of Statutes and is submitted to the Legislature. At this juncture, the Legislature's options for the IB are to enact the IB as law as submitted or not enact it—in which case the Legislature may send the IB as written to referendum or propose and pass an alternative to the IB to appear on the ballot as a competing measure, along with the IB as submitted.

If the IB is not enacted as submitted in the session in which it was presented to the Legislature, the Constitution requires the Governor to issue a proclamation referring the issue to the voters in November of the year in which the petition was filed. In this instance, the SOS is required to prepare a draft ballot question for the IB within ten business days after the Legislature to which the IB was submitted adjourns sine die. The SOS is required by statute to give public notice of any proposed ballot question and provide a 30-day public comment period for comments on the content and form of the proposed question. The SOS then has ten days to review the comments and write the final ballot question.<sup>5</sup> The statute also requires that the question is written in a simple, clear, concise and direct manner and phrased so that an affirmative vote is in favor of the citizen initiative.<sup>6</sup>

Once the preceding steps are complete, the citizen initiative appears on the ballot at the November election. After the vote has been determined, the Governor must proclaim the result of the vote within ten days. A citizen initiative that is approved at referendum takes effect 30 days after the Governor's proclamation, unless a later date is specified in the initiative or competing measure.<sup>7</sup>

For a people's veto the process from certification to the ballot is much simpler. Once the petition is validated by the SOS, the people's veto measure must be on the ballot at the next statewide or general election 60 days or more after the final determination of validity. There is no intermediary role for the Legislature. If the referendum vote on the people's veto succeeds, then the Act or Resolve, or any part or parts of the Act or Resolve, that were suspended by the filing of the petition remain ineffective. If the vote on the people's veto fails, then the Act or Resolve, or any part or parts of the Act or Resolve, that were suspended by the filing of the petition take effect 30 days after the Governor proclaims the outcome of the vote on the people's veto.

For each citizen initiative or people's veto measure sent to a referendum vote, state law requires the SOS to prepare a citizen guide. The citizen guide includes: the full text of each measure on the referendum ballot; an explanatory statement of intent and content prepared by the AG's office; an estimate of the fiscal impact; and public comments. The SOS must post the citizen guide to the

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<sup>5</sup> 21-A MRSA §905-A

<sup>6</sup> 21-A MRSA §906(6)

<sup>7</sup> If a measure requires spending "an amount in excess of available and unappropriated state funds" and does not "provide for raising new revenues adequate for its operation," the measure shall remain inoperative until 45 days after convening of next regular session of the Legislature.

referendum election on the SOS's publicly accessible website and provide a printed copy to each municipality and to each public library in the State.<sup>8</sup>

### **Campaign Finance Registration and Reporting**

The Maine Commission on Governmental Ethics and Election Practices (Commission) administers the campaign finance and registration aspects of the process for citizen initiatives and people's vetoes. Pursuant to state campaign finance laws, organizations that raise and spend funds to influence ballot campaigns must register with the Commission within seven days upon reaching certain dollar amount thresholds for receiving contributions or making expenditures. Once an organization reaches the certain dollar threshold, it must register with the Commission within seven days as one of two types of organizations as follows:

- **Political Action Committee (PAC).** A PAC is an entity formed for the express purpose of influencing an election campaign, including the nomination or election of a candidate. A PAC must register with the Commission if it receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for the purpose of influencing a campaign.
- **Ballot question committee (BQC).** A BQC is an organization that does not meet the definition of a PAC, and does not undertake activities to influence the nomination or election of a candidate, but intends to initiate or influence the outcome of a statewide ballot question such as a citizen initiative or people's veto. A BQC must register with the Commission if it receives contributions or makes expenditures aggregating more than \$5,000 in a calendar year for the purpose of influencing a campaign.

If Commission staff identify a PAC or BQC that did not register on time, staff send a notice of late registration and schedules the matter for the next meeting of the Commission. The Executive Director of the Commission may make a recommendation to the Commission regarding a penalty of up to \$2,500. Registration of PACs and BQCs are discussed further on page 28 (OFI 4).

Both BQCs and PACs must submit an initial campaign finance report, as well as quarterly updates to the Commission's electronic filing website. As an election approaches, these committees must report more often and these more frequent reports replace the quarterly reporting. The timing of these required reports is described in more detail on page 32 (OFI 8).

The information reported on campaign finance reports differs for PACs and BQCs. Specifically, PACs formed for the major purpose of influencing a ballot question election must report all expenditures, while BQCs are required to report only those expenditures made for the purpose of initiating or influencing a ballot question. Both types of committees must itemize contributions over \$50, although BQCs are required to report only those contributions received for the purpose of initiating or influencing a ballot question. Once the PAC and BQC campaign finance reports are filed with the Commission, they are available for public viewing on the agency's website. The website allows a user to query the data to determine the amount of money raised or spent by entities to either support or oppose a particular initiative. A summary of expenditures supporting and

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<sup>8</sup> 21-A MRSA §605-A(2)(E)

opposing certain initiatives and people's veto efforts during the period under review is provided on page 18.

Commission staff review campaign finance reports from PACs and BQCs for completeness and compliance with financial disclosure and documentation requirements, and take follow-up actions in accordance with Commission Rules (Chapter 1: Procedures). Any person or organization may request a Commission investigation of any alleged reporting violation by a PAC or BQC by filing a written request. The Executive Director of the Commission may conduct a preliminary investigation and prepare a summary of findings for the Commission, and the Commission may authorize further investigative proceedings. Final determinations regarding violations of financial disclosure and documentation requirements by the Commission may be appealed to Superior Court.

## Trends and Characteristics

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During initial discussions related to a potential review of the citizen initiative and people's veto process, legislators, stakeholders, and members of the public expressed various areas of interest. These areas of interest resulted in the development of three scope questions for this review to provide a broad picture of the citizen initiative and people's veto efforts over a 20-year period (1/1/1999 – 12/31/2018). These scope questions specifically address:

- Trends in activity and characteristics of citizen initiatives and people's vetoes, generally;
- The geographic distribution of collected signatures; and
- The extent to which citizen initiatives dealt with matters that had previously been before the legislature.

This section of the report presents the results of our analysis of these issues.

### **Applications Submitted and Petitions Issued**

Using data obtained from the SOS, we identified 135 citizen initiative applications and 27 people's veto applications, for a total of 162, submitted during the 20-year period we reviewed. The number of applications submitted ranged from two to 18 per year, with applications being submitted in all 20 calendar years under review. While these numbers accurately represent the number of applications filed, they do not necessarily provide a good measure of the number of unique issues being pursued. This is due to the fact that applicants may submit multiple applications at the same time for the same issue, with only slight variations in wording, but only choose to advance the one they feel is likely to garner the most support from the public. Thus, the number of applications in any given year may well be greater than the number of applications for unique issues.

Of the 162 applications received by the SOS during the period of review, 106 (93 citizen initiatives and 13 people's vetoes) resulted in the issuance of a petition by the SOS. Annual applications received and petitions issued by the SOS are listed in Table three.

<b>Table 3: Citizen Initiative and People's Veto Applications Received and Petitions Issued by the SOS by Year</b>				
Year	Citizen Initiatives		People's Vetoes	
	Applications	Petitions	Applications	Petitions
1999	17	4	1	0
2000	6	6	0	0
2001	6	6	0	0
2002	9	8	1	1
2003	5	4	1	1
2004	8	5	0	0
2005	4	2	3	3
2006	7	5	0	0
2007	13	9	1	0
2008	7	6	4	2
2009	4	3	4	2
2010	6	5	0	0
2011	5	4	6	1
2012	1	0	2	0
2013	9	8	1	1
2014	2	2	0	0
2015	16	10	1	1
2016	3	1	0	0
2017	3	3	2	1
2018	4	2	0	0
Source: OPEGA analysis of application and petition data obtained from the SOS.				

### Subject Matter of Petitions Issued

We reviewed each of the 93 citizen initiatives and 13 people's veto petitions that were issued and identified common subject areas. For citizen initiatives, five common subject area categories emerged accounting for 56 of the 93 petitions issued as follows:

- **Gambling** (12 petitions). This category included initiatives related to casinos, racinos, video lottery terminals, slot machine facilities and beano.
- **Taxation** (13 petitions). This category included initiatives related to limiting property taxes, making changes in the sales tax and fuel tax, taxpayer bill of rights (TABOR), reduction of automobile excise taxes and requiring voter approval to increase government spending and State taxes.
- **Marijuana** (13 petitions). This category included initiatives related to the medical use of marijuana, the expansion of the medical marijuana law, growth and use of hemp and legalization of adult use of marijuana.
- **Health and Medical** (10 petitions). This category included initiatives related to labeling of genetically engineered food, smoking rights and prohibitions, death with dignity, abortion issues and healthcare/health insurance issues.

- **Natural Resources** (8 petitions). This category included initiatives related to forestry, pesticide moratoriums, groundwater extraction/protection/ownership and renewable energy.

Among the 13 people's veto petitions, there were 3 subject areas with 2 or more associated petitions as follows:

- **Civil Rights** (3 petitions). This category included people's vetoes related to same sex marriage and citizenship.
- **State Budget Veto** (2 petitions). This category included people's vetoes related to the state budget.
- **Elections** (2 petitions). This category included people's vetoes related to campaign finance and ranked choice voting.

### Qualifying for the Ballot and Legislative Actions

Of the 93 petitions issued for citizen initiatives, just over one-third (32) were submitted to the SOS for certification. Of those 32 petitions submitted, 29 were certified by the SOS as having a sufficient number of valid signatures qualifying them for the ballot and 3 were rejected for having an insufficient number of valid signatures.

As described in the process overview beginning on page 7, once a citizen initiative petition is certified, the SOS submits it to the Legislature where it is assigned IB and LD numbers for potential Legislative action. There are several possible paths for an IB when it is introduced to the Legislature. For the 29 IBs in our review, we found:

- **Committee referral:** 19 were referred to a joint standing committee for consideration (public hearing, work session, and committee vote) and 10 were addressed by the Legislature without reference to committee. Reference to committee was more common in the earlier period of our sample: the first 18 were referred to a joint standing committee, while only one of the most recent 11 (An Act to Allow Slot Machines or a Casino in York County) was referred to a committee.<sup>9</sup> We note that a new law was enacted in the 1<sup>st</sup> Regular Session of the 129<sup>th</sup> Legislature that requires initiated bills be afforded a public hearing by a joint standing committee, unless waived by a two-thirds vote of each body.
- **Final disposition in the Legislature:** Two initiated bills were enacted by the Legislature (without changes to the language) and signed by the Governor, removing the need for a referendum.
- **Sent to Referendum:** 27 initiated bills went to a referendum vote, including 26 that were not enacted by the Legislature and one that was enacted by the Legislature, but vetoed by the Governor.
- **Competing measure:** Only one of the 27 that went to referendum vote (An Act to Enact the School Finance and Tax Reform Act of 2003) had a competing measure prepared by the

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<sup>9</sup> Recently, a new law was enacted (P.L. 2019, c.152) requiring that an IB must be afforded a public hearing by a legislative committee; this requirement may be waived by a vote of 2/3 in each House of the Legislature.



Legislature, providing voters the choice between the competing measures as well as the option to reject both.

For the 13 petitions issued for people's veto attempts, six (46.2%) were submitted to the SOS for signature validation and all six of the submitted petitions were certified. For people's vetoes, once certified, the measure goes directly on the ballot.

### **Matters Previously Before the Legislature**

The extent to which proposals brought forth as citizen initiatives had been previously brought to the Legislature as bills was a specific interest expressed by some legislators.

To address this question, we reviewed the 29 citizen initiatives that qualified for the ballot in our data. To determine whether these dealt with matters previously before the Legislature, we identified preceding legislative sessions to be searched for bills with similar content using relevant search terms and working from most to least recent; and we reviewed search results, and, for those bills appearing potentially similar, reviewed the language of the bill to compare to the citizen initiative to identify those that were, in fact, similar.

#### Previously before the Legislature

Of the 29 citizen initiatives that qualified for the ballot during the period of study, we found that 25 dealt with matters that had previously been before the Legislature. In all but two of those 25 cases, the subject of the initiative was before the Legislature within two biennia prior to the application for the citizen initiative petition.

Of the 25 citizen initiatives dealing with matters previously before the Legislature, most were similar to prior bills in terms of the desired policy outcomes and the means through which those outcomes would be achieved. Among the six gambling related citizen initiatives that addressed matters previously before the Legislature, we observed some that had a degree of specificity in the citizen initiative that narrowed the proposal further than the prior bills. One example is "An Act to Allow Slot Machines or a Casino in York County" in 2017. For this citizen initiative, we found similar legislation related specifically to a casino located in York County the year before the application was filed, including three specific bills in the preceding two Legislatures. At a finer level of detail, however, we noted the initiated bill include detailed requirements regarding the site location and developer not contained in the previous legislative proposals.

#### Not previously before the Legislature

We found that just 4 of the 29 citizen initiatives that qualified for the ballot in our study period addressed matters not previously before the Legislature. Two of these were taxation-related citizen initiatives: An Act to Impose Limits on Real and Personal Property in 2004 and An Act to Create a Taxpayer Bill of Rights in 2006. Each of these initiatives sought to establish a specific mechanism for limiting taxes that, based on our research, had not previously come before the Legislature. While limiting taxes is a perennial issue before the Legislature, the specific approaches contained in these initiatives were novel when they were brought forward.

