

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 FIVE MAINE VOTERS

In Response to the Court's Procedural Order
Dated February 11, 2026

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INTRODUCTION

Cara Ryan, Peter Sly, Alison Smith, Anna Kellar, and Alex Newell Taylor, being five registered and active voters of the State of Maine (the “Voters”), tender this brief in support of the constitutionality of the system of Ranked Choice Voting (“RCV”) established by 21-A M.R.S.A. §1 et seq. as the same would be modified and amended by L.D. 1666, currently before the Maine Legislature. This brief addresses only Question 2, the constitutionality of RCV, leaving Question 1, whether the inquiry from the Maine Legislature represents a “solemn occasion,” to the submissions of others.

All five Voters on whose behalf this Brief is filed are active registered voters of the State of Maine. They believe it is in their individual interests as voters and in the public interest that their preferences among candidates for elected office be given the maximum effect in the election process. In a two-candidate race, traditional single choice voting allows the voter to choose one of the two candidates. The choice of one candidate in such a race directly reflects the voter’s preference, as there is no other candidate to consider. However, in a multiple candidate race, single choice voting permits only a narrow expression of preference. It does not give the voter the ability to express a relative preference among the other candidates in the event that the voter’s first-preference candidate is not the preference of most of the other voters. RCV, as it would be modified by L.D. 1666, would enable voters to express their

preferences among all the candidates for Governor, State Senators, and State Representatives and to elect candidates who receive a plurality of the votes after the ranked preferences of all the voters are considered. That outcome maximizes the degree to which each voter's preferences dictate the result of the vote *and* satisfies Article V, Part First, Section 3; Article IV, Part First, Section 5; and Article IV, Part Second, Sections 3 and 5 of the Maine Constitution. Therefore, the Justices should find that RCV, as modified by L.D. 1666, would be constitutional.

STATEMENT OF INTERESTS

Voter Cara Ryan is a resident of Bar Harbor, Maine. She believes that RCV provides a healthy dynamic that incentivizes her to pay closer attention to the positions of the entire field of candidates and provides her an opportunity to fully express her preferences regarding those candidates in the ultimate vote.

Voter Alex Newell Taylor is a resident of Southwest Harbor, Maine and has been voting in Maine since 2010. Her first experience with a multiple candidate statewide election was a three-way statewide race that ended up with a winner who received less than forty percent of the vote. She agonized over which way to cast her vote, and in the end, felt that all her choice did was to generate the one outcome she *did not* want.

Voter Anna Kellar is a resident of Portland, Maine and has experienced how the power of ranking preferences in Portland City Council elections greatly enhances the voting experience. The process of ranking has encouraged them to become educated about all the candidates and weigh the pros and cons of each one.

Voter Peter Sly is a resident of Brooklin, Maine. He participated in the Second District congressional election in 2024 and believes that RCV best respects voters' preferences in a multi-candidate election while ensuring that a candidate can be elected to office by a plurality of the actual votes of all of the participating voters.

Voter Alison Smith is a resident of Portland, Maine. She has participated in ranked choice elections for City Council. In some elections she has expressed a preference for just one candidate, while in others she has ranked several. In both cases she greatly appreciates the opportunity to express preferences among all of the candidates seeking election.

ARGUMENT

For the reasons set forth in greater detail below, the Voters submit that RCV would elect candidates for Governor, Senator, and Representative by pluralities of the votes returned in accordance with Article V, Part First, Section 3; Article IV, Part First, Section 5; and Article IV, Part Second, Sections 3 and 5, respectively, of the Maine Constitution. That is because each ranked choice ballot sets forth a voter's

preferences among the candidates running for office but ultimately counts as only one vote that gives the voter's preferences practical effect.

Under RCV, voters' preferences are tallied in a series of steps to determine which candidates are viable in terms of cumulative voter preferences and which candidates are not. As non-viable candidates are eliminated, the preferences marked on each ballot continue to count towards the election of any remaining viable candidate ranked on the ballot. Counting is stopped once the number of these "continuing candidates" has been reduced to two. At that point, the continuing candidate ranked highest on the most ballots wins and it is also mathematically impossible for any other candidate to receive more votes in the election. The result of this process is that the candidate who receives a plurality of all votes cast wins the election. Maine's system of RCV, as it would be clarified and revised by L.D. 1666, conforms to Maine's Constitutional requirement that candidates be elected by a plurality while offering its citizens the opportunity to express preferences among all the candidates.

