STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DKT. NO. HAN-23-371

MICHAEL GOOD et al.

Plaintiffs-Appellees

v.

TOWN OF BAR HARBOR

Defendant-Appellant

ON APPEAL FROM THE SUPERIOR COURT
HANCOCK COUNTY
DOCKET NO. CV-2020-00045

BRIEF OF APPELLANT TOWN OF BAR HARBOR

Jonathan P. Hunter, Esq. (Bar No. 4912)
Stephen W. Wagner, Esq. (Bar No. 5621)
Rudman Winchell
Attorneys for Appellant Town of Bar Harbor
Bangor, ME 04402-1401
(207) 947-4501
jhunter@rudmanwinchell.com
swagner@rudmanwinchell.com

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

INTRODUCTION 1

STATEMENT OF FACTS AND PROCEDURAL HISTORY 2

Factual Background 2

The Charter Commission Process 2

Correction and Approval of the Warrant 3

Voters Adopt Eight of Nine Proposed Modifications 5

Procedural History 5

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW 10

SUMMARY OF ARGUMENT 11

ARGUMENT 13

I. The Charter Modifications Were Properly Presented to Voters as Separate Questions Pursuant to 30-A M.R.S. § 2105(1)(A). 13

A. The Home Rule Act Defines Charter "Modifications" as a Type of Charter "Revision," and Permits Them to Be Presented to Voters as Separate Questions. 16

B. The Charter Commission Properly Submitted the Modifications to Voters as Separate Questions. 20

C. Even if the Modifications Should Have Been Presented as a Single Question, This Did Not "Materially and Substantially" Affect the Modifications. 28

II. The Superior Court Abused Its Discretion in Declining to Resubmit the Charter Modifications to Voters as Permitted by 30-A M.R.S. § 2108(4) 30

CONCLUSION 37

CERTIFICATE OF SERVICE 38

TABLE OF AUTHORITIES

Cases **Page(s)**

Anglez Behavioral Health Servs. v. HHS,
2020 ME 26, 226 A.3d 762 22

Bates v. Dep't of Behavioral & Developmental Servs.,
2004 ME 154, 863 A.2d 890 30

Bodack v. Town of Ogunquit, 2006 ME 127, 909 A.2d 620 23

Christian Fellowship & Renewal Ctr. v. Town of Limington,
2001 ME 16, 769 A.2d 834 23

Fair Elections Portland, Inc. v. City of Portland,
2021 ME 32, 252 A.3d 504 .... 14, 16-17, 23, 26, 35

Friends of Lamoine v. Town of Lamoine,
2020 ME 70, 234 A.3d 214 22

F.R. Carroll, Inc. v. TD Bank, N.A., 2010 ME 115, 8 A.3d 646 25

Haskell v. Haskell, 2017 ME 91, 160 A.3d 1176 31

Karytko v. Town of Kennebunk, 2006 Me. Super. LEXIS 209,
2006 WL 2959505 (Oct. 10, 2006) (Brennan, J.) 16, 22

Marks v. Marks, 2021 ME 55, 262 A.3d 1135 .... 31, 35

Pike Indus. v. City of Westbrook, 2012 ME 78, 45 A.3d 707 30

Remmes v. Mark Travel Corp., 2015 ME 63, 116 A.3d 466 25

Riemann v. Toland, 2022 ME 13, 269 A.3d 229 .... 13, 25

Ruppert v. Inhabitants of York, CV-95-634,
1996 Me. Super. LEXIS 247 (July 30, 1996) (Crowley, J.) 14-15, 36

Sch. Comm. of York v. York, 626 A.2d 935 (Me. 1993) 14

Scott v. Fall Line Condo. Ass'n, 2019 ME 50, 206 A.3d 307 13

Ten Voters of the City of Biddeford v. City of Biddeford,
2003 ME 59, 822 A.2d 1196.. 14, 30-31

Town of Vassalboro v. Barnett, 2011 ME 21, 13 A.3d 784 13

Constitutions

Me. Const. art. VIII, pt. 2, § 1 .... 13, 25

Statutes and Legislative Documents

30-A M.R.S. §§ 2101-2109... 1, 5, 13

30-A M.R.S. § 2101 .... 13-14, 25, 29-30

30-A M.R.S. §§ 2102-2107... 14

30-A M.R.S. § 2102 .... 16-18, 28

30-A M.R.S. § 2103 .... 16, 18-19, 29

30-A M.R.S. § 2104 .... 16, 19, 29

30-A M.R.S. § 2105 .... 16, 18-20, 23

30-A M.R.S. § 2105(1) 8, 11, 13, 18-22, 24, 26-27

30-A M.R.S. § 2105(2) 19

30-A M.R.S. § 2108 .... 1, 14

30-A M.R.S. § 2108(2) 5-7, 14

30-A M.R.S. § 2108(3) 1, 6, 10-12, 14-15, 28-29, 36

30-A M.R.S. § 2108(4) 9-10, 12, 30-32, 34-37

30-A M.R.S. § 2109 .... 14, 25, 29-30

30-A M.R.S. § 3001 14

30-A M.R.S. §§ 4364-A, 4364-B 33

P.L. 2021, ch. 672 33

P.L. 2023, ch. 192 33

L.D. 2003 (130th Legis. 2022) 33

Rules

M.R. Civ. P. 62(a), (e) 9, 33

M.R. Civ. P. 80B 14

INTRODUCTION

This case concerns modifications to the Town of Bar Harbor's Charter adopted by the voters of the Town over three years ago pursuant to the processes set forth in Maine's Home Rule Act, 30-A M.R.S. §§ 2101-2109. Plaintiffs challenged the validity of the process by which the voters adopted these modifications under 30-A M.R.S. § 2108. Because Plaintiffs failed to show any deficiency that process, much less one that "materially and substantially" affected the Charter modifications as required by 30-A M.R.S. § 2108(3), the Superior Court erred in setting aside the modifications adopted by the voters.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Factual Background

The Charter Commission Process

At the November 6, 2018, Town Meeting, the voters of the Town of Bar Harbor voted in favor of creating a Charter Commission for the purpose of revising the Town Charter, and voted to elect the members of the Commission. (A. 125 ¶ 33; A. 132 ¶ 33; A. 155-56.) During the process of drafting the proposed changes to the Charter, the Charter Commission originally contemplated presenting the proposed changes to voters as a single question because, as Commission Chair Michael Gurtler stated at the Commission's meeting of October 15, 2019, the proposed changes were "considered a revision not an amendment, so the changes would be presented to the voters as a whole." (A. 139-40 ¶ 67; A. 148 ¶ 67.)

