State of Maine
Supreme Judicial Court

Docket No. OJ-26-1

In the Matter of Request
For Opinion of the Justices

Before the Justices of the Supreme Judicial Court
On Referral from the Maine Legislature

Brief for Maine State Senate President and Maine State Speaker of the House

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Introduction

In response to the Chief Justice's Procedural Order inviting the Senate, the House of Representatives, and others to submit a brief on the question propounded by the Legislature, the Maine State Senate President and Maine State Speaker of the House submit this brief on behalf of their respective caucuses.

Not to bury the lede, the Legislature's question presents a stronger case today for a solemn occasion than when the Justices previously found a solemn occasion in 2017 before opining on the constitutionality of ranked choice voting (RCV). *Opinion of the Justices*, 2017 ME 100, 162 A.3d 188 (*2017 Opinion*). Additionally, considering the specific amendments in L.D. 1666 to the RCV statute, and considering the development of the law and facts since 2017, including the fact that Jared Golden was elected Congressman in 2018 under RCV while receiving a plurality and not a majority of all the votes cast, ranked choice voting today in all elections for Governor, State Senator, and State Representative would conform with the Maine Constitution.

Procedural Background

On February 10, 2026, the Legislature submitted to the Justices a Joint Order of the Legislature, Senate Paper 900, requesting an Opinion of the Justices on the following question:

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

On February 11, 2026, the Chief Justice invited the Senate, the House of Representatives, and others to submit a brief on whether this was a solemn occasion under Me. Const. art. VI, § 3, and whether the ranked choice voting statute, as amended by L.D. 1666, was constitutional under Me. Const. art. IV, pt. 1, § 5, Me. Const. art. IV, pt. 2, § 4, and Me. Const. art. V, pt. 1, § 3. The answer to both questions is simply "yes."

Argument

I. This Question Presents a More Compelling Case for a Solemn Occasion than the *2017 Opinion* Concerning Ranked Choice Voting.

In determining whether the question propounded presents a solemn occasion under Me. Const. art. VI, § 3, we begin and end with the Justices' prior opinion concerning ranked choice voting. *See 2017 Opinion*, 2017 ME 100, ¶¶ 9–55. Because the question here concerns proposed legislation at the end of the current legislative session instead of an already enacted citizen initiative, and because it affects an election just a few months away instead of 18 months from now, this question presents a more solemn occasion than the Justices addressed in the *2017 Opinion.*

A. The *2017 Opinion* Should Be Understood Within its Historical, Factual, and Legal Constraints.

Before turning to the substance of the *2017 Opinion*, it is important to put the Opinion into context. There, the Justices were opining on the first statute in the country that planned to use ranked choice voting for all state and all non-presidential federal elections, breathing new life into the state motto, *Dirigo*, which means "I lead."

Florida, Indiana, Maryland, Minnesota, and Wisconsin had used RCV in some elections in the early 20th century, while some municipalities turned to RCV in the late 20th century. *See* Jeffrey C. O'Neill*, Everything That Can Be Counted Does Not Necessarily Count: The Right to Vote and the Choice of a Voting System*, 2006 Mich. St. L. Rev. 327, 333 (2006). In 2010, North Carolina added and then repealed RCV for one statewide judicial election, making it the only state before Maine to use RCV in any statewide election. *See* G. Scott Edwards, *Empowering Shareholders or Overburdening Companies? Analyzing the Potential Use of Instant Runoff Voting in Corporate Elections*, 68 Vand. L. Rev. 1335, 1342–43 (2015). In other words, when the Justices opined, they largely were navigating in uncharted seas.

Additionally, the Justices were opining in 2017 on the RCV law that had been passed by the voters through a citizen initiative, but had not yet been implemented, and indeed, was not scheduled to be used for any election for another 18 months. *2017 Opinion*, 2017 ME 100, ¶ 40. Stated differently, the Justices could not evaluate ranked choice voting based on how it operated in the real world and instead had to rely on the RCV

proponents' and opponents' descriptions and predictions of how it *might* work in a statewide election.

