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**SUPREME JUDICIAL COURT**

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**DOCKET NO. OJ-26-1**

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**BEFORE THE JUSTICES OF THE SUPREME JUDICIAL COURT**

**IN THE MATTER OF REQUEST FOR OPINION OF THE JUSTICES**

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**BRIEF OF REPUBLICAN NATIONAL COMMITTEE SUBMITTED IN  
CONJUNCTION WITH QUESTIONS PROPOUNDED TO THE JUSTICES  
OF THE SUPREME JUDICIAL COURT BY THE MAINE LEGISLATURE  
ON FEBRUARY 10, 2026**

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## INTRODUCTION

Pursuant to Article VI, Section 3 of the Maine Constitution, both Houses of the Maine Legislature have asked the Justices to offer an advisory opinion as to whether Legislative Document 1666 (“L.D. 1666”), “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,” complies with the Maine Constitution. In accordance with the Justice’s Procedural Order, the Republican National Committee respectfully submits this brief for the Justices’ consideration in their review of the Legislature’s question.

### INTEREST OF THE REPUBLICAN NATIONAL COMMITTEE

In addition to soliciting briefs from the House and the Senate, the Attorney General, and the Secretary of State, the Chief Justice’s Procedural Order also invited briefs from “any other interested person or entity.”

The Republican National Committee (“RNC”) submits that it is an “interested entity” within the contemplation of the Procedural Order. The RNC is the national committee of the Republican Party within the meaning of 52 U.S.C. § 30101(14). The RNC supports Republican candidates for public office at all levels of government across all fifty states, including in Maine.<sup>1</sup> The RNC has a direct and

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<sup>1</sup>The RNC has participated in numerous election law cases across the country and has a direct interest in the integrity and constitutionality of electoral systems in every state. *See, e.g., League of United Latin Am. Citizens v. Trump*, No. 1:25-cv-0946 (CKK) (D.D.C.) (RNC intervention to defend Executive Order 14,248); *New Hampshire Youth Movement v. Scanlan*, No. 1:24-cv-291 (D.N.H.) (RNC intervention to

continuing interest in ensuring that elections for state office in Maine are conducted in accordance with the Maine Constitution. The constitutionality of the electoral method used to determine the winners of state elections directly affects the candidates the RNC supports, the voters who support those candidates, and the integrity of the democratic process itself. The House Republican Caucus, the Senate Republican Caucus, and the Maine Republican Party all join in this brief.

The constitutional question now before the Justices is of immediate consequence to the RNC, which will work with Maine Republicans to field and support candidates for Governor, the State Senate, and the State House of Representatives in the 2026 primary and general elections—elections whose basic rules of determination remain uncertain so long as the constitutionality of LD 1666 is unresolved.

### **QUESTION POSED BY THE HOUSE AND THE SENATE**

The Joint Order of the House and the Senate poses the following question for the Justices to consider and answer:

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

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defend constitutionality of New Hampshire House Bill 1569); *Equality State Policy Ctr. v. Wyoming Sec'y of State*, No. 1:25-cv-00117-SWS (D. Wyo.) (same; Wyoming House Bill 156); *Republican Nat'l Comm. v. N. Carolina State Bd. of Elections*, No. 5:24-CV-00547-M (E.D.N.C.) (lawsuit filed by RNC seeking to enforce North Carolina's list maintenance obligations); *Dagusen v. Aguilar*, No. 24-OC-001531B (Nev. 1st Jud. Dist. Ct.) (same; Nevada).

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?

Among the series of “whereas” clauses preceding the foregoing question, the Joint Order suggested that a decision of the Alaska Supreme Court, *Kohlhaas et al. v. State of Alaska, Office of Lieutenant Governor, Division of Elections*, 518 P.3d 1095 (Alaska 2022) and Advisory Opinion 2024-12 of the Federal Election Commission might be pertinent to the Justices’ consideration of the question. As is explained below, neither is apposite to the question posed.

In the RNC’s view, the Joint Order’s very lengthy, and seemingly tendentious question does not clearly state the issue that the Justices have been asked to address. See, *Op. of the Justs.*, 460 A.2d 1341, 1346 (Me. 1982); *Op. of the Justs.*, 216 A.2d 656, 661 (Me. 1966). Nonetheless, as the RNC understands the Joint Order’s question, it asks the Justices to opine on whether L.D. 1666’s failure to recognize a candidate for the House, Senate, or the Governorship, who receives a plurality of the votes as the winner, complies with the Maine Constitution’s plurality requirement for each office. For the reasons set forth below, the RNC, joined by the aforementioned interested entities, contends that it does not.