On November 20, 2019, however, the Commission voted 8-1 to "split out" the changes proposed to the Charter into separate questions to be voted on. (A. 125 ¶ 34; A. 132 ¶ 34; A. 159.) On January 6, 2020, the Commission again considered this question, and rejected presenting the proposed changes to voters as a single question by a vote of 7-2. (A. 125 ¶ 35; A. 132 ¶ 35; A. 162.) Accordingly, the Commission's final report recommended changes to the Charter in the form of nine "modifications," each presented as a separate warrant article. (A. 125-26 ¶¶ 36-41; A. 132-33 ¶¶ 36-41; A. 168, 170-87.) The Chair explained to

the Warrant Committee that the Commission, after consulting with the Town Attorney, decided to split the proposed changes into a series of questions so that they would be easier for voters to consider. (A. 127 ¶ 49; A. 135-36 ¶ 49; A. 240.)

The Charter Commission submitted its final report, dated February 28, 2020, to the Town Council on April 7, 2020, recommending nine modifications "within the current structure of the Charter." (A. 125 ¶¶ 36-38; A. 132-33 ¶¶ 36-38; A. 168, 170-87.) These proposed modifications were numbered as Articles 2 through 10 on the Town Meeting warrant. (A. 103 ¶ 4; A. 112-13 ¶ 4; A. 261-75.)

Correction and Approval of the Warrant

In August 2020, the Charter Commission Chair, Michael Gurtler, became aware of a scrivener's error in the Commission's report regarding proposed Charter Modifications 2 and 3 (which were ultimately presented to the voters as Warrant Articles 3 and 4, respectively). (A. 126 ¶ 44; A. 133-34 ¶ 44.) Proposed changes to Charter § C-6(B)(3), relating to amendments to the Land Use Ordinance, which should have been included as part of Article 4, were erroneously included in Article 3 (which concerned electronic voting at Town Meetings) instead. (A. 127 ¶ 45; A. 134 ¶ 45.) By email dated August 28, 2020, Mr. Gurtler advised the Town Clerk, Sharon Linscott of this error, attaching a corrected version of Charter Modifications 2 and 3 of the Charter Commission's report (i.e., Warrant Articles 3

and 4), with the language that should be moved from Article 3 to Article 4 (the changes to Charter § C-6(B)(3)) highlighted. (A. 127 ¶ 46; A. 134 ¶ 46.)

At a meeting of the Warrant Committee on August 31, 2020, Mr. Gurtler acknowledged and took responsibility for this inadvertent transposition of language from Article 4 to Article 3, indicated that he had already contacted the Town Clerk to correct the error in the Warrant, and agreed that the Warrant Committee should recommend rejection of Article 3 as presently written. (A. 127 ¶ 47; A. 135 ¶ 47; A. 242-43.) The Warrant Committee voted to recommend rejection of Articles 3 and 4, as written. (A. 127 ¶ 48; A. 135 ¶ 48; A. 243-44.)

The Town Clerk corrected the error in the Warrant, moving the relevant language concerning Charter § C-6(B)(3) from Article 3 to Article 4. (A. 127 ¶ 50; A. 136 ¶ 50.) This corrected Warrant was provided to the Warrant Committee and the Town Council for review. (A. 128 ¶ 51; A. 136 ¶ 51.) At a meeting of the Town Council on September 1, 2020, the Town Clerk advised the Council of the error affecting Articles 3 and 4, and that the final Warrant that would be presented to the Council at the next meeting for signature had been corrected by moving the relevant language from Article 3 to Article 4. (A. 128 ¶ 52; A. 136-37 ¶ 52; A. 254-55.) The Town Council voted to recommend adoption of all 9 articles of the Warrant, as corrected. (A. 128 ¶ 53; A. 137 ¶ 53; A. 254-67.) At a meeting of the Warrant Committee on September 8, 2020, the Warrant Committee was presented

with and made its recommendations on Articles 3 and 4 as corrected. (A. 128 ¶ 54; A. 137 ¶ 54.) The Warrant Committee voted to recommend adoption of Article 3, as corrected, and to recommend rejection of Article 4, as corrected. (A. 128 ¶ 55; A. 137 ¶ 55.) At a meeting of the Town Council on September 15, 2020, the Council signed the Warrant for the Town Meeting of November 3, 2020. (A. 128 ¶¶ 56-57; A. 137 ¶¶ 56-57.)

Voters Adopt Eight of Nine Proposed Modifications

At the November 3, 2020, Town Meeting, the voters of Bar Harbor approved eight of the nine proposed modifications. (A. 103 ¶ 4; A. 112-13 ¶ 4; A. 129 ¶ 61; A. 138 ¶ 61; A. 259-60, 278.) The only article that did not pass was Article 2, which, among other things, would have altered the responsibilities of the Town's Warrant Committee. (A. 103, 105 ¶¶ 4, 12; A. 112-13, 116 ¶¶ 4, 12; A. 129 ¶ 61; A. 138 ¶ 61; A. 278.)

Procedural History

On or about December 1, 2020, Plaintiffs, alleging that they are voters of the Town, filed a "Petition for Leave and Complaint for Declaratory Judgment" pursuant to 30-A M.R.S. § 2108(2), alleging various procedural defects in the Charter modification process under Maine's Home Rule Act, 30-A M.R.S. §§ 2101-2109. (A. 3, 32-35.) Section 2108(2) permits the filing of declaratory

judgment action by ten registered voters only with leave of court.[1] Plaintiffs argued, among other things, that the proposed changes to the Town Charter should have been presented to voters a single question, rather than as separate questions. (A. 34.) The Town objected to Plaintiffs' petition for leave on the basis that Plaintiffs had not shown that they were entitled to relief pursuant to the standards set forth in 30-A M.R.S. § 2108(3). (See Def.'s Opp'n to Pet. for Leave and Answer to First Amd. Comp., dated Jan. 8, 2021.)

Although the Superior Court had not granted them leave to file a complaint under section 2108(2), Plaintiffs filed a First Amended Complaint on December 30, 2020. (A. 4, 36-40.) On March 11, 2021, Plaintiffs filed, but subsequently withdrew, a motion seeking a preliminary injunction restraining the Town from implementing any of the changes to the Charter adopted by the voters. (A. 4-5, 8.) On May 3, 2021—again, without the court having granted Plaintiffs leave to institute the action under section 2108(2)—Plaintiffs filed a motion seeking leave to file a Second Amended Complaint "to correct a misnomer" of two of the Plaintiffs.[2] (A. 5, 41-45.)

On December 30, 2021, Plaintiffs filed a Motion for Summary Judgment. (A. 5, 46-66.) On February 2, 2022, the Town opposed Plaintiffs' Motion and filed

[1] As to whether a declaratory judgment action pursuant to section 2108(2) was an appropriate procedural vehicle for Plaintiffs' claims of procedural error in this case, see *infra* note 6.

