STATE OF MAINE

BEFORE THE JUSTICES OF
THE SUPREME JUDICIAL COURT

DOCKET NO. OJ-26-1

In the Matter of Request for
Opinion of the Justices

BRIEF OF THE ATTORNEY GENERAL

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Introduction

In 2017, the Justices were asked to render an opinion on whether ranked-choice voting—a method of voting that allows for the simulation of successive runoff elections until one candidate wins by a majority—is inconsistent with the Maine Constitution's instruction that a plurality of votes, as counted and declared by municipal officials, is enough to win an election for Representative, Senator, or Governor. The Justices concluded unanimously that it was. *Opinion of the Justices*, 2017 ME 100, ¶ 68, 162 A.3d 188, *as revised* (Sept. 19, 2017).

The Legislature now appears poised to enact a law, L.D. 1666, that would require use of ranked-choice voting for elections for Representative, Senator, and Governor. It wishes to do so based on an opinion of a foreign court interpreting a foreign constitution and changes to the ranked-choice voting statutes that would alter terminology without changing how the process works.

Neither of these developments warrants revisiting the Justices' prior opinion. Although Maine's experience since 2017 has demonstrated that ranked-choice voting is a workable and reasonable way to decide elections, it is not the sort of plurality "first past the post" system that the Maine Constitution mandates for the elections at issue here. The statutory wordsmithing proposed by L.D. 1666 cannot change the fact that ranked-choice voting is fundamentally a process that requires "sequential rounds" of tabulation*, see* 21-A M.R.S.A. § 1(35-A), and thus produces

an initial plurality winner who can go on to lose in subsequent rounds of tabulation. L.D. 1666's attempt to redefine a "vote" to mean the full array of a voter's rankings, as deciphered by a centralized algorithmic process, runs headlong into the Maine Constitution's conception of a "vote" as something that is discernable to and quantifiable by the local officials to whom the Constitution delegates responsibility to "sort, count and declare." Me. Const. art. IV, pt. 1, § 5.

For these and the other reasons set forth below, the Justices should find a solemn occasion but answer "no" to the Legislature's question.

Background

History of election provisions in the Maine Constitution

The Maine Constitution originally specified that candidates for Representative, Senator, and Governor must secure a "majority" of votes to win. Me. Const. art. IV, pt. 1, § 5; art. IV, pt. 2, § 4; art. V, pt. 1, § 3 (1820). Depending on the type of election, different consequences were specified if no candidate achieved a majority. In elections for Representative, the Constitution specified holding serial elections until a candidate achieved a majority. *Id.* art. IV, pt. 1, § 5. In elections for Senator, the Constitution required the Legislature to fill any vacant seats by joint ballot, choosing from a list of the highest polling candidates for each Senate District. *Id.* art. IV, pt. 2, § 5. In elections for Governor, the Constitution provided that the House of Representatives would select two candidates from

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among the four receiving the most votes, and that the Senate would then decide

which of those two candidates should become Governor. *Id.* art. V, pt. 1, § 3.

These majority-vote requirements proved to be among the Framers' less

inspired ideas. House elections frequently failed to produce a winner, with 66

failed elections in 1846 alone. Peter Neil Berry, *Nineteenth Century Constitutional*

Amendment in Maine, at 85 (June 1965) (hereinafter "Berry").[1] In some cases,

towns had to conduct numerous votes before a candidate won a majority.[2] Senate

races fared no better. Thirty-two elections between 1820 and 1875 included at

least one race for Senator that failed to produce a winner, with as many as 19 failed

elections in a single year. Berry at 88; *see also Opinion of the Justices*, 35 Me.

563, 564 (1854) (noting that the elections of 1847 and 1851 left a majority of

Senate seats vacant). Gubernatorial candidates failed to achieve a majority in nine

different elections between 1820 and 1880, triggering the alternative method of

selecting a Governor.[3] In four cases, the Legislature rejected the winner of the

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[1] *Available at* https://digitalcommons.library.umaine.edu/cgi/viewcontent.cgi? article= 3432&context=etd.

[2] *See* Report of the Committee of Elections and Statement of the Minority of Said Committee in the Case of Andrew Roberts at 1, 5 (1830), *available at* https://digitalcommons.library.umaine.edu/cgi/ viewcontent.cgi?article=1091&context=mainebicentennial (reflecting that Waterboro had to hold seven votes to elect a Representative in 1830); Reuel Robinson, *History of Camden and Rockport Maine* (1907) at 245–46, 262 (recounting multiple failed votes for Representative in Camden).