## **SUMMARY OF ARGUMENT**

If enacted, L.D. 1666 would subject candidates for the Maine House and Senate and for Maine’s governorship under the Ranked Choice Vote system. It would

deny such candidates victory if they secured a plurality, but not a majority, when all the votes were tallied. Instead, L.D. 1666 would force them into successive rounds of vote counting in which candidates would be progressively eliminated until only one candidate—the winner of the majority of votes—remained. (L.D. 1666 would determine that the candidate to be named the winner.)

L.D. 1666 violates the plurality standard that the Maine Constitution requires for these elections. For that reason, the Republican National Committee respectfully asks the Justices to advise that L.D. 1666 would violate the Maine Constitution.

## **I. ARGUMENT**

### **A. THE QUESTION PROPOUNDED PRESENTS A SOLEMN OCCASION**

Under Article VI, Section 3, of the Maine Constitution, the Justices are obliged to render advisory opinions “upon important questions of law, and upon solemn occasions.” A solemn occasion exists where the question presented is “of a serious and immediate nature, and the situation presents an unusual exigency.” *Op. of the Justs.*, 2017 ME 100, ¶ 22 (quoting *Op. of the Justs.*, 2015 ME 107, ¶ 5, 123 A.3d 494). The question must also be “one of ‘live gravity,’ that is, one ‘of instant, not past nor future, concern.’” *Id.* ¶ 23 (quoting *Op. of the Justs.*, 229 A.2d 829, 831 (Me. 1967)).

These requirements are satisfied here. By its Joint Order, the Legislature has propounded a question concerning the constitutionality of a bill, L.D. 1666 that seeks

to expand the Ranked Choice Voting Act (“RCVA”) system to state general elections of candidates for the House of Representatives, the Senate, and the Governorship. To this end, L.D. 1666 would amend several sections of Title 21-A, changing electoral processes and altering the meaning of statutory terms or supplanting them altogether.

The attempt to subject elections for the House, Senate, and Governorship to the RCVA system by statute, and not by constitutional amendment, raises essentially the same question that the Justices answered in 2017; namely, is the RCVA’s ranked choice process consistent with the Maine Constitution’s plurality requirement for each of these State offices?

The circumstances under which the Joint Order’s question arises are compelling. The 2026 primary and general elections are approaching. If LD 1666 is enacted and signed into law (or otherwise becomes law) without resolution of its constitutionality, then every candidate, every election official, and, every voter in the State will confront uncertainty regarding the rules governing the election of the Governor, thirty-five State Senators, and 151 State Representatives. Campaign strategies, ballot design, voter education materials, and tabulation systems all depend on whether the Constitution’s plurality standard or the RCVA electoral system will govern.

Questions such as this, as the Justices recognized, implicate the fundamental principles of Maine’s representative democracy and thus present “an important question of law.” *Id.* at ¶¶ 38-39. The centrality of the electoral process to governmental integrity meets the “solemn occasion” threshold. See, *id.* at ¶¶ 48-55. This is only heightened where, as here, elections are imminent, constitutional uncertainty persists, and the potential for upheaval is real. *Id.* at ¶ 40 (concluding that the “live gravity and unusual exigency requirements are satisfied” where elections were imminent and constitutional uncertainty persisted).

Indeed, in their 2017 *Opinion*, the Justices acknowledged the significance of precisely this risk when they, observed that “[t]he time to plan and organize a fair and impartial election is at hand and the doubt surrounding the constitutionality of the Ranked–Choice Voting Act casts uncertainty on all aspects of voting preparation.” *Id.* (citing *Storer v. Brown*, 415 U.S. 724, 730 (1974), and *Maine Taxpayers Action Network v. Sec’y of State*, 2002 ME 64, ¶ 8, 795 A.2d 75); see also *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008) (“[P]ublic confidence in the integrity of the electoral process has independent significance[] because it encourages citizen participation in the democratic process.”)).

The RNC respectfully submits that the question propounded by the Joint Order is, therefore, one of live gravity and unusual exigency, and presents a solemn occasion for the issuance by the Justices of an advisory opinion on the

constitutionality of L.D. 1666.