The other two initiatives we classified as addressing matters not previously before the Legislature were gambling-related: An Act to Allow Slot Machines at Commercial Horse Racing Tracks in 2003 and An Act Regarding a Slot Machine Facility in 2011. For the 2003 initiative, we did not identify any prior bills before the Legislature as far back as the 112<sup>th</sup> Legislature that would allow slot machines at race tracks (although many bills on this matter did follow). The 2011 initiative for a slot machine facility proposed a casino with table games and slot machines to be located in the city of Lewiston. While slot machines had been before the Legislature, we were unable to identify any prior bills that sought this specific result even when considering all of Androscoggin County.

Overall, it appears that most of the citizen initiatives subject to our review address matters previously before the Legislature to various extents.

### **Ballot Results**

Of the 27 citizen initiatives that went to referendum, 11 (41%) were ultimately approved by voters and became law, while 16 (59%) failed passage.

The citizen initiative, An Act to Enact the School Finance and Tax Reform Act of 2003, which was the one initiative in the study period with a competing measure, took two steps to final passage at the ballot. On the November 2003 ballot, voters had three options: the citizen initiative (1A), the Legislature's competing measure (1B), and an option to vote against both measures (1C). At the ballot the citizen initiative did not receive a majority of votes, but did receive over one-third of votes cast and was the option receiving the most votes. This result sent it to the voters at the next statewide election as a single option with no competing measures. At the June 2004 election, the initiative passed.

Of the six people's vetoes that went to referendum vote, five passed and one failed. The measure that failed was the people's veto measure to reject An Act to Extend Civil Rights Protections to All People Regardless of Sexual Orientation in 2005.

Additional information on ballot results for each citizen initiative and people's veto in the review can be found in Table A-1 in Appendix A.

### **Legislative Actions Following Passage at Ballot**

We also examined the extent to which citizen initiatives that were approved by the voters at referendum were changed by the Legislature soon after the referendum vote. We found this was a frequent occurrence. For the 11 citizen initiatives passed by the voters in the review period, eight were changed during the next Legislative session (first, second or special sessions) subsequent to the referendum vote. As shown in Table 4, these changes included amendments, clarifications, delayed implementations and one complete reversal.

**Table 4. Initiated Bills Passed at Referendum with Subsequent Legislative Modifications**

Year	Initiated Bill	Subsequent Legislation
2003	<ul style="list-style-type: none"> <li>An Act to Allow Slot Machines at Commercial Horse Racing Tracks (IB 2003, c.1) LD 1371</li> </ul>	<ul style="list-style-type: none"> <li>An Act to Establish the Gambling Control Board to License and Regulate Slot Machines at Commercial Harness Racing Tracks (P.L. 2003, c.687) LD 1820</li> </ul>
2003	<ul style="list-style-type: none"> <li>An Act to Enact the School Finance and Tax Reform Act of 2003 (IB 2003, c.2) LD 1372</li> </ul>	<ul style="list-style-type: none"> <li>An Act to Increase the State Share of Education Costs, Reduce Property Taxes and Reduce Government Spending at All Levels (P.L. 2005, c.2) LD 1</li> </ul>
2009	<ul style="list-style-type: none"> <li>An Act to Establish the Maine Medical Marijuana Act (IB 2009, c.1) LD 975</li> </ul>	<ul style="list-style-type: none"> <li>An Act to Amend the Maine Medical Marijuana Act (P.L. 2009, c.631) LD 1811</li> </ul>
2010	<ul style="list-style-type: none"> <li>An Act to Allow a Casino in Oxford County (IB 2009, c.2) LD 1808</li> </ul>	<ul style="list-style-type: none"> <li>An Act to Allow Table Games at a Facility Licensed to Operate Slot Machines on January 1, 2011 (P.L. 2011, c.417) LD 1418</li> </ul>
2016	<ul style="list-style-type: none"> <li>An Act to Establish Ranked-choice Voting (IB 2015, c.3) LD 1557</li> </ul>	<ul style="list-style-type: none"> <li>An Act to Bring Maine's Ranked-choice Voting Law into Constitutional Compliance (P.L. 2017, c.316) LD 1646</li> </ul>
2016	<ul style="list-style-type: none"> <li>An Act to Establish the Fund to Advance Public Kindergarten to Grade 12 Education (IB 2015, c.4) LD 1660</li> </ul>	<ul style="list-style-type: none"> <li>An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019 (P.L. 2017, c.385) LD 390</li> </ul>
2016	<ul style="list-style-type: none"> <li>An Act to Raise the Minimum Wage (IB 2015, c.2) LD 1661</li> </ul>	<ul style="list-style-type: none"> <li>An Act to Restore the Tip Credit to Maine's Minimum Wage Law (P.L. 2017, c.272) LD 673</li> </ul>
2016	<ul style="list-style-type: none"> <li>An Act to Legalize Marijuana (IB 2015, c.5) LD 1701</li> </ul>	<ul style="list-style-type: none"> <li>An Act to Delay the Implementation of Certain Portions of the Marijuana Legalization Act (P.L. 2017, c.1) LD 88</li> <li>An Act to Change the Oversight Agency for Recreational Marijuana from the Department of Agriculture, Conservation and Forestry to the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations and to Allocate Funds for Implementation (P.L. 2017, c.278) LD 243</li> <li>An Act to Amend the Marijuana Legalization Act Regarding Retail Marijuana Testing Facilities (P.L. 2017, c.309) LD 1641</li> </ul>

Source: OPEGA analysis of enacted citizen initiatives.

We also noted one citizen initiative, that while not subsequently changed by the Legislature, had a delayed implementation resulting from action of the Governor. This occurred following the 2017 passage of An Act to Enhance Access to Affordable Healthcare when the administration at the time did not implement the new law. Ultimately the effect of the law that had passed at referendum was implemented by executive order of the next Governor on January 3, 2019.

## Geographic Distribution of Signatures

The Maine Constitution requires that petitioners gather a number of valid signatures equal to or greater than 10% of the total votes cast for Governor in the last Gubernatorial election. While this requirement is statewide, there has been some recent legislative interest in the idea of requiring a set geographical distribution of collected signatures, as reflected by bills on this subject introduced in the 127<sup>th</sup>, 128<sup>th</sup> and 129<sup>th</sup> Legislatures. These bills, none of which passed, included various proposals to amend the Constitution of Maine to require equal numbers of signatures be gathered by U.S. Congressional District, by State senate district or by Maine county.

To provide some national context, we looked to geographic signature requirements in other states. We found that of the 26 states that have a citizen initiative or referendum process, 17 states have requirements related to the geographic distribution of signatures which are based on county, state legislative district or U.S. Congressional District. From our review of these requirements in other states, and conversations with the SOS and the AG's Office, it is our understanding that a geographical requirement for signatures based on U.S. Congressional District is the most practical of these options. It is also the most likely to withstand any potential court challenges from petitioners based on the extent to which the requirement presents an undue burden on petitioners and otherwise limits political speech. For these reasons, the following analysis of the geographic distribution of signatures is based on U.S. Congressional Districts as they are currently configured.

As part of its signature validation process, the SOS generates master lists that contain the numbers of valid and invalid signatures by petition and municipality. To examine the geographic distribution of signatures, we used 26 of these SOS master lists that were both available and suitable for further analysis. These lists spanned 26 efforts (21 citizen initiatives and 5 people's vetoes) occurring between 2004 and 2018. For our analysis, we then applied the congressional district geographic boundaries to the lists to determine the geographic distribution of signatures by congressional district.

We found that the majority of signatures came from the first Congressional District (CD1) in 21 of the 26 efforts (81%) between 2004 and 2018 (the specific percentages of signatures obtained from each congressional district for each effort can be found in Appendix A, table A-1.). Reviewing the data chronologically, we observed an increased reliance on CD1 for obtaining signatures in more recent years. The data fell into two discrete groups:

- For the first 14 efforts (2006 to 2011): 9 collected a majority of signatures from CD1 and 1 collected more than two-thirds of signatures collected in CD1.
- For the last 12 efforts (2011 to 2018): all 12 collected a majority of signatures from CD1 and 8 collected over two-thirds of signatures from CD1.

Based on the data available, it is unclear what impact requiring an equal split between congressional districts might have on the content, qualification, or ultimate passage of ballot measures.

## Expenditures and Contributions

To conduct the analysis of expenditures and contributions, we obtained campaign finance data from the Commission. The available data covered the period from 2008<sup>10</sup> to 2019. We were able to attribute the available data to 18 citizen initiatives and four people's vetoes that qualified for the ballot, for a total of 22 ballot measures.

During our initial review of the Commission's expenditure data, we observed that total expenditures data included what are called "committee-to-committee" transfers; these transfers represent movement of funds between different committees involved in the same initiative effort. To examine actual expenditures on goods and services by campaigns (direct expenditures), we removed the committee-to-committee transfers from total expenditures for our analysis. A potential opportunity for improvement related to these data is described in further detail on Page 31.

### Total Direct Expenditures

Overall, we found direct expenditures ranged significantly across the ballot measures. The two ballot measures with the lowest spending among the 22 initiatives were both 2009 ballot measures:

- An Act to Repeal the School Consolidation Laws (2009): \$7,785 (failed), and
- An Act to Establish the Medical Marijuana Act (2009): \$23,358 (passed).

The two ballot measures with the highest spending occurred in 2009 and 2017 respectively:

- People's Veto of An Act to End Discrimination in Civil Marriage and Affirm Religious Freedom (2009): \$7.9 million (passed); and
- An Act to Allow Slot Machines or a Casino in York County (2017): \$9.2 million (failed).

In reviewing the data, we identified three factors at play in the level of expenditures as follows: (1) the degree of public interest in the effort; (2) the degree of opposition to the effort; and (3) the financial resources of those either supporting or opposing the effort. Due to significant variations within these three factors, as well as the unique features of each individual initiative, the value of an analysis comparing expenditures across citizen initiative and people's veto efforts and over time was limited. Looking at the data broadly across the 22 ballot measures, we observed that:

- The four ballot measures that had the highest levels of direct expenditures were associated with two issues: casinos and same sex marriage; and
- A higher proportion of direct expenditures in either support, or opposition, does not ensure desired outcomes at the ballot.

This second observation was especially evident among the nine efforts in which there was \$2 million or more in total spending, as shown in Table 5 below. In six of these nine efforts, the ballot result was the opposite of the side (support/opposition) that spent more. In two cases, York County

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<sup>10</sup> Earlier data was unavailable from the current system and Commission staff cautioned that earlier data was not reliable.

casino (2017) and bear hunting (2014), over 90% of expenditures were made by supporters of the measure and yet the measure failed at the ballot.

Table 5. Expenditures in Support or Opposition of a Citizen Initiative or People's Veto					
Name of Effort (Ballot Year)	Total Expenditures	Percent of Total in Support	Percent of Total in Opposition	Majority	Ballot Result
An Act to Allow Slot Machines or a Casino in York County (2017)	\$9,211,743	93%	7%	Support	Failed
Reject the New Law that lets Same-sex Couples Marry and Allows Individuals and Religious Groups to Refuse to Perform these Marriages (2009)	\$7,922,315	34%	66%	Oppose	Passed
An Act to Amend the Laws Governing the Deadline and Conditions for Municipal Approval of a Second Racino and Allow a Tribal Racino in Washington County (2011)	\$4,751,894	85%	15%	Support	Failed
An Act to Allow Marriage Licenses for Same-Sex Couples and Protect Religious Freedom (2012)	\$3,788,674	69%	31%	Support	Passed
An Act to Require Background Checks for Gun Sales (2016)	\$3,043,853	58%	42%	Support	Failed
An Act to Prohibit the Use of Dogs, Bait or Traps When Hunting Bears Except Under Certain Circumstances (2014)	\$2,912,361	92%	8%	Support	Failed
An Act to Legalize Marijuana (2016)	\$2,628,657	91%	9%	Support	Passed
An Act to Establish Universal Home Care for Seniors and Persons with Disabilities (2018)	\$2,513,238	56%	44%	Support	Failed
An Act to Enhance Access to Affordable Health Care (2017)	\$2,419,266	85%	15%	Support	Passed
Source: OPEGA analysis of expenditure data obtained from the Maine Commission on Ethics and Election Practices.					

Information on the direct expenditures made in support and in opposition to each of the 22 citizen initiatives or people's vetoes we reviewed are provided in Table A-1 in Appendix A.

Expenditures for Paid Signature Gathering

The extent to which paid signature gatherers are used to collect signatures on petitions was an area of interest noted during this review. To explore this issue, OPEGA looked to campaign finance maintained by the Commission. However, we encountered two specific challenges in the data that together prevented us from being able to reliably and consistently identify paid signature gathering expenditures in these data. First, we found that the Commission's electronic data system does not contain an expenditure category for paid signature gathering. Second, we found that paid signature gathering was not consistently identifiable in the narrative expenditure descriptions in the data. Given these limitations, we were unable to determine the extent of expenditures on paid signature gathering. These limitations point to a potential opportunity for improvement in the transparency and effectiveness of contributions data; this opportunity is discussed further beginning on Page 30 (OFI 6).

## Contributions

The question of who is funding efforts in support or opposition to a specific initiative and whether the contributions are in-state or out-of-state has been another area of ongoing interest. Again, we looked to campaign finance data maintained by the Commission to address this question. In these data, contributions are reported at the committee level – that is, a contribution is assigned to a BQC or PAC, not to a specific initiative. We found that identifying contributions connected to expenditures on a specific initiative effort was possible in certain situations. However, we encountered three specific limitations in how contributions data is reported and segregated that prevented us from being able to reliably and consistently identify the sources of funds (contributions) spent in support or opposition of a particular effort, thus preventing any analysis of such data. These limitations are: (1) there can be multiple distinct initiatives associated with a single BQC at one time; (2) organizations may maintain BQCs “at the ready” funded with contributions from prior efforts; and (3) BQCs and PACs may receive general treasury transfers from the larger organizations with which they are affiliated, and the original source of those funds is unknown. These limitations point to a potential opportunity for improvement, which is discussed further beginning on page 29 (OFI 5).