We also note that the *2017 Opinion* is an outlier on the merits of challenges to ranked choice voting. *First*, no court in any litigated case in Maine has invalidated RCV on *any* grounds. *See Baber v. Dunlap,* 376 F. Supp. 3d 125 (D. Me. 2018); *see also Me. Republican Party v. Dunlap*, 324 F. Supp. 3d 202 (D. Me. 2018) (attempt to prevent use of RCV); *Me. Senate v. Sec'y of State*, 2018 ME 52, 183 A.3d 749 (same). *Second*, in a litigated case outside of Maine, the Alaska Supreme Court expressly considered and explicitly rejected the analysis in the *2017 Opinion*. *See Kohlhaas v. State*, 518 P.3d 1095, 1120–21 (Alaska 2022). Indeed, courts outside of Maine have routinely rejected RCV challenges on multiple grounds. *See, e.g., Dudum v. Arntz*, 640 F.3d 1098 (9th Cir. 2011); *Minn. Voters Alliance v. City of Minneapolis*, 766 N.W.2d 683 (Minn. 2009); *McSweeney v. City of Cambridge*, 665 N.E.2d 11 (Mass. 1996).

In short, the *2017 Opinion* addressed a new statute that had yet been implemented statewide anywhere (with one brief exception) and expressed an opinion not shared by any court anywhere.

B. The *2017 Opinion* Explains Why the Current Question Presents a Solemn Occasion.

The *2017 Opinion* contains one of the most comprehensive discussions of the solemn occasion requirements for advisory opinions under Me. Const. art. VI, § 3. *See 2017 Opinion*, 2017 ME 100, ¶¶ 9–55. Simply following the path blazed by the Justices in the *2017 Opinion* whether it should *then* answer the question whether the original RCV statute violated the "plurality" requirements of the Maine Constitution leads indubitably to the conclusion that the Justices should *now* answer the query whether the amendments to the RCV law satisfy the "plurality" requirements of the Maine Constitution. (If RCV opponents suggest any other supposed infirmities with the proposed amendments to the RCV law, we will address them in a reply brief.)

First, because the current question has been unanimously propounded by the entire Legislature, the standing requirements to seek an Opinion of the Justices have been met. *Cf. 2017 Opinion*, 2017 ME 100, ¶ 36 (answering a question posed only by State Senate).

Second, "[t]here can be no doubt" that the current question of the constitutionality of the proposed amendment to the RCV statute "addresses a very serious matter." *Id.* ¶ 37. "Whether [L.D. 1666] conflicts with the constitutional 'plurality' requirement is a question of serious consequence for the people of this State." *Id*. (brackets added). As before, "we have no difficulty in agreeing" that the proposed amendment to the RCV statute "is an important question of law within the meaning of" Me. Const. art. VI, § 3.

Third, "[m]any of the guideposts for determining the existence of a solemn occasion are unquestionably satisfied" by the current question. *2017 Opinion*, 2017 ME 100, ¶ 39. "It seeks advice on a matter that is not tentative, hypothetical, or remote." *Id*. (footnote and citations omitted). "The Question is sufficiently precise and understandable, and does not implicate facts or other provisions of law beyond those cited in the materials submitted to us by the [Legislature]." *Id*. (brackets added and citations omitted). "Neither is the Question overly complex." *Id*. (citations omitted).

The other components of a solemn occasion are more evident today than in 2017. More so than the *2017 Opinion*, the current question satisfies

the "live gravity and unusual exigency requirements" because "Maine voters will go to the polls to elect a new Governor along with their Senators and Representatives" in just over eight months, not 18 months. *See id*. ¶ 40.

Furthermore, unlike the "much closer question" in the *2017 Opinion* whether there was "doubt about the body's authority" and whether there was any "uncertainty" about the status of the law, *see id*. ¶¶ 41–42, there is doubt and uncertainty aplenty here. In 2017, "[t]here [was] no uncertainty as to the status of the [RCV] Act; it is in effect," and the "citizen initiative [did] not require any further action of the Governor or the Legislature." *Id*. ¶¶ 43–44 (brackets added).

In sharp counterpoint, the Legislature currently is considering whether to finally approve L.D. 1666 and thus needs the Justices' guidance concerning the constitutionality of L.D. 1666 before its statutory adjournment date of April 15, 2026. As noted above, it also concerns an election that looms on the immediate horizon.

In the final analysis, the reasons the Justices found compelling to opine about the constitutionality of ranked choice voting in 2017 ring even more

true today. "In short, the State of Maine is faced with potential uncertainty in its election process, and we cannot ignore the historical ramifications of previous election upheaval." *Id*. ¶ 55 (footnote omitted). As before, "we would be remiss if we refused to acknowledge the unique and historically significant situation in which the [Legislature] now finds itself." *Id*. ¶ 49 (brackets added). The Justices properly can and should answer the current question propounded by the Legislature.