**B. L.D. 1666 WOULD SUBJECT ELECTION TO THE OFFICES OF STATE REPRESENTATIVE, STATE SENATOR, AND GOVERNOR TO THE RANKED CHOICE VOTE SYSTEM.**

The question posed by the Joint Order acknowledges that L.D. 1666 must comply with the plurality standards in Article IV, Part First, Section 5 (election to the House of Representatives), Article IV, Part Second, Sections 4 and 5 (election to the Senate), and Article V, Part First, Section 3 (election to the Governorship). In doing so, however, the question suggests that L.D. 1666 does comply with the Constitution’s plurality requirement for these offices. The question attempts this by asking the Justices to advise whether “the method of **arriving at a plurality** of votes cast through the use of ranked-choice voting, as amended by L.D. 1666” violate the Constitution’s plurality requirement. *Joint Order*, (emphasis supplied). The aspirational tenor of the Joint Order’s question notwithstanding, an examination of L.D. 1666’s terms shows that by changing the meaning of electoral terms or eliminating them altogether, L.D. 1666 would subject elections to the House, Senate, and Governorship to the RCVA system.

**1. The Plurality Requirement was Intended to Protect the Electoral Process for the House, Senate, and Governorship.**

The plurality requirement in the Maine Constitution is not merely a procedural detail; it is a structural protection for the voting rights of Maine citizens. The Maine Declaration of Rights provides that “[a]ll people are born equally free and

independent, and have certain natural, inherent and unalienable rights[.]” Me. Const. art. I, § 1. It further provides that “[n]o person shall be deprived of life, liberty or property without due process of law[.]” *Id.* art. I, § 6-A. The right to vote is “a fundamental right” that is “at the heart of our democratic process.” *Crafts v. Quinn*, 482 A.2d 825, 830 (Me. 1984).

The plurality system protects these rights by ensuring simplicity, transparency, and equal treatment. Under a plurality system, each voter casts one vote. That vote is counted once. The candidate with the most votes wins. The process is intuitive, verifiable, and produces a result that every voter can understand. No voter’s ballot is discarded, diluted, or subjected to multi-round processing. The system thereby reinforces the fundamental right to vote by ensuring each ballot carries equal weight in a single, dispositive determination.

Adding further solidity to this electoral system, the word “plurality” has a settled meaning in constitutional and election law. It refers to the highest number of votes received by any candidate—not a majority, but simply more votes than any other candidate. *See id.* ¶ 61, n.36 (citing *Rockefeller v. Matthews*, 459 S.W.2d 110, 111 (Ark. 1970), and *State ex rel. Attorney Gen. v. Anderson*, 12 N.E. 656, 658 (Ohio 1887)). “A majority, in contrast, refers to more than one-half, that is, greater than fifty percent.” *Id.* (cleaned up). “A majority is always a plurality; a plurality may be, but is not necessarily, a majority.” *Id.*

When the Maine Constitution was amended to replace “majority” with “plurality” between 1847 and 1880, the framers of those amendments deliberately chose between two well-understood electoral systems. They chose plurality voting—a system in which voters cast a single vote, the votes are counted once, and the candidate with the most votes wins—intentionally to avoid the dysfunction that had plagued the prior majority-vote system. Kenneth T. Palmer, *Development of the Maine Constitution: The Long Tradition, 1819-1988*, 28 Me. History J. 126, 135 (1989).

The constitutional text and its history establish that the term “plurality” is not merely a label for whatever number happens to be highest at the end of any counting process the Legislature might devise. It refers to a specific electoral determination: a single count of votes in which the candidate with the highest total prevails. As then-Attorney General (and now Governor) Janet Mills argued in 2017, the Constitution “establishes a voting system in which the winners are elected by plurality after municipal officials examine the ballots and count the votes – once.” Reply Br. of Att’y Gen. 1, *In re Request for Op. of the Justs.*, No. OJ-17-1 (Mar. 17, 2017) (“AG Reply Brief”). In their 2017 *Opinion*, the Justices agreed, advising that a system requiring rounds of tabulation, candidate elimination, vote redistribution, and the determination of a winner from the final two candidates is not a “plurality” system. *Op. of the Justs.*, 2017 ME 100, ¶¶ 64–68.