[3] *See Maine Register State Year-book and Legislative Manual* (1900) at pp. 118–23, *available at* https://www.google.com/books/edition/Maine_Register_Or_State_Year_book_and_Le/ swxFAQAAMAAJ?hl=en&gbpv=1&pg=PA118&printsec=frontcover, listing gubernatorial votes from 1820–1898. No candidate attained a majority in the elections of 1840, 1846, 1848, 1852, 1853, 1854, 1855, 1878, and 1879.

popular vote in favor of a candidate with fewer votes. Berry at 91–93.

These problems resulted in mounting calls for change. After the election of 1853 produced no Governor and no quorum in the Senate, necessitating a solemn occasion to determine how to constitute the government, *see Opinion of the Justices*, 35 Me. 563, 575–94 (1854), Governor William Crosby urged a constitutional amendment, referencing the "embarrassments which have attended the organization of the State government at the present session, growing out of the failure on the part of the people to elect a majority of the members of one branch of the Legislature, and the strong probability of a recurrence of the same state of affairs." Address of Governor Crosby to the Legislature at 15 (Feb. 8, 1854);[4] *see also Opinion of the Justices*, 2017 ME 100, ¶ 63, 162 A.3d 188 (observing that the majority requirement resulted in "widespread discontent").

Thus, over the course of the nineteenth century, the relevant provisions were changed, one by one, to end the majority-vote threshold for elections. In 1847, the Constitution was amended to allow for election of Representatives by "the highest number of" votes. Const. Res. 1847, ch. 45, *approved in* 1848.[5] In 1875, the constitutional provision relating to Senators was changed from "majority" to

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[4] *Available at* https://lldc.mainelegislature.org/Open/Rpts/PubDocs/PubDocs1854/ PD1854_00D.pdf.

[5] "Highest number" was later changed to "plurality." Const. Res. 1864, ch. 344, *approved in* 1864.

"plurality." Const. Res. 1875, ch. 98, *approved in* 1876. The same change was made for Governor four years later. Const. Res. 1880, ch. 159, *approved in* 1880.

The switch from majority to plurality voting is just one example of Maine's longstanding practice of making major changes to the voting process by constitutional amendment, rather than statute. Mainers amended the Constitution in 1834 and 1920 to allow cities and towns respectively to subdivide into election wards for voting. Const. Res. 1834, ch. 43, *approved in* 1835; Const. Res. 1919, ch. 22, *approved in* 1920. They amended the Constitution in 1864 to provide for military absentee voting, Const. Res. 1864, ch. 344, *approved in* 1864, and then later in 1921 to provide for civilian absentee voting, Const. Res. 1921, ch. 87, *approved in* 1921. They amended the Constitution in 1935 to permit the use of voting machines. Const. Res. 1935, ch. 110, *approved in* 1935. Mainers have not been asked to vote on an amendment authorizing ranked-choice voting.

Modern constitutional provisions

The modern version of article IV, part first, § 5, describes duties for municipal officials, the Secretary of State ("Secretary"), and the Governor in elections for Representative. Municipal officials must publicly notice the "meetings" at which the election will occur and

> shall preside impartially at such meetings, receive the votes of all the qualified electors, sort, count and declare them in open meeting; and a list of the persons voted for shall be formed, with the number of votes for each person

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against that person's name.

Me. Const. art. IV, pt. 1, § 5. Municipal officials must then attest "[f]air copies of

the lists of votes" and transmit those copies to the Secretary. *Id.* Upon receipt, the

Governor must

> examine the returned copies of such lists and 7 days before
> the first Wednesday of December biennially, shall issue a
> summons to such persons as shall appear to have been
> elected **by a plurality of all votes returned**, to attend and
> take their seats.

Id. (emphasis added).

The provisions governing elections for Senate prescribe substantially the

same process. The Governor must examine a copy of the lists provided by

municipal officials and "issue a summons to such persons, as shall appear to be

elected by *a plurality of the votes* in each senatorial district." Me. Const. art. IV,

pt. 2, § 4 (emphasis added). Part 2 also contains a second reference to plurality

voting, describing a vacancy as "the failure of any district to elect by a plurality of

votes the Senator to which said district shall be entitled." *Id.* § 5.

In elections for Governor, the prescribed process is the same at the

municipal level but differs at the state level. Once municipal officials provide

attested copies of the list of votes to the Secretary, the Secretary must provide

those lists directly to the Senate and House. Me. Const. art. V, pt. 1, § 3. The

Legislature must then examine both the "lists returned" and the "ballots cast if they

so elect" to determine the winner. *Id.* They must declare a winner "in case of a choice *by plurality of all of the votes returned*." *Id.* (emphasis added).

