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 LEAGUE OF WOMEN VOTERS OF MAINE

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

David M. Kallin, Bar No. 4558
Oliver Mac Walton, Bar No. 6340
Melissa A. Hewey, Bar No. 3587
Drummond Woodsum & MacMahon
84 Marginal Way, Suite 600
Portland, ME 04101-2480
Tel: (207) 772-1941
dkallin@dwmlaw.com
owalton@dwmlaw.com
mhewey@dwmlaw.com

Attorneys for
League of Women Voters of Maine

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions

Cases

Statutes & Public Laws

Legislative Documents

Other Authorities

INTRODUCTION AND STATEMENT OF INTEREST

The League of Women Voters of Maine submit this brief in response to the Court's Procedural Order dated February 11, 2026. The League of Women Voters of Maine is a nonpartisan civic organization that promotes informed participation in government and advances public policy through education and advocacy. Its study of ranked-choice voting contributed to the public debate preceding the 2016 ballot question.

BACKGROUND

The applicable facts are set out in the question presented. In short, the Legislature asks whether an act currently pending before it—which would amend the statutes on ranked-choice voting and implement it for the offices of State Senator, State Representative, and Governor—conforms with the plurality provisions of the Maine Constitution.

The history of ranked-choice voting (RCV) in Maine is long and deep. As relevant here, in 2016, the voters approved a measure entitled An Act to Establish Ranked-Choice Voting. *See* IB 2015, ch. 3 (the "2016 Act"). In 2017, the Justices opined that the 2016 Act, as applied to the elections for Representative, Senator, and Governor, conflicted with the plurality provisions of the Maine Constitution. *See generally Opinion of*

the Justices, 2017 ME 100, 162 A.3d 188 (the "2017 Opinion"). Subsequently, those offices were removed from the list to which ranked-choice voting applies. *See* P.L. 2017, ch. 316, as amended by people's veto on June 12, 2018; *see generally Me. Senate v. Sec'y of State*, 2018 ME 52, 183 A.3d 749. Starting with the June 12, 2018 primary elections, Maine has conducted numerous elections for other offices using ranked-choice voting, and the statutes governing the conduct of elections have been amended multiple times.[1] This constitutional issue has never been adjudicated by the Law Court in a binding precedent, and the Legislature now seeks advice on a new a distinct piece of proposed legislation entitled An Act to Include in the Ranked-choice Election Method for General and Special Elections the Offices of Governor, State Senator and State Representative and to Make Other Related Changes (as amended by Committee Amendment B, "L.D. 1666").

Pursuant to Article VI, Section 3 of the Maine Constitution, the Legislature asks the Justices to answer one question on whether counting a plurality of the votes cast through the use of ranked-choice

[1] *See* P.L. 2025, ch. 363; P.L. 2021, ch. 273, § 1 (repealing and replacing 21-A M.R.S. § 1(27-C)); P.L. 2019, ch. 320 (An Act to Clarify Ranked-choice Voting Laws); P.L. 2019, ch. 539; P.L. 2017, ch. 316.

voting, as amended by L.D. 1666, conforms with the provisions of the Constitution of Maine for the general election of Governor, State Senator, and State Representative (the "Question"). This Court, by Procedural Order dated February 11, 2026, invited briefs on two issues:

1. Whether the Question propounded presents a "solemn occasion," pursuant to Article VI, Section 3 of the Maine Constitution; and
2. The law regarding the Question propounded.