[2] Plaintiffs purported to "clarify that Jake Jagel has the legal name of Paul F. Jagel and Shaiah Emigh-Doyle has the legal name of Sarah Emigh-Doyle." (Pls.' Mot. to Amend dated May 3, 2021.)

a Cross-Motion for Summary Judgment, noting in its filings that the court had not granted Plaintiffs leave to institute an action under section 2108(2). (A. 6, 67-88.) Amid the summary judgment filings, on January 18, 2022, Plaintiffs filed a suggestion of death regarding Plaintiff Michael Blythe, and moved for leave to amend their complaint yet again to substitute Wendy Kearny as a plaintiff. (A. 6.) Plaintiffs simultaneously filed a motion for leave to join Terri Zabala as a plaintiff. (*Id.*)

The Superior Court took no action on these several pending motions until September 2022. The court granted Plaintiffs leave to file a second amended complaint by an order dated July 28, 2021, but not entered on the docket or sent to the parties until over a year later, on September 23, 2022. (A. 9.) On September 22, 2022, the court further granted Plaintiffs leave amend their complaint to substitute Ms. Kearny for Mr. Blythe, and to further amend their complaint to join Ms. Zabala, as requested in their January 2022 motions. (A. 8.) Plaintiffs never amended their pleadings in accordance with these orders. Finally, on September 23, 2022, almost two years after Plaintiffs filed their original petition for leave to file a complaint pursuant to section 2108(2), the court granted Plaintiffs leave to do so. (A. 9.)

By an Order dated October 24, 2022, but entered on the docket on October 31, 2022, the Superior Court granted Plaintiffs' Motion for Summary Judgment,

and denied the Town's Cross-Motion. (A. 9, 12-27.) The court concluded that the Charter Commission had inappropriately presented the proposed changes to the Charter to voters as separate "modifications" pursuant to 30-A M.R.S. § 2105(1)(A), rather than as a single question. (A. 24-25.). Despite recognizing that "the [Home Rule Act] does not specifically require a charter commission to make an explicit holding that the changes are minor modifications," the court concluded that "no factual finding" supported the Charter Commission's decision to present the proposed changes as separate questions. (A. 23-24 & n.4.) The court also held that the proposed changes could not be "modifications" within the meaning of the Home Rule Act as a matter of law because they were insufficiently "minor." (A. 22-23.) The court further concluded that this error "materially and substantially affected the revision of the Charter," because voters adopted eight of nine proposed modifications to the Charter, where, had the nine proposed changes been presented as a single question, voters would have been compelled to adopt or reject the proposed changes in full. (A. 25-26.) The Court therefore concluded that the changes "should be invalidated," and "should be set aside."[3] (A. 26.)

On November 14, 2022, the Town filed a Motion for Reconsideration or to Alter or Amend the Judgment. (A. 9, 89-101.) The Town requested that the Superior Court reconsider its Order granting summary judgment for Plaintiffs

[3] The Superior Court did not address other procedural errors alleged by Plaintiffs. (A. 15 & n.2.)

because the Court had misconstrued and misapplied the Home Rule Act. (A. 91-97.) In the alternative, the Town requested that the Superior Court amend its Order to provide for resubmission of the modifications to the voters as permitted by 30-A M.R.S. § 2108(4). (A. 97-100.) On September 7, 2023—almost ten months later[4]—the Superior Court denied the motion. (A. 10, 28-31.) This appeal followed, automatically staying the Superior Court's judgment. *See* M.R. Civ. P. 62(a), (e).

[4] Justice Anderson retired in late November 2022; this matter was ultimately assigned to Justice Larson. (A. 9-10.)

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the Home Rule Act required that the Charter modifications be presented to voters as a single up or down vote rather than as separate questions, and if so, whether this "materially and substantially" affected the modifications under 30-A M.R.S. § 2108(3).

2. Whether the Superior Court abused its discretion in invalidating the Charter modifications adopted by voters in November 2020 rather than ordering that they be resubmitted to voters as permitted by 30-A M.R.S. § 2108(4).

SUMMARY OF ARGUMENT

1. The Superior Court erred in invalidating the Charter modifications adopted by voters in November 2020 on the basis that the modifications were presented to voters in separate questions rather than as a single up-or-down vote. The Home Rule Act permits Charter modifications—which are a type of Charter revision—to be presented to voters in exactly this fashion. 30-A M.R.S. § 2105(1)(A). The Charter Commission, duly formed and elected by the voters, voted multiple times to present these modifications "within the current structure of the Charter" as separate questions, so as to be easier for voters to understand, and therefore presented them as such in its Final Report as directed by the Home Rule Act. The Superior Court improperly required the Charter Commission to make findings that the statute does not require; failed to give proper deference to the Charter Commission; improperly speculated that the Commission's classification of the changes to the Charter as "modifications" might have been accidental, contrary to the undisputed facts; and misconstrued the meaning of the term "modifications" as used in the Home Rule Act.

The Superior Court then compounded this error by concluding that presenting the modifications as separate ballot questions "materially and substantially" affected the modifications so as to permit invalidation of the will of the voters based on this supposed procedural error under 30-A M.R.S. § 2108(3).

Voters having a greater degree of choice over how they wish to change their Charter is not a "material[] and substantial[]" error within the meaning of the Home Rule Act. To hold otherwise would elevate form over substance in a manner inconsistent with section 2108(3), which makes plain the Legislature's intention that minor deviations from procedural rules should not be fatal a charter revision or modification, as well as with the purposes for which the Home Rule Act is to be liberally construed—implementation of the constitutional right of the people to local self-government.

2. If a court finds that a charter adoption, revision, modification, or amendment was invalid—i.e., that a procedural error or omission "materially and substantially affected the adoption, revision, modification or amendment"—the Home Rule Act permits the court to order that the measure be resubmitted to voters with "only the minimum procedures . . . necessary" to cure the errors or omissions. 30-A M.R.S. § 2108(4). The Superior Court abused its discretion in declining to do so here, where wholesale invalidation of Charter modifications under which the Town has been operating since November 2020 would be unduly disruptive to the effective governance of the Town, and wholly out of proportion with the purported error.

ARGUMENT

I. The Charter Modifications Were Properly Presented to Voters as Separate Questions Pursuant to 30-A M.R.S. § 2105(1)(A).

This Court reviews rulings on cross-motions for summary judgment de novo, "reviewing the trial court's decision for errors of law and considering the evidence in the light most favorable to the party against whom the judgment has been granted in order to determine whether there is a genuine issue of material fact." *Scott v. Fall Line Condo. Ass'n*, 2019 ME 50, ¶ 5, 206 A.3d 307. This Court also reviews de novo the interpretation of statutes and ordinances. *Town of Vassalboro v. Barnett*, 2011 ME 21, ¶ 6, 13 A.3d 784. Statutory provisions must be construed in the context of the statutory scheme of which they form a part. *E.g.*, *Riemann v. Toland*, 2022 ME 13, ¶ 28, 269 A.3d 229.