History of ranked-choice voting in Maine

Ranked-choice voting was enacted by Maine voters through the direct initiative process in 2016. I.B. 2015, ch. 3. The ballot question presented to voters expressly described the ranked-choice voting process as having a majority-vote threshold, asking:

> Do you want to allow voters to rank their choices of candidates in elections for U.S. Senate, Congress, Governor, State Senate, and State Representative, and to have ballots counted at the state level in multiple rounds in which last-place candidates are eliminated **until a candidate wins by majority?**

Maine State Legislature, Legislative History Collection, *Citizen Initiated Legislation, 1911-Present*, at https://www.maine.gov/legis/lawlib/lldl/citizeninitiated/ (emphasis added).

The law approved by voters defined "ranked-choice voting" as "the method of casting and tabulating votes in which voters rank candidates in order of preference, tabulation proceeds in sequential rounds in which last-place candidates are defeated and the candidate with the most votes in the final round is elected." I.B. 2015, ch. 3, § 2 (codified at 21-A M.R.S.A. § 1(35-A)). In each round of tabulation, "[e]ach continuing ballot counts as one vote for its highest-ranked continuing candidate for that round." 21-A M.R.S.A. § 723-A(2). If there are

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more than two continuing candidates, the candidate who finishes last is "removed from consideration"[6] and the count proceeds to the next round. *Id.* § 723-A(2)(B). In that next round, votes previously counted for the removed candidate are reallocated based on the next-highest-ranked continuing candidate. *Id.* § 723-A(2). Once the field has been winnowed to two candidates or fewer, "the candidate with the most votes is declared the winner of the election." *Id.* § 723-A(2)(A).

The original law applied to elections for U.S. Congress, the Maine Legislature, and Governor, including both primary and general elections to those offices. I.B. 2015, ch. 3, § 1. On May 23, 2017, the Justices of this Court issued an opinion concluding that the initiated law violated the plurality requirements of the Maine Constitution for legislative and gubernatorial elections. *See Opinion of the Justices*, 2017 ME 100, ¶ 68, 162 A.3d 188.

In response, the Maine Legislature enacted a law that would have suspended all use of ranked-choice voting until December 1, 2021, and would have further repealed ranked-choice voting completely unless voters ratified a constitutional amendment. P.L. 2017, ch. 316, §§ 1–3, 6, 11–12. That same law also repealed and replaced the list of elections subject to ranked-choice voting to clarify that primary elections were covered. *Id.* § 1.

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[6]   The original Act described the last-place candidate as "defeated," but this terminology was changed in 2024. *See* P.L. 2023, ch. 628, §§ 1–3.

Supporters of ranked-choice voting organized a successful People's Veto of portions of the enacted law. The People's Veto struck the language delaying and contingently repealing ranked-choice voting. P.L. 2017, ch. 316, *at* https://legislature.maine.gov/ros/LawsOfMaine/breeze/Law/getDocById/?docId=59538. It also struck a portion of the recodified list of elections subject to ranked-choice voting, removing Representative, Senator, and Governor. *Id*. The People's Veto thereby ensured that ranked-choice voting did not extend to those elections that the Justices had determined must be decided by plurality vote.

Other than an expansion to presidential elections in 2020, *see* P.L. 2019, ch. 539, § 1, the changes to the ranked-choice voting statutes since 2018 have been of a minor, technical nature. *See, e.g.*, P.L. 2023, ch. 304, § A-14 (repealing provision allowing elimination of multiple candidates in a single round); P.L. 2019, ch. 320 (changing "tabulation" to "count" in various places).

Rules governing tabulation

The Secretary has issued rules for conducting ranked-choice tabulations. The rules provide that, where there is no majority winner shown on election returns, a centralized tabulation must occur. 29-250 C.M.R. ch. 535, § 4(2)(A). Under this process, the Secretary designates a central counting facility where

election materials from the municipalities[7] must be delivered. *Id.* § 5. The rules

provide for a public proceeding in which election officials verify that the vote

totals in the transferred materials match the election returns and then input the

rankings into a software utility that conducts the tabulation. *Id.* § 6.

The 2018 2nd Congressional District election

The 2018 election for Congressional District 2 ("CD2"), one of the first

elections conducted using ranked-choice voting, illustrates its mechanics. The

results were as follows:

Candidate	Round 1			Round 2		
	Votes	**%**	**Transfer**	**Votes**	**%**	**Transfer**
Tiffany Bond	16,552	5.7%	-16,552	0	0%	0
Jared Golden	132,013	45.6%	+10,427	142,440	50.6%	0
William Hoar	6,875	2.4%	-6,875	0	0%	0
Bruce Poliquin	134,184	46.3%	+4,474	138,931	49.4%	0

See Exhibit A. As shown in the chart above, Bruce Poliquin was the plurality

winner in the first round of tabulation, with 46.3% of the vote. This was also the

result reflected in the election returns transmitted by municipal officials to the

Secretary, which, by law, "report . . . only the first choice votes cast." 21-A

M.R.S.A. § 711; *see* 29-250 C.M.R. ch. 535, § 4(1).