THE QUESTION PRESENTS A "SOLEMN OCCASION"

The Legislature here seeks the Justices' advice regarding the constitutionality of pending amendments to the election process for the offices of Governor, State Senator, and State Representative. These amendments would apply to the elections slated for November of this year—just six months hence. The Justices previously determined that questions surrounding the 2016 Act (which had already been enacted through citizen initiative and was already effective at the time of the 2017 Opinion) presented a solemn occasion and should so find here.[2]

The Justices have historically "provided Advisory Opinions when the House, Senate, or Governor seeks an opinion as to the

[2] The other "constitutional prerequisites"—"standing" and an "important question of law"—are easily satisfied here. *Opinion of the Justices*, 2017 ME 100, ¶¶ 18-20, 36-38, 162 A.3d 188.

constitutionality of legislation currently pending before that body." *Opinion of the Justices*, 2017 ME 100, ¶ 29 & n.29, 162 A.3d 188 (collecting cases). That is true here, and as with those prior Opinions, the overlapping "guideposts" used to determine whether to issue an advisory opinion, here all counsel in favor of answering the questions. *Id.* ¶ 21.

First, the Question addresses a "matter applicable to the general public rather than private parties," and is not subject to the tug of litigation. *Id.* ¶ 28. *Second*, it is specific and limited, does not implicate facts or provisions of law beyond those included in the Question, and is not overly complex. *See id.* ¶¶ 26-27, 39; *Opinion of the Justices*, 2012 ME 49, ¶ 9, 40 A.3d 930. The factual and legal landscape is perhaps dense, but it is not complicated—the relevant historical facts are linear, unambiguous, and undisputed. *See Opinion of the Justices*, 2012 ME 49, ¶ 9, 40 A.3d 930. *Third*, the Legislature seeks advice on a matter of live gravity, which is not tentative or remote, *see Opinion of the Justices*, 2017 ME 100, ¶¶ 22-23, 25, 162 A.3d 188; the Question is predicated on the Legislature enacting the measure without change, which would then control the tabulation of ballots in the November 2026 elections for Governor, State Senators, and State Representatives. *Fourth*, the

Justices have regularly concluded that questions on the constitutionality of legislation constitute a solemn occasion if it is currently pending before the body asking the question, particularly if it would render a significant or substantial legal change, *e.g.*, *Opinion of the Justices*, 560 A.2d 552 (Me. 1989); *Opinion of the Justices*, 501 A.2d 16 (Me. 1985); *Opinion of the Justices*, 437 A.2d 597, 604 (Me. 1981); *Opinion of the Justices*, 355 A.2d 341, 390 (Me. 1976); *cf. Opinion of the Justices*, 2017 ME 100, ¶ 20, 162 A.3d 188; here, L.D. 1666 is pending before the Senate, having been passed to be enacted by the House on February 10, 2026.

Finally, that the Justices issued the 2017 Opinion bolsters the conclusion that this is a solemn occasion. While the Justices' Advisory Opinions are "not binding" and "have no conclusive effect,"[3] they carry

---

[3] *Opinion of the Justices*, 2023 ME 34, ¶ 9, 295 A.3d 1212. As the Justices explained in 1961:

> The opinion given is the opinion of each justice as an individual. It is not the opinion of the Supreme Judicial Court. The fact that justices often, and perhaps usually, join in one opinion does not alter the fact that the opinion is not that of the Court, but of each justice. . . . In an advisory opinion there is no decision; there is no binding precedent.

Opinion of the Justices, 157 Me. 152, 158, 170 A.2d 652 (1961) (quotation marks omitted); *see also Opinion of the Justices*, 396 A.2d 219, 223 (Me. 1979). The Justices issue advisory opinions, including the 2017 Opinion, on a short timeline, with limited briefing and no opportunity for factual development. *See generally Opinion of the Justices*, 157 Me. at 159 (summarizing the "advantages and disadvantages of advisory opinions"). In issuing such opinions, the Justices do not, and constitutionally cannot, resolve potentially disputed or thorny legal questions for all time; rather, the purpose of such advisory opinion is to "provide necessary guidance and analysis for decision-making by the other branches of government." *Opinion of the Justices*, 2023 ME 34, ¶ 9, 295 A.3d 1212.

significant institutional weight. As a result, it is likely that if the Justices do not opine on L.D. 1666, that inaction could be interpreted as a directive that the 2017 Opinion settled the issues related to L.D. 1666—even though it addressed a different enactment with materially different language and the legal landscape has changed in the interim.