The Maine Constitution guarantees to the people of Maine the right of local self-government. *See* Me. Const. art. VIII, pt. 2, § 1 ("The inhabitants of any municipality shall have the power to alter and amend their charters on all matters . . . which are local and municipal in character.") The Constitution charges the Legislature with implementation of this principle of municipal "home rule" power by statute. *See id.* ("The Legislature shall prescribe the procedure by which the municipality may so act."). The statutory framework developed by the Legislature, 30-A M.R.S. §§ 2101-2109 (the Home Rule Act), expressly states that its purpose is to "implement the home rule powers granted to municipalities by the

Constitution of Maine." 30-A M.R.S. § 2101.[5] The Home Rule Act must be liberally construed to accomplish that purpose. 30-A M.R.S. § 2109 ("This chapter, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to accomplish its purposes.")

The Home Rule Act prescribes the procedures by which municipalities may adopt and change their municipal charters in the exercise of their home rule powers. *See* 30-A M.R.S. §§ 2102-2107. The Act also permits voters of a municipality to seek judicial review of the procedures under which a charter was adopted, revised, modified, or amended. *See* 30-A M.R.S. § 2108(3).[6] However, it is not sufficient under the Act to prove a mere procedural defect in that process. Rather, section 2108(3) provides: "No charter adoption, revision, modification, or amendment may be found invalid because of any procedural error or omission

---

[5] This Court has observed that the Legislature actually broadened the scope of municipalities' home rule powers, granting municipalities plenary police powers, even if not "local and municipal in character" within the meaning of the Constitution's home rule provision. *Sch. Comm. of York v. York*, 626 A.2d 935, 938-39 (Me. 1993); *see also* 30-A M.R.S. § 3001 (granting municipalities broad ordinance powers).

[6] Arguably, where Plaintiffs' challenge was procedural in nature, Plaintiffs should have brought this case via an appeal pursuant to 30-A M.R.S. § 2108(3) and M.R. Civ. P. 80B rather than as a declaratory judgment action pursuant to 30-A M.R.S. § 2108(2). *See Ruppert v. Inhabitants of York*, CV-95-634, 1996 Me. Super. LEXIS 247, *7-10 (July 30, 1996) (Crowley, J.) (interpreting 30-A M.R.S. § 2108 to require that procedural challenges to charter modifications be brought by petition for judicial review under section 2108(3), whereas substantive challenges to the validity of modifications may be brought by declaratory judgment action under section 2108(2)); *see also Fair Elections Portland, Inc. v. City of Portland*, 2021 ME 32, ¶¶ 19, 21 n.7, 252 A.3d 504 (affirming dismissal of declaratory judgment count as duplicative of Rule 80B count in Home Rule Act case). *But see Ten Voters of the City of Biddeford v. City of Biddeford*, 2003 ME 59, ¶ 2, 822 A.2d 1196 (addressing declaratory judgment action challenging municipal clerk's denial of voters' request to issue petition to amend charter). Where this matter comes before the Court on cross-motions for summary judgment to resolve issues of interpretation of the Home Rule Act, however, Plaintiffs' procedural error is of little if any consequence in terms of this Court's review.

unless it is shown that the error or omission *materially and substantially* affected the adoption, revision, modification, or amendment." 30-A M.R.S. § 2108(3) (emphasis added). The Legislature has therefore clearly signaled that an exercise of right of the people of Maine to local self-governance, embodied in the Maine Constitution and codified in the Home Rule Act, is not to be overturned based on minor procedural deficiencies. *See id.*; *see also Ruppert v. Inhabitants of York*, CV-95-634, 1996 Me. Super. LEXIS 247, *16 (July 30, 1996) (Crowley, J.) (recognizing that the need to follow the Home Rule Act's procedures must be balanced against the "need for stability and finality with respect to charter revisions and amendments that have been approved by the voters").

It is against this backdrop that this Court must consider Plaintiffs' challenge to changes to the Town's Charter adopted more than three years ago, in November 2020. Plaintiffs argue, and the Superior Court agreed, that the Charter changes adopted by voters were invalid because they were presented to voters in nine separate ballot questions rather than as a single up or down vote. This was error. The Home Rule Act expressly permits the presentation of the proposed changes in this fashion, and expressly forbids invalidation of the changes on the basis of any immaterial or insubstantial procedural defect.

A. The Home Rule Act Defines Charter "Modifications" as a Type of Charter "Revision," and Permits Them to Be Presented to Voters as Separate Questions.

To begin with, it is necessary to address the terminology used by the Home Rule Act. The Home Rule Act distinguishes between charter "adoptions" and "revisions" on one hand, and charter "amendments" on another. *See Fair Elections Portland, Inc. v. City of Portland*, 2021 ME 32, ¶ 4, 252 A.3d 504 (discussing distinction between "amendments" and "revisions"); *Karytko v. Town of Kennebunk*, 2006 Me. Super. LEXIS 209, *5-6, 2006 WL 2959505 (Oct. 10, 2006) (Brennan, J.) (same). "Amendments" are addressed in 30-A M.R.S. § 2104, and may be directly initiated and placed on the ballot either by the municipal officers or by voter petition. *Id.* § 2104(1)-(2). "Adoptions" or "revisions," on the other hand, are governed by 30-A M.R.S. §§ 2102-2103, and require the creation of a charter commission. 30-A M.R.S. § 2102(1)-(2) (providing for creation of charter commission by municipal officers or voter petition). This distinction is baked into the structure of the statute. *See, e.g.*, 30-A M.R.S. § 2104(4) (stating that voters may ask that the municipal officers treat a proposed amendment as a request for a charter commission if the officers determine that the amendment would in fact constitute a "revision"); 30-A M.R.S. § 2105 (setting forth different requirements for how charter revisions or adoptions on one hand, and charter amendments on the other, are presented to voters and when they become effective).

The statute does not define the terms "amendment" or "revision," but this Court had occasion to distinguish the two in *Fair Elections Portland, Inc. v. City of Portland*. There, this Court wrote:

> the critical question is whether the proposed change is significant enough to require a (potentially) years-long inquiry into all aspects of the municipality's government. The distinction between an amendment and a revision, therefore, is essentially one of scope, in terms of both the breadth of what would be affected and the depth of what would be altered. In terms of breadth, a proposed amendment would not, if enacted, materially affect the municipality's implementation, in the course of its operations, of major charter provisions that are not mentioned in the proposed amendment. In terms of depth, an amendment would not, if enacted, make a profound and fundamental alteration in the essential character or core operations of municipal government. If a petition proposes a change to the charter that is either so broad or so profound (or both) as to justify a revisitation of the entire charter by a charter commission, the proposal is for a revision.

Fair Elections Portland, 2021 ME 32, ¶ 32, 252 A.3d 504 (citations omitted). In short, a revision results in a "profound and fundamental alteration in the essential character" of municipal government, and/or "materially affect[s] . . . major charter provisions that are not mentioned" in its text, whereas an amendment does not. *See id.* To accomplish the sort of "profound and fundamental" change constituting a revision, the Home Rule Act requires additional procedures—namely, "a (potentially) years-long inquiry into all aspects of the municipality's government" by a charter commission before submission to voters. *Id.; see also* 30-A M.R.S. § 2102(1)-(2) (requiring creation of charter commission for revision or adoption of

charter); 30-A M.R.S. § 2103 (detailing organization and duties of charter commission).