## Identified Issue and Opportunities for Improvement —

For the second part of our review of the citizen initiative and people’s veto process, OPEGA was charged with identifying potential opportunities for improvement related to the following attributes of the process: transparency, accountability, effectiveness, efficiency, and the economical use of resources.

Identifying potential opportunities for improvement in a process takes a broad perspective and consider instances in which what *is* occurring in the process *could be* improved. We note that this is different, and less straightforward, than identifying “issues”—which we define as instances in which what *is* occurring *does not meet established criteria* for what *should be* occurring. Identifying opportunities for improvement in various attributes of the process is less straightforward because there are no established criteria against which to assess what is occurring. Additionally, there are often inherent trade-offs between different attributes of the process (e.g., balancing greater accountability with the potentially less economical use of resources if more staff is required to enhance accountability)-such that pursuing an opportunity for improvement may have unintended consequences for another attribute of the process.

In this section of the report, we present the one issue and the eight potential opportunities for improvement identified in our work. For the issue, we identify the associated recommendation to address underlying risks. For each potential opportunity for improvement, we describe the current situation and context, the potential opportunity and, as appropriate, describe readily evident potential impacts to stakeholders or other attributes of the process and other policy considerations. Because the relative value and merit of different opportunities and trade-offs between different attributes is largely dependent on policy values, priorities and perspectives, OPEGA is not in a

position to make recommendations for further action. Rather, our role is to identify these opportunities for the Legislature and provide information on the background, context and other considerations to inform policy discussions and decisions. Further, we acknowledge there may be other potential opportunities for improvement, and other possible impacts and considerations within and between identified opportunities, that we did not directly observe or identify in this review.

## ISSUE

**Issue: There is no established procedure governing how the Secretary of State conducts the signature validation process when there is more than one submission of petitions for a single citizen initiative or people's veto attempt.**

Petitioners for a citizen initiative have up to 18 months<sup>11</sup> from the issuance of the petition form to submit the required number of valid signatures to the SOS to qualify for the ballot. Typically, signed petitions containing well in excess of the required number of signatures are delivered to the SOS in a single submission. However, for one initiative in 2016, there were two submissions of petitions and signatures separated by approximately 10 months: a first submission in February that did not yield the required number of signatures and a second submission in December of that year, which was combined with the first submission to reach the required number of signatures to qualify for the ballot.

The signatures contained in these two submissions were validated separately, as two independent datasets, by the SOS. Conducting the validation process in this way did not account for the possibility of any duplicate signatures between the two submissions. Without a mechanism to identify potential duplicates of this type, the process did not ensure that the initiative did indeed have enough valid signatures to qualify for the ballot.

The broad timeline of events and actions for this initiative are as follows:

- On December 8, 2015, the SOS issued a petition for the citizen initiative titled “An Act to Allow Slot Machines in York County.”
- On February 1, 2016, roughly two months later, petition organizers submitted petitions containing 91,294 signatures to the SOS. The SOS began its work to determine whether the initiative had enough valid signatures to qualify for the ballot. This work included checking that all petitions were in the approved printed form, checking for duplicate signatures, and ensuring that all oaths and certifications were completed, and, as necessary, notarized.
- On March 2, 2016, the SOS issued its determination that a maximum<sup>12</sup> of 35,518 signatures were valid (subject to further checking for duplicates). The petition failed to qualify for the ballot.

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<sup>11</sup> Me. Const. Art IV, Pt. 3<sup>rd</sup>, sec.18(1)

<sup>12</sup> The SOS noted in its determination that they were not able to check for duplicates on all of the petitions submitted due to time constraints and the large number of signatures and petitions submitted to the SOS for review within the past 30 days. The duplicate signatures identified at this point were done so through the review of petitions circulated in 50 municipalities. To the extent that additional review would identify duplicate signatures, the total number of valid signatures would decrease; thus 35,518 is the maximum.



- With the petition having failed to qualify, petition organizers began collecting signatures again.
- On December 22, 2016—still within the allowable 18-month timeframe—another 64,897 signatures were submitted to the SOS. The SOS then began work to determine the validity of the signatures in the December submission.
- On January 23, 2017 the SOS issued its determination, finding the second submission contained 52,930 valid signatures.
- The SOS then combined the 52,930 valid signatures with the previously submitted 35,518<sup>13</sup> valid signatures, removing those (less than 1,000) that were invalid due to having been collected more than 12 months prior.<sup>14</sup> The SOS issued a determination that petitioners had submitted in excess of 87,000 valid signatures, and, thus, the petition qualified for the ballot.

OPEGA found that in the SOS process the two discrete submissions of signatures related to the initiative, the February 2016 submission and the December 2016 submission, were not checked against each other by the SOS for duplicate signatures. We do not know the extent to which there may have been duplicate signatures between the two datasets or whether the identification of any duplicates would have resulted in this initiative not qualifying for the ballot. However, the absence of checking for duplicate signatures between two separate submissions of signatures creates a risk that an initiative qualifies for the ballot with fewer than the required number of valid signatures.

### Recommendation

The SOS should update its signature validation process and procedures to address a scenario in which there are multiple discrete submissions to attempt to qualify. Those procedures should include the checking of duplicate signatures between signature submissions for the same initiative or people's veto attempt.

We note that even if such procedures are established, the ability of the SOS to perform this type of validation for duplicates may be limited due to resource constraints. The SOS is bound by a statutorily defined 30-day deadline for making its determination, and the Maine Superior court ruled<sup>15</sup> in 2009 that failure to meet this deadline automatically qualifies an initiative or people's veto attempt for the ballot. With the existing SOS resources and processes, this is a very compressed timeframe—which becomes even tighter if petitions are submitted at the same time for multiple initiatives.

This was the case for the signature validation and petition certification process for An Act to Allow Slot Machines in York County. When the first submission of signatures came to the SOS (February 1, 2016), two other unrelated initiatives also submitted signatures. Additionally, two other initiatives had submitted their signatures less than three weeks prior. Facing these demands, the SOS was unable to even complete its check for duplicate signatures across all signatures in the first submission for the York County Casino initiative. Instead, the SOS targeted its work regarding duplicates to those signatures from the largest municipalities. As a result, the language in the

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<sup>13</sup> The SOS did not perform any additional checks for duplicates within the first submission of signatures.

<sup>14</sup> Me. Const. Art. IV, Pt. 3<sup>rd</sup>, §18(2)

<sup>15</sup> *Webster v. Dunlap*, AP-09-55, (Me. Super. Ct., Ken. Cnty., Dec. 21, 2009)

determination letter described “a maximum of 35,518 valid signatures” with a footnote that that total was subject to further duplicate checks (which did not occur).

With the demands faced by the SOS for signature validation and the current processes employed (as described in greater detail later in this section), there is no guarantee that any additional check for duplicate signatures would be conducted even if a procedure was adopted. We do note the expanded use of a CVR system could also address this concern through the identification and logging of the registered voters who have signed the petition over the course of the effort by municipal registrars. This potential opportunity for improvement is discussed further beginning on page 26 (OFI 3).

## **OPPORTUNITIES FOR IMPROVEMENT**

In this review, we identified eight potential opportunities for improvement in at least one of the five attributes (transparency, accountability, effectiveness, efficiency, and the economical use of resources) of the process as it generally exists today:

1. Improve transparency and accountability in the signature collection process through the identification and reporting of all individuals participating in that process to the SOS.
2. Improve accountability in the signature collection process through the development of mechanisms to ensure that signatures are collected in accordance with current requirements and that potential violations may be reported to and investigated by the SOS.
3. Improve the efficiency of the signature validation process through the implementation and use of a fully functioning CVR system by municipal registrars and the SOS.
4. Improve the transparency and effectiveness of data on organizers of petition circulation at the beginning of that effort through better communication between the SOS and the Commission.
5. Improve the transparency and effectiveness of data on contributions to initiative campaigns through the better alignment of contributions to committees with expenditures made in support or opposition of a specific initiative or people’s veto attempt.
6. Improve the transparency and effectiveness of expenditure data through the development of an additional expenditure purpose category within the Commission’s e-filing system to capture expenditures for paid signature gathering.
7. Improve the transparency and effectiveness of expenditure data by developing a means of delineating committee-to-committee transfers from total expenditures to better reflect funds directly spent on services and goods in the Commission’s publicly available data.
8. Improve the efficiency and economical use of resources by committees engaged in the initiative process and the Commission through adjustments to committee reporting requirements to limit additional reports to those elections in which a committee is participating.

Again, it should be noted that OPEGA is not making recommendations regarding these eight items. We are identifying these as opportunities in which one or more of the five designated attributes of the citizen initiative and people’s veto process, that we were tasked to consider, could be improved.

**(1) Improve transparency and accountability in the signature collection process through the identification and reporting of all individuals participating in that process to the SOS.**

Background and Context

Under the Maine Constitution and state law<sup>16</sup> petitions may be circulated by any Maine resident who is a registered voter. The petition circulator solicits signatures for the petition by presenting the petition to the voter, asking the voter to sign the petition, and personally witnessing the voter affix the voter's signature to the petition. Additionally, circulators must sign each petition form submitted and verify by oath before a notary public, or other person authorized by law to administer oaths,<sup>17</sup> that they personally witnessed all of the signatures on the petitions and, to the best of their knowledge, each signature is the signature of the person it purports to be.

In practice, there appear to be two groups of people involved in the actual collection of signatures, but only one—the aforementioned petition circulators—is clearly identified and able to be directly linked to specific petitions. Although state law is silent to the existence and role of people other than the petition circulator in the signature collection process, individuals other than the petition circulator—including out-of-state residents—are not prohibited from participating in a petition or signature collection effort; in fact, their involvement was described to us by the SOS and their counsel as protected under the First Amendment of the U.S. Constitution.

The involvement of other individuals besides the petition circulator was widely acknowledged by stakeholders, and partially confirmed through the review of committee expenditure reports and petition organization registrations. While we did not directly observe any signature collection efforts as part of this review, stakeholders described to us a variety of ways in which individuals, other than the petition circulator, participate in signature collections. One common description is as follows:

- Petition organizers hire a company to manage their signature collection efforts.
- This company recruits and hires out-of-state residents—many of whom have prior signature collection experience—to come to Maine and work as paid signature gatherers.
- These out-of-state signature gatherers are paired with a Maine resident and registered voter who serves as the petition circulator.
- The out-of-state resident approaches people and asks them to sign the petition, while the petition circulator “witnesses” the signatures (thus meeting that requirement).
- Once done collecting signatures, the circulator takes the required oath, signs, and submits the signed petitions for validation by municipal registrars.

Reports of the extent to which out-of-state, paid signature gatherers actually collected the signatures varied. The degree of involvement ranged from the out-of-state paid signature gatherers acting in a “carnival barker” type role while the petition circulator physically handled the petition forms to the out-of-state paid signature gatherers handling the entirety of the interactions with potential signers as the petition circulator witnessed those signatures from some distance (or—possibly—not at all).

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<sup>16</sup> 21-A MRSA §903

<sup>17</sup> Me. Const. Art. IV, Pt. 3<sup>rd</sup>, section 20

Currently, little is known about out-of-state, paid signature gatherers beyond what is collected in the petition organization registration required for any entity hired to organize, supervise or manage the circulation of petitions for a citizen initiative or people's veto attempt. In addition to information related to the organization itself, the registration must include a "list of individuals hired by the petition organization for the purpose of circulating petitions or organizing, supervising or managing the circulation process." We reviewed a number of these registrations and found that they contained unsearchable, scanned lists of the names of hired individuals, but did not indicate whether an individual was circulating petitions or organizing, supervising or managing the circulation process. Additionally, the lists we reviewed did not include addresses for those hired (who may be located anywhere in the country).

### Potential Opportunity

To the extent the State has an interest in ensuring petition circulators are identified and that they, and their actions, can be linked to specific petitions to provide accountability, that same interest may apply to those other than the petition circulators who participate in signature collection. The inability to identify all individuals who worked on the circulation of specific petitions may hamper any necessary review or investigation of the validity of signatures collected.

During meetings with stakeholders for this review, a number of ideas to improve accountability and transparency as it relates to signature collection were discussed. The most common idea was to expand current registration or reporting requirements. To better identify who is participating in the collection of signatures, the petition organization registration could require the disclosure of each hired individual's role in the effort (e.g., signature collection or supervising/managing the process) as well as addresses for those individuals, which the petition organization presumably already has for payment of wages and tax purposes. Linking any of those specific, paid signature gatherers to a specific petition form could potentially be achieved by requiring an additional disclosure for the petition circulator in which they list any paid-signature gatherers assisting them in the collection of those signatures. However, we should note that many initiative efforts employ paid-signature gatherers, but manage the effort themselves instead of hiring a petition organization, and in these instances, no registration is required.

While it extends beyond the current design of the citizen initiative and people's veto process, another consideration is a recent legal action that may impact the petition circulator requirements. On December 31, 2020, a political action committee, a Maine state lawmaker and a professional circulator, who resides in Michigan, filed a lawsuit against the Maine Secretary of State to prohibit the enforcement of State laws that regulate the circulation of ballot initiative petitions. The plaintiffs had been involved in a citizen initiative and claimed, in part, that the requirement for circulators to be Maine residents hindered their ability to gather the required number of signatures. The lawsuit challenged both the residency requirement and the voter registration requirement. In February of 2021, The United States District Court, District of Maine, ruled<sup>18</sup> in this case that the state's voter registration and residency requirement for petition circulators violated the right to political speech. A

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<sup>18</sup> *We the People PAC, et al. v Shenna Bellows*, Case 1:20-cv-00489-JAW (US Dist. Ct., Dist. of ME, February 16, 2021).

preliminary injunction was granted on February 16, 2021, blocking enforcement of these State laws. The SOS has filed an appeal of this decision with the U.S. Court of Appeals for the First Circuit.