More broadly, the law has developed in Maine and elsewhere regarding ranked-choice voting. At least one court in another jurisdiction has held, in a precedential decision, that ranked-choice voting does not conflict with a constitutional "plurality" provision. *See Kohlhaas v. State*, 518 P.3d 1095 (Alaska 2022). The Federal Election Commission has also issued an opinion addressing Maine's RCV process and concluded that "Maine law supports the determination that the entire RCV process is a single election." FEC AO 2024-12, at 5 (Sept. 19, 2024). The legal landscape is not the same as when the Justices issued the 2017 Opinion, and L.D. 1666 responds to the concerns raised in that Opinion and subsequent developments in the law.

Under these circumstances, failing to opine would be inconsistent with the mandatory language setting forth the Justices' constitutional duty, s*ee* Me. Const. art. VI, § 3, and the Justices should so opine.

THE LAW REGARDING THE QUESTION PROPOUNDED

I. The Question Should Be Answered in the Positive.

Under our Constitution, "[t]he power granted to the Legislature . . . is plenary and subject only to those limitations placed on it by the Maine and United States Constitutions." *League of Women Voters v. Sec'y of State*, 683 A.2d 769, 771 (Me. 1996). Thus, "'[t]he Legislature of Maine may enact any law of any character or on any subject unless it is prohibited, either in express terms or by necessary implication, by the Constitution of the United States or the Constitution of this State.'" *Id.* (quoting *Baxter v. Waterville Sewerage Dist.,* 146 Me. 211, 215, 79 A.2d 585, 588 (1951)); *see also Town of Warren v. Norwood,* 138 Me. 180, 24 A.2d 229, 235 (1941).

Elections for State Senators, State Representatives, and Governor must be determined by a "plurality of all votes returned." Me. Const. art. IV, pt. 1, § 5 (representatives); *see also* Me. Const. art. V, pt. 1, § 3 (governor) ("by plurality of all of the votes returned"); Me. Const. art IV, pt. 2, § 4 (senators) ("by a plurality of the votes"). The Maine Constitution does not further define that phrase or its constituent parts.

Ranked-choice voting, as implemented by L.D. 1666, does not violate these plurality provisions. A ranked ballot is a single vote that expresses multiple preferences. This counting method identifies the candidate who receives a plurality of votes after the preferences expressed by voters—including ballots with multiple rankings and ballots with only a single ranking—have been sorted and tabulated. This process is entirely consistent with the Constitutional text: nothing in the words "plurality" or "vote" prohibits the Legislature from allowing a voter to express a more nuanced set of contingent preferences or to declare the plurality winner after a ranked choice count of these votes. Additionally, by capturing a more accurate expression of voter intent, the ranked-choice voting system set forth in L.D. 1666 in fact honors, rather than undermines, the purpose and intent of the "plurality" provisions.

The answer to the Question propounded is "Yes."

A. Background Legal Principles Support the Conclusion that L.D. 1666 Is Constitutional.

General principles of constitutional interpretation, judicial review of legislative enactments, and the right of the People to choose their government all lead to the conclusion that L.D. 1666 is constitutional.

1. The Legislative Power, Including the Express Power to Prescribe the Conduct of Elections, is Plenary Unless Expressly Limited by the Constitution.

Legislative power is "absolute and all-embracing except as expressly or by necessary implication restricted by the Constitution." *Town of Warren*, 24 A.2d at 235 (quotation marks omitted); *see also Opinion of the Justices*, 623 A.2d 1258, 1262 (Me. 1993) ("Legislative power is defined by limitation, not by grant, and is absolute except as expressly or by necessary implication restricted by the Constitution.").