Poliquin, however, was not the winner under ranked-choice voting. Because

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[7] Municipalities that use electronic tabulators must send memory devices containing electronic records of the ballots, together with any ballots that could not be scanned. *Id.* § 5(2). Municipalities that hand-count ballots must send the actual ballots. *Id.*

Poliquin had obtained less than a majority of first-choice votes, a ranked-choice voting count was required. The Secretary conducted that count in a multi-day process.[8] As the chart shows, once Bond and Hoar were eliminated[9] and votes on any continuing (i.e., non-exhausted) ballots reallocated to the remaining candidates based on next-highest rankings, Golden achieved a majority of 50.6% of continuing ballots in the final round.

L.D. 1666

The Legislature has requested a solemn occasion so that the Justices may consider the constitutionality of L.D. 1666. That bill makes one substantive change to the ranked-choice voting laws: it restores the language excised by the 2018 People's Veto in response to the Opinion of the Justices concluding that ranked-choice voting was unconstitutional as applied to the elections for Governor, House, and Senate. *See* L.D. 1666, § 1 (132nd Legis. 2025). If enacted, L.D. 1666 will restore "[g]eneral and special elections for the offices of Governor, State Senator and State Representative" to the list of elections subject to ranked-choice voting. *Id.* (amending 21-A M.R.S.A. § 1(27-C)).

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[8] *See* Kevin Miller and Scott Thistle, "Jared Golden declared winner of first ranked-choice congressional election, but challenge looms." *Portland Press Herald* (Nov. 15, 2018), *at* https://www.pressherald.com/2018/11/15/final-ranked-choice-vote-count-slated-for-noon/.
[9] The original law allowed for "batch elimination," in which multiple mathematically eliminated candidates could be deemed defeated in a single round. I.B. 2015, ch. 3, § 5. Under current law, candidates must be eliminated one at a time unless one candidate receives a majority of first-choice rankings. 21-A M.R.S.A. § 723-A(2). The two processes produce identical outcomes.

The remaining provisions of L.D. 1666 make entirely cosmetic changes to the ranked-choice voting statutes. The bill rewords the definition of "ranked-choice voting" so that candidates finishing last in a round of tabulation are "eliminated" rather than "defeated." *Id.* § 2. It relabels "plurality voting" as "single-choice voting" and defines that term. *Id.* §§ 3–4. It eliminates instances in which the statutes refer to rankings as "votes" and the tallying of such rankings as "counting." *E.g., id.* § 5. It provides additional explanation about the meaning of "ranking" that will not change how those rankings function. Comm. Amend. B, § 8, No. S-499 (132nd Legis. 2025) ("Amend."). And, in several places, it describes the winner in the final round of ranked-choice tabulation—which, by law, is triggered only when the race is down to two candidates and one is certain to receive a majority absent a tie—as having received a "plurality" of the votes cast. L.D. 1666, § 7; Amend., § 8. None of these changes will make any difference in how ranked-choice voting is administered or in the outcome of any election determined by ranked-choice voting.

L.D. 1666, as amended, was passed to be enacted, but was recalled from the Governor's desk due to constitutional concerns. S.P. 900 (132nd Legis. 2026). The Legislature thus requested a solemn occasion to consider the following question:

> Does the method of arriving at a plurality of votes cast
> through the use of ranked-choice voting, as amended by

L.D. 1666, in which a person's vote is not determined until the final round of tabulation and in which the candidate with the highest continuing ranking on the most ballots after the final round of tabulation is determined to have received a plurality of votes cast, conform with the provisions of the Constitution of Maine, Article IV, Part First, Section 5; Article IV, Part Second, Section 4 and Section 5; and Article V, Part First, Section 3?

Id. On February 11, 2026, the Court invited briefs on this question.

