IN THE MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Law Court Docket No. Han-23-371

Michael Good, et al.

v.

Town of Bar Harbor

On Appeal from the Hancock Superior Court

Plaintiffs/Appellees' Reply to Amicus Brief

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INTRODUCTION

Plaintiffs/Appellees respectfully disagree with arguments of Amicus Curae (Amicus) Maine Municipal Association (MMA) and submit the following brief in reply to the Amicus Brief. Plaintiffs/Appellees ask this court to reject Amicus's interpretation of the Home Rule Act and AFFIRM the judgment of the Superior Court.

ARGUMENT

A. The plain language of the Home Rule Act does not support Amicus's proposed interpretation.

Although Amicus correctly states that the guiding principle of statutory interpretation is the plain language of the statute itself, the assertion that, under the Home Rule Act, a town is always able to present a charter revision as separate ballot questions so long as it does not replace 100% of the charter is not supported by the plain language of the statute. It requires a stretch of logic and imagination to assert that a 75% or 99% re-write of an existing charter constitutes only a

"minor modification" that leaves the "the present charter" in force. 30-A M.R.S.A. § 2105(1)(A).

Amicus's assertion that "any proposed charter change short of a whole-cloth rewrite constitutes a 'minor modification' " ignores a critical requirement of §2105(1)(A) – "that the present charter continue in force." Green Brief, p 5. If any proposed changes would alter the core operations of government so that that the current charter cannot continue in force, the proposed changes are not "only minor modifications" but constitute a revision that must be presented to voters as a single question. The phrase "continue in force" must mean something more than simply "some of the existing language remains in place." It is "the present charter" that must "continue in force" in order to allow a charter commission to present its recommendations separately as "only minor modifications."

Amicus's warning regarding disenfranchisement of voters and absurd results are unfounded. As Amicus points out, nothing in the Superior Court's interpretation of the Home Rule Act restricts the scope of a charter commission's proposals for a new or revised charter. The only requirement is that the revision be presented as a single ballot

question for voters to consider unless, and only unless, the recommendation is for "only minor modifications" that leave the existing charter in force. Voters are enfranchised and given power to craft the revised charter by the charter commission process itself. First, the members of the charter commission are elected as municipal officers by and from the same electorate that will eventually vote on the charter revision at town meeting. The charter commission must then hold public hearings, provide copies of a preliminary report for review by the voting public, and eventually present its recommendations in a final report. 30-A M.R.S.A. 2103(5). Interested voters have numerous opportunities to participate in the process of crafting what will eventually become the proposed charter revision before presenting it to the town meeting for a vote. The commissioners likewise have many opportunities to solicit and receive feedback from the public regarding their proposals.

The unrestricted breadth and depth of a charter commission's power to consider changes to the municipal charter is unquestioned and is not contradicted by a requirement that a proposed revision be presented to the voters as a single question. But even if the section at

issue could be said to restrict the charter commission and the revision process in some way, that is entirely consistent with the Maine Constitution which provides that the Legislature "shall prescribe the procedure" by which municipalities may amend their charters. Me. Const. art. VIII, pt. 2, § 1. A procedural rule, such as the one at issue here, does not substantively limit the scope of home rule authority. It does, however, dictate the methods and procedures that must be used when a municipality chooses to exercise that authority. The authority to prescribe the procedures to be used when a municipality wishes to make changes to its charter is squarely placed in the hands of the Legislature by the Maine Constitution.

Amicus also argues that a charter commission cannot be required to engage in a substantive determination of the nature and scope of the proposed changes. This argument is without merit. *In Fair Elections Portland*, this Court held that municipal officers are required to make a determination as to whether a proposed change to a charter can be made as an amendment or if it must be considered a revision. *Fair Elections Portland, Inc. v. City of Portland*, 2021 ME 32, 252 A.3d 504. There is no logical reason that the members of the charter commission

cannot make a similar determination when considering their statutory charge to submit a proposed revision to the voters as a single question unless the proposal is for "only minor modifications." There may not always be a bright line and there may be some proposed changes that fall close to the line, but that does not mean that the commission cannot be expected to make that determination. Municipal counsel can advise a charter commission of what is required and what it is empowered to do. Judicial review is available to resolve challenges to a charter commission's legal and factual determinations.