A. Ranked Choice Voting, per L.D. 1666, Would Enable Voters to Express Ranked Preferences for all the Candidates in a Multi-Candidate Election.

The process of selecting political leaders in Maine and the United States is based on the principle that voters should be enabled to choose their political leaders

based on their respective preferences among the available candidates as expressed through their ballots.

If there are only two candidates on an election ballot, the expression of a voter's preference and the vote for a candidate are one in the same. Each voter states a preference between the two, which dictates the outcome of the vote. There are no other preferences that could be stated. The person who receives more votes than the other is elected. The ballot presents the voter with a single choice, which the voter makes by endorsing the preferred candidate between the two contenders.

It is a little more complicated if there are multiple candidates running for the same office. In those cases, many voters are likely to have a series of preferences based on which candidates appear on the ballot. While a voter may have a favorite candidate, if that candidate cannot be elected, the voter is likely to have significant preferences among the other candidates who may turn out to be more viable than the candidate whom the voter initially preferred. To ensure that the ultimate vote in the election reflects a voter's preferences regarding the slate of candidates, there must be some means for that voter to express those preferences that will be considered when the vote is tabulated.

The traditional "single choice" ballot permits a voter only to name the voter's first preference among all the candidates on the ballot. It does not permit a voter to

state the voter's preference among candidates other than the first preference. In that sense the ballot fails to capture the actual preferences of the voter.

By way of example, Voter Newell Taylor participated in a recent Maine multi-candidate election governed by single-choice voting. She had a favorite candidate who she knew was unlikely to win, and she also had a strong preference among the more viable, "frontrunner" candidates. In this election, the single-choice voting method prevented her from being able to fully express her preference for the candidate less likely to win without thereby taking her vote out of the race. She agonized over which way to cast her vote and was ultimately left feeling like her single choice did not (and could not) contribute to the results in a way that reflected her views. Ultimately, the candidate least preferred by Voter Newell Taylor was elected based on less than forty percent of the voters who participated in the election and without that vote fully reflecting the preferences of Voter Newell Taylor. She ended up feeling like her choice had led to the one outcome she did not want.

Had the RCV system, as it would be modified by L.D. 1666, been in effect, Voter Newell Taylor would have had the opportunity to express her preferences on the ballot fully and have her one vote counted in a way that made her proud of her vote and feel more invested and included in the final election results. Her second-choice preference in the event that her first choice turned out to be unelectable would have been tallied along with the preferences of those voters who had identified that

candidate as their first preference. The winner in the election would have been the candidate who received the most statements of preference of all of the voters who participated in the election and the candidate who was ultimately the most preferred candidate of the entire slate.

Voters' ability to express their preferences among all the candidates on the ballot is most important in an election where there are candidates with a range of political views. A voter whose initial preference would be for a candidate on either extreme of the range is likely to have a second preference for a candidate in the middle over the candidate at the other extreme. By limiting the voter's opportunity to express a preference to a single candidate, this important second preference is not factored into the ultimate vote, which can lead to an extreme candidate being elected by the expressed preference of a minority of the voters.

Voter Kellar has participated in a recent Maine election where they tried to make a strategic decision about their early absentee vote based on what polls said at the time in order to avoid what they viewed as a "worst case" outcome. By Election Day the polls had changed, and they felt like their vote had been wasted. RCV would have allowed Voter Kellar to better account for the possibility of evolving polling by ranking their preferences. *See Kohlhaas v. State*, 518 P.3d 1095, 1123 (Alaska 2022) ("Ranked-choice voting allows a voter to account somewhat for the

uncertainty of others' behavior by permitting a choice of second- and third-place candidates.”).

