

# STATE OF MAINE

In Senate \_\_\_\_\_

**WHEREAS**, it appears to the 132nd Legislature that the following is an important question of law and that this is a solemn occasion; and

**WHEREAS**, the Constitution of Maine, Article VI, Section 3 provides for the Justices of the Supreme Judicial Court to render their opinion on such a question; and

**WHEREAS**, separate provisions of the Constitution of Maine, adopted at different times, provide that persons elected to the House of Representatives must be elected “by a plurality of all votes returned,” Constitution of Maine, Article IV, Part First, Section 5; those elected to the Senate must be “by a plurality of the votes in each senatorial district” and the Senate determines “who is elected by a plurality of votes to be Senator in each district,” Article IV, Part Second, Section 4 and Section 5; and those elected as Governor must be “by plurality of all of the votes returned,” Article V, Part First, Section 3; and

**WHEREAS**, on November 8, 2016, the voters of Maine approved the use of ranked-choice voting in state elections, Initiated Bill 2015, chapter 3; and

**WHEREAS**, on May 23, 2017, the Justices of the Supreme Judicial Court answered questions in an advisory opinion regarding the constitutionality of ranked-choice voting in light of the plurality provisions of the Constitution of Maine, Article IV and Article V; and

**WHEREAS**, as a result of a people's veto of portions of Public Law 2017, chapter 316, the general and special elections for the offices of Governor, State Senator and State Representative were removed from the list of those offices to which ranked-choice voting applied; and

**WHEREAS**, starting with the June 12, 2018 primary elections, Maine has conducted numerous successful elections using ranked-choice voting, including primary and general elections in races for the United States House of Representatives and United States Senate and primary elections for the Maine House of Representatives, Maine Senate and Governor; and

**WHEREAS**, Maine has not used ranked-choice voting in general elections for state office, resulting in general election ballots containing both ranked-choice voting and conventional “first past the post” voting; and

**WHEREAS**, having 2 different election systems on a single ballot is potentially confusing and disruptive to the voting process; and

**WHEREAS**, in *Kohlhaas et al. v. State of Alaska, Office of Lieutenant Governor, Division of Elections*, 518 P.3d 1095 (Alaska 2022), in considering whether ranked-choice voting violates a provision of the Alaska Constitution requiring the person “receiving the greatest number of votes” to be the governor, Alaska Constitution, Article III, §3, a requirement that is substantially similar to the requirements of the Constitution of Maine, the Alaska Supreme Court held that, because a candidate wins a plurality of the votes only after the final round of tabulation, Alaska’s ranked-choice voting statute conformed with the Alaska Constitution’s plurality provision; and

**WHEREAS**, in Advisory Opinion 2024-12, the Federal Election Commission concluded unequivocally “that the entire ranked-choice voting process, including all necessary rounds of vote tallying, ... constitutes a single election” and recognized that, unlike traditional run-off

elections, ranked-choice voting does not allow for any additional periods of campaigning and voting; and

**WHEREAS**, Legislative Document 1666, Senate Paper 660, 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, referred to in this order as "L.D. 1666," amends Maine's ranked-choice voting law to conform with the plurality election provisions of the Constitution of Maine and restores the use of ranked-choice voting for general elections for Governor, State Senator and State Representative; and

**WHEREAS**, on June 18, 2025, having been passed to be enacted by both the House of Representatives and the Senate, L.D. 1666 was presented to the Governor for her signature; and

**WHEREAS**, upon presentment of L.D. 1666 to the Governor, questions were raised regarding the application of the Constitution of Maine's plurality provisions to this legislation in light of recent legal precedent; and

**WHEREAS**, on June 25, 2025, the Senate recalled L.D. 1666 from the Governor's desk and then carried it over, in the same posture, to the next special or regular session of the 132nd Legislature, so that an answer to the constitutionality of L.D. 1666 could be obtained; and

**WHEREAS**, several candidates for Governor in the 2026 election have already registered their campaigns and begun their efforts while others are likely to enter the race before the end of the qualification period, all of whom would be affected by the manner in which the general election is conducted; and

**WHEREAS**, an answer to the constitutionality of L.D. 1666 is required before candidates, their supporters and the voting public begin engaging in earnest in the 2026 campaign; and

**WHEREAS**, if the ranked-choice method of voting, as amended by L.D. 1666, was applied to elections in 2026 without resolution of the constitutional question presented here, a candidate for Governor, State Senator or State Representative who achieved an apparent plurality of the votes counted by city and town officials but failed to prevail in the subsequent round or rounds conducted under the supervision of the Secretary of State pursuant to ranked-choice voting could challenge that candidate's declared loss as a violation of the plurality vote requirement in the Constitution of Maine for the position sought by that candidate and thereby place the validity of the election into question and delay the seating of a Governor, State Senator or State Representative; and

**WHEREAS**, failing to address important and unresolved questions about the constitutionality of ranked-choice voting before the end of the current legislative session would potentially cause chaos and uncertainty in the races now beginning; and

**WHEREAS**, the Legislature requests guidance from the Justices of the Supreme Judicial Court as to the constitutionality of L.D. 1666 so that it may determine, during the Second Regular Session of the 132nd Legislature, whether it is necessary to propose constitutional amendments for submission to the voters for approval in order to implement ranked-choice voting for elections held thereafter; and

**WHEREAS**, it is vital that the Legislature be informed at the earliest possible date as to the opinions of the Justices of the Supreme Judicial Court on the question propounded in this order; now, therefore, be it

**ORDERED**, that, in accordance with the provisions of the Constitution of Maine, the Legislature respectfully requests the Justices of the Supreme Judicial Court to provide to the Legislature the Justices' opinion on the following question of law:

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?

**SPONSORED BY:** \_\_\_\_\_

**(Senator RENY, C.)**

**COUNTY: Lincoln**