Argument

I. The Legislature's question presents a solemn occasion.

A solemn occasion requires a question of "live gravity," in which the questioner is "seeking advice to guide its own actions relating to matters of public concern that are not tentative, hypothetical, or remote." *Opinion of the Justices*, 2023 ME 34, ¶ 11, 295 A.3d 1212 (quoting *Opinion of the Justices*, 2017 ME 100, ¶ 23, 162 A.3d 188). The question also should not be "overly complex because of intersecting legal and factual variables." *Id.*

The Legislature's question satisfies these criteria. Maine will be holding an election for Governor and every seat in the Maine House of Representatives and Maine Senate in November 2026. Despite a prior Opinion of the Justices concluding that deciding these elections by ranked-choice voting would violate the Maine Constitution, *see Opinion of the Justices*, 2017 ME 100, ¶ 68, 162 A.3d 188, the Legislature appears poised to enact legislation requiring the use of ranked-choice voting in these elections. For the Legislature to go forward with such a plan

without the blessing of the Justices would cause chaos in an election cycle already facing unprecedented threats of federal interference.[10] Both candidates and voters would be harmed by uncertainty about how votes will be counted. Election officials would have to choose between following statute or the Maine Constitution as interpreted by the Justices' 2017 opinion. Litigation would ensue, and courts could be faced with deciding winners and losers after voting has occurred. *Cf. Bush v. Gore*, 531 U.S. 98 (2000). The Justices should act to preempt such potential chaos by answering this pure question of law and thereby providing clear and unequivocal guidance as to how the 2026 elections should be conducted.

II.   The correct answer to the Legislature's question is "no."

A.   Nothing has changed since the Justices' 2017 opinion.

Interpretation of the Maine Constitution begins with the text. *Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, ¶ 14, 237 A.3d 882. Courts should "apply the plain language of the constitutional provision if the language is unambiguous, and if the provision is ambiguous, [courts] will determine the meaning by examining the purpose and history surrounding the provision." *Id.* (cleaned up). In construing constitutional text, courts should consider "the meaning which the words would convey to an intelligent, careful voter." *Opinion*

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[10]   *See, e.g.*, Piper Hudsepth Blackburn and Samantha Waldenberg, "Trump calls on Republicans to 'nationalize' future elections," *CNN* (Feb. 3, 2026) *at* https://www.cnn.com/2026/02/03/politics/trump-calls-on-republicans-to-nationalize-future-elections.

of the Justices, 2015 ME 107, ¶ 35, 123 A.3d 494 (quoting *Allen v. Quinn*, 459 A.2d 1098, 1100 (Me. 1983)).

Here, the Justices are asked to consider whether ranked-choice voting for Representative, Senator, and Governor is consistent with provisions of the Maine Constitution setting forth the mechanics of how those elections are to be conducted and determined. The Justices already answered this question in 2017. *See Opinion of the Justices*, 2017 ME 100, ¶ 68, 162 A.3d 188. At the urging of the Attorney General, Maine Senate, and others, they concluded that ranked-choice voting was inconsistent with the constitutional requirement that the winners of those elections must be determined by "a plurality of" all votes returned. *Id.* ¶ 65.

Specifically, the Justices unanimously concluded that the fundamental mechanic of ranked-choice voting—the "tabulation of votes in rounds"—is inconsistent with the constitutional plurality requirement because that mechanic "prevents the recognition of the winning candidate when the first plurality is identified." *Id.* ¶ 65. Instead, ranked-choice voting requires additional rounds of tabulation "until a majority is achieved or all votes are exhausted." *Id.* The Justices noted that a candidate who wins a plurality in the first round can ultimately lose because another candidate "obtain[s] a *majority* of the votes after eliminating other candidates by taking into account the second, third, and fourth place preferences." *Id.* ¶ 67. The Justices reasoned that, in this scenario, the Act

"prevents the candidate obtaining a 'plurality' from being named the winner unless and until multiple rounds of vote-counting have occurred." *Id.*

The Justices' reasoning was sound in 2017, and it remains sound today. *Black's Law Dictionary* defines *plurality* by contrasting it with *majority*: "the greatest number (esp. of votes), *regardless of whether it is a majority*, simple or absolute." "Plurality," *Black's Law Dictionary* (12th ed. 2024) (emphasis added). Maine's history shows that, throughout the 19th century, Maine made a conscious choice, borne of hard experience with majority-threshold elections, to eschew majority requirements in favor of a plurality threshold.

Ranked-choice voting flies in the face of this constitutional change. Fundamentally, ranked-choice voting operates to winnow down a field of candidates until, in the final round, there are only two candidates left and thus, one candidate necessarily wins by a majority. *See* 21-A M.R.S.A. § 723-A(2); MIT Election Data Science Lab, "Instant Runoff Voting," *at* https://electionlab.mit.edu/ research/instant-runoff-voting (condition for winning in ranked-choice voting is "Does a candidate have a majority?"); *Dudum v. Arntz*, 640 F.3d 1098, 1103 (9th Cir. 2011) (contrasting ranked-choice voting with plurality voting); *Baber v. Dunlap*, 376 F. Supp. 3d 125, 135–36 (D. Me. 2018) (same).