The constitutional text provides that election officials shall receive, sort, count, and declare the votes, and that the candidate with a plurality of those votes is elected. Me. Const. art. IV, pt. 1, § 5. This language describes a single, linear, wholly public process: votes are cast, votes are counted, and the candidate with the most votes wins. RCVA interposes a fundamentally different process between the casting of votes and the declaration of a winner—one involving multiple rounds of vote counting, progressive candidate elimination, vote redistribution, and ballot exhaustion. That process is entirely alien to the electoral process under the Constitution’s plurality standard and, regardless of the labels applied to it, fundamentally conflicts with that constitutional framework.

In contrast with the Constitution’s requirements for the election of candidates to the House, Senate, and Governorship, the multi-round RCVA tabulation process is not readily observable by voters or poll watchers. Results cannot be fully determined on election night or even at the local level.<sup>2</sup> The progressive elimination of candidates and redistribution of ballots occurs through a process that is opaque to most voters, undermining the public confidence in the electoral process that the Justices have recognized as essential. *See Op. of the Justs.*, 2017 ME 100, ¶ 49 (“The public’s trust in the election process is therefore at the forefront of our concern.”); *Crawford*, 553 U.S. at 197 (“[P]ublic confidence in the integrity of the electoral

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<sup>2</sup> Under 21-A M.R.S.A. § 722, sub-§ 1, ballots are sent to the Secretary of State for tabulation.

process . . . encourages citizen participation in the democratic process.”).

In sum, the protection that the plurality requirement affords to every Maine voter’s right to a simple, equal, and wholly transparent election. And this constitutionally sanctioned system can be withdrawn only through the deliberate and considered process of constitutional amendment—not through the legislative relabeling of a system the Justices have already advised is unconstitutional.

**2. L.D. 1666 seeks to circumvent the Constitution’s “plurality” requirement by relabeling “majority” to mean “plurality.”**

Through a series of word substitutes, L.D. 1666 seeks to disguise its circumvention of the Constitution’s plurality standard. These word substitutes, L.D. 1666 would replace the word “defeated” with the word “eliminated” to describe what happens to last-place candidates.<sup>3</sup> For example, it would replace “count” with “tabulation” to describe the multi-round process.<sup>4</sup> And it would declare that the candidate who receives the most votes in a two-candidate final round is the winner because he or she received a “plurality of the votes cast,” rather than a “majority.”<sup>5</sup> Although it is self-evident that these are nothing more than semantic changes, it is equally self-evident that L.D. 1666 intends that they have significant substantive effect; that is, that they would effectively overtake all other terms and standards,

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<sup>3</sup> LD 1666, § 2 (amending 21-A M.R.S.A. § 1, sub-§ 35-A).

<sup>4</sup> L.D. 1666, Comm. Amend. (132LR1668(04)), § 8 (amending 21-A M.R.S.A. § 723-A, sub-§§ 1, 2, 2-A).

<sup>5</sup> *Id.* (amending 21-A M.R.S.A., § 723-A, sub-§ 2(A)).

including those imposed by the Constitution, and apply the RCVA to House, Senate and Gubernatorial elections .

Under L.D. 1666 (as was true of L.D. 1557 of 2016, Maine’s original “Act To Establish Ranked-choice Voting”), the RCV process would apply to candidates for the House, Senate, and Governorship as follows: Voters would rank candidates in order of preference on a single ballot; if a candidate were to receive a majority of first-round rankings, the rankings would count as votes and that candidate would be elected; if no candidate were to receive a majority of first-round rankings, the candidate with the fewest rankings would be eliminated; ballots cast for the eliminated candidate would then be redistributed to the next-ranked continuing candidate; if in that round a candidate were to receive a majority of remaining rankings, that candidate would be elected; this process would repeat itself until one candidate were to achieve a majority of the remaining non-exhausted ballots or only two candidates remain and, mathematically, one were to receive a majority vote.

This is essentially the same system the Justices described and analyzed in their 2017 *Opinion. Op. of Justs.*, 2017 ME 100, ¶ 65. There is no difference. Rebranding the RCVA requirement for a “majority” result as a “plurality” does not resolve the constitutional conflict that the Justices identified. *Id.* L.D. 1666 would deny victory to candidates for the House, Senate, and Governorship winning a plurality when the votes are counted. In its place, it would impose the RCVA system

in elections for those offices and, in effect, allow victory only when a candidate has gained a majority of the votes cast. For this reason, L.D. 1666 cannot be reconciled with the constitutionally imposed plurality standard for election to these offices.