II. The Proposed Amendments to the Ranked Choice Voting Law Conform with the Plurality Requirements of the Maine Constitution.

A. The Justices' Opinion on this Constitutional Issue Is Not Controlled by the *2017 Opinion*.

The *2017 Opinion* opined that the RCV law passed by the citizen initiative violated the "plurality" requirements of the Maine Constitution. *See 2017 Opinion*, 2017 ME 100, ¶¶ 60–68. That Opinion, however, is not frozen in amber and controlling today to answer the question whether the proposed amendments to the RCV law in L.D. 1666 also violate the "plurality" requirements of the Constitution.

"Advisory Opinions represent the advice of the individual Justices." *2017 Opinion*, 2017 ME 100, ¶ 9 (citing Me. Const. art. VI, § 3; *Opinion of the Justices*, 682 A.2d 661, 663 (Me. 1996)). "They are not binding on the Justices individually or together in any subsequent case that may come before the Law Court and they have no precedential value or conclusive effect." *2017 Opinion*, 2017 ME 100, ¶ 9 (citations omitted). Thus, the *2017 Opinion* is not binding on any Justice who joined that Opinion and is not binding on any or all the current Justices of the Maine Supreme Judicial Court.

Similarly, the *2017 Opinion* is not binding precedent in any subsequent litigated case. "The rule of stare decisis does not apply to Justices' Constitutional Advisory Opinions." *Opinion of the Justices*, 281 A.2d 321, 322 (Me. 1971) (quoted in *2017 Opinion*, 2017 ME 100, ¶ 9).

The persuasiveness of the *2017 Opinion* on the merits is further undermined by the fact that the Justices were opining about a ranked choice voting system that was going to take effect in 18 months, as opposed to the actual system that Maine has used to conduct ranked choice voting for almost a decade. Oliver Wendell Holmes, Jr., famously wrote long before he

joined the U.S. Supreme Court: "The life of the law has not been logic; it has been experience." Oliver Wendell Holmes, Jr., *The Common Law* 1 (1881).

By relying on labels and shorthand descriptions characterizing ranked choice voting and speculating how it might work in the future, the Justices erroneously opined in 2017 that it was an improper form of "majority" as opposed to "plurality" voting. *See 2017 Opinion*, 2017 ME 100, ¶¶ 60–68. By relying now on experience, the Justices can—and should—opine that ranked choice voting, like single choice voting, is simply another way of counting votes that produces a winner in a single election, and that both approaches can produce a winner with a "plurality of the votes returned," even if the winner has not received a majority. And that is all that the Maine Constitution requires.

B. The Proposed Amendments to the Ranked Choice Voting Law Are Constitutional.

1. The RCV Opponents Must Meet a Very High Standard to Declare the Proposed Amendments Unconstitutional.

In evaluating the constitutionality of ranked choice voting, as amended by L.D. 1666, we begin with the recognition that it "enjoys a 'heavy

presumption' of constitutionality, it is the burden of the party challenging the statute to establish that it is unconstitutional, and the challenging party must meet that burden beyond a reasonable doubt." *2017 Opinion*, 2017 ME 100, ¶ 59 (quoting *Opinion of the Justices*, 2004 ME 54, ¶ 10, 850 A.2d 1145; *League of Women Voters v. Sec'y of State*, 683 A.2d 769, 771–72 (Me. 1996)). This is a very high bar that cannot be easily cleared.

"Moreover, a party challenging the facial constitutionality of a statute must establish that there is 'no set of circumstances' in which the statute could be read to be constitutional, even if the only constitutional interpretation is cumbersome or introduces additional delay or expense." *2017 Opinion*, 2017 ME 100, ¶ 59 (quoting *Guardianship of Chamberlain*, 2015 ME 76, ¶ 10, 118 A.3d 229; *United States v. Salerno*, 481 U.S. 739, 745 (1987)). This is critical here because it means that if the counting method under ranked choice voting is consistent with *any* reasonably possible reading of the "plurality of all votes returned" provision, then the constitutional challenge under that provision evaporates. And, as experience teaches us,

that is exactly how ranked choice voting has operated in Maine since the Justices issued the *2017 Opinion*.