This majority threshold is also reflected in the provision of current statute— which would not be changed by L.D. 1666—providing that candidates who obtain

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a majority of first-choice votes on election night are declared the winner without the need for any ranked-choice tabulation. 21-A M.R.S.A. § 723-A(2). No ranked-choice tabulation is required in that scenario because such candidates have already achieved the "win condition" for a ranked-choice contest: majority support. Yet the "win condition" specified in the Constitution is merely a "plurality" of votes cast. Under ranked-choice voting, a plurality may be *necessary* to win, but, unlike in a true plurality system, it is not *sufficient*. Even if the candidate receives a plurality of votes, they do not win unless they survive successive rounds of tabulation in which candidates are eliminated and votes are reallocated.

The resolution seeking a solemn occasion cites as a new development *Kohlhaas v. State*, 518 P.3d 1095 (Alaska 2022), in which the Alaska Supreme Court determined that Alaska's ranked-choice voting statute did not contradict the provision in its constitution providing that the candidate "receiving the greatest number of votes shall be governor." *Id.* at 1120 (quoting Alaska Const. art. III, § 3). That decision, out of a different jurisdiction and interpreting a different constitution with a different history, obviously does not control here.

In any event, *Kohlhaas*'s reasoning is not persuasive. *Kohlhaas* takes issue with the notion that ranked-choice voting imposes a majority threshold. *Id.* at 1118–20. It does so, however, by pointing out a nuance that was not lost on the Justices in 2017: that some ranked-choice voting outcomes can be characterized as

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wins by less than a majority, depending on the calculation. Specifically, if the

denominator used to calculate the win percentage includes ballots not counted in

the final round of tabulation because they were "exhausted"—meaning the voter

ranked neither of the final candidates or otherwise marked the ballot in a way that

excluded it from the final round, *see* 21-A M.R.S.A. § 723-A(1)(D)—the final-

round winner could, in some scenarios, be said to have won with less than 50% of

the vote, even though they necessarily received more than 50% of the votes

counted in the final round. As *Kohlhaas* points out, under this calculation, Golden

could be said to have won the 2018 CD2 race by a plurality. 518 P.3d at 1119.

The Justices made the same observation. *Opinion of the Justices*, 2017 ME

100, ¶ 65 n.38, 162 A.3d 188. However, they concluded that this nuance did not

matter. In those circumstances, they reasoned, ranked-choice voting would still

violate the Constitution because it "would not declare the first candidate to achieve

a plurality to be the winner." *Id.* In other words, plurality voting is fundamentally

a "first-past-the-post" system. *Dudum*, 640 F.3d at 1103. Yet, in ranked-choice

voting, the candidate "first past the post"—the one receiving the plurality of first-

choice votes—can go from winner to loser as votes are reallocated from some

candidates to others in the succeeding rounds. *See Baber*, 376 F. Supp. 3d at 138

(characterizing ranked-choice voting as an alternative to selecting the candidate

"who is first 'past the post'").

What is more, although the Justices accepted at face value that using a denominator of all *ballots* cast in the election is the correct measure of whether a ranked-choice winner has prevailed by a plurality or a majority, it may not be the relevant metric. The "win condition" specified in the Constitution is not a plurality of all "ballots" returned, it is a plurality of all "votes" returned. Me. Const. art. IV, pt. 1, § 5; art. IV, pt. 2, § 4; art. V, pt. 1, § 3. Ranked-choice voting is also called "instant runoff voting," *see, e.g.*, *Minnesota Voters All. v. City of Minneapolis*, 766 N.W.2d 683, 685 (Minn. 2009), because it simulates a type of majority-threshold voting system in which the consequence of no candidate attaining a majority is a runoff election between the top-finishing candidates. Only, with ranked-choice voting, no separate runoff election is needed. That is because a ranked-choice ballot acts as a set of instructions that allows the voter, if they choose, to specify their vote in every possible permutation of runoff election between the candidates.

By this logic, a voter completing their ballot in a manner so that it will be deemed exhausted if certain candidates reach the final round (e.g., choosing to assign no rank to either candidate) should be understood as a decision by that voter *not to cast a vote* in that particular contest, should it occur. Under this understanding, ranked-choice voting is a true majority-threshold system in which the winning candidate must receive a majority—not just a plurality—"of all *votes* returned." Me. Const. art. IV, pt. 1, § 5 (emphasis added); *see also Baber*, 376 F.

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Supp. 3d at 136 (upholding use of ranked-choice voting in federal election on grounds that the U.S. Constitution does not require use of "plurality elections").[11]

The *Kohlhaas* decision also complains that

> the Maine Supreme Judicial Court did not explain why its constitution required the election to be called after "one round of counting." If the vote count is not final after the first round of tabulation, then the candidate in first place after the first round is not necessary the candidate "receiving the greatest number of votes." Instead that candidate is simply the candidate in the lead before the votes have been fully counted.