**(2) Improve accountability in the signature collection process through the development of mechanisms to ensure that signatures are collected in accordance with current requirements and that potential violations may be reported to and investigated by the SOS.**

Background and Context

Current requirements related to how signatures are to be collected include:

- Citizens may not be paid for signing the petition;<sup>19</sup>
- Petitions may not be left unattended at a location or attended by someone other than the circulator as circulators must personally witness each signature;<sup>20</sup>
- Individual voters must sign their own names to the petition, no one (not even a spouse or child of an elderly parent) may sign for another person;<sup>21</sup> and
- The circulator must be able to take the circulator's oath and state truthfully that they personally witnessed each person sign the petition.<sup>22</sup>

However, despite these established requirements, we learned that there are no existing mechanisms for enforcement or investigation within the SOS to respond to concerns related to signature collection practices that are observed and reported by the general public. Specifically, we noted that there is no published or established reporting avenue through which the public may make reports, no established administrative process for investigating and responding to reports, no dedicated staff currently available to respond, and limited staff resources overall to respond even on an ad hoc basis. Instead, the SOS relies on the signature validation process to identify potential violations and any evidence of fraud that may emerge in that process is provided to the AG's office for potential prosecution.

We do not know the extent to which reports are made or would be made if a reporting avenue existed. Relatedly, we observed differing interpretations of what does, or should, merit a report to the SOS. Regardless of the particular expectations to be applied, a response and investigation into reported issues as they occur is currently unlikely.

Potential Opportunity

To the extent that the development of reporting and response mechanisms within the SOS are a priority of the Legislature or the SOS, this represents a potential opportunity for improvement as it relates to accountability within the signature collection process. At the same time, there are several challenges and policy considerations inherent in this opportunity:

- Such a reporting system is likely to generate complaints from the public based on individuals' beliefs of what are and are not allowable petition circulator practices. There is

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<sup>19</sup> 21-A MRSA §904-B

<sup>20</sup> 21-A MRSA §903-A

<sup>21</sup> 21-A MRSA §904

<sup>22</sup> 21-A MRSA §904

the potential for complaints to target practices that may in fact be allowable, and, thus, not something that the SOS can address to the satisfaction of the complainant;

- Reporting and response mechanisms are likely to be ineffective without sufficient staffing to investigate and respond to reports or complaints. As reported by the SOS, there is not staff currently available to perform these functions; and
- Even with a reporting mechanism and staff in place to respond and investigate reported claims, an administrative process would need to be developed to allow the SOS to address and resolve any of the potential issues identified by SOS staff.

**(3) Improve the efficiency of the signature validation process through the implementation and use of a fully functioning Central Voter Registration (CVR) system by municipal registrars and the SOS.**

Background and Context

The current process for validating signatures and certifying petitions relies on both municipal registrars from the municipalities in which residents signed a petition and the SOS to review those signatures for various aspects of validity.

Under the process, petition organizers first provide signed and notarized petitions to municipal registrars. These registrars then review each signature to ensure that the signer is actually a registered voter and resident of that municipality by comparing the name and signature on the petition to that on the hardcopy voter registration card or in the CVR system, to the extent that voter cards and signatures are scanned and entered in the CVR. Registrars then complete the “registrar certification” section of each petition where, among other information, they provide separate totals for the number of valid and invalid signatures identified on that particular form. Petition organizers then collect and compile the petition forms from the municipalities for submission to the SOS.

Once a petition is received, the SOS has 30 days to certify the petition—which means ultimately determining whether the petition has enough signatures to qualify for the ballot—and to issue a written decision stating the reasons for the decision. The Maine Superior Court ruled in its 2009 decision in *Webster v. Dunlap* that if the SOS does not issue its decision within the 30-day timeframe, the petition is considered certified.

In current practice, SOS staff manually transfer information from the submitted paper petitions into a database. They enter the name, municipality, petition number, and the petition line number on which the signature appears for each of the signatures certified by the municipal registrars. Printouts are generated from the database that list the names of individual signers by municipality, and in alphabetical order by last name, along with the petition and line number. Staff review these printouts and highlight potentially duplicate names. Staff, in teams of two, then pull the numbered petitions from the boxes and compare the signatures to see if the same voter has signed more than once. Staff may check existing voter registrations as necessary to ensure that a potential duplicate is not actually two separate voters with the same name. When staff confirm that one signature is a duplicate of a prior signature, that signature is marked as duplicate (“DUP”) on the petition and invalidated.

### Potential Opportunity

In its entirety, this process is very time intensive. Currently, a petition must have 63,067 valid signatures to be certified and petition organizers will routinely submit many more signatures than the number required. We identified a potential opportunity for improvement in the efficiency of the signature validation process. Specifically, the signature validation process could be significantly streamlined through the use of a CVR system that:

- Allows municipal registrars to select or indicate which registered voters have signed a specific petition;
- Either prevents, flags or allows municipal registrars to select or indicate which registered voters have signed the same petition more than once, and potentially notes the number of times they have signed; and
- Records this information for the SOS to access and use in identifying the number of duplicate—and thus invalid—signatures.

If implemented, use of a CVR with this functionality could eliminate the need for the data entry of signatures that is currently performed manually by SOS staff and the subsequent, manual checking of signatures identified as potential duplicates. Alleviating the need for this part of the larger petition certification process would require fewer staff resources, which could instead be used for other elements of the process. This may be of particular value considering the increased frequency with which the citizen initiative process is being used, which can result in multiple petition certifications occurring at the same time.

It should be noted that the SOS currently has a CVR system that may be used by municipalities; however, the particular module of that system containing the necessary functionality to streamline the signature validation process has never been fully implemented. SOS staff explained to OPEGA that the required testing of that functionality never occurred due to a combination of time and resource constraints, as well as other competing priorities.

The implementation of this existing module in the CVR is not as straightforward as completing the necessary testing. For example, various updates within the module may need to be installed. Furthermore, SOS staff described that their CVR system, in its entirety, has become outdated and due for replacement. Updating and implementing that one module only for the entire system to be replaced does not appear to be a good use of resources.

Additionally, any impacts to municipalities arising from the implementation of this functionality in the CVR should be considered. SOS staff and municipal registrars reported that municipalities may vary in the extent to which the CVR is used. There are likely software, hardware, and training issues to be considered as well.

**(4) Improve transparency and effectiveness of the data on organizers of petition circulation from the beginning of that effort through better communication between the SOS and the Commission.**

Background and Context

Organizations that raise and spend funds to initiate and influence ballot questions must register with the Commission as either a BQC or PAC within seven days of exceeding certain specified thresholds for either expenditures made or contributions received. These thresholds are \$5,000<sup>23</sup> for a BQC and \$1,500<sup>24</sup> for a PAC. Once registered, the BQC or PAC must submit initial and regular campaign financial reports.

In this review, we identified the potential for gaps in time between the start of petition activity and registration of an associated BQC or PAC, beyond what would be expected. We note that without timely registration as a BQC or PAC, the public may not be able to identify who is raising and spending funds in support of an effort. However, ensuring a timely registration is complicated by the fact that the Commission may be unaware of current citizen initiative and people's veto attempts and the parties initiating those efforts.

Commission staff reported that they may learn about citizen initiative or people's veto efforts through periodically checking the SOS website or being alerted of the effort by initiative opponents, but otherwise they generally learn of petition efforts at the same time as the general public. Consistent with this, SOS staff reported that they do not have a practice of notifying the Commission of petition applications. SOS staff also reported that they do not receive information regarding expenditures by petition organizations that would necessitate organizations filing reports with the Commission.

If Commission staff identify a PAC or BQC that did not register on time, they send a notice of failure to register to the committee, and the Executive Director of the Commission may make a recommendation to the Commission regarding penalties for failure to register when required. As committees register and make appropriate filings, those are then publicly available via the Commission campaign finance reporting website.

Potential Opportunity

While we note that the SOS and Commission are performing two largely independent roles within the overall process for citizen initiatives and people's vetoes—and that it is ultimately the responsibility of the parties involved in supporting or opposing a particular effort to complete their registrations with the Commission as required—we identified the communication between the SOS and Commission at this early point in the process as a potential opportunity for improvement. Specifically, better communication and coordination upon the submission of a petition application to the SOS would provide the Commission with an awareness of efforts underway and the ability to inform or prompt organizations to register; this could potentially minimize any time that may elapse between that submission—or even signature collection—and the time at which the public could

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<sup>23</sup> 21-A MRSA §1056-B(1-A)

<sup>24</sup> 21-A MRSA §1052(5)(A)(4)



identify those funders and supporters of the effort through the Commission's campaign finance reporting website.

As this opportunity was separately discussed with SOS and Commission staff, two possible actions (although there may be many) were suggested to improve communication and coordination:

- A direct communication from the SOS to Commission staff alerting them that a petition application has been submitted; or
- The inclusion of either a field or reminder in SOS petition application materials provided to applicants to prompt registration of associated BQCs or PACs with the Commission.

Both actions were described by SOS staff as not overly burdensome from their perspective. Additionally, their counsel noted that there would be no legal impediment that would prevent SOS staff from notifying Commission staff of a petition applicant.

**(5) Improve the transparency and effectiveness of data on contributions to initiative campaigns through better alignment of the amount of contributions to committees with the expenditures made in support or opposition of a specific initiative or people's veto attempt.**

Background and Context

An ongoing public interest related to citizen initiatives and people's veto efforts has been the fundamental question of who is contributing to a specific initiative, as well as whether those contributions are from in-state or out-of-state sources. When a BQC or PAC reports to the Commission, expenditures are delineated by initiative or people's veto attempt while contributions are reported at the committee-level.

Identifying the source of funds (contributions) connected to expenditures on specific citizen initiative or people's veto effort is possible in certain situations. However, we identified three limitations in how campaign data is segregated and reported that prevented us—and would also prevent the general public—from reliably and consistently identifying the sources of funds expended in support or opposition of a particular effort. These limitations included the following:

- **Multiple initiatives connected with one BQC.** BQCs may support or oppose more than one initiative or people's veto attempt at the same time. As contributions are recorded at the committee-level, this potential one (committee) to many (initiatives or people's veto attempts) makes it impossible to determine with any certainty which initiative or people's veto attempt a given contribution should be attributed to. While this appears rare—we noted one such instance as a byproduct in our preliminary data work—this potential limitation can limit one's ability to identify who is funding a specific initiative.
- **Having organizations "at the ready" with prior contributions.** Organizations may continually maintain BQCs to have "at the ready" for when an issue arises that they have an interest in supporting or opposing through the initiative and people's veto process. In reviewing BQC registration forms and more recent campaign finance reports, we found that these "at the ready" BQCs sometimes already had substantial cash balances, presumably from contributions to former efforts. As those funds are spent on a future effort and

reported as such, there is an inherent disconnect between the earlier contributors of those funds and current expenditures. As a result, one would be unable to link these two pieces of data to identify who is funding a current effort.

- **General treasury transfers from other organizations.** Committees may receive “general treasury transfers” from the larger organizations with which they are affiliated. For example, a community action organization may make a general treasury transfer to its affiliated BQC to support a particular initiative that aligns with its organizational goals. The funds contributed by the organization may come from a variety of sources, but to whatever extent those funds were contributions made to the organization, the original source may be unknown to the general public. Relatedly, and, as currently reported Commission’s campaign finance reporting website, those funds would appear as in-state contributions based on the geographic location of the organization regardless of whether the earlier contribution to the organization originated from out-of-state.

### Potential Opportunity

We identified an opportunity to better align the data on contributions made with the expenditures made in support or opposition of a specific initiative or people’s veto attempt. Whether such alignment is warranted is subject to consideration of policy priorities and tradeoffs that would be involved in making changes to reporting requirements. Further, there may be any number of ways to make such improvement—each with its own policy considerations and potential impacts. Based on discussions with Commission staff and their counsel, we note the following:

- Changes in campaign finance reporting requirements—particularly any related to how BQCs and PACs segregate contributions or their activities while involved in more than one effort—would likely require legislative action;
- Any efforts to improve transparency of contributions data would likely result in additional administrative burdens being placed upon BQCs and PACs; and
- While identifying the contributors behind a particular effort is most straightforward for BQCs involved in only a single effort, potentially limiting BQCs to only one effort at a time could arguably be considered an undue burden on committees and potentially challenged in court.

### **(6) Improve the transparency and effectiveness of expenditure data through the development of an additional expenditure purpose category within the Commission’s e-filing system to capture expenditures for paid signature gathering.**

#### Background and Context

Another ongoing public interest was the extent to which paid signature gatherers were used in signature collection efforts. Currently, any committee spending funds in either support or opposition of a citizen initiative or people’s veto attempt reports those expenditures to the Commission by selecting one of twelve established “expenditure purpose” categories and providing a brief, narrative “expenditure description.”

In our review of committee expenditure data, we found that the Commission’s e-filing system does not contain an established expenditure category for paid signature gathering. It appears that this type of expenditure is primarily captured in four other “expenditure purpose” categories: campaign

worker salaries and personnel costs; campaign consultants; other professional services; and other. Second, we also observed paid signature gathering was not consistently identifiable in the narrative field for “expenditure description”. As a result of these two factors, we were unable to reliably and consistently identify paid signature gathering expenditures within the larger universe of all expenditures. We note that the general public would encounter even greater challenges in identifying paid signature gathering expenditures from the more limited data available via the campaign finance reporting website.