In those elections where RCV is currently used, Maine voters are not forced to face the same kinds of limitations. For example, in the 2024 Second District U.S. Congressional election, there were three candidates: Jared Golden, Diana Merenda, and Austin Theriault. Voter Sly participated in that election, in which each voter had the opportunity to express a preference among any combination of the three candidates via the RCV system adopted by Maine citizens' referendum in 2017. His initial preference was for Diana Merenda, with a second preference for Jared Golden. Inspection of the ballots cast indicated that 196,189 voters identified Golden as their first preference, 194,030 voters initially preferred Theriault, 420 initially preferred Merenda, and 12,635 ballots were returned without a first preference.¹ Without looking to second and third choices, it would be impossible to know whether Golden or Theriault was preferred by more voters. Once Merenda was eliminated and her first preference voters' second preferences were considered, it became clear that more voters preferred Golden over Theriault, and Golden was declared the winner of the election. Voter Sly felt vindicated in that his preference for Golden over Theriault was given effect after it was clear that Merenda could not win the election.

¹ See Maine Department of the Secretary of State, Election Results 2024, <https://www.maine.gov/sos/elections-voting/election-results-data/election-results-2024#ranked>.

It should be noted that the RCV system in this instance produced a winner based on a plurality of votes returned, but not a majority. More than three percent of the ballots returned expressed no preference between Golden and Theriault. Those voters' ballots were still counted and their preferences were still registered.

RCV, as it would be implemented by L.D. 1666, would provide voters with the maximum opportunity to express their preferences for their political leaders, and is distinctly more effective than the traditional single choice system. In the words of the U.S. Court of Appeals for the Ninth Circuit in *Dudum v. Arntz*, 640 F.3d 1098 (2011):

[RCV] systems eliminate the need for a separate runoff and ordinarily will result in the election of a candidate with more widespread support than would simple plurality voting. . . [RCV] systems also tend to produce fewer votes cast only for losing candidates—in academic parlance, “wasted votes”—than does straight plurality voting, because votes that would otherwise be cast for losing candidates can be redistributed to candidates with a chance of winning. Likewise, [RCV] systems “allow[] the voters more say over who they want to represent them: if it is not to be their first choice, then they can choose a second.”

640 F. 3d at 1104 (citations omitted).

B. Ranked Choice Voting per L.D. 1666 Would Elect the Candidate Who Receives a Plurality of the Votes Returned.

The Maine Constitution provides that the office of Governor, Senator, or Representative is filled by the candidate who receives “a plurality of all votes returned” (in elections for Governor and the House of Representatives), or “a

plurality of all votes in each senatorial district” (in elections for the Maine Senate). Me. Const., Art. IV, Pt. 1st, § 5; Art. IV, Pt. 2d, §§ 3,5; Art. V, Pt. 1st, § 3. “Plurality” means “more than any other candidate.” There is no requirement that the ultimate victor receive a “majority” of all votes returned. The focus instead is on the relationship of the votes cast to each other, not on the total votes cast by all participants.

Maine’s RCV system, as it would be revised by L.D. 1666, would require officeholders elected under that system to be elected by receiving “a plurality of the votes cast” in their respective elections. The modified RCV system thus would comply with the requirements of the Maine Constitution.

This conclusion is based on the following reasoning. With single-choice voting, a voter’s single expression of preference is counted as the voter’s vote. Those single expressions of preference can be added up in one step, and the candidate who receives the most expressions of voter preference wins the election. As indicated above, in a two-candidate election, every voter is expected and required to make a single choice between the two candidates, so the winner by plurality does reflect the choice of all the voters.

As is also indicated above, in a multiple candidate election, a single choice ballot does not result in all of the voters participating in the choice of the candidate, either for or against the candidate’s nearest rival. An RCV ballot, on the other hand,

gives each voter the opportunity to express a preference with respect to *all* of the candidates. Those ranked expressions of preferences are added up in steps to determine which candidates are viable (and which are not), but when the count is complete the result is the same: the candidate who receives the most expressions of voter preference wins the election.