A legislative enactment is presumed to be constitutional and will be invalidated "only if there is a clear showing by 'strong and convincing reasons' that it conflicts with the Constitution." *Opinion of the Justices*, 623 A.2d at 1262 (quoting *Laughlin v. City of Portland*, 111 Me. 486, 489, 90 A.3d 318 (1914)). If a "reasonable interpretation which would satisfy constitutional requirements" exists, the Court is "bound to adopt that interpretation as it sustains the statute." *Portland Pipe Line Corp. v. Envtl. Imp. Comm'n*, 307 A.2d 1, 15 (Me. 1973); *see also Rideout v. Riendeau*, 2000 ME 198, ¶ 14, 761 A.2d 291.

The Court and the Justices have consistently applied this principle to uphold enactments challenged on constitutional grounds. *See, e.g.*,

Opinion of the Justices, 119 Me. 603, 113 A. 614, 616-17 (1921) (nothing in the Constitution restricts the Legislature from authorizing the appointment of women as justices of the peace notwithstanding the absence of express language permitting it); *Opinion of the Justices*, 133 Me. 525, 178 A. 621, 622-23 (1935) (Justices unanimously concluded that since Amendment 36 of the Constitution did not prohibit the Legislature from imposing taxes other than those on real and personal property, the Legislature was left "free to impose other taxes"); *see also Opinion of the Justices*, 255 A.2d 655, 665 (Me. 1969) (same).

Perhaps most directly relevant here is the pair of decisions relating to term limits. The Justices there concluded that while the Maine Constitution imposed certain qualifications for representative or senator, there was no express prohibition against the Legislature enacting additional qualifications for these offices, nor did the presence of some qualifications in the Constitution deprive the Legislature of that power by necessary implication. *Opinion of the Justices*, 623 A.2d at 1262-63. The Court reaffirmed that view unanimously in *League of Women Voters*, 683 A.2d 769. There, candidates and others brought a challenge in federal court to the *application* of term limits. The

federal court certified a question almost identical to the ones posed by the Senate here: could term limits be enacted by legislation or only by constitutional amendment? The Court unambiguously and unanimously concluded that nothing precluded this exercise of the people's legislative power:

> When the people enact legislation by popular vote, we construe the citizen initiative provisions of the Maine Constitution liberally in order to facilitate the people's exercise of their sovereign power to legislate. . . . The exercise of initiative power by the people is simply a popular means of exercising the plenary legislative power "to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State . . . ."

Id. at 771 (quoting Me. Const. art. IV, pt. 3, § 1).

As the term limits cases make clear, the principle of plenary legislative authority applies with full force when it comes to structuring elections. *Cf. Burdick v. Takashi*, 504 U.S. 428, 433 (1992) ("Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections."). The Legislature's inherent—and inherently flexible—authority to regulate the conduct of elections is reinforced by Article II, Section 5 ("*Voting machines*, or other mechanical devices for voting, *may be used at all elections under such regulations as may be prescribed by law*." (emphasis

added)), and Article IX, Section 12 ("*The Legislature may by law* authorize the dividing of towns into voting districts for all state and national elections, and *prescribe the manner in which the votes shall be received, counted, and the result of the election declared*." (emphasis added)).

Broad Legislative authority in the context of elections has long been recognized and reaffirmed. *See, e.g.*, *White v. Edgar*, 320 A.2d 668, 687 (Me. 1974) (holding that Article II, Section 4 "leaves to the Legislature" to determine the reasons for which an elector may be permitted to vote absentee); *Opinions of the Justices*, 70 Me. 560, 561 (1879) (Legislature can statutorily authorize other evidence than that directed by the Constitution of what persons "appear to be elected" representatives to the legislature "by a plurality of all the votes returned."); *Bacon v. York Cty. Comm'rs*, 26 Me. 491, 498 (1847) (holding that county commissioners did not have authority to inquire into propriety of town meeting at which votes were counted, because the "legislature have thought it expedient to provide" that "[town ballot] returns shall be the only evidence from which to determine what person" is elected); L.D. 1394 at 5 (101st Legis. 1963) (1963 Constitutional Commission noting the "authority and

responsibility of the Legislature to determine the individual receiving the largest number of votes for the office of Governor").