### **3. L.D. 1666’s “Preference vs. Vote” Distinction Is a Semantic Fiction That Does Not Alter the Constitutional Plurality Standard .**

If enacted, L.D. 1666 would redefine RCVA as “the method of casting votes and tabulating ballots in which voters rank candidates in order of preference,” and would provide that “the continuing candidate with the highest continuing ranking on the most ballots in the final round of tabulation is determined to have received a plurality of the votes cast and is elected.”<sup>6</sup> It would provide further that final round would have to include “2 or fewer continuing candidates”.<sup>7</sup> Additionally, the bill would redefine a voter’s “ranking” as “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.”<sup>8</sup>

The fiction undergirding these revisions is that, when a voter ranks candidates on a ballot, that does not constitute a “vote” but, rather, constitutes a “preference” or “instruction”, as Section 3 of L.D. 1666 would have it Under the bill, a voter

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<sup>6</sup> LD 1666, § 2 (amending 21-A M.R.S.A. § 1, sub-§ 35-A), available at: <https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0660&item=1&snum=132>.

<sup>7</sup> LD 1666, Com. Amend. (132LR1668(04)), § 8 (amending 21-A M.R.S.A. § 723-A, sub-§ 2), available at: <https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0660&item=4&snum=132>.

<sup>8</sup> LD 1666, Comm. Amend. (132LR1668(04)), § 8 (amending 21-A M.R.S.A. § 723-A, sub-§ 1(I)).

would not cast an actual “vote” until that vote contributes to one candidate receiving a majority of “preferences”, whether in the first round or the final round of tabulation. Once a candidate has attained a majority, in Orwellian fashion, L.D. 1666 provides that that candidate would have achieved a “plurality” of “votes. Thus, “preferences” would transform into “votes” only when a given candidate has reached a majority of the votes cast. Throughout this process, the ballot remains what it always has been: an instrument for facilitating and documenting a vote, not a platform for expressing preferences.

The Maine Constitution and the Maine Election Code treat the ballot as the instrument by which a citizen casts a vote. The Constitution provides that election officials shall “receive the votes of all the qualified electors, sort, count and declare them in open meeting.” Me. Const. art. IV, pt. 1, § 5. The constitutional language is precise: what election officials receive are “votes,” not “preferences” or “instructions.” And what they do with those votes is “sort, count and declare them...” The process provides for a single, definitive act of counting, not an iterative series of tabulation rounds and winnowing of a field of candidates to two finalists. The ballot is the physical medium through which this constitutionally prescribed act of voting occurs.

Maine’s Election Code reinforces this understanding. Ballots in Maine are regulated by statute as instruments for the casting of votes. *See* 21-A M.R.S.A. § 601

(governing the form and content of official ballots and, in sub-§ 2(E), providing that “[w]ords of explanation such as, ‘**Vote** for one’ or ‘**Vote** for not more than 2’ must be printed on the ballot to assist the voter in **voting** correctly.” (emphases added)). Section 601 prescribes the form, content, and handling of the ballot with exacting specificity, not because the ballot is a workshopping document for expressing voter preferences, but because it is the authoritative record of the citizen’s exercise of the franchise. When a voter marks a ballot and deposits it in the ballot box, that voter has voted. The act of marking a candidate and submitting a ballot is the constitutionally recognized act of voting, not a preliminary expression of preference that awaits potential future activation dependent upon a non-majority count in the first round.<sup>9</sup>

Under the plurality standard, the voter cannot amend the ballot that voter has cast to add candidates to the ranking, or change that voter’s previously indicated preferences after learning which candidates have continued or been eliminated. To the contrary, the voter’s entire act of democratic participation in the electoral process is complete at the moment the voter submits his or her ballot. To characterize this act of voting as something other than “voting”, as L.D. 1666 would do, contradicts the common understanding of every participant in the electoral process, the

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<sup>9</sup> Federal courts likewise recognize this function of a ballot. See *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 363 (1997) (noting that “[b]allots serve primarily to *elect* candidates” (emphasis added) (citation omitted)).

constitutional text, and the statutory framework governing elections in Maine.