### Potential Opportunity

If the extent to which paid signature gatherers are used in signature collection efforts, there is an opportunity to improve the collection and recording of expenditures on paid signature gathering efforts. This could be achieved through the addition of a new, discrete expenditure purpose category for paid signature gathering in the Commission’s e-filing system. Such a change could ultimately improve transparency, specifically as it relates to the extent that paid signature gatherers are used on a given effort.

While the addition of a single expenditure category to already existing reporting categories in a data system sounds straightforward, there are tradeoffs to consider in the priority and timing of any potential action. Commission staff reported that they are currently working with their e-filing system vendor to address other existing reporting and functionality issues. They noted that the addition of a new expenditure category would potentially occur as a matter of course as part of their larger effort to improve how data is presented for the public; however, the larger effort is of less immediate priority for the commission and likely to be addressed at a future date.

### **(7) Improve the transparency and effectiveness of the Commission’s publicly available expenditure data by developing a means of delineating committee-to-committee transfers from total expenditures to better reflect funds directly spent on services and goods.**

#### Background and Context

Throughout the initiative and people’s veto process, more than one committee may support or oppose an effort and funds may be moved between those committees, creating what is referred to as “committee-to-committee” transfers. Currently, committee-to-committee transfers are coded as expenditures in the Commission’s e-filing system and on its campaign finance reporting website. As a result, funds that are transferred from one committee to another and then spent by the second committee show up as two expenditures. For example:

- Two organizations with existing BQCs (X and Y) join forces and create a new jointly managed BQC (Z). Once BQC(Z) is created, BQC(X) transfers \$100,000 to BQC(Z).
- BQC(Z) spends that \$100,000 on canvassing and advertising.
- In the Commission’s campaign finance reporting this appears as:
  - \$200,000 in total expenditures supporting the effort.
- This total is comprised of:
  - \$100,000 committee-to-committee transfer BQC(X) to BQC(Z) and
  - \$100,000 direct spending on services and goods by BQC(Z).

In this example, someone looking to the website for expenditures on a particular effort may be under the impression that \$200,000 in expenditures represents funds directly spent on services and goods to influence the potential outcome of a citizen initiative or people's veto attempt—which is not the case.

To better understand how frequently this occurs, we examined the underlying expenditure data obtained from the Commission. We reviewed 54 expenditure totals consisting of total expenditures in support and total expenditures in opposition for 27 initiatives. We found that 13 of the 54 totals (24%) spanning 11 initiatives included committee-to-committee transfers. In these 13 instances that included committee-to-committee transfers, there was a wide range in the extent of transfers. We found that including the transfers in total expenditures overstated direct expenditures in support or opposition to an initiative from 1.5% to 48.1%.

### Potential Opportunity

While including of these transfers in total expenditure appear consistent with applicable definitions, statutes, and rules, this may not be consistent with what we believe is the public's general definition of what an expenditure is—the *direct* spending of funds on services and goods. With this general definition, committee-to-committee transfers would not be expenditures. Potentially clarifying what is included in those reported totals or accounting for committee-to-committee transfers in a different manner represents an opportunity for improvement.

**(8) Improve the efficiency and economical use of resources in campaign finance reporting by committees through the adjustment requirements to limit additional reports to only those elections in which a committee is participating.**

### Background and Context

The campaign finance reporting schedule for committees is established in statute (Title 21-A §1059). Each year, PACs and BQCs are required to file quarterly reports, and in any year in which primary and general elections are held, committees are required to file additional reports including an 11-Day Pre-Election Report, a 42-Day Post-Election Report and 24-Hour Reports. The 24-hour reports are required for any single contribution or expenditure in excess of established thresholds that occur after the 14<sup>th</sup> day before the election. The 11-day and 42-day reports are also required in any election year that a committee has received contributions or made expenditures to influence a ballot question election.

As noted above, in years with primary and general elections, committees are required to file the 11-day, 42-day and 24-hour reports for both the primary and general election. The law (Title 21-A §1059(2) B) specifically states that “a committee shall file primary and general election reports even if the committee did not engage in financial activity to influence the primary or election.” This means that when a citizen initiative or people's veto is on a November ballot, for example, and there is a primary election that year in June, any committee connected with that initiative is required to file the additional reports for both the June and November election dates.

Potential Opportunity

There is a potential opportunity to improve efficiency and use of resources in the reporting process through adjusting the requirements for elections in which a committee is not engaged. For example, relying on a single quarterly report to cover the same time periods and exempting committees from the 24-hour reporting requirements for elections they are not participating in could potentially improve the efficiency of the reporting process (fewer reports to be made and reviewed), as well as the economical use of resources (fewer reports, requiring fewer staff resources) for committees and the Commission. We observed that something like this occurred in 2020, as Commission staff developed two filing schedules—one for committees involved in the March 3<sup>rd</sup> special election and one for those who were not. Committees that were not involved in that special election were not required to file an 11-Day Pre-Special Election, a 42-Day Post-Special Election, and related 24-Hour Reports.

Any decision to adjust reporting requirements for committees based on their participation in a particular election would require the understanding and consideration of several factors, including: the purposes of pre- and post-election reports and 24-hour reports; the extent to which those purposes and transparency, in general, would be impacted by any such changes; and the potential efficiencies to be gained and potential burdens or challenges that could result for committees or the Commission.

## Acknowledgements

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OPEGA would like to thank the management and staff of the Department of the Secretary of State and the Maine Commission on Governmental Ethics and Election Practices for their cooperation throughout this review. OPEGA would also like to thank the Office of the Attorney General and the Office of the Revisor of Statutes, Office of Fiscal and Program Review and Office of Policy and Legal Analysis within the Maine Legislature, along with municipal registrars, notaries public and initiative participants for their cooperation and assistance.

## Agency Response

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In accordance with 3 MRSA §997§§1, OPEGA provided the Department of the Secretary of State and the Maine Commission on Governmental Ethics and Election Practices an opportunity to review and provide comments on a draft of the final report. Agency comment letters were submitted by both entities and are included at the end of this report. In their comment letter, the Secretary of State noted some clarifications related to the petition process; these clarifications have been made by OPEGA in this final report.

**Appendix A. Citizen Initiatives and People's Vetoes Certified as Valid by the Secretary of State from Applications Submitted Between 1999 and 2018**

**Table A-1. Citizen Initiatives and People's Vetoes Certified for the Ballot from Applications Submitted 1999-2018**

Referendum Vote Date	Title	Result	Total Votes	Total % in Favor	% in Favor <sup>1</sup>		% of Signatures <sup>2</sup>		Expenses (\$) <sup>3</sup>	
					CD1	CD2	CD1	CD2	In Support	In Opposition
<b>People's Vetoes</b>										
Nov 2005	An Act To Extend Civil Rights Protections to All People Regardless of Sexual Orientation	Failed	405,200	45%	39%	51%	32%	68%	N/A	N/A
Nov 2008	An Act to Continue Maine's Leadership in Covering the Uninsured	Passed	715,844	65%	63%	67%	71%	29%	N/A	N/A
Nov 2009	An Act to End Discrimination in Civil Marriage and Affirm Religious Freedom	Passed	568,676	53%	46%	60%	36%	64%	\$2,704,627	\$5,217,688
Jun 2010	An Act to Implement Tax Relief and Tax Reform	Passed	318,888	61%	58%	63%	43%	57%	\$336,148	\$572,447
Nov 2011	An Act to Preserve the Integrity of the Voter Registration and Election Process <sup>4</sup>	Passed	392,180	60%	N/A	N/A	N/A	N/A	\$821,507	\$338,520
Jun 2018	An Act to Implement Ranked-choice Voting in 2021	Passed	278,191	54%	58%	49%	69%	31%	\$1,370,049	\$5,748
<b>Citizen Initiatives</b>										
Nov 2000	An Act Regarding Forest Practices	Failed	640,882	28%	N/A	N/A	N/A	N/A	N/A	N/A
N/A	An Act to Repeal the Sales Tax on Snack Food Except Candy and Confections	Enacted by Legislature	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Nov 2003	An Act to Enact the Maine Tribal Gaming Act	Failed	517,083	33%	N/A	N/A	N/A	N/A	N/A	N/A
Nov 2003	An Act to Allow Slot Machines at Commercial Horse Racing Tracks	Passed	514,884	53%	N/A	N/A	N/A	N/A	N/A	N/A
Jun 2004 <sup>5</sup>	An Act to Enact the School Finance and Tax Reform Act of 2003	Passed	181,111	55%	N/A	N/A	N/A	N/A	N/A	N/A
Nov 2004	An Act to Impose Limits on Real and Personal Property Taxes	Failed	730,005	37%	N/A	N/A	N/A	N/A	N/A	N/A
Nov 2004	An Act Prohibiting Certain Bear Hunting Practices	Failed	733,777	47%	N/A	N/A	N/A	N/A	N/A	N/A
Nov 2006	An Act to Create a Taxpayer Bill of Rights	Failed	536,146	46%	47%	46%	60%	40%	N/A	N/A
Nov 2007	An Act to Authorize a Tribal Commercial Track and Slot Machines in Washington County	Failed	272,622	48%	45%	50%	54%	46%	N/A	N/A
N/A	An Act to Allow a Tax Credit for College Loan Repayments	Enacted by Legislature	N/A	N/A	N/A	N/A	62%	38%	N/A	N/A
Nov 2008	An Act to Allow a Casino in Oxford County	Failed	722,936	46%	47%	46%	50%	50%	N/A	N/A
Nov 2009	An Act to Decrease the Automobile Excise Tax and Promote Energy Efficiency	Failed	562,324	26%	27%	25%	52%	48%	\$16,823	\$781,584
Nov 2009	An Act to Establish the Maine Medical Marijuana Act	Passed	564,062	59%	64%	54%	57%	43%	\$23,358	\$0
Nov 2009	An Act to Promote Tax Relief	Failed	599,203	40%	39%	41%	53%	47%	\$287,744	\$1,353,227
Nov 2009	An Act to Repeal the School Consolidation Laws	Failed	549,286	42%	36%	47%	32%	68%	\$7,785	\$0
Nov 2010	An Act to Allow a Casino in Oxford County	Passed	565,145	50%	52%	49%	65%	35%	\$736,708	\$688,893
Nov 2011	An Act Regarding Establishing a Slot Machine Facility	Failed	391,594	37%	36%	37%	48%	52%	\$582,155	\$148,602
Nov 2011	An Act to Amend the Laws Governing the Deadline and Conditions for Municipal Approval of a Second Racino and to Allow a Tribal Racino in Washington County	Failed	391,833	45%	47%	43%	71%	29%	\$4,055,734	\$696,160
Nov 2012	An Act to Allow Marriage Licenses For Same-Sex Couples and Protect Religious Freedom	Passed	707,610	53%	59%	45%	71%	29%	\$2,609,596	\$1,179,078
Nov 2014	An Act to Prohibit the Use of Dogs, Bait or Traps When Hunting Bears Except Under Certain Circumstances	Failed	604,724	47%	53%	40%	75%	25%	\$2,681,976	\$230,385

Maine's Citizen Initiative and People's Veto Process

**Table A-1. Citizen Initiatives and People's Vetoes Certified for the Ballot from Applications Submitted 1999-2018**

Referendum Vote Date	Title	Result	Total Votes	Total % in Favor	% in Favor <sup>1</sup>		% of Signatures <sup>2</sup>		Expenses (\$) <sup>3</sup>	
					CD1	CD2	CD1	CD2	In Support	In Opposition
Nov 2015	An Act to Strengthen the Maine Clean Election Act, Improve Disclosure and Make Other Changes to the Campaign Finance Laws	Passed	218,335	55%	60%	49%	61%	39%	\$407,004	\$47,963
Nov 2016	An Act to Establish Ranked-choice Voting	Passed	744,894	52%	56%	47%	69%	31%	\$846,678	\$25,135
Nov 2016	An Act to Establish the Fund to Advance Public Kindergarten to Grade 12 Education	Passed	757,276	51%	52%	48%	62%	38%	\$153,741	\$443,275
Nov 2016	An Act to Raise the Minimum Wage	Passed	758,378	55%	60%	51%	56%	44%	\$1,317,508	\$36,701
Nov 2016	An Act to Require Background Checks for Gun Sales	Failed	760,927	48%	58%	37%	73%	27%	\$1,773,370	\$1,270,483
Nov 2016	An Act to Legalize Marijuana <sup>6</sup>	Passed	759,541	50%	N/A	N/A	N/A	N/A	\$2,401,371	\$227,286
Nov 2017	An Act to Allow Slot Machines or a Casino in York County	Failed	344,385	17%	18%	15%	69%	31%	\$8,548,120	\$663,623
Nov 2017	An Act to Enhance Access to Affordable Health Care	Passed	344,516	59%	65%	52%	64%	36%	\$2,048,994	\$370,271
Nov 2018	An Act to Establish Universal Home Care for Seniors and Persons with Disabilities	Failed	634,498	37%	37%	37%	70%	30%	\$1,415,138	\$1,098,101

Notes:

<sup>1</sup> Percent of votes by congressional district do not include UOCAVA (Uniformed & Overseas Citizens Absentee Voting Act) results since they were not available by district.

<sup>2</sup> Geographic results by congressional district for signatures is unavailable prior to 2005. Available data excludes signatures on petition forms that spanned more than one municipality; these "multi" petitions accounted for less than 0.5% of total signatures.

<sup>3</sup> Expenses for referenda are not available prior to 2009.

<sup>4</sup> Geographic distribution votes and signatures for the People's Veto of An Act to Preserve the Integrity of the Voter Registration and Election Process is not available.

<sup>5</sup> The Jun 2004 referendum was a constitutionally required runoff of the citizen initiative against the "no" option. This was required because the citizen received only a plurality of votes against the competing measure in the November 2003 vote.