2. Constitutional Provisions Are Interpreted by Considering Their Plain Language, History, and Purpose.

In interpreting a constitutional provision to determine whether there are strong and convincing reasons that a legislative enactment conflicts with it, the Justices "look primarily to the language used which may be illumined in cases of doubt by the surrounding circumstances." *Farris ex rel. Dorsky v. Goss*, 143 Me. 227, 230, 60 A.2d 908 (1948). In reading constitutional text, the Justices "seek the meaning which the words would convey to an intelligent, careful voter." *Allen v. Quinn*, 459 A.2d 1098, 1100 (Me. 1983) (quotation marks omitted). In so doing, "[c]onstitutional provisions are accorded a liberal interpretation in order to carry out their broad purpose, because they are expected to last over time and are cumbersome to amend." *Id.* at 1102.

3. The Right to Vote is Sacred, and Constitutional Provisions Governing Elections Must Be Interpreted to Best Ascertain the People's Will.

The Justices should be particularly cautious before concluding that the Constitution prevents a method of voting—like ranked choice voting—that provides a more complete expression of voter intent,

identifies a popular winner with the broadest support in a single election, and which has been doggedly pursued by the People (through initiative) and by the Legislature. "The object of the constitutional provisions respecting elections is to furnish as many safeguards as may be against a failure, either through fraud or mistake, correctly to ascertain and declare the will of the people as expressed in the choice of their officers and legislators." *Opinions of the Justices*, 70 Me. at 561.

It is a "fundamental principle of our representative democracy" that "the people should choose whom they please to govern them." *Powell v. McCormack*, 395 U.S. 486, 547 (1969) (quotation marks omitted); *see also Crafts v. Quinn*, 482 A.2d 825, 830 (Me. 1984). Because the right to vote is "preservative of all rights," *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886), it is "considered as one of the most sacred parts of" the constitution, *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 795 (1995) (quotation marks omitted).

B. The Maine Constitution Does Not Restrict the Legislature's Authority to Enact Ranked-Choice Voting

Applying the foregoing principles, L.D. 1666 does not violate the Constitution's "plurality" provisions. The history and purpose of those provisions, the plain meaning of the terms "plurality" and "votes," and

the tabulation mechanisms prescribed in L.D. 1666 all compel the conclusion that L.D. 1666 conforms with these provisions.

1. The Plurality Provisions Were Intended to Remove the Majority Threshold that Could Lead to a Failed Election, Not to Restrain the Manner in Which Voters Express Their Preferences in a Single Election.

The history and purpose of the plurality provisions were amply aired in the 2017 Opinion. As originally established in 1820, "the Maine Constitution provided for the election of Senators, Representatives, and the Governor by a majority vote." *Opinion of the Justices*, 2017 ME 100, ¶ 61, 162 A.3d 188. If no candidate received a majority of the votes, the election failed and alternative means were used: for the office of Representative, this meant holding a "series of new elections until a candidate won a majority," and for the offices of Senator and Governor, it meant election by the other members of the Legislature in different ways. *Id.* ¶ 62.

In the mid-1800s, several elections "yielded no candidate who achieved a majority vote," *id.*, thus resulting in many failed elections that required the use of these time-consuming or undemocratic alternatives. The result, as the Justices explained in the 2017 Opinion,

> was widespread discontent – and, in 1879, threats of violence, which were quelled by the efforts of Joshua Chamberlain – caused by the expense and delay of holding repeat elections, by the election of candidates through legislative action rather than based on the will of the people, and by the claims of manipulation and allegations of self-dealing levied by opponents of the eventually-declared winners.

Id. ¶ 63. It is undisputed that the plurality provisions were enacted to address this disorder. They do so by removing the "majority" threshold that could lead to a failed election and ensuring that there is a single election where the person with the most votes wins. These plurality provisions do not go further to mandated "single choice" counting to the exclusion of "ranked choice" counting as the only allowable method of determining who has the most votes.