The statute also uses another term of art that is relevant to this case: "modification." This term is specifically relevant to how a proposed charter revision is presented to voters after consideration by the charter commission. Section 2105 provides, in relevant part:

> **1. Charter revision or adoption.** Except as provided in paragraph A, in the case of a charter revision or a charter adoption, the question to be submitted to the voters shall be in substance as follows:
>
> "Shall the municipality approve the (charter revision) (new charter) recommended by the charter commission?"
>
>> A. *If the charter commission, in its final report under section 2103, subsection 5, recommends that the present charter continue in force with only minor modifications, those modifications may be submitted to the voters in as many separate questions as the commission finds practicable.* The determination to submit the charter revision in separate questions under this paragraph and the number and content of these questions must be made by a majority of the charter commission.
>>
>>> (1) If a charter commission decides to submit the charter revision in separate questions under this paragraph, each question to be submitted to the voters shall be in substance as follows:
>>>
>>> "Shall the municipality approve the charter modification recommended by the charter commission and reprinted (summarized) below?"

30-A M.R.S. § 2105(1) (emphasis added). By the plain language of section 2105, "modifications" are a type of "revision," or more precisely, a method by which a revision may be presented to voters. This is evident in section 2105's repeated references to "submit[ting] the *charter revision in separate questions* under this paragraph." 30-A M.R.S. § 2105(1)(A), (1)(A)(1) (emphasis added). The Legislature makes this even more explicit in 30-A M.R.S. § 2103(7), which permits summaries of proposed charter modifications to be printed on the ballot rather than the full text of proposed modifications "[w]hen a *proposed charter revision is submitted to the voters in separate questions as charter modifications* under section 2105, subsection 1, paragraph A." (Emphasis added.)

In effect, the Home Rule Act creates a subcategory of revisions—"modifications"—that are primarily distinguished by how they are presented to voters. As a type of revision, modifications are more profound and fundamental than mere "amendments"[7] and by definition can only arise out of the charter commission process. However, they are comparatively more "minor" than a full-scale "revision" of the entire charter, making presentation of the changes to voters as separate questions, rather than as a single up-or-down vote on a whole new charter, practicable and potentially desirable. This interpretation is supported by the Legislature's use of the phrase, "[i]f the charter commission . . . recommends

[7] Section 2105 separately addresses presentation of "amendments" to voters. 30-A M.R.S. § 2105(2). Unlike revisions, amendments are limited to a single subject. *See* 30-A M.R.S. § 2104(1)(A), (2)(A).

that the *present charter continue in force* with only minor modifications." 30-A M.R.S. § 2105(1)(A) (emphasis added). In this scenario, the statute optionally permits the proposed changes to be presented as separate questions. *Id.*

B. The Charter Commission Properly Submitted the Modifications to Voters as Separate Questions.

The Town's Charter Commission followed the procedures set out in the Home Rule Act, and in particular, section 2105. The Charter Commission originally intended to present the proposed changes to voters as a single revision, but later voted to present them as separate modifications, as the statute permits. On November 20, 2019, the Commission voted 8-1 to "split out" the changes proposed to the Charter into separate questions. (A. 125 ¶ 34; A. 132 ¶ 34; A. 159.) On January 6, 2020, the Commission again voted 7-2 to present the proposed changes to voters as separate questions. (A. 125 ¶ 35; A. 132 ¶ 35; A. 162.) Accordingly, the Commission's final report recommended changes to the Charter in the form of nine "modifications," "within the current structure of the Charter," each presented as a separate warrant article. (A. 125-26 ¶¶ 36-41; A. 132-33 ¶¶ 36-41; A. 168, 170-87.) The Commission's reference to the changes as "modifications," and being made "within the current structure of the Charter" are clear references to the statutory language permitting revisions to be presented in separate questions when the Commission "recommends that the present charter

continue in force with only minor modifications," as provided in 30-A M.R.S. § 2105(1)(A).

Faced with this record, the Superior Court somehow concluded that the Charter Commission did not "recommend[] that the present charter continue in force with only minor modifications," so as to permit presentation of the revision as separate questions under section 2105(1)(A). Bizarrely, it did so despite "agree[ing] with the Town that the statute does not specifically require a charter commission to make an explicit holding that the changes are minor modifications." (A. 23.) Nevertheless, the court went on to hold that the proposed changes were not modifications because "[n]owhere does the Commission suggest that in fact the changes are minor," and because there was "no factual finding" that the changes were modifications. (A. 24 & n.4.) The court declined to infer that, by voting to present the changes as separate questions, and referring to them to as "modifications," the Commission made any requisite supporting findings, because "no factual findings were made by the Town as to the magnitude of the changes proposed by the Commission." (*Id.*) It is difficult to square this reasoning with the court's acknowledgement that the law does not require any such findings. Indeed, the court imposed just such a requirement on the Town.

Contrary to the Superior Court's conclusions, the Charter Commission did make the recommendation contemplated by section 2105(1)(A). The

Commission's final report is itself just such a recommendation. The report presents the proposed changes as separate questions, and specifically refers to the proposed changes as "modifications" made "within the current structure of the Charter," mirroring the language of section 2105(1)(A). (A. 125-26 ¶¶ 38-39; A. 133 ¶¶ 38-49; A. 168, 170-87.) The report even expressly states that it "represents the recommendations of" the Commission. (A. 125 ¶ 37; A. 133 ¶ 37; A. 168.) Those recommendations were made after twice voting to present the proposed changes to voters as separate ballot questions. (A. 125 ¶¶ 34-35; A. 132 ¶¶ 34-35; A. 159, 162.)

The determinations of local government bodies are entitled to a great deal of deference. *See Friends of Lamoine v. Town of Lamoine*, 2020 ME 70, ¶¶ 20, 22, 234 A.3d 214 ("We accord substantial deference to a municipal agency's factual findings."); *Anglez Behavioral Health Servs. v. HHS*, 2020 ME 26, ¶ 12, 226 A.3d 762 (noting Court will not "substitute [its] judgment for that of the agency"). This is especially the case in the context of matters of local governance such as changes to a Town's governing documents. *See Karytko*, 2006 Me. Super. LEXIS 209, at *7 (concluding that, "[g]iven this Court's deferential review of factual determinations involved in [a] Charter change," municipality did not err by deciding that a voter-initiated Charter "amendment" in fact constituted a revision requiring review by a charter commission). Certainly, the Charter Commission

should not be held to a more rigorous standard than applies to other municipal bodies. *See Bodack v. Town of Ogunquit*, 2006 ME 127, ¶ 14 n.7, 909 A.2d 620 (noting that a court will deem municipal decisions supported by implicit findings, so long as there is sufficient evidence to support those findings); *Christian Fellowship & Renewal Ctr. v. Town of Limington*, 2001 ME 16, ¶ 19, 769 A.2d 834 (noting findings can be inferred where they are "obvious or easily inferred from the record and the general factual findings"); *see also Fair Elections Portland*, 2021 ME 32, ¶ 38 & n.11, 252 A.3d 504 (stating court could not infer findings regarding whether proposed change to charter was an amendment or a revision where Town Council failed to make any findings at all).