518 P.3d at 1121. Putting aside that the Justices did in fact clearly and persuasively explain their reasoning, the Alaska court's argument does not hold water. Ranked-choice voting, by its nature, is not a single continuous "counting" of votes. Rather, it requires discrete "sequential rounds" of counting votes, *see* 21-A M.R.S.A. § 1(35-A), simulating multiple elections, in which each round will produce a plurality winner. *See Minnesota Voters All.*, 766 N.W.2d at 690 (characterizing aspect of ranked-choice voting as "directly analogous" to a non-partisan primary system involving multiple elections). Thus, excepting a tie, at the

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[11] "Yes" proponents may point to *Sasinowski v. Legislative Assembly*, 549 P.3d 540 (Or. 2024) (en banc), which found a ballot question misleading because it described ranked-choice voting as requiring a candidate to "receive majority of votes to win election." But the court's analysis in that case turned on whether the concept was adequately described to voters, not the meaning of a constitutional provision predating the invention of ranked-choice voting. *See also* Maine State Legislature, Legislative History Collection, Citizen Initiated Legislation, 1911–Present (quoting ballot question describing Maine's ranked-choice voting process as requiring a candidate to "win[] by a majority"); *Helton v. Nevada Voters First PAC*, 512 P.3d 309, 313 (Nev. 2022) (quoting ballot question that described ranked-choice winner as attaining "more than 50% support").

end of the first round of counting votes, one candidate can be said to have obtained a "plurality of all votes returned." Me. Const. art. IV, pt. 1, § 5. According to the constitutional standard for victory, that candidate has won the election. The further rounds of counting contemplated by ranked-choice voting, in which votes are reallocated from one candidate to another, is simply not permitted by the constitutional text.

L.D. 1666 seeks to avoid application of these constitutional provisions by scrubbing the ranked-choice voting statutes of any hint that an individual ranking is a "vote" or that the tabulation that occurs in each round is a "counting" of "votes." By doing so, the legislation appears aimed at convincing the Justices that, as *Kohlhaas* holds, a person's "vote" is not any single ranking but the entire array of rankings and, thus, the ranked choice process cannot be understood to have produced any outcome cognizable under the Maine Constitution until all rounds of tabulation have been completed. *See Kohlhaas*, 518 P.3d at 1122.

As an initial matter, if ranked-choice voting as it is described in current law is unconstitutional in elections for Legislature and Governor, the cosmetic changes proposed by L.D. 1666 cannot possibly make it constitutional. The three provisions of the Maine Constitution governing the relevant elections are not philosophical treatises; they set forth concrete procedures for how elections are to be administered and determined. Ranked-choice voting is either consistent with

those procedures or it is not. Legislation like L.D. 1666, which changes the

terminology used to describe the process without changing how the process works,

cannot make the unconstitutional constitutional. To hold otherwise would

effectively cede to the Legislature the judicial branch's responsibility to determine

the meaning of constitutional provisions. *See State v. Thorndike*, 2025 ME 61,

¶ 26 n.9, 340 A.3d 77 (under the separation of powers the Law Court must

"ultimately determine" constitutional limits).

A hypothetical example with starker facts may be illustrative. Imagine that

the Legislature enacted a law requiring Maine elections for Legislature and

Governor to be conducted via a traditional runoff system, in which the failure of

any candidate to obtain a majority would require a runoff election between the two

highest-polling candidates. Such a system would be indistinguishable from the

majority systems abolished by the nineteenth-century constitutional amendments.

The Legislature surely could not render such a blatantly unconstitutional law

constitutional merely by enacting language defining a "vote" as encompassing the

ballots cast by a given voter over both elections, so that their "vote" was not

complete until both elections had been held. Nor, in the same scenario, could the

Legislature circumvent the plurality requirement by specifying that the winner of

the two-candidate runoff election that, by design, must produce a majority winner,

is whomever receives a "plurality" of votes. Yet this sort of non-substantive

relabeling is precisely how L.D. 1666 attempts to make ranked-choice voting for the relevant offices constitutional.