The benefits of removing a threshold that could lead to a failed election were more than mere convenience. The electoral dysfunction caused by the majority threshold had actively disenfranchised voters by invalidating the elections where there was no majority and transferring those elections from the People to a small cohort of elite politicians. Eliminating the majority threshold, and therefore the possibility for a failed election meant that the right to vote—the sacred right to choose the State's leaders—would remain in the People's hands: one election,

where the person with the most votes wins. L.D. 1666 is faithful to the history and purpose of the plurality provisions.

Indeed, two principles can be derived from this history, which illuminate the proper interpretation of the plurality provisions. *First*, the plurality provisions are fundamentally pro-democratic. They aim to elicit, not to stifle, the People's expression of choice in leaders. *Second*, the plurality language must be read in contradistinction to the predecessor "majority" threshold that could result in a failed election. So long as the winner is the candidate who receives the most votes in a single election (*i.e.*, a plurality)—regardless of whether the winning candidate attains a majority—the plurality provisions are satisfied. In this historical light, the plurality provisions should be seen to loosen, not stiffen, the constitutional constraints on the Legislature's plenary power to control the conduct of a single election in which the constitutional "electors" express their popular preference to elect their leaders.

2. A "Vote" is the Constellation of Contingent Preferences—the Ballot—Not Just the First-Choice Mark.

The Maine Constitution does not define or limit the term "vote," and the plain meaning of the word does not preclude the use of a ranked-choice method of tallying preferences on a single ballot. Black's Law

Dictionary defines "vote" broadly as "the expression of one's preference or opinion in a meeting or election by ballot, show of hands, or other type of communication." Vote, BLACK'S LAW DICTIONARY (12th ed. 2024).

Nothing in Maine law nor in common language restricts the term "vote" to a first-choice preference alone. To the contrary, in conventional usage, it is common for the singular noun "vote" to refer to an expression of multiple, contingent preferences. For instance, if I am out to lunch with colleagues and we are trying to decide on a starter for the table, I might say, "My vote is for French fries or nachos, not chicken wings." No one would be confused by my formulation: I have cast a single vote that might be counted towards either fries or nachos, depending on the votes of my companions. I have expressed multiple, contingent preferences because there are more than two options and I cannot know my colleagues' preferences in advance—if I did not voice the entirety of my preference, and instead voted only for my single apex choice, I would risk wasting my vote. But no one would complain that I had cast multiple votes.

Likewise, a ranked ballot is a single "vote" that expresses multiple, contingent preferences. As L.D. 1666 explains, "[t]he ranking of a candidate for an office on a voter's ballot is an instruction from the voter

on the relative order in which the voter intends the ballot to be tabulated in the election for that office." Comm. Amend. B to L.D. 1666; *accord Kohlhaas*, 518 P.3d at 1122 ("A ranked-choice vote is an expression of preference that contains more information than a single-choice vote . . . . But it is still a single vote, cast by a single voter, that in the end is counted for a single candidate."); *Dudum v. Arntz*, 640 F.3d 1098, 1112 (9th Cir. 2011) ("the option to rank multiple preferences is not the same as providing additional votes" (emphasis in original)).

This is entirely in line with the common usage of the term "vote." Just as in the quotidian lunchtime example, no one who casts a ranked ballot would say "I voted three times." Rather, a ranked ballot is defined by L.D. 1666 (and naturally understood) as a single vote that the voter intends to be tallied towards one or another candidate, depending on how the preferences of other voters shake out (which no one can know in advance of the election). *See Kohlhaas*, 518 P.3d at 1124 ("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."). The 2016 Act muddied this nuance, and while the 2017 Opinion did not analyze the Constitutional contours of the word "vote," the implicit flaw

in that Opinion was assuming that a "plurality of all votes returned" somehow interrupted the counting of contingent preferences to recognize a winning candidate when "the first plurality is identified." 2017 ME 100, ¶¶ 64-65, 162 A.3d 188. The phrase "first plurality" appears nowhere in Maine's Constitution and is not a concept that is inherent in either the word "vote" or the phrase "plurality of votes." *See infra* Section I.B.3.