<sup>6</sup> Geographic distribution of the 2016 Act to Legalize Marijuana is unavailable.



**Appendix B - Legislative Changes After Passage of a Citizen Initiative**

<b>Table B.1. Summary of Legislative Changes After Passage of a Citizen’s Initiative by Referendum Vote</b>		
<b>Year</b>	<b>IB Title</b>	<b>Summary of Changes in Subsequent Legislation</b>
2003	An Act to Allow Slot Machines at Commercial Horse Racing Tracks (IB 2003, c.1) LD 1371	LD 1820 (P.L. 2003, c.687) amended IB 2003, c.1, which allowed for the operation of slot machines by certain persons licensed to operate commercial harness horse racing tracks. P.L. 2003 c.687 established the Gambling Control Board within the Department of Public Safety to regulate the operation, distribution and maintenance of slot machines and the facilities at which those slot machines are located. Although the entities eligible for a license was not changed, chapter 687 established new licensing criteria applicable to all potential slot machine operators, thereby eliminating the initiated bill's automatic licensing provisions. The new law created a framework for the Gambling Control Board to regulate and monitor slot machine operators, distributors and gambling-related vendors and service providers. Chapter 687 made changes to the amount of slot machine revenue to be paid by operators for distribution to the state for administrative costs and for deposit into dedicated accounts such as scholarships, the Fund for a Healthy Maine, agricultural fairs, harness racing industry related funds and others.
2003	An Act to Enact the School Finance and Tax Reform Act of 2003 (IB 2003, c.2) LD 1372	LD 1 (P.L. 2005, c.2) made changes to the education funding formulas to provide 4-year ramp to achieve 55% state share of 100% of essential programs and services (EPS); modified special education distributions; provided various transition adjustments; directed the Commissioner of Education to provide recommendations for a transition adjustment and other issues in FY 2006-07 to the Joint Standing Committee on Education and Cultural Affairs; directed the Department of Education to phase-in the impact of cost-sharing changes; provided a school administrative unit spending cap based on 100% of the EPS total cost of education and provides for a local override process; and addressed conflicting provisions regarding administration and oversight of the Fund for Efficient Delivery of Educational Services.
2009	An Act to Establish the Maine Medical Marijuana Act (IB 2009, c.1; LD 975)	LD 1811 (P.L. 2009, c.631) amended the statutes enacted by IB 2009, c.1, which allowed a person who has been diagnosed by a physician as suffering from certain medical conditions to possess marijuana for medical use. The changes reflected the work and the recommendations of the Committee on the Implementation of the Maine Medical Marijuana Act and the Criminal Law Advisory Commission. Chapter 631 clarified many of the provisions of the statutes, added a process to add new debilitating conditions and aligned the language of the statutes to other Maine laws. Chapter 631 applied retroactively to December 23, 2009, the effective date of the initiated bill.
2010	An Act to Allow a Casino in Oxford County (IB 2009, c.2) LD 1808	LD 1418 (P.L. 2011, c.417) established a separate fee structure for the operation of table games at a casino in Oxford County and authorized the operation of table games at the slot machine facility operating in Bangor contingent on approval of the voters in Penobscot County. Chapter 417 clarified provisions governing the distribution of table game revenue from the Oxford Casino and established a separate distribution requirement for table games to be operated in Bangor.
2016	An Act to Establish Ranked-choice Voting (IB 2015, c.3) LD 1557	LD 1646 (P.L. 2017, c.316) delayed the implementation of ranked choice voting until election held after December 21, 2021 providing that for primaries held prior to that date, nominations for the general election are determined by plurality vote. Chapter 316 also provided that ranked choice voting provisions were subject to repeal unless an amendment to the Constitution passed upon ratification by voters authorizing the Legislature to enact a method by which the Governor and members of the Legislature are elected. (Portions of this law were overturned by a People’s Veto election on June 12, 2018 leaving ranked choice voting in place for all primaries and general elections for federal offices.)

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2016	An Act to Establish the Fund to Advance Public Kindergarten to Grade 12 Education (IB 2015, c.4) LD 1660	LD 390, enacted as the biennial budget (P.L. 2017, c.385) repealed the provisions enacted by IB 2015, c.4 which had enacted the 3% income tax surcharge imposed on taxable income in excess of \$200,000 and eliminated the Fund to Advance Public Kindergarten to Grade 12 Education.
2016	An Act to Raise the Minimum Wage (IB 2015, c.2) LD 1661	LD 673 enacted as Public Law 2017, chapter 272 eliminates the scheduled increases in the minimum wage applicable to service employees and starting January 1, 2018, establishes the tip credit in the minimum wage laws at 50% of the general minimum hourly wage.
2016	An Act to Legalize Marijuana (IB 2015, c.5) LD 1701	Several laws were enacted affecting the initiative which enacted the Marijuana Legalization Act. LD 88 (P.L. 2017, c.1) delayed implementation of several provisions of the Marijuana Legalization Act until February 1, 2018; it also amended several definitions, limited the amount of concentrate that a person could legally possess, corrected several provisions included in or removed by the initiative; clarified that consumption of marijuana in a private residence excluded those operated as a day-care facility or baby-sitting service, and permitted the delegation of rulemaking to agencies with expertise in the subject matter. LD 243 (P.L. 2017, c.278) changed the state licensing authority from the Department of Agriculture Conservation and Forestry to the Department of Administrative and Financial Services with regard to the distribution, and sale of retail marijuana, including licensing of retail operations. Cultivation oversight was retained by the Department of Agriculture Conservation and Forestry. Chapter 278 also established the Retail Marijuana Regulatory Coordination Fund. LD 1641 (P.L. 2017, c.309) established provisions to allow for the establishment and operation of retail marijuana testing facilities.

## ***Appendix C. Scope and Methods***

The scope for this review, as approved by the Government Oversight Committee, consisted of five questions. To answer these questions fully, OPEGA primarily used the following methods: document reviews, interviews, and data analysis.

### **Document Review**

OPEGA reviewed relevant documentation about the citizen initiative and people's veto process. Specific materials reviewed include, but are not limited to:

- Constitution of the State of Maine;
- Maine Statutes and Legislative histories;
- Maine initiative and campaign finance rules, policies and guidance documents;
- Relevant briefs and reports produced by the National Conference of State Legislatures; and
- Program data obtained from the Secretary of State and the Commission on Governmental Ethics and Election Practices.

### **Interviews**

OPEGA interviewed relevant staff at the Department of the Secretary of State, the Maine Commission on Governmental Ethics and Election Practices, and other stakeholders to obtain information about the administration of the citizen initiative and people's veto process and campaign finance process. Interviews were conducted with the following individuals:

- The past Secretary of State, current Deputy Secretary of State and Director of Elections for the Department of the Secretary of State;
- The Executive Director, Assistant Director and Political Committee and Lobbyist Registrar for the Maine Commission on Governmental Ethics and Election Practices;
- The Assistant Attorney General assigned to the SOS and Commission;
- Directors and staff of the Legislature's Office of the Revisor of Statutes, Office of Fiscal and Program Review and Office of Policy and Legal Analysis; and
- Maine municipal registrars, notaries public and other process stakeholders.

### **Data Analysis**

OPEGA performed various analyses of petition related data obtained from the SOS as well as campaign finance reporting data obtained from the Commission. The analysis examined:

- The number of petition applications, number of petitions issued, number of petitions submitted and certified by the SOS;
- The number and types of legislative actions taken to certified petitions, ballot results, and legislative changes made after the passage of a ballot measure;
- The geographic distribution of valid, signatures by current congressional district;
- Total expenditures made in support or opposition by effort; and
- Total contributions made to BQCs or PACs supporting or opposing an effort.

## ***Appendix D. OPEGA Recommendation for Project Direction***

### **Citizen Initiative Process**

#### **Background**

The Government Oversight Committee added a review of the Citizen Initiative Process to OPEGA's Work Plan on November 9, 2017 following consideration of a GOC member's request for a review and OPEGA's case study research on the York County Casino Referendum. The GOC directed that OPEGA submit a recommendation on project direction in January 2018. OPEGA's preliminary research phase on this project has included:

- reviewing information gathered during the case study research;
- reviewing provisions in the Maine Constitution relevant to citizen initiatives and the related legislative history;
- reviewing relevant statute for citizen initiatives;
- interviewing directors and staff of the Legislature's Office of the Revisor of Statutes, Office of Fiscal and Program Review and Office of Policy and Legal Analysis;
- reviewing information provided by the Secretary of State's Office, Office of the Attorney General and the Maine Commission on Governmental Ethics and Election Practices regarding responsibilities, processes and records maintained by their offices;
- analyzing historical activity for direct initiatives and people's vetoes that have qualified for the ballot; and
- reviewing briefs and reports produced by the National Conference of State Legislatures on the subject of citizen initiatives.

#### **Summary of Preliminary Research**

##### **The Citizen Initiatives Process in Maine Constitution and Statute**

The Maine Constitution provides for citizen initiatives in Article IV, Part One, Section 1 and Article IV, Part Three, Sections 16-22. Maine statute sets out additional process details for citizen initiatives in Title 21-A Chapter 11 and Title 21 Chapter 13 establishes requirements for Political Action Committees and Ballot Question Committees involved in financing initiatives.

##### **Origins of Maine's Citizen Initiative Process**

The populist movement in the 1890s and the progressive era in the early 1900s created the impetus for the adoption of the initiative and referendum (veto) process in a number of states. At that time, state legislatures were perceived as controlled by special interests, particularly railroads, banks and land speculators. This led to some states adopting direct democracy devices to bypass legislatures

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perceived as being unresponsive to ordinary citizens. The first state to adopt the initiative process was South Dakota in 1898.

In Maine, the proposal for a direct initiative and people's veto process originally came before the Legislature in 1903 and was referred to the next Legislature. The proposed Constitutional amendment was debated in 1905, but did not receive the required two-thirds vote in the House to be put to a vote of the people. The House and Senate records suggest that the issue had been advanced by petitions from labor unions, granges and the Civic League.

The proposal was again considered by the Legislature in 1907, when both the majority and minority reports of the Judiciary Committee recommended "ought to pass." The House debate indicated that, although there was some initial opposition to the proposal within the Legislature, opposition had disappeared and both major political parties favored the proposal in their election platforms.

The amendments to the Maine Constitution to implement the direct initiative and people's veto were passed by the House and Senate in March 1907, passed by popular vote in September 1908 and took effect in January 1909. The Constitutional amendments included two components to amend Article IV:

- Part One, Section 1 - whereas it previously noted that the legislative power is vested in two branches (the House and the Senate), the amendment added an exception that "*the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the legislature*" and reserve the power to reject at the polls any actions passed by the Legislature. This amended language appears to reflect the original intent for citizen initiatives.
- Part Three, Sections 16-22 established the detail of the power and the process for the people's veto and direct initiative.

### Evolution of the Citizen Initiative Process

Since enactment in 1909, two substantial Constitutional amendments have been made:

- The number of signatures required to petition for a direct initiative or people's veto was increased. The original enactment required 10,000 signatures to invoke the people's veto and 12,000 signatures to invoke the direct initiative. In 1947, this was amended and increased for the people's veto to 10% of the total vote for governor cast in the last gubernatorial election. It was noted in the floor debate that, since enactment, women had been granted the right to vote, which substantially increased the number of eligible voters. In 1951, a similar amendment was made for the direct initiative.
- The implementation of citizen-initiated legislation was delayed if no funding was available. In 1951, the Constitution was amended to delay implementation of directly initiated legislation that entailed expenditure in excess of available and unappropriated state funds for 45 days after the convening of the next regular session, unless the measure provided a mechanism to raise adequate revenue.

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There were a number of further amendments to these provisions in the Maine Constitution in subsequent years, the most recent in 2006. These amendments were largely related to process and implementation details, including requirements for signature gathering.

The Legislature has also made changes to the citizen initiative process through amendments to statute. Numerous amendments to Title 21-A Chapter 11 have been enacted over the years with 14 amendments made since 2001. These most recent amendments included:

- a requirement that the petition circulator take an oath before a notary that the circulator personally witnessed the signatures and that the notary sign a certification of the oath in the presence of the circulator;
- a requirement that circulators be Maine residents and that the names of paid circulators be reported to the Secretary of State;
- a requirement that entities receiving compensation for organizing, supervising or managing the circulation of petitions are registered with the Secretary of State; and
- creation of a fiscal impact statement that must be printed on the petition being circulated for signatures.

Maine is not the only state regularly amending its direct initiative and people's veto processes. In December 2001, the National Conference of State Legislatures assembled a task force to review the growing use of these direct democracy avenues around the country. The task force adopted 34 recommendations for states considering adopting the processes or seeking to improve existing processes. A number of the recommendations were either already in place or have since been implemented in Maine, while others have not been implemented. For example, the task force recommended that to achieve geographical representation, states should require signatures be gathered from more than one area of the state. This has been the subject of some debate in Maine and would require an amendment to the Maine Constitution to implement. LD 31, currently before the 128<sup>th</sup> Legislature, is the most recent effort to require some geographical representation. This resolution proposes an amendment to the Maine Constitution to require direct initiative petition signatures to come from each congressional district.

### **Process Overview**

The Constitution and related statutes contain deadlines and requirements for both people's vetoes and direct initiatives. For both types of initiatives, the Secretary of State's Office (SOS) has the primary role in working with citizens and ensuring compliance with the requirements established for getting an initiative onto the ballot for a popular vote. The process starts when a registered Maine voter submits to the SOS a written application for circulating a direct initiative or people's veto petition.

The process for a direct initiative is more involved than that for a people's veto as it is seeking to establish new law. As described in the attachment, several State offices provide input to the SOS during the process to help ensure the proposed law conforms to drafting conventions and to provide information that will be included on the circulated petitions.