Indeed, the Maine Constitution contains textual indicators that the term "vote," as used in the relevant provisions, is not as capacious as L.D. 1666 seeks to conceptualize it. The Maine Constitution provides that municipal officials must "sort, count and declare" the "votes" in their respective jurisdictions. Me. Const. art. IV, pt. 1, § 5. The specified result of that process is the local creation of an election return that must list "the number of votes for each person against that person's name." *Id.* It is from "the returned copies of such lists" that the plurality winner is to be determined. *Id.*

L.D. 1666's conception of a single "vote" as constituting the full array of candidate rankings specified on a ranked-choice ballot is inconsistent with the conception of a "vote" embedded in this constitutional text. If, as L.D. 1666 suggests, a person's single "vote" is a series of contingent preferences that must be resolved through an algorithmic process, how is a local election official to form a list showing "*the number of votes* for each person against that person's name"? *Id.* (emphasis added). In any ranked choice contest involving more than one municipality, such a task would be literally impossible, since the ranked-choice algorithm requires combining results from all municipalities within the relevant electoral district to determine the "last-place candidate" to be eliminated in each

round, and thus a final "vote" count. *See* 21-A M.R.S.A. § 723-A(1)(F), (2)(B).

Thus, the only way that the ranked-choice voting process can be squared with the constitutional text is if voters' first-choice preference expressed on their ballot is a "vote" for purposes of a municipal election return, so that the municipal officials can specify a "number of votes" to assign to each candidate in every election. Indeed, Maine law recognizes the impossibility of any other approach by requiring municipal election returns to list only the first-choice rankings in ranked-choice contests. *See id.* § 711. But if first-choice rankings are the "votes" that must be quantified on municipal returns, the plain language of the Constitution provides that those votes alone determine the winner of elections for Governor, Senator, and Representative. Me. Const. art. IV, pt. 1, § 5; art. IV, pt. 2, § 4; art. V, pt. 1, § 3. L.D. 1666 cannot escape this logic by redefining "vote" in a manner that is inconsistent with the constitutional text.

The Maine Constitution's conception of a "vote" as a choice that must be discernable to and quantifiable by a local election official is another reason that *Kohlhaas* does not merit a reconsideration of the Justices' 2017 Opinion. The Alaska Constitution contains no similar provisions. *See* Alaska Const. art. II, § 3, art. III, § 3. Thus, when the Alaska Supreme Court opined that "there is no question that a ranked-choice vote is a single vote," *Kohlhaas*, 518 P.3d at 1122, it was doing so under a constitutional framework that offered no textual clues as to

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what is and is not a "vote." The Maine Constitution, with its intricate procedures for how "votes" are to be counted, does not provide the same sort of blank slate.

B. **Ranked-choice voting is inconsistent with the duty of municipal officials to "sort, count and declare" the vote.**

In 2017, the Justices declined to answer whether ranked-choice voting was also inconsistent with the constitutionally required process by which municipal officials "sort, count and declare" the vote. *Opinion of the Justices*, 2017 ME 100, ¶ 69, 162 A.3d 188. The incompatibility of these processes is another reason that the Justices should answer "no" to the Legislature's question.

As already discussed, centralized tabulation is a necessary feature of any ranked-choice election involving more than one municipality. This necessity is reflected in the rules requiring centralized ranked-choice tabulation. *See* 29-250 C.M.R. ch. 535, § 6. Thus, even if the "vote" in a ranked-choice contest could be understood as the full array of rankings expressed by each voter, as L.D. 1666 suggests, ranked-choice voting necessarily requires someone other than the local officials specified in the Constitution to "sort, count and declare" those votes. While the Secretary has proven that she can ably conduct such a centralized process, it is not the process required by the Constitution for the relevant elections.

Conclusion

The Attorney General urges the Justices to answer "no" to the question propounded by the Legislature.

Respectfully submitted,

March 6, 2026   AARON M. FREY
                                   Attorney General

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Counsel for the Attorney General

Report Name	**Summary Report**

Election Name	**General Election**
Election Date	**11.06.18**
Office Title	**Congressional District 2**

Candidate Names	Round 1			Round 2		
	Votes	Percentage	Transfer	Votes	Percentage	Transfer
Bond, Tiffany L.	16552	05.71%	-16552	0	00.00%	0
DEM Golden, Jared F.	132013	45.58%	**10427**	**142440**	**50.62%**	**0**
Hoar, William R.S.	6875	02.37%	-6875	0	00.00%	0
REP Poliquin, Bruce	**134184**	**46.33%**	**4747**	138931	49.38%	0
Ballot Exhausted						
By Overvotes	435		98	533		0
By Undervotes	6018		7820	13838		0
By Exhausted Choices	0		335	335		0
Continuing Ballots	289624		0	281371		0
TOTAL	**296077**		**0**	**296077**		**0**
Winning threshold by round	144813			140686		

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Total = Ballot Exhausted by Overvotes + Ballot Exhausted by Undervotes + Exhausted Ballot + Continuing Ballots

Winning Threshold = [Continuing ballots/(Vote for [number] +1)] + 1

"*" symbol signifies elimination due to Tie Resolution.