It bears repeating that in interpreting the constitutional term "vote," the Justices should give that term "such a liberal and practical construction as will permit the purpose of the people therein expressed to be carried out, if such a construction is reasonably possible." *Wakem v. Inhabitants of Town of Van Buren*, 137 Me. 127, 15 A.2d 873, 876 (1940). As indicated above, an interpretation of "vote" that includes the expression of multiple, contingent preferences is clearly reasonable, and there is nothing in the history or purpose of the plurality provisions that suggests, by "strong and convincing reasons," that ranked-choice voting conflicts with that term. *Opinion of the Justices*, 623 A.2d at 1262; *Opinions of the Justices*, 70 Me. at 561.

Moreover, although many voters will undoubtedly take advantage of the opportunity to rank multiple candidates to express their nuanced

preference, nothing in the Act so requires. Experience and common sense teach that many will rank a single candidate, and under the tabulation rules set forth in L.D. 1666, a ballot that ranks only a single candidate will simply be counted for that candidate. Indeed, the fact that many voters in ranked-choice voting systems express only a single preference is the reason that elections under ranked-choice voting may, and often do, have winners who receive less than 50% of the vote—as was the case in the first congressional race in Maine which used ranked-choice voting.[4]

3. "Plurality" Is a Rule of Decision Once Tabulation is Complete and Votes Are Counted.

Bringing it all together, the Constitutional requirement that the winner receive a "plurality" of votes means what it says: the winner is

---

[4] *See* Dep't of Sec'y of State, Election Results 2018, https://www.maine.gov/sos/elections-voting/election-results-data/election-results-2018 (follow "Representative to Congress – District 2(Excel) – Results Certified to the Governor 11/26/18") (last visited March 5, 2026). There, 289,624 votes were returned (not counting 6,018 blank ballots or 435 initial overvote ballots). Although Poliquin was ahead in the first round, the final vote count was as follows:

- Jared Golden: 142,440 (49.18% of 289,624)
- Bruce Poliquin: 138,931 (47.97% of 289,624)
- Tiffany Bond/William Hoar ballots exhausted after first round: 8,253 (2.85% of 289,624)

Thus, Jared Golden won by less than half of the 289,624 votes returned (*i.e.*, a "plurality"). To instead focus on his "majority" of the 281,371 preferences counted in the final round (also a "plurality") unnecessarily disenfranchises 8,253 voters who cast a valid ballot that was counted initially but exhausted by the final round. As other courts have observed, "it is no more accurate to say that these ballots are not counted than to say that the ballots designating a losing candidate in a two-person, winner-take-all race are not counted." *McSweeney v. City of Cambridge*, 665 N.E.2d 11, 14 (Mass. 1996).

the person who receives the most votes. And as explained above, a "vote" is not self-defining; a "vote" is the unit that is ultimately counted for a candidate under whatever applicable rules govern the interpretation and tabulation of ballots. In a single-choice election, each valid ballot counts for the one marked candidate. In a ranked-choice election, the ballot may contain more information, and the tabulation rules specify how that information determines which candidate ultimately receives the single vote of that ballot. The plurality requirement is a rule of decision (the winner is the person who receives the most votes), not a tabulation rule (*e.g.*, that only the first mark can be tabulated as a vote). *See Kohlhaas*, 518 P.3d at 1122 ("Because a ranked-choice vote contains more information than a single-choice vote, it requires a more elaborate calculation to determine the winner. But it is still a single vote, cast by a single voter, that in the end is counted for a single candidate.").