The Superior Court appears to speculate that the Commission's use of the word "modifications" in its report could have been accidental. (A. 24 & n.4.) To the contrary, the record demonstrates that the Commission used the word "modifications" advisedly. The Commission sought the advice of counsel in determining how it could present the proposed changes, and counsel advised them of their authority under section 2105 to present the changes as a single revision or multiple modifications. (A. 140 ¶¶ 68-70; A. 149-50 ¶¶ 68-70.) The Commission then voted—twice—to present the changes as separate questions, and submitted a final report consistently referring to the changes as "modifications," with separate

questions in the correct form prescribed by the statute for modifications. (A. 125-26 ¶¶ 34-35, 39; A. 132-33 ¶¶ 34-35, 39; A. 159, 162, 168, 170-87.)

The Superior Court also relied on the "grand language" used by the Commission in its report, particularly its reference to the changes as "a vision for the future of our town's governance," and to "changes to 19 areas within the current structure of the Charter," which the Court reasons "seems to suggest" the changes were not minor. (A. 24.) However, in the same breath, the Commission described its task in considerably less "grand" terms, stating that the Commission "has endeavored to review, discuss and suggest updates to the *current Charter* of the town."[8] (A. 168 (emphasis added); *see also* A. 104 ¶¶ 8-11; A. 114-15 ¶¶ 8-11.) This language closely tracks the language of section 2105(1)(A) permitting presentation of a revisions as separate modifications where the charter commission "recommends that the present charter continue in force with only minor modifications." What can be described as, at most, some mild puffery is a vanishingly slender reed on which to rest a determination that the Charter

[8] The Commission also stated that the modifications "looked to maintain citizen involvement while suggesting areas for increased efficiencies in our system of governance for the town." (A. 168.) The Commission went on to suggest that the Council "consider . . . a grammatical review" of the Charter, as "[i]t has become clear to the Commission that as the Charter has been edited and changed over time the document has become less than completely fluid and consistent in form." (*Id.*) These are not the words of a body that believes it has engaged in a "grand" reimagining of the Town Charter.

Commission violated the Home Rule Act, and that its work, and the will of the voters, should be wiped out as a consequence.[9]

To the extent the Superior Court concluded that the changes to the Charter could not, as a matter of law, be considered "modifications," it misinterpreted that term as it is used in the context of the Home Rule Act. Statutory provisions must be construed in the context of the statutory scheme of which they form a part. *E.g., Riemann*, 2022 ME 13, ¶ 28, 269 A.3d 229. The Home Rule Act, in particular, must be liberally construed to effectuate the constitutional right of the people to local self-government. *See* Me. Const. art. VIII, pt. 2, § 1; 30-A M.R.S. §§ 2101, 2109.

As discussed above, the primary distinction made by the Home Rule Act is between charter "amendments" on one hand, and charter "revisions" on the other. That distinction dictates which of two procedural tracks a proposed change must proceed along. "Revisions," being more significant in terms of depth and breadth than amendments, are diverted to the lengthier and more exacting procedural track—the charter commission process.

---

[9] To the extent the Superior Court was left with any factual question as to the Commission's findings, that is not a valid basis for granting summary judgment for Plaintiffs. Indeed, the existence of such a question precludes summary judgment. *See Remmes v. Mark Travel Corp.*, 2015 ME 63, ¶ 18, 116 A.3d 466 (noting that summary judgment is appropriate only when the record "considered in the light most favorable to the nonprevailing party, demonstrates that there is no genuine issue of material fact that is in dispute"). "Cross motions for summary judgment neither alter the basic Rule 56 standard, nor warrant the grant of summary judgment *per se*." *Id.* ¶ 19 (quoting *F.R. Carroll, Inc. v. TD Bank, N.A.*, 2010 ME 115, ¶ 8, 8 A.3d 646). Setting aside that the record must be viewed in the light most favorable to the Town, summary judgment cannot be granted on the basis of what the Commission's report "seems to suggest" to a court not sitting as a fact-finder.

"Modifications" are, by the plain language of the statute, a type of "revision," as the Superior Court correctly recognized. (A. 20-21.) It follows that modifications—as a type of revision, and subject to the same more elaborate charter commission process—are broader and more profound than amendments. *See Fair Elections Portland*, 2021 ME 32, ¶ 32, 252 A.3d 504. The Superior Court reasoned that the changes here cannot be "modifications" because they "thoroughly modify the existing Charter, rewriting, deleting or adding to large swathes of eight of its articles, fundamentally changing how a number of Town officeholders operate, creating new Town officeholder positions, and even adjust the Town's land use ordinance." (A. 23.) The problem with this reasoning is that, as a type of revision, a "modification" *necessarily* entails fairly broad or significant changes to a charter—otherwise it would be an amendment, and would not require a charter commission at all. When viewed in the context of the entire statute, then, the word "minor" in section 2105(1)(A) cannot reasonably be understood in an absolute sense, but rather, must be understood as relative to a full-scale rewriting and/or reorganization of a charter that can only be practicably presented to voters as a whole. "Minor modifications" are changes that, although broader and more significant than amendments, fundamentally leave "the present charter . . . in force," such that the changes can practicably (and perhaps more intelligibly) be

presented to voters in separate questions in the judgment of the charter commission. *See* 30-A M.R.S. § 2105(1)(A).

The Superior Court's focus on the significance of the proposed changes was therefore misguided—that is the very reason they went through the charter commission process in the first place, and does not preclude their presentation to voters as separate questions. The proposed changes here modified the existing Charter, but did not broadly reorganize or rewrite it, such that the changes could only practicably be presented as a single question. The Charter Commission reasonably determined that the changes proposed, "within the current structure of the Charter" (A. 125 ¶ 38; A. 133 ¶ 38; A. 168), were relatively minor modifications within the context of the entire Charter, and were best presented to voters as a series of individual questions, with individual summaries and stated rationales for each question, rather than a single proposed "revision" of the Charter. Under these circumstances, and mindful of the liberal construction the Court must give the statute in favor of municipal home rule, as well as the deference this Court must afford municipal bodies in local matters, the Court should hold that the changes were properly presented in separate questions.

C. Even if the Modifications Should Have Been Presented as a Single Question, This Did Not "Materially and Substantially" Affect the Modifications.

Even if there were any procedural error in the adoption of the Charter modifications—there was not—any such error did not "materially and substantially affect" the modifications, as would be required to invalidate the modifications under 30-A M.R.S. § 2108(3). The Superior Court reasoned that the presentation of the modifications as separate questions necessarily had a "material and substantial" effect, because voters rejected one of the questions but adopted the rest, where, had the questions been presented as a single revision, voters could only have adopted the entire revision in full, or rejected it in full. (A. 25.) This is not a "material and substantial" effect within the meaning of the Home Rule Act.