The key is that under the RCV system, as it would be modified by L.D. 1666, voters would be able to list their preferences, first, second, third, etc., among the candidates on the ballot. When the ballots are counted, the first preferences are tallied. While that may result in a candidate receiving a larger number of first preferences than any fellow candidate, there is no way to determine whether that candidate has received the most preferences among all the voters unless that candidate has received more first preference indications than all of the other candidates combined. If a candidate has received more first preferences than all of the others combined, or otherwise stated, more than half of all of the first preferences expressed, it is mathematically impossible for any other candidate to receive as many or more statements of preference. If that happens, the candidate with more than half of first preferences stated will always be the candidate receiving more votes than anyone else, i.e., a plurality.

If no candidate has received more than half of the indications of first preference, then it is possible that a candidate other than the first preference leader

has been preferred by a larger number of voters. Some voters who did not list a candidate as first preference may have done so as second preference in the event that their first preferred candidate turned out to be other than the plurality choice. On the other hand, it is highly unlikely that the candidate who receives the least number of first preference indications could end up with more voter preferences than any other. That candidate is then eliminated, and the second preferences of the voters who initially favored that candidate can be inspected. Those preferences are added to the first preferences for the remaining candidates.

Under the counting procedure followed in Maine, counting continues in steps with the least-favored candidates being progressively set aside and their second preferences allocated to the remaining candidates until the number of “continuing candidates” is reduced to two. Of these, the candidate preferred by the most voters (a plurality) is declared the winner.

Take for example, the Portland City Council election in 2024. The ballot for the at-large seat on the Council included five candidates: Ben Grant, Jessica Falero, Brandon Mazer, Grayson Lookner, and Jacob Viola. Voters completed 33,658 ranked choice ballots. A review of the voters’ first preferences indicated that Ben Grant was the first preference of 7,906 voters, Jessica Falero of 7,811 voters, Brandon Mazer of 7,246 voters, Grayson Lookner of 5,593 voters, and Jacob Viola of 4,882 voters. On the remaining 220 ballots, voters’ first preferences were for

write-in candidates.² No candidate was preferred by more than all of the other candidates combined, so it was not possible to determine which one would receive a plurality of the votes by considering only the voters' initial preferences.

Inspection of the second preferences of the write-in voters yielded very slight changes in the respective total.

Because Jacob Viola was the least-preferred declared candidate, he was then removed from further consideration and the second preferences of those voters who had ranked him as their first preference were added to the tallies of the other continuing candidates. At that point in the counting process, 8,610 voters preferred Ben Grant, 8,262 preferred Jessica Falero, 8,699 preferred Brandon Mazer,³ and 5,932 preferred Grayson Lookner. It was still impossible to say for sure who would have the most preferences from the electorate as a whole.

After five steps of tallying voter preferences, the number of continuing candidates was reduced to two, Ben Grant with 13,668 preferences and Jessica Falero, with 11,638. Ben Grant, who received more expressions of preference than any other candidate, was the winner.

² Information about the RCV tabulations for the Portland 2024 City Council Election is from the City of Portland's website: <https://content.civicplus.com/api/assets/me-portland/eed038bf-1dd9-4e8c-ad1a-2c0478e5e839?cache=1800> (viewed on 3/1/26).

³ At this point Brandon Mazer had received the most preferences, but still not enough so that it was impossible for another candidate to receive more.

Portland Voter Kellar had expressed their first preference for Jessica Falero, who retained the second largest number of expressed preferences until the last round of the ballot review. In that round, in which the second choices of voters who had expressed a first choice of Brandon Mazer were reviewed, the second preferences of all voters who had expressed a first preference for each of the other candidates other than the two leaders had been included in the cumulative totals. Enough of the Mazer first-preference voters expressed a second preference for Ben Grant to give Grant a plurality of all the expressions of preference in comparison with Jessica Falero, the other continuing candidate. At that point, the tally reflected voters' *final* expressions of preference – and the candidates for whom voters *ultimately* wanted their votes to count. Based on this final vote count, Ben Grant, having more votes than anyone else, was declared the winner. Since Ben Grant was Anna Kellar's own second preference, this was an outcome that reflected the preferences they expressed on their ballot.