In the 2017 Opinion, the Justices implicitly took the view that the "first" ranked preference is the entirety of the voter's "vote" for constitutional purposes. *See* 2017 ME 100, ¶¶ 64-65 & n.38, 162 A.3d 188 (stating that the 2016 Act conflicts with the Constitution because it "prevents the recognition of the winning candidate when the <u>first</u>

plurality is identified") (emphasis added)). The Justices did not explain or excavate this assumption, but it has no basis in the Maine Constitution, nor in the plain meaning of the term "vote."[5] As explained above, it is utterly commonplace to use "vote," in the singular, to refer to the expression of multiple contingent preferences. And such a common, everyday usage is plainly a "reasonably possible" use of the term. *Wakem*, 15 A.2d at 876. Nothing in the text or history of the Maine Constitution suggests that the People intended to forever constitutionalize any assumption that a "first" ranked preference on a ballot is the entirety of the voter's "vote" for determining who has the most votes.

L.D. 1666 proposes statutory language that corrects for this errant assumption: "[i]n each round, each continuing ballot is tabulated for its highest-ranked continuing candidate for that round. . . . If there are 2 or fewer continuing candidates, the ranked-choice voting tabulation is complete and each ballot is tabulated as one vote for its highest-ranked

---

[5] As the Alaska Supreme Court explained in *Kohlhaas*:

> 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 necessarily 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.

continuing candidate, and the candidate receiving a plurality of the votes cast is elected." Comm. Amend. B to L.D. 1666. This corrects the imprecision in the 2016 Act as to the distinction between the tabulation rules and the rule of decision, where the 2016 Act had used "vote" to refer to preferences during tabulation. L.D. 1557 § 4 (127th Legis. 2016) ("In each round, the number of votes for each continuing candidate must be counted."). Here, the language of L.D. 1666 hews to a liberal and practical construction of the text of the Maine Constitution.

4. Ranked-Choice Voting Furthers, Rather than Undermines, the Purposes of the Constitution's "Plurality" Provisions.

Although the text is dispositive, so too is the overall intent of the plurality provisions. Where a constitutional provision is susceptible to multiple interpretations, the "more restrictive interpretation should be disregarded" if it "does not effectuate the overall intent" of the provision. *Opinion of the Justices*, 673 A.2d 1291, 1299 (Me. 1996).

As shown above, the plurality provisions of the Maine Constitution are fundamentally pro-democratic. They are meant to facilitate, not impede, the People's exercise of their fundamental right to choose their elected representatives in a single popular election, and they do so simply by removing the majority threshold that could result in a failed election.

Ranked-choice voting, far from hindering or conflicting with that purpose, uses modern techniques and computational capacity to give the People more control over the conduct of their elections. *See Dudum*, 640 F.3d at 1116 (noting that ranked-choice voting "provid[es] voters an opportunity to express nuanced voting preferences and elect[] candidates with strong plurality support"); *McSweeney*, 665 N.E.2d at 15 (the purpose of ranked-choice voting "is not a derogation from the principle of equality but an attempt to reflect it with more exquisite accuracy"). L.D. 1666 thus furthers the purpose of the plurality provisions of the Maine Constitution: to empower the People, rather than a small cohort of elite politicians, to elect their representatives in a single popular election.

CONCLUSION

The People of Maine—both by direct initiative and through their elected representatives—have repeatedly expressed an overwhelming desire to use ranked-choice voting to elect their leaders. That policy decision is not expressly or necessarily restricted by the Constitution. For the reasons set forth above, L.D. 1666 conforms with the plurality provisions in the Constitution, and the Justices should so opine.

Respectfully Submitted,

Dated: March 6, 2026

/s/ *David M. Kallin*
David M. Kallin, Bar No. 4558

/s/ *Oliver Mac Walton*
Oliver Mac Walton, Bar No. 6340

/s/ *Melissa A. Hewey*
Melissa A. Hewey, Bar No. 3587

Drummond Woodsum & MacMahon
84 Marginal Way, Suite 600
Portland, ME 04101-2480
Tel: (207) 772-1941
dkallin@dwmlaw.com
owalton@dwmlaw.com
mhewey@dwmlaw.com