The central procedural element of the Home Rule Act is that proposed changes rising to the level of "revisions" must go through the charter commission process prior to presentation to voters. This is not a case where a municipality attempted to enact a revision to a charter without going through the charter commission process laid out by the statute. *Compare* 30-A M.R.S. § 2102(1)-(2) (requiring formation of a charter commission to consider revision of a charter or adoption of a new charter), *with* 30-A M.R.S. § 2104 (permitting amendment of a charter without a charter commission). Nor is it a case where a charter commission failed to discharge its duty to hold hearings or produce a report as directed by the

statute. *See* 30-A M.R.S. § 2103(5) (requiring charter commission to hold public hearings and prepare reports). Such major deviations from the requirements of the Home Rule Act might conceivably satisfy section 2108(3)'s materiality and substantiality standard because they would circumvent or deprive the public of the benefit of participation in the charter commission process set out in the statute for profound, wide-ranging changes to municipal charters. But that is not this case—a Charter Commission was properly formed and performed its duties under the statute. The key procedural requirement—the charter commission process—was carried out.

The "material and substantial" effect postulated by the Superior Court here is not that voters were deprived of critical processes, as in the examples above, but that they were ultimately given *too much choice* over how they wanted to change their Charter. According to this logic, voters should have been compelled to adopt a provision they did not favor, or else reject the remainder of the provisions that they did favor—and for that reason, they should have the benefit of *none* of them. This reasoning elevates form over substance in a manner inconsistent with section 2108(3), which makes plain the Legislature's intention that minor deviations from procedural rules should not be fatal to a charter revision or modification. It is also inconsistent with the Legislature's command that the Home Rule Act be liberally construed to effectuate municipalities' home rule powers. *See* 30-A M.R.S. §§

2101, 2109. "Material and substantial" defects under the Home Rule Act are those that deprive voters of key processes—not those that simply give them more granular choices.

The voters of the Town adopted all but one of the Charter modifications in November 2020. The Town has been governed under that modified Charter for more than three years. As discussed in greater detail in Part II, below, to suddenly roll back those modifications now, more than three years later, would be highly disruptive of the Town's operations and call into question the validity of actions taken by the Town under the modified Charter. To do so on the basis that voters should have had *less choice* as to how to revise their Charter would be inconsistent with sound public policy, subject the Town to needless disruption, and invite further litigation against the Town and other municipalities based on fundamentally harmless procedural errors.

II. The Superior Court Abused Its Discretion in Declining to Resubmit the Charter Modifications to Voters as Permitted by 30-A M.R.S. § 2108(4).

"[J]udgmental decisions evaluating remedies in areas where the court has choices will be reviewed for sustainable exercise of the court's discretion." *Pike Indus. v. City of Westbrook*, 2012 ME 78, ¶ 22, 45 A.3d 707 (quoting *Bates v. Dep't of Behavioral & Developmental Servs.*, 2004 ME 154, ¶ 38, 863 A.2d 890). Likewise, this Court reviews the denial of motions to amend or alter the judgment for an abuse of discretion. *Ten Voters of the City of Biddeford v. City of Biddeford*,

2003 ME 59, ¶ 11, 822 A.2d 1196. In reviewing for an abuse of discretion, this Court considers three questions:

> (1) are factual findings, if any, supported by the record according to the clear error standard; (2) did the court understand the law applicable to its exercise of discretion; and (3) given all the facts and applying the appropriate law, was the court's weighing of the applicable facts and choices within the bounds of reasonableness.

Marks v. Marks, 2021 ME 55, ¶ 15, 262 A.3d 1135 (quoting *Haskell v. Haskell*, 2017 ME 91, ¶ 12, 160 A.3d 1176).

Even if this Court were to conclude that there was a "material and substantial" procedural error in the voters' adoption of the Charter modifications in November 2020, it should remand this matter to the Superior Court with instructions to order curative procedures as permitted by 30-A M.R.S. § 2108(4). If a court finds that a charter adoption, revision, modification, or amendment is invalid—i.e., that a procedural error or omission "materially and substantially affected the adoption, revision, modification or amendment"—the Home Rule Act permits the court to order that the measure be resubmitted to voters with "only the minimum procedures . . . necessary" to cure the errors or omissions. 30-A M.R.S. § 2108(4). The Act provides, in relevant part:

> **4. Resubmission upon judicial invalidation for procedural error.** If the court finds that the procedures under which any charter was adopted, revised, modified or amended are invalid, the Superior Court, on its own motion or the motion of any party, may order the resubmission of the charter adoption, revision, modification or amendment to the voters. This order shall require only the minimum

> procedures on resubmission to the voters that are necessary to cure the material and substantial errors or omissions. The Superior Court may also recommend or order other curative procedures to provide for valid charter adoption, revision, modification or amendment.

30-A M.R.S. § 2108(4). This gives the court authority to craft an appropriate remedy correcting any error while not unduly disrupting municipal government.

Following the Superior Court's ruling on the parties' cross-motions for summary judgment, the Town moved to alter or amend the judgment to allow for resubmission of the modifications to voters pursuant to 30-A M.R.S. § 2108(4). (A. 97-100.) Where the only error the court found was the submission of the modifications to the voters as separate questions, and the statute requires that any resubmission to the voters be accomplished through the "minimum procedures . . . that are necessary to cure the material and substantial errors or omissions" found by the court, the Town requested an order permitting the Town to resubmit the Charter modifications at issue in this matter to voters as a single question, with the Charter modifications remaining in effect until resubmitted to the voters. The Town further suggested that the single revision resubmitted to voters should omit the proposed modification that was Article 2 on the warrant, which voters rejected. (A. 103, 105 ¶¶ 4, 12; A. 112, 116 ¶¶ 4, 12; A. 129 ¶ 61; A. 138 ¶ 61.)