Furthermore, LD 1666’s own treatment of the ballot further undermines its premise. The bill continues to refer to the document that voters mark and submit as a “ballot.” It does not redesignate it as a de facto “preference form” or an “instruction sheet.” The bill retains the existing statutory framework governing ballot creation, security, and counting, each of which presupposes that the ballot is a legal instrument carrying the voter’s binding electoral choice. If the rankings on the ballot were truly mere “preferences” rather than votes, it would call into question the constitutional and statutory bases for treating them with the solemnity that Maine law accords ballots. That is because the law protects ballots that have been cast because ballots carry votes.

Moreover, if a voter’s ranking were truly a mere “instruction”, as Section 8 of L.D. 1666 would have it, rather than a vote, one would expect that instruction to have no legal force until the round of tabulation in which it forms a majority of preferences, at which point it is treated as a vote. But that is not how the system operates. As discussed further below, the first-round “ranking” **is** determinative if a candidate has achieved a majority of such “rankings”—*i.e.*, votes. Only if no candidate receives a majority of first-round “rankings” does the RCVA process proceed to a subsequent round of counting.<sup>10</sup> It also determines which candidate is

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<sup>10</sup> See LD 1666, Comm. Amend. (132LR1668(04)), § 8 (amending 21-A M.R.S.A § 723-A, sub-§ 2)

in last place and is, therefore, eliminated. The RCVA process also determines the entire trajectory of the election.<sup>11</sup> These determinations are all the consequences of voting, not of offering merely tentative guidance. Indeed, that legislators understood L.D. 1666’s “rankings” were actually “votes” is shown by the floor statement of Representative Michael Brennan who said that “[u]nder a ranked choice voting system, every voter becomes important to a candidate because every voter can **vote** for multiple candidates.”<sup>12</sup>

**4. A candidate who wins an outright majority in the first round wins the election, confirming that the first round is an election.**

On another note, L.D. 1666 itself contains an internal contradiction that disposes of the “preference vs. vote” and “plurality vs. majority” argument. Under the bill, as amended, if a candidate receives more than 50% of all first-round rankings, that candidate is declared the winner without any further tabulation.<sup>13</sup> This provision is significant because it constitutes a practical concession that first-round results can be dispositive. If the first-round ranking were merely a “preference” and not a “vote,” then a candidate who received a majority of first-round rankings would

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(providing that a candidate is “elected” if he or she “has been assigned ranking number one on more than 50% of all ballots cast . . .”).

<sup>11</sup> *See id.* (amending 21-A M.R.S.A. § 723-A, sub-§ 2(B)).

<sup>12</sup> *House Chamber Recorded February 10, 2026 at 10:00 AM* at 2:10:53–2:11:07 PM, Me. Legis. Media Streaming (Feb. 10, 2026), available at: [https://legislature.maine.gov/Audio/#house\\_chamber?event=95870&startDate=2026-02\\_10T10:00:00-05:00](https://legislature.maine.gov/Audio/#house_chamber?event=95870&startDate=2026-02_10T10:00:00-05:00).

<sup>13</sup> LD 1666, Comm. Amend. (132LR1668(04)), § 8 (amending 21-A M.R.S.A. § 723-A, sub-§ 2).

have received only a majority of preferences—not a majority of votes—and would have no claim to election.

But L.D. 1666 would not treat it that way. If enacted, it would treat the first-round majority as conclusive. The candidate has won, and no further tabulation is necessary. This is because, in substance, the first-round ranking **is** a vote. The bill cannot, consistent with the Constitution, validly maintain that the first-round result is determinative when a majority exists but is merely preliminary when only a plurality exists. Either the first round constitutes a binding election, or it does not. L.D. 1666 concedes that it does.