In this election, Voter Smith expressed a preference for only one candidate: Ben Grant. The RCV system that would be implemented by L.D. 1666 would not require a voter to express preferences among all of the candidates. Voter Smith's first preference turned out to receive a plurality of the preferences reviewed and hence won the election. But had she initially preferred one of the other candidates

without stating any further preferences, her vote would have still counted – it would simply count for one of the eliminated, losing candidates.

C. The L.D. 1666 Ranked Choice Voting System Explicitly Differentiates Between Preferences and Votes and Elects a Candidate by a Plurality of Votes.

As discussed above, under the L.D. 1666 version of RCV, each Maine voter would continue to have one vote, which would be ascertained and tabulated according to a system designed to make sure that the voter has the opportunity to evaluate and express a preference with respect to every candidate in a multi-candidate election. The expressions of preferences in the various “rounds” of an RCV election are just that: expressions of preference based on the roster of candidates under consideration ranked in order of preference. A voter’s actual vote is that expression of preference that will give one of the candidates a plurality of the preferences recorded.

It is important to differentiate between expressions of a voter’s preference in the various steps of counting a ranked choice ballot and the voter’s actual vote that is recorded when the ranked choice counting finally identifies the most-preferred candidate. At that point, and not before, each voter’s expression of preference become a vote, the voter’s only actual vote in the election. *See, e.g.,* FEC Advisory Op. 2024-12 (Sept. 19, 2024); *Kohlhaas*, 518 P.3d at 1121.

The L.D. 1666 focus on a voter's final, effective vote is to be contrasted with the notion that RCV gives each voter several votes that are passed out among the candidates until a candidate receives a majority. That was the impression given the Justices of this Court in 2017 when it considered the constitutionality of what is now 21-A M.R.S. A. §1 et seq. prior to the proposed revisions in L.D. 1666. *See generally Opinion of the Justices*, 2017 ME 100, 162 A.3d 188. It is not surprising that the Court was then of the view that RCV, as then understood, would not satisfy the requirements of the Maine Constitution.

L.D. 1666 would amend and clarify Maine's existing RCV system in two important respects to render it constitutional without a doubt:

1. It would make clear that a voter's preference as checked in each "round" of an RCV count is to be regarded as an expressed *preference* and that each voter has only a single actual *vote*, which would become effective only in the final "round" at the end of the count; and
2. The RCV system would elect a candidate by a plurality of votes (more votes than any other candidate). A majority is not required. The plurality is determined by considering the preferences expressed by all voters, including those voters who only expressed earlier preferences for candidates who turned out to be unelectable.

The concern expressed in paragraph 67 of the 2017 Opinion is directly addressed by the demonstration that winning the election is indeed based on receiving a plurality of the expressed preferences of all the voters tabulated at the point where one candidate has been preferred in the first “round” by more voters than all others combined or at the point when the number of continuing candidates had been reduced to two. As mentioned above, in more than one recent RCV election in Maine, a candidate has been elected by a plurality without receiving a majority of all of the votes cast. LD 1666 would clarify that this is a core feature of the RCV system.

If the approach of the Court in the 2017 *Opinion of the Justices* is applied to the RCV system as it would be amended by L.D. 1666, these changes in the law lead to only one reasonable conclusion—that the RCV system *would* fulfill the Maine Constitutional requirement that the Governor, Senators, and Representatives be elected by a plurality of all the votes returned.

CONCLUSION

Maine Voters Cara Ryan, Peter Sly, Alison Smith, Anna Kellar, and Alex Newell Taylor respectfully submit that Maine’s system of Ranked Choice Voting as described and modified by L.D. 1666 would empower Maine voters in multi-candidate elections by permitting them to state preferences among all the candidates

thus ensuring that the people whom they elect to office are supported by the preferences of the greatest number of voters. By the same token, the system would ensure that candidates for Governor, Maine Senate, and Maine House of Representatives are elected by a plurality of actual votes. L.D. 1666 would thus comply with the requirements of the Maine Constitution. The Voters respectfully request that the Court answer Question 2, “Yes!”

Respectfully Submitted,

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