2. The Proposed Amendments Seek to Achieve the Fundamental Purpose of Determining the Will of the People.

In evaluating whether the proposed amendments to the RCV law are constitutional, we should not lose sight of the fact that "[o]urs is a representative democracy." *2017 Opinion*, 2017 ME 100, ¶ 48 (citing *Opinion of the Justices*, 461 A.2d 701, 704 (Me. 1983); *Powell v. McCormack*, 395 U.S. 486, 547 (1969)). "A fundamental principle of our representative democracy is, in Alexander Hamilton's words, 'that the people should choose whom they please to govern them.'" *2017 Opinion*, 2017 ME 100, ¶ 48 (cleaned up and quoting *Powell*, 395 U.S. at 547) (other citation omitted). "Because this entire system of government is founded on the people's choice of who will represent them, the right to vote is regarded as 'preservative of all rights.'" *2017 Opinion*, 2017 ME 100, ¶ 48 (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

To state the obvious, ranked choice voting is premised on counting *all* the votes to determine the will of *all* the people. As Judge Walker explained:

> The point, rather, is that a manner of election that requires a contestant for representative office to win over minority factions, when the contestant has not achieved an outright majority, is not inherently destructive to the virtues of a republican form of government and may, in fact, promote them.

Baber, 376 F. Supp. 3d at 137 n.18 (Court's explanation of James Madison's attack on minority factions in *The Federalist* No. 10).

If the polestar of the constitutional right to vote is to determine the people's choice of who will represent them, it's apparent that the RCV opponents drew the wrong lesson from Maine's move from "majority" to "plurality" voting in the Maine Constitution in the 19th century. *See 2017 Opinion*, 2017 ME 100, ¶ 61–64 (describing history). As the Justices noted, "[b]etween 1830 and 1880, a number of elections yielded no candidate who achieved a majority vote." *Id*. ¶ 62. For many State Representative races, it meant the will of the people was ignored because a stalemate prevented anyone from representing them until someone received a majority following repeated elections. *Id*. For many State Senate races, it meant that the will of

the people was sidelined because the other members of the House of Representatives and State Senate, instead of the people, picked the State Senator. *Id*. For Gubernatorial races, it meant that the will of the people was ignored because the House of Representatives selected any two of top four vote getters and the State Senate elected the Governor. *Id*.

> The result 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.

The debate then between "majority" and "plurality" voting in Maine in the 19th century was not an overwrought academic argument at an American Political Science Association convention, but rather was a fight over fulfilling the constitutional promise that "the people should choose whom they please to govern them." *2017 Opinion*, 2017 ME 100, ¶ 48 (citations omitted). Unfortunately, the Justices then erroneously focused on a caricature of ranked choice voting presented by RCV opponents and

opined that ranked choice voting required "majority" voting and thus ran afoul of the "plurality" voting provisions of the Maine Constitution. *See id*. ¶ 65.

3. The Proposed Amendments Make Explicit that RCV Requires a "Plurality of All Votes Returned" to Win an Election.

The question is whether the proposed amendments in L.D. 1666 to the ranked choice voting law comply with the plurality requirements of the Maine Constitution. *See* Me. Const. art. V, pt. 1, § 3 (the Secretary of State "shall determine the number of votes duly cast for the office of Governor, and in case of a choice by *plurality of all of the votes returned* they shall declare and publish the same") (emphasis added); *accord* Me. Const. art. IV, pt. 1, § 5 (State Representative); Me. Const. art. IV, pt. 2, § 3 (State Senator). Additionally, the Maine Constitution grants the Legislature the power to determine how to count the votes. *See* Me. Const. art. IX, § 12 ("The Legislature may by law … prescribe the manner in which the votes shall be received, counted, and the result of the election declared.") (ellipsis added).

Ranked choice voting is merely a method of counting the votes to determine who received a plurality of all the votes returned.