This internal contradiction exposes the wholly artificial nature of the “preference” versus “vote” distinction. By way of example, consider an election with three candidates in which Candidate A receives 51% of first-round rankings, Candidate B receives 30%, and Candidate C receives 19%. Under L.D. 1666, Candidate A would win outright—the first-round result would be treated as the election, and the rankings would be treated as votes.<sup>14</sup>

Now consider the same election but with Candidate A receiving 49%, Candidate B receiving 30%, and Candidate C receiving 21%. Under L.D. 1666, Candidate A would not yet have received a “vote”—Candidate A would only have received a “preference”—and the “tabulating” process would have to continue until

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<sup>14</sup> LD 1666, Comm. Amend. (132LR1668(04)), § 8 (amending 21-A M.R.S.A. § 723-A, sub-§ 2).

there were two candidates remaining, one of which would have received a majority of the “preferences.” Yet the only difference between these two scenarios is a two-percentage-point shift. Nothing else would have changed: The character of the voter’s act of marking the ballot would not have changed; the ballot itself would not have changed; the voter’s intent to select a candidate would not have changed. Given this stark illustration, it is clear that, under L.D. 1666, the same physical electoral act constitutes “voting” in one scenario becomes mere indication of “preference” in the other. Yet, for the elections to the House, Senate, and Governorship, the Maine Constitution does not provide for or even contemplate such a distinction. It is not tenable as an electoral principle for these constitutional offices.

If the first round is an election—as L.D. 1666 itself acknowledges it would be—then a candidate who receives a plurality of all first-round votes has received a plurality “of all votes returned” within the meaning of the Constitution. The Constitution requires that that candidate be declared the winner. Me. Const. art. IV, pt. 1, § 5; *id.* art. IV, pt. 2, § 4; *id.* art. V, pt. 1, § 3. RCV refuses to recognize that candidate as the winner and instead continues tabulation in pursuit of a majority. That is the precise conflict the Justices identified in 2017. *See Op. of the Justs.*, 2017 ME 100, ¶ 65 (“[T]he Act prevents the recognition of the winning candidate when the first plurality is identified.”).

As then-Attorney General Mills explained, RCV is “a fundamentally different voting methodology” from plurality voting—it is “an alternative to plurality voting,” not a variation of it. AG Reply Brief at 4–5. Courts and commentators consistently characterize RCV as equivalent to a series of runoff elections held on a single day using a single ballot. *See Dudum v. Arntz*, 640 F.3d 1098, 1103 (9th Cir. 2011) (describing RCV as distinct from a “simple plurality system”); *Minnesota Voters All. v. City of Minneapolis*, 766 N.W.2d 683, 687 (Minn. 2009) (characterizing RCV’s multiple rounds as simulating “a series of run-off elections”). Under this system, “the voters’ ballots are counted as votes in a series of distinct runoff elections,” with “[e]very voter ha[ving] one and only one vote in each runoff round.” Brian P. Marron, *One Person, One Vote, Several Elections? Instant Runoff Voting and the Constitution*, 28 Vt. L. Rev. 343, 357 (2004).

**5. Out-of-State Authorities do not Change the Constitution’s Plurality Requirement for House, Senate, and Gubernatorial Elections**

As noted above, among the Joint Order’s “whereas” clauses were references to a decision of the Alaska Supreme Court and Advisory Opinion of the Federal Election decision. The Alaska decision was *Kohlhaas v. State of Alaska, Office of Lieutenant Governor, Division of Elections*, 518 P.3d 1095 (Alaska 2022).

The *Kohlhaas* Court considered the 2017 *Opinion* and rejected it as unpersuasive. *Id* at 1120-1122. But *Kohlhaas* gave no weight to the *Opinion*’s

detailed discussion of the origins of the Maine Constitution’s plurality requirement, including the extreme civil discord that precipitated it. *Id.*, *cf. Opinion*, 2017 ME ¶¶ 54-55, 61-64.

Neither did the *Kohlhaas* Court acknowledge the *Opinion*’s pellucid logic explaining how the Constitution’s plurality requirement could not be reconciled with the RCVA’s denial of victory to the winner of the plurality of votes. *Op. of Justs.*, 2017 ME 100, ¶ 65.

Advisory Opinion 2024-12 of the Federal Election Commission is simply inapposite to the question the Joint Order has posed. All it does is describe its treatment of Ranked Choice Voting for the federal elective offices, none of which is covered by the Maine Constitution’s plurality standard.

## CONCLUSION

For the foregoing reasons, the RNC respectfully submits that the question propounded by the Legislature presents a solemn occasion and that LD 1666 conflicts with the provisions of the Maine Constitution’s plurality requirement. The constitutional text has not changed since this Court’s unanimous 2017 Advisory Opinion, and LD 1666’s attempt to redefine statutory terms cannot alter the constitutional analysis. The Justices should advise accordingly.

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