In support of its motion, the Town submitted an affidavit of then-Town Manager Kevin L. Sutherland. As the Town explained, the resubmission remedy authorized by section 2108(4) was necessary because the Town had by that time

been operating in good faith under the modified Charter for more than two years. (A. 281, 293.) In that time, the voters had adopted a budget under a new procedure set out in the modified Charter. (A. 281.) The Warrant Committee, whose members were elected under procedures set out in the modified Charter, had made recommendations on some forty-three warrant articles submitted to the voters. (A. 281-82.) Sudden invalidation of the modifications could call into question the validity of those actions taken under the modified Charter, without providing the Town an opportunity to cure any error as provided in the Home Rule Act. (A. 281-82.) Moreover, invalidation of the modifications without opportunity to cure would have rendered the Town unable to comply with a statutory deadline to amend its zoning ordinance in compliance with a recent state law addressing the housing crisis.[10] (A. 280-81, 290-94.) To the extent that its motion and supporting

[10] On April 27, 2022, Governor Mills signed into law L.D. 2003 (130th Legis. 2022), entitled "An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning Land Use Restrictions." Among other things, L.D. 2003 required municipalities to allow certain dwelling units in residential areas by July 1, 2023. *See* P.L. 2021, ch. 672, §§ 5-6 (codified at 30-A M.R.S. §§ 4364-A, 4364-B). Under the Charter as modified, the zoning changes required by L.D. 2003 could be implemented by recommendation of the Planning Director, supermajority vote of the Planning Board, and supermajority vote of the Town Council. (A. 105 ¶ 14; A. 116-17 ¶ 14; A. 264-66, 279-80, 292.) If the Superior Court's order invalidating the modifications had gone into immediate effect, amendments to the Town's Land Use Ordinance implementing L.D. 2003 would have needed to be submitted to voters at the annual Town Meeting in June 2023. (A. 280, 290-91.) It was not possible for the Town to submit such an amendment to the voters at the June 2023 Town Meeting because there was insufficient time to draft the amendment and complete the processes required for its inclusion on the ballot, including submission to the Warrant Committee and Planning Board for review and recommendations after properly noticed hearings, and preparation of the ballot. (A. 280, 291-94.) This result was thankfully avoided because this appeal—made necessary by the Superior Court's denial of the Town's motion—stayed the effect of the Superior Court's order, *see* M.R. Civ. P. 62(a), (e), and because the Legislature later extended the time for implementation of L.D. 2003, *see* P.L. 2023, ch. 192. However, this situation illustrates the dangers of court intervention in local charter revision processes without adequate consideration of the potentially wide-ranging effects on effective municipal governance

affidavit were not sufficient, the Town requested that the court hold a testimonial hearing at which the Town could present evidence as to the need for an order pursuant to 30-A M.R.S. § 2108(4) as well as the "minimum procedures" necessary for resubmission of the Charter changes to the voters and other appropriate curative procedures. (A. 100.)

The Superior Court compounded its error in this case by refusing to permit the Town to cure any defect in the procedures by which the modifications were adopted by resubmitting them to voters as permitted by section 2108(4). This was an abuse of the court's discretion, in that it failed to understand the law applicable to the exercise of its discretion, and was unreasonable under the circumstances.

The Superior Court denied the Town's motion on the basis that "permitting the Town to resubmit [the] proposed changes without the change that was rejected by the voters, i.e., the change marked on the ballot as 'Article 2,' is beyond the authority granted to the Court on these matters by § 2108(4)." (A. 30.) To the contrary, section 2108(4) gave the Court broad authority to craft an appropriate remedy, including not only resubmission to voters, but by ordering "other curative procedures." 30-A M.R.S. § 2108(4). The statute's provision that the order "shall require only the minimum procedures . . . necessary to cure the material and substantial errors or omissions" found by the court protects municipalities by

---

of sudden invalidation of portions of a municipality's organizing documents, and without regard for the curative procedures supplied by the Home Rule Act.

prohibiting the court from requiring municipalities to engage in unnecessary procedures on resubmission. It in no way restricts the Court from granting municipalities appropriate relief under the last sentence of section 2108(4). Inclusion of the rejected Article 2 would only serve to compel voters to adopt changes they do not favor in order to retain those changes they did favor, or else reject all of the changes, the vast majority of which (eight of nine) they did favor. Nothing in the statute requires this absurd result—indeed, the statute is to be liberally construed in favor the right of the people to shape their local government. Where the Court misunderstood the law applicable to the exercise of its discretion, the Court's denial of the Town's motion for relief under the statute was an abuse of discretion. *See Marks*, 2021 ME 55, ¶ 15, 262 A.3d 1135.

Even if the Superior Court were not inclined to exclude the rejected Article 2, the Court abused its discretion by failing to order resubmission to the voters *at all*, despite recognizing its authority to do so. The revision of a municipal charter is, as this Court has recognized, a "(potentially) years-long inquiry into all aspects of the municipality's government." *Fair Elections Portland*, 2021 ME 32, ¶ 32, 252 A.3d 504. Here, that process began over a half-decade ago, in 2018, with the formation of the Charter Commission. (A. 125 ¶ 33; A. 132 ¶ 33; A. 155-56.) Where the only error the court found was in the ultimate method of presentation of the proposed changes to voters in November 2020, it is neither necessary nor

reasonable to compel the Town to repeat the years of properly conducted procedures leading up to that point; doing so would only serve to delay resubmission of the changes to voters and to further disrupt the governance of the Town. As it stands, the Superior Court's order would immediately upend more than three years of good faith governance under the modified Charter, based solely on the Charter Commission presenting its proposed changes in nine separate ballot questions rather than one. The resubmission process permitted by the Home Rule Act but unreasonably withheld by the Superior Court would mitigate the disruption to the Town's government.

Courts have long recognized that they must be sensitive to the need for stability and finality in changes to municipalities' governing documents adopted by voters under their constitutional home rule authority. *See, e.g.*, *Ruppert*, 1996 Me. Super. LEXIS 247, *16 (recognizing "need for stability and finality with respect to charter revisions and amendments that have been approved by the voters"). The Legislature itself recognized this in only permitting invalidation of democratically adopted changes to municipal charters based on material and substantial procedural errors in section 2108(3), and making the remedies in section 2108(4) available to correct any such errors. There was no reasonable basis, either in law or logic, for the Superior Court to deny the Town the opportunity to resubmit the modifications to voters, and instead compel the Town to restart from the beginning a multi-year

charter revision process that began in 2018, solely because the modifications were presented as nine questions rather than one.

CONCLUSION

WHEREFORE, the Court should vacate the decision and judgment of the Superior Court and remand this matter to the Superior Court for the entry of judgment in favor of Defendant Town of Bar Harbor. In the alternative, this Court should remand this matter to the Superior Court with instructions to order resubmission of the Charter modifications to voters in accordance with 30-A M.R.S. § 2108(4).

Respectfully submitted, dated at Bangor, Maine this 9th day of January, 2024.

<u>/s/ Jonathan P. Hunter</u>
Jonathan P. Hunter, Esq. (Bar No. 4912)
Stephen W. Wagner, Esq. (Bar No. 5621)
Rudman Winchell
Attorneys for Appellant Town of Bar Harbor
Bangor, ME 04402-1401
(207) 947-4501
jhunter@rudmanwinchell.com
swagner@rudmanwinchell.com

CERTIFICATE OF SERVICE

I, Jonathan P. Hunter, certify that I served two copies of this Brief of Appellant upon the other parties in this matter by regular U.S. mail, postage paid, with a copy by email, at the addresses below:

Maxwell G. Coolidge, Esq.
P.O. Box 332
Franklin, ME 04634
attorney.coolidge@gmail.com

Dated: January 9, 2024

/s/ Jonathan P. Hunter
Jonathan P. Hunter, Esq. (Bar No. 4912)