## Maine's Citizen Initiative and People's Veto Process

The Legislature's Office of the Revisor of Statutes (ROS) does a limited review of the language for the proposed law provided by the applicant. ROS checks the proposed law for conformance to the essential aspects of drafting conventions including: correct allocation and integration with existing statute, bill title and headnotes that objectively reflect the content, conformity to the statutory numbering system, and no inclusion of intent or testimonial statements that create legal requirements. ROS may recommend revisions and offer observation on other issues with the language to the SOS. ROS also provides the SOS a concise, objective summary describing the content of the proposed law. The SOS may also seek input on the language from the Attorney General's Office (AG). The SOS then sends the draft legislation with any questions or comments from ROS and the AG to the applicant for acceptance or further changes.

Once the language has been accepted by the applicant, the SOS obtains a fiscal note from the Legislature's Office of Fiscal and Program Review (OFPR). OFPR's fiscal note is intended to reflect the fully implemented cost of the proposed measure as described in the accepted language. Preparing this analysis can require a more detailed understanding of how the measure might be implemented than what is reflected in the accepted language. In these cases, OFPR works with affected agencies to get any further details that might be available and/or makes educated assumptions in order to estimate the fiscal impact of the initiative.

If the initiative ultimately gathers enough valid signatures to qualify for the ballot, the SOS sends the qualifying language to ROS, which produces in bill form the exact language received from the SOS. The Constitution provides that "the measure thus proposed, unless enacted **without change**...shall be submitted to the electors together with any amended form, substitute, or recommendation." Consequently, unlike the process for other bills, ROS does not review the bill language at this point for adherence to drafting conventions, even though the language may differ from what ROS initially reviewed.

Once the initiative is printed as a bill, it may be handled in various ways by the Legislature with the rules of legislative procedure being the same as for any other bill. It may be dealt with on the floor without reference to committee, or may be referred to a committee for review. A committee that receives the bills may hold a public hearing and one or more work sessions before reporting out recommendations on the initiated bill. Unlike other bills, however, final action by the Legislature on the bill is governed by the initiative provisions of the Constitution which specify the available options.

Under the Constitution, the Legislature may enact the initiated bill without change. If the enacted bill is signed by the Governor, or the Governor's veto is overridden, the bill becomes law in the same manner as any other enactment. However, if a Governor's veto is sustained by the Legislature, the bill is placed on the ballot at the next general election. The initiated bill is also placed on the ballot at the next general election if the Legislature chooses **not** to enact the bill without change.

The Constitution allows for the Legislature to pass an amended form, substitute, or recommendation for the initiated bill as a competing measure. If a competing measure is passed, then both the initiated bill and the competing measure will be put on the ballot in such a manner that voters can choose between the measures or reject both. If neither the initiated bill nor the

## Maine's Citizen Initiative and People's Veto Process

competing measure receives a majority of the votes cast, the one receiving the most votes is submitted again at the next statewide election as long as it receives more than one-third of the votes given for and against both. The next statewide election is held not less than 60 days after the first vote.

Once an initiated bill becomes law, either by legislative enactment without change or by approval of the voters, it has the same legal status as other law and may subsequently be amended in the normal course. Initiated bills approved by the voters take effect 30 days after the Governor announces the result of the vote unless there is a later date specified in the bill. The Governor must announce the result within 10 days after the vote has been determined. However, if the initiated bill entails expenditure exceeding the amount of available and unappropriated state funds, and does not provide for raising adequate new revenues, it will remain inoperative until 45 days after the next convening of the Legislature in regular session.

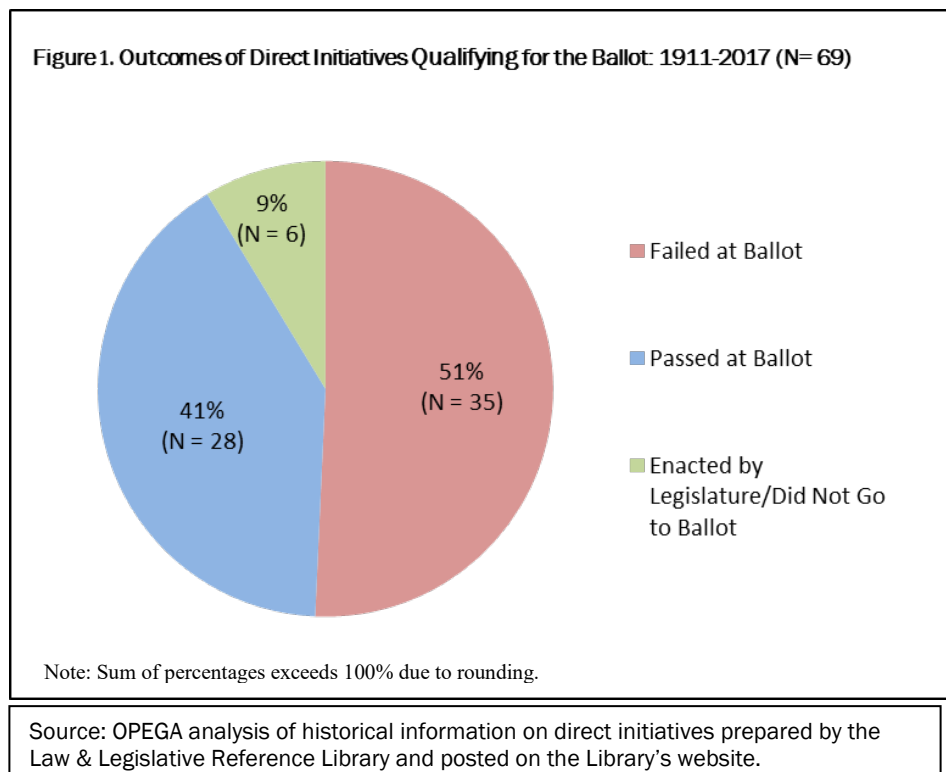
The Maine Commission on Governmental Ethics and Election Practices (Ethics Commission) also plays a role in the citizen initiative process. The Ethics Commission administers the State's campaign finance laws and conducts associated investigations. Political Action Committees (PACs) and Ballot Question Committees (BQCs) that receive contributions or make expenditures for the purpose of initiating or influencing a ballot question must register with the Ethics Commission. PACs and BQCs are required to file campaign finance reports, which are reviewed by Ethics Commission staff for completeness and compliance with election law. The Ethics Commission conducts investigations and assesses penalties for non-conforming campaign finance reports in accordance with statute.

### Summary of Citizen Initiative Activity

#### Direct Initiatives

Sixty-nine direct initiatives have qualified for the ballot since 1911. As illustrated in Figure 1, 35 of the initiatives (51%) failed at the ballot and 28 (41%) passed. Six of the initiatives were enacted by the Legislature and never went to the ballot.

The Legislature placed competing measures on the ballot for four of the directive initiatives, one each in 1947, 1985, 1996, and 2003. None of the





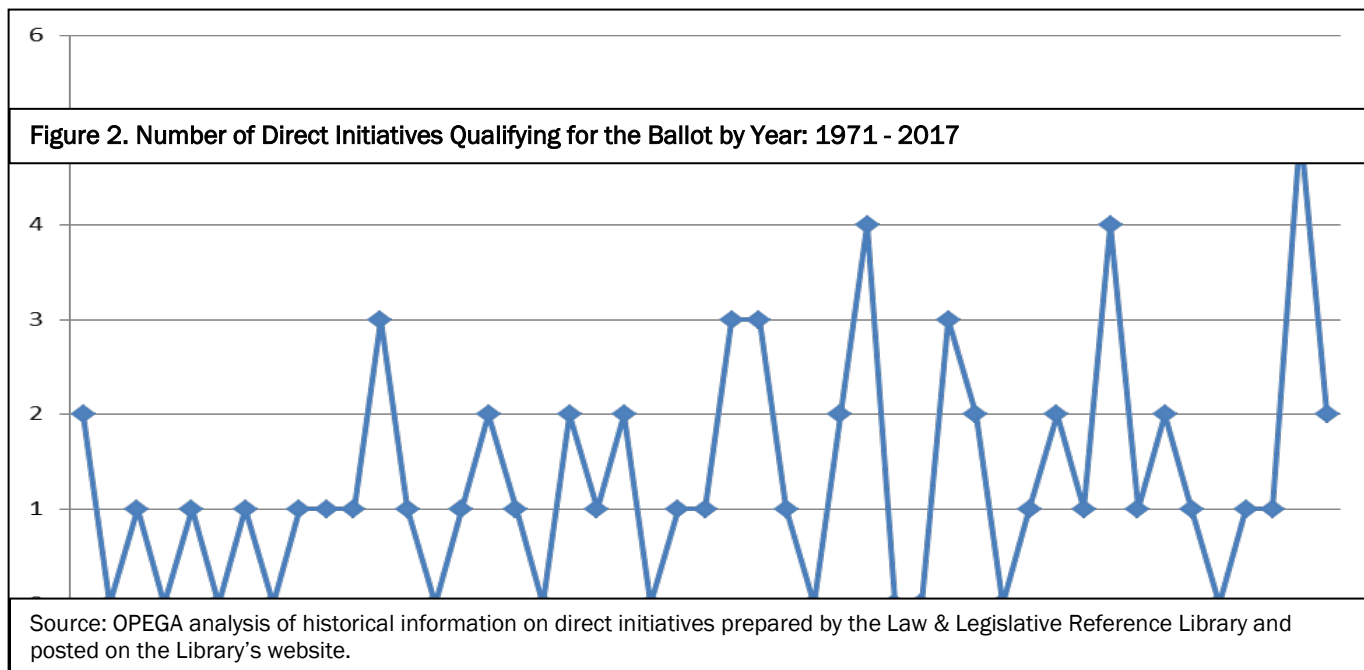
## Maine's Citizen Initiative and People's Veto Process

competing measures ultimately prevailed, while two of the challenged initiated measures became law.<sup>25</sup> Table 1 provides a breakdown of the 69 direct initiatives and their final outcomes by time period.

Time Period	Total Initiatives	Enacted by Legislature before Ballot		Failed at Ballot		Passed at Ballot		% Became Law
		#	%	#	%	#	%	
1911-1970	7	0	0%	5	71%	2	29%	29%
1971-1999	32	4	13%	13	41%	15	47%	59%
2000-2017	30	2	7%	17	57%	11	37%	43%
<b>Total</b>	<b>69</b>	<b>6</b>	<b>9%</b>	<b>35</b>	<b>51%</b>	<b>28</b>	<b>41%</b>	<b>49%</b>

Source: OPEGA analysis of historical information on direct initiatives prepared by the Law & Legislative Reference Library and posted on the Library's website.

As reflected in the table and in Figure 2, there has been a noticeable increase in direct initiative activity since 1971. In the first 59 years (1911-1970), there were seven direct initiatives that qualified for the ballot. None of them were enacted by the Legislature and the vast majority failed at the



<sup>25</sup> In two of the four instances where competing measures were on the ballot, there was a second popular vote taken as prescribed by the Constitution to decide the final outcome when neither the initiated bill or competing measure receives a majority of the votes cast. In 1996, the competing measure won the most votes in the first election and those votes totaled more than one-third of all the votes cast for either measure. Accordingly it was carried over to a second election but ultimately failed to pass. In 2003, the initiated measure won the most votes in the first election and met the one-third of votes cast requirement. It was subsequently approved by voters in the second election.

## Maine's Citizen Initiative and People's Veto Process

ballot. In the next 28 years (1971-1999), 32 initiatives qualified for the ballot. The Legislature enacted four and 15 passed at the polls for a total of 19 (59%) that ultimately became law.

In the last 17 years (2000-2017), 30 initiatives qualified for the ballot with 57% of them failing at the polls. Two were enacted by the Legislature and 11 passed at the ballot for a total of 13 (43%) that became law. Direct initiatives qualifying for the ballot have most regularly dealt with the topics of taxes (n=14), election laws (n=7), and gambling (n=9). All nine of the gambling focused initiatives were put forth in the 2000-2017 time period.

### People's Vetoes

There have been 30 people's veto attempts that have gone to the ballot since the process was enacted in 1909. Twenty-two of these attempts were in the first 56 years (1909-1965) and eight of them occurred in the 44 years between 1973 and 2017. No attempts were made from 1966 to 1972. Of the total 30 attempts, 57% have been successful at vetoing the challenged law that had been enacted by the Legislature.

### **OPEGA Recommendation on Project Direction**

OPEGA recommends continuing this review of the Citizen Initiatives Process encompassing both People's Veto and Direct Initiatives with a focus on the following questions:

1. What are the trends in activity and characteristics for People's Veto and Direct Initiative efforts over time?
2. What has been the geographic distribution for signatures collected on People's Vetoes and Direct Initiatives that qualified for the ballot?
3. To what extent have Direct Initiatives that qualified for the ballot in the last ten years dealt with matters that had previously been before the Legislature?
4. What opportunities exist to improve the efficiency, effectiveness and economical use of resources in the People's Veto and Direct Initiative processes?
5. What opportunities exist to improve transparency and accountability in People's Veto and Direct Initiative efforts?



*Department of the Secretary of State*

*Bureau of Corporations, Elections and Commissions*

Shenna Bellows  
*Secretary of State*

Julie L. Flynn  
*Deputy Secretary of State*

June 17, 2021

Senator Nate Libby, Senate Chair  
Representative Genevieve McDonald, House Chair  
Members of the Government Oversight Committee

Dear Senator Libby and Representative McDonald,

The Department of the Secretary of State appreciates this opportunity to provide official comments on the OPEGA Study of the Citizen's Initiative and People's Veto Process. We consider the people's right to legislate as an integral part of our system of governance and make every effort to discharge our responsibilities in reviewing and certifying the circulated petitions fairly and effectively. Overall, we think that this report is thorough and balanced, and accurately reflects the Secretary of State's process for reviewing and certifying petitions. We appreciate the care and attention given by OPEGA to understanding the process.