First things first. Neither the original RCV law, P.L 2017, ch. 3, nor the proposed amendments in L.D. 1666 require the winning candidate to receive a majority of *all* votes cast (although obviously a candidate who does receive a majority of all votes cast is declared the winner). Rather, the proposed amendments repeatedly refer to a "plurality" and require the winning candidate to receive a plurality of all votes cast. *See* L.D. 1666, § 2 (amending 21-A M.R.S § 1(35-A); L.D. 1666, § 3 (enacting 21-A M.R.S § 1(40-C)); L.D. 1666, § 4 (amending 21-A M.R.S § 605-A(2)(A)); L.D. 1666, § 6 (amending 21-A M.R.S § 723(1)); L.D. 1666, § 7 (amending 21-A M.R.S § 723(2); L.D. 1666, § 8 (amending 21-A M.R.S § 723-A(2)(A)). The Justices should evaluate the constitutionality of the actual language of the statute proposed by the Legislature instead of the strawman constructed by RCV opponents.

At the heart of the amended RCV law, the Legislature expressly states that voters cast *one* ballot in *one* election resulting in *one* final tally in which

the counting continues until a candidate receives a plurality, who is then declared the winner:

> A. 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 continuing candidate, and the candidate ~~with the most~~ receiving a plurality of the votes cast is ~~declared the winner of the election~~ elected.
>
> B. If there are more than 2 continuing candidates, the last-place candidate is ~~removed from consideration~~ eliminated and a new round begins.

L.D. 1666, § 8 (amending 21-A M.R.S § 723-A(2)). Only after the count is complete is "each ballot is tabulated as one vote for its highest-ranked continuing candidate." *Id.*

L.D. 1666 makes explicit what had been implicit, namely, that voters' rankings do not constitute a series of separate votes cast in separate elections. Instead, "[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." L.D. 1666, § 8 (amending 21-A M.R.S. § 723-A(1)(I)). This amended language matches the RCV law to its actual operation.

The Justices recognized that the former language of the RCV statute did *not* require a majority in cases in which there were only one or two candidates. *Cf. 2017 Opinion*, 2017 ME 100, ¶ 65 ("In essence, the Act is inapplicable if there are only two candidates[.]"). Thus, no one can—or does—suggest that the RCV law unconstitutionally requires a "majority" instead of a "plurality" when there are only one or two candidates.

Maine's experience since the *2017 Opinion* informs us that the RCV also does not unconstitutionally require a "majority" instead of a "plurality" when there are more than two candidates.

We need look no further than the 2018 Congressional race in the Second District conducted under the RCV law. In that election, in addition to Jared Golden and Bruce Poliquin, there were two other candidates on the ballot. *See Baber*, 376 F. Supp. 3d at 129–31. Utilizing ranked choice voting, the minor candidates were mathematically eliminated and those candidates' second choices, if any, were allocated to Golden and Poliquin, with Golden being declared the winner after all the votes were counted. *Id*. The critical point from a constitutional perspective is that, at the end of counting, *Golden*

received more votes than Poliquin and was elected even though he only received a plurality of all the total votes cast:

Name	**Final Vote**	**Percentage of Total Votes Cast**
Jared Golden	142,440	49.2%
Bruce Poliquin	138,931	48.0%
Exhausted ballots (contained votes for a candidate, but ranked neither Golden nor Poliquin)	8,253	2.8%
Total Votes Cast	289,624	100%

See Baber, 376 F. Supp. 3d at 130–31; *see also Kohlhaas*, 518 P.3d at 1119 (Golden "received only 49.2% of the total votes cast—winning with slightly less than a majority, but still the greatest number, of votes cast") (footnote omitted).

The 2018 Second Congressional District race identified the will of the people by counting all the votes to determine their preferences using ranked choice voting, and it produced a winner who received a plurality, not a majority, of the total votes cast. Full stop.

Although ranked choice voting *may* produce a winner who received a majority, that is of no moment—as the Justices explained previously, "[a] majority is always a plurality[.]" *2017 Opinion*, 2017 ME 100, ¶ 61 n.36

(brackets added). But ranked choice voting need not produce a winner who receives a majority. *See Kohlhaas*, 518 P.3d at 1119. In rejecting a similar challenge to what the Alaska Supreme Court described as a similar constitutional provision, *see id*. at 1120, the *Kohlhaas* court explained why as a mathematical matter ranked choice voting did *not* require a majority:

> The flaw in [the] argument is in assuming that votes for losing candidates are always redirected to successful candidates, so that a candidate must ultimately receive more than half the total votes cast in order to win. But [opponents] fail to appreciate the fact that voters do not have to select second- or third-choice candidates, and many may not. When a voter's first-place candidate is eliminated and the voter has not ranked a second-place candidate, the ballot is not redirected to another candidate. Because these votes do not go into the numerator (votes for a successful candidate) but remain in the denominator (total votes cast), *a successful candidate can win the election with less than half of the total votes cast even though the candidate receives more than half of the votes counted in the final round of tabulation*.