Amicus argues that "the only 'determination' for a commission under Section 2105 relates to whether it <u>will</u> break individual modifications into separate questions or not." Green Brief, p 8, (emphasis added). This is an extraordinary assertion that completely ignores the limitations imposed by the plain language of the Home Rule Act. The relevant text reads "If the charter commission . . . 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." § 2105(1)(A). This text plainly imposes the condition that the proposed

changes be minor AND that the present charter continue in force before "those modifications" can be submitted in "as many separate questions as the commission find practicable." If the Legislature had intended for a municipality to be able to present all charter revisions as either a single up or down vote or in as many separate questions as it wanted it could have simply said that.

Amicus also makes too much of the distinction between the substantive scope and the number of modifications. Laws are contained in the text of charters, statutes, and constitutions. The more text a revision changes, the more likely the revision will substantively impact the effect of the law. The Superior Court's interpretation does not require a charter commission to conduct a deep searching analysis into the scope of every proposed change – it simply requires the charter commission to apply a common sense understanding of the phrase "only minor modifications." The Town here missed the mark and tried to use a procedure that is only available when the proposed changes to the charter can accurately be called "minor modifications." As determined by the Superior Court and argued in Plaintiffs/Appellees' principal brief, the changes proposed by the charter commission here were not

"only minor modifications." Nor could it fairly be said that the proposed changes left the present charter "in force."

Amicus asks this Court to "determine, as a matter of law, that 30-A M.R.S. § 2105 authorizes a charter commission to present any number of proposed charter revisions to voters as separate questions when a majority of the commission deems such a presentation appropriate and has recommended that an existing charter remain in place." Green Brief p 17. Such relief is simply not available where, as here, the plain language of the statute does not support such an interpretation. Further, the proposed changes here were not minor modifications that would leave the present charter in place.

B. Analysis of legislative history is unnecessary because the statute at issue is not ambiguous. However, even assuming for the sake of argument that it is, the legislative history presented by Amicus does not support Amicus's interpretation of the Home Rule Act.

Amicus argues that the legislative history of the phrase "only minor modifications" supports its and the Town's interpretation. As Amicus points out, this Court need only consider legislative history where the statutory language at issue is ambiguous. Here the plain

language of the Home Rule Act is unambiguous and does not support Amicus and the Town's interpretation because both the phrases "only minor modifications" and "that the present charter continue in force" place procedural limits on how proposed charter revisions are presented to voters. However, even if this Court were to examine the legislative history of the statute and accept Amicus's argument that "Minor" means "a few" and relates to the number and not the substance of the proposed changes, that does not change the outcome of this case. The phrase "only minor" in the current statute and the phrase "a few" in the prior statute both modify the word "modifications." "A few" is <u>not</u> synonymous with "anything short of 100%." "A few" is a phrase that means "at least some but indeterminately small in number" https://www.merriam-webster.com/dictionary/few (viewed March 13, 2024). The phrase is used to indicate a relatively small number as in "I caught a few fish." No one would hear that phrase and think the angler was wildly successful.

Importantly, the phrase "a few" in the prior statute referred to the number of modifications – not the number of ballot questions. Appellees again invite the Court to examine the text on pages 191 through 211 of

the Appendix which shows revisions to major portions of the municipal charter. It would strain credulity if the proposed changes here were called “a few modifications.”

Again, however, the Court need not resort to examining the legislative history to determine legislative intent. The intent of the legislature can be readily determined by the plain language of the Home Rule Act itself. As discussed above every word in the relevant section has meaning. No words in the statute are to be treated as surplusage. On its face the statute requires that certain conditions be met before changes to the charter can be submitted as separate questions. Those conditions were not met here and the Town erred by submitting the revision as separate questions. That error materially and substantially affected the revision and the Superior Court correctly exercised its power of judicial review to invalidate the Town’s actions accordingly.

CONCLUSION

Amicus’s interpretation is simply not supported by the plain language of the Home Rule Act. Far from being “unworkable,” as Amicus suggests, the plain language interpretation adopted by the

Superior Court can be easily followed by municipal charter commissions using common sense when proposing revisions or minor modifications to their charters. Plaintiffs/Appellees ask this Court to reject Amicus's interpretation of the Home Rule Act and again ask this Court to AFFIRM the judgment of the Superior Court in all respects.

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