We wish to make the following summary reply:

- We agree with the opportunities identified in the report, although most of them require additional technology and/or staffing resources.
- The Elections Division, which currently includes eight full-time positions, is seriously and chronically understaffed.
- Addressing the one issue identified – reviewing duplicates from multiple submissions – would require an investment in staffing and technology.
- We are confident in the integrity with which the Elections Division administers the petition process within existing resources. We do not believe that the issue and opportunities identified had any material impact on the outcome of any petition.
- We have provided some modest corrections to the factual information presented. The petition process is complicated, and we want to ensure that the Legislature understands that we take the statutory and constitutional obligations to administer the citizen's initiative and people's veto process seriously.

With regards to staffing, the Governor's change package includes a recommendation from the Secretary of State to add an additional position. This would help but not fully resolve the staffing resource constraints identified in this report. In 2020, for example, Bureau staff and managers worked 2,933.15 hours of overtime (the equivalent of 73.3 weeks) on elections activities including petition certification as well as ballot proofreading, equipment and election media creation and testing, processing UOCAVA applications and issuing ballots, etc. Overtime worked by the Deputy Secretary

of State, the Director of Elections and APA and the Assistant Director of Elections comprised 1,164 of those hours – or an average of 388 hours or 9.7 weeks of overtime each.

Our responses to each opportunity and issue are detailed below.

**Opportunity: “Improved transparency and accountability in the signature collection process through the identification and reporting of all individuals participating in that process to the SOS.”**

The recommendation from OPEGA is to expand current registration and reporting requirements, by requiring the petition organization registration to include disclosure of each hired individual’s role in the effort as well as provide their addresses. If the Legislature should add these requirements to the petition organization registration process, we can easily add these to the form. The Legislature should be aware of a pending lawsuit that may materially change Maine’s residency requirements for petition gathering before the US Court of Appeals for the First Circuit, “We the People PAC, et al., v. Shenna Bellows.” The Legislature may wish to postpone any changes to the requirements for petition gatherers until the constitutionality of Maine’s requirements is resolved.

**Opportunity: “Improve accountability in the signature collection process through the development of mechanisms to ensure that signatures are collected in accordance with current requirements and that potential violations may be reported to and investigated by the SOS.”**

While we agree that this is a worthwhile goal, implementing such a policy would change the nature of the work. Investigatory and enforcement duties and responsibilities are currently outside the scope and statutory authority of the Bureau of Corporations, Elections and Commissions. Implementing this recommendation would require the addition of an investigative section to conduct investigations and enforce penalties as well as a hearings section to conduct administrative hearings to ensure that the constitutional due process rights of petitioners are protected in the process. We should note that the Bureau of Motor Vehicles has a similar structure where detectives investigate and enforce penalties for violations of the civil law with a process of administrative appeals through a separate hearings division. This is possible but would require significant additional staffing within the Bureau of Corporations, Elections and Commissions that does not currently exist.

**Opportunity: “Improve the efficiency of the signature validation process through the implementation and use of a fully functioning Central Voter Registration (CVR) system by municipal registrars and the SOS.”**

We are fully committed to implementing this recommendation, resources permitting. The current central voter registration (CVR) software is nearing its end of life, and we are working diligently on a plan for procuring its replacement and implementing a new system statewide by November 2023. The procurement process has already begun with the recent issuance of a Request for Information (RFI) and the work on drafting a Request for Proposals (RFP) is scheduled to begin this summer after analysis of the RFI information and vendor demos. We are requesting the functionality to certify petitions as part of the RFP, and if funding permits, we hope to obtain and implement the petition functionality with the new CVR system.

**Opportunity: “Improve transparency and effectiveness of the data on organizers of petition circulation from the beginning of that effort through better communication between the SOS and the Commission.”**

We agree we can improve communication regarding new citizen's initiative or people's veto applications by providing information to the Ethics Commission at the time we provide the legislation and title drafted by the Revisor of Statutes to the proponents. Alternatively, we recommend that the Legislature require proponents of a petition to file with the Ethics Commission as soon as they have filed an application with our office.

**Issue: "There is no established procedure governing how the Secretary of State conducts the signature validation process when there is more than one submission of petitions for a single citizen initiative or people's veto attempt."**

The report describes the petition for the citizen initiative entitled "An Act to Allow Slot Machines in York County," which submitted two sets of signatures in 2016. The Secretary of State agrees with the description in the report of how the signatures were submitted and how the certification was conducted as two separate data sets, including the search and identification of duplicate signatures. OPEGA states that by not checking the two datasets together for determination of duplicate signatures a risk is created that an initiative could qualify for the ballot with fewer than the required number of signatures.

While the Secretary of State concedes this is possible, based on an analysis of the petitions that were a subject of this report, we believe that for the York County petition, it would not have made a material difference to the outcome. This report analyzed petitions certified within a 20-year period. Of the 29 citizen initiative petitions certified within this period, the greatest number of duplicate signatures identified through a full review of signatures was 5,141. As of the final submission of signatures, the York County petition from 2016 had an excess of about 30,000 valid signatures over the minimum. The number of duplicates between the two data sets would have to have been almost six times the highest number of duplicates detected on other initiatives during the same period in order to determine the petition to be invalid.

Of equal importance, technology and staffing constraints did not permit a comparison of the duplicates between the two submissions during the available time. To do so would have resulted in failing to meet the 30-day deadline and automatic qualification of the petition for the ballot regardless. Should the Legislature direct the Secretary of State to conduct duplicate reviews among all submissions of a multi-submission effort, more staffing and/or technology resources would be required.

#### **Clarifications On the Petition Process:**

On page 4 of the report, there is a statement that the effect of any Act or Resolve, or any part or parts of the Act or Resolve that are specified in the people's veto petition application are automatically suspended upon filing of the *application*. However, pursuant to the Maine Constitution, Article IV, Part Third, section 17, subsection 2, "[t]he effect of any Act, bill, resolve or resolution or part or parts thereof as are specified in such petition shall be suspended upon the filing of such petition." The "petition" refers to the entire set of petition forms containing at least the minimum number of valid signatures required (i.e., not less than 10% of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition). Accordingly, we would like to clarify for the record that the filing of the petition *signatures*, not the application, is the event that triggers the suspension of the effect of the subject addressed in the people's veto.

On page 5 of the report, there is a description of the elements of the petition form prepared by the Secretary of State that is provided to the citizen's initiative proponents for circulation. One of the items listed is "a section for the circulator's name and a unique number for each petition." To clarify, while this section is provided on each form, the forms are not assigned a unique number by the Secretary of State. Rather, each circulator will fill in their name and assign a unique number to each of their petition forms. We do not prescribe the numbering scheme, and even if several circulators use a system of consecutive numbers starting with the number "1," the number, in conjunction with the circulator's name, will result in a unique number for each petition.

The same paragraph goes on to state: "The SOS also provides instructional meetings for petition circulators to review the petition form and all laws and rules related to petition circulation." We would like to correct the record regarding this statement. When the petition form is ready to be issued, at least two senior staff from the Elections Division of the Secretary of State (e.g., Deputy Secretary of State, Director of Elections, Assistant Director of Elections, etc.) meet with the lead applicant on the petition form, who may bring other members of the petitioners' group. During this meeting, the Elections staff provide and explain the petition form that must be printed or copied by the petitioners, along with an instructional document for the petition proponents and a separate instructional guide for the circulators, as well as the pertinent Constitutional and statutory provisions governing these petitions. We currently do not conduct instructional meeting for the petition circulators; however, we instruct the proponent group who must then instruct their circulators.

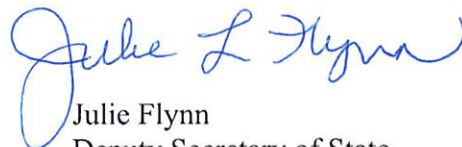
**Summary:**

We appreciate OPEGA's diligence and the Legislature's interest in the petition and referendum process. We are committed to providing the highest quality review and certification procedures within existing resources. We are proud of the work of the Bureau of Corporations, Elections and Commissions and the State of Maine's commitment to democracy.

Sincerely,



Shenna Bellows  
Secretary of State



Julie Flynn  
Deputy Secretary of State



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0135

June 17, 2021

Sent via Email

Lucia Nixon, Director  
Office of Program Evaluation & Government Accountability  
82 State House Station  
Augusta, ME 04333-0082

Re: Maine Commission on Governmental Ethics and Election Practices comments on  
Maine's Citizen Initiative and People's Veto Process – Final Report

Dear Director Nixon:

Thank you for the opportunity to comment on the OPEGA report on the citizen initiative and people's veto process. My comments focus on the opportunities for improvement numbered four through eight. Overall, the staff is supportive of the OPEGA recommendations, but we want to expand on some of the potential trade-offs that were referenced in the report.

As a general caution, please be aware that all campaign finance reporting by political action committees (PACs) and ballot question committees (BQCs) are made through our e-filing system which is maintained by a private IT company. The current e-filing system can be changed, but there is always a cost to taxpayers associated with any change request. Also, we have to make sure that well-intended changes that promote one objective do not result in confusion or headaches for the public or the PACs/BQCs that file the reports.

*Recommendation 4 – better communication between the Secretary of State (SOS) and the Commission when a petition application is received*

The Commission staff supports both suggestions to improve communication between our office and the SOS, as long as they are not burdensome to SOS managers. Receiving earlier notice that the SOS has received a petition application would help our office more quickly communicate with the proponents about their duties to register and file financial reports with our office.

*Recommendation 5 – aligning contributions received by PACs/BQCs with their expenditures to support or oppose a specific ballot question*

The Commission staff believes that most of the time, members of the public *are* able to identify the contributors to a ballot question through examining campaign finance reports, but we acknowledge that some of the realities of our current disclosure system can detract from the desired clarity.

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It is rare, but under current law a PAC/BQC may actively support or oppose multiple ballot questions at any one time. The contributors that fund the committee do not currently have to designate which ballot question the contribution is made to support or oppose. The State of Maine could move to a system of requiring PACs and BQCs to designate a specific ballot question for each contribution received, but this would increase the administrative burden on PACs and BQCs when filing reports.

The Commission has several registered committees that are “at the ready” with funds from a prior campaign that could be used for a future campaign. The Commission has not felt there is a governmental interest in requiring a committee to terminate following the conclusion of a referendum campaign. The Legislature could pursue this if it wished.

Some PACs or BQCs are formed by an existing organization (*e.g.*, a business entity, trade association, or labor organization) that has general revenue that was not received to influence a specific election (*e.g.*, business income or membership dues). If the founding organization gives this money to the PAC or BQC, the PAC or BQC may report the receipt as a “general treasury transfer.” The Commission staff would be pleased to discuss any specific legislative proposal concerning this procedure.

*Recommendation 6 – introducing an additional expenditure type for paid signature gathering.*

The Commission staff agrees that introducing an expenditure type for paid signature gatherers would assist the public in tracking payments for petitioning. I will confer with my colleagues and our IT vendor on the cost of this proposal and whether this would introduce any unintended consequences.

*Recommendation 7 – delineating committee-to-committee transfers from total expenditures to better reflect funds directly spent for services and goods.*

The Commission agrees that when a PAC or BQC contributes (or transfers) funds to another PAC/BQC, this practice can complicate the task of a researcher or news reporter who is trying to calculate *a total spent across all committees* to promote or oppose a ballot question. On our own, the Commission staff will investigate ways for these contributions/transfers between committees to be delineated in our campaign finance reporting system so that they can be “pulled out” of expenditure totals. In doing so, we need to be cautious about cost and not creating confusion or complexity for our filers or for the public, who may not know what a “committee-to-committee transfer” refers to. We are not sure, however, that redefining expenditures to exclude these transfers is the best solution.



*Recommendation 8 – Adjusting the PAC/BQC filing schedule to limit additional reports to only those elections in which a committee is participating.*

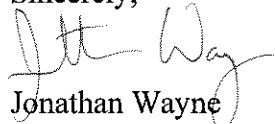
Under current law, during an election year *all* PACs and BQCs are required to file campaign finance reports according to the same seven or eight deadlines, and they may need to file 24-hour reports if they engage in large transactions in the last 13 days before an election. The Commission is open to discussing eliminating some of these reports for committees who are not participating in the June or November elections, but we want to note a couple of potential areas of concern. First, fewer campaign finance reports filed during an election year would result in financial information being available to the public less frequently.

Second, we need to make sure that creating multiple filing schedules in our e-filing system for different groups of PACs/BQCs does not result in confusion for the Commission staff, our filers, or for the public. When a special candidate election is scheduled during a non-election year, the Commission will typically assign a special filing schedule to a handful (between 10-15) of committees who will participate in that special candidate election. The Commission is able to identify those 10-15 committees and assign a unique filing schedule. This is manageable for staff because there are a small number of committees engaged in the election. It would be significantly harder to manage multiple filing schedules for different subsets of the 130+ PACs and BQCs registered during an election year. Due to this difficulty, there is a risk of error on the part of Commission staff in assigning the wrong filing schedule and the public missing out on critical information prior to an election.

If this approach were explored, it might make sense to incorporate an opt-out provision to the filing schedule. If a committee is not going to participate in an election during a general election year, they could file a form with the Commission to opt out of the election related reports. This would also keep the burden on the committee, if they did engage in an election that they had opted out of, to contact the Commission and withdraw that request.

Thank you again for the opportunity to submit these written comments.

Sincerely,



Jonathan Wayne  
Executive Director