Id. at 1120–21 (brackets and emphasis added).

"Our construction of the Maine Constitution depends primarily on its plain language, which is interpreted to mean whatever it would convey to an intelligent, careful voter." *2017 Opinion*, 2017 ME 100, ¶ 58 (citations omitted). Because the plain language of the Constitution requires only that

the winner be chosen "by plurality of all of the votes returned," Me. Const. art. V, pt. 1, § 3, the stubborn fact that ranked choice voting always produces winners by a plurality—sometimes by a majority (which always is a plurality) and sometimes by a plurality but not a majority—should be the end of the matter.

In their discussion of "rounds" of tabulation in ranked choice voting, the Justices assumed RCV was "akin to a series of runoff elections that the [Constitution] implicitly rejected by providing for election by a plurality of votes." *Kohlhaas*, 518 P.3d at 1119 (brackets added); *cf. 2017 Opinion*, 2017 ME 100, ¶¶ 65–67 (criticizing "rounds" of tabulations). But that detaches ranked choice voting from its statutory moorings. Under RCV, there is a single election, and voters submit a single ballot with instructions how to count that vote. *See* L.D. 1666, § 8 (amending 21-A M.R.S § 723-A(2)).

The U.S. Federal Election Commission (FEC) also rejected the Justices' notion that "rounds" of tabulations were the equivalent of runoff or multiple elections. In response to an inquiry whether "each round of voting, tallying, and vote reallocation in Maine's ranked-choice voting system" qualified as

a separate election for purposes of federal campaign contribution limits, the FEC was unequivocal:

> No, the individual rounds of vote tallying in Maine's ranked-choice voting system do not qualify as separate elections under [federal law]. Rather, the entire ranked-choice voting process, including all necessary rounds of vote tallying, … constitutes a single election[.]

FEC Advisory Opinion 2024-12 at 3 (brackets and ellipsis added). So, too, here.

Without anchoring its conclusion in the plain language of the Constitution, the Justices broadly opined:

> [T]he Act prevents the recognition of the winning candidate when the *first* plurality is identified. … If, *after one round of counting*, a candidate obtained a plurality of the votes but not a majority, that candidate would be declared the winner according to the Maine Constitution as it currently exists.

2017 Opinion, 2017 ME 100, ¶¶ 64, 66 (emphasis added).

"But the Maine Supreme Judicial Court did not explain why its constitution required the election to be called after one round of counting." *Kohlhaas*, 518 P.3d at 1121 (footnote omitted). The Maine Constitution does not use the term "first plurality" or "final plurality," and it certainly does

not say that an election must be called partway through the counting process. The RCV opponents cannot place their thumb on the scale by adding words and requirements to the Maine Constitution.

"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." *Id*. Accordingly, the Alaska Supreme Court concluded: "The [Maine] court's failure to pinpoint constitutional text, structure, or policies inconsistent with ranked-choice voting leaves us unconvinced by its analysis." *Id*. (brackets added).

Declaring a winner before the votes have been fully counted is the equivalent of declaring the Atlanta Falcons the Super Bowl Champions because they led the New England Patriots by a score of 28–3 with little more than a quarter of the game remaining. That is not the proper approach in any contest that keeps score.

* * *

At the end of the day, the answer to the constitutional question is plain. The Maine Constitution requires *only* that the winning candidates in the general election be chosen "by plurality of all of the votes returned**."** Me. Const. art. V, pt. 1, § 3 (Governor); *accord* Me. Const. art. IV, pt. 1, § 5 (State Representative); Me. Const. art. IV, pt. 2, § 3 (State Senator). The ranked choice voting law, as amended by L.D. 1666, repeatedly makes explicit that the winning candidates need only receive a plurality of all the votes cast. That conclusion is confirmed by recent experience, by recent caselaw, and by the laws of mathematics. Nothing more is necessary and nothing more is required. The answer to both questions is either "yes" or "yes!"

Conclusion

The Maine State Senate President and Maine State Speaker of the House respectfully request that the Justices opine that the question propounded presents a solemn occasion under the Maine Constitution, and that the proposed method of ranked choice voting, as amended, conforms with the Maine Constitution.

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