

April 24, 2025

Sen. Craig Hickman, Chair
Rep. Laura Supica, Chair
Joint Standing Committee on Veterans and Legal Affairs
Maine State Legislature
100 State House Station
Augusta, ME 04333

RE: LD 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

Chair Hickman, Chair Supica, and members of the Joint Standing Committee on Veterans and Legal Affairs: My name is David O'Brien, and I am Policy Director for RepresentUs, a nonpartisan election reform advocacy organization. RepresentUs is submitting testimony today in strong support of LD 1666.

RepresentUs is dedicated to the idea that the government should be representative of and accountable to the people. It advocates for policies to strengthen our democracy and provides activists with resources and training to bring meaningful change. We have advocated for Ranked Choice Voting across the country and were among the *amici curiae* who submitted a brief to the Supreme Court of Alaska when it considered the use of RCV in a similar constitutional context to Maine.

In 2016, the voters of Maine showed their support for ranked choice voting (RCV) at the ballot. At that time, Maine voters intended for RCV to be used in all state and federal elections. However, in 2017, the Maine Supreme Judicial Court issued a non-binding advisory opinion declaring that RCV is contrary to the Maine Constitution to the extent that the Constitution provides for election by "plurality" in general elections (see Me. Const. art. IV, pt. 1, § 5; Me. Const. art. IV, pt. 2, § 4; Me. Const. art. V, pt. 1, § 3). Crucially, the Supreme Judicial Court assumed that it must look to the first round of counting to determine whether there has been a plurality winner rather than at the end of the full counting process.

Other bodies have reached very different conclusions since the Supreme Judicial Court's advisory opinion. In 2022, the Supreme Court of Alaska considered a similar challenge to RCV under the plurality provision in its state constitution. It found no conflict, noting that under RCV, "the vote count is not complete until the final round of tabulation." *Kohlhaas v. State*, 518 P. 3d 1095, 1121 (Ak. 2022).

Last year, the Federal Election Commission (FEC) issued an advisory opinion addressing the interaction of federal campaign finance law with the use of RCV in Maine's congressional elections. The FEC determined that the entire RCV counting process should be considered as a single process, rather than treating each round as a separate election, noting "a candidate is elected by receiving the most votes in the final round" and that the separate rounds of counting in RCV "cannot be considered separate elections." (Federal Election Commission Advisory Opinion 2024-12 (McCutcheon)).

Recent scholarship also supports the understanding that Maine's plurality requirement is compatible with RCV. In a 2021 law review article, legal scholars Richard Pildes and Michael Parsons conducted an exhaustive review of the language and history behind plurality requirements in state constitutions and determined that RCV conflicts with neither the text nor the intent of these constitutional provisions, including Maine's. (Richard H. Pildes & G. Michael Parsons, *The Legality of Ranked Choice Voting*, 109 Cal. Law Rev. 1773 (2021)).

LD 1666 will standardize elections in Maine by adopting Ranked choice voting (RCV) for all state and federal elections. Should this bill pass, we expect the courts would take a fresh look at this issue prior to the 2026 gubernatorial election and, in light of developments in scholarship and jurisprudence, along with a better understanding of RCV arising from Maine's years of experience using it, we expect the Supreme Judicial Court to reach a different conclusion than they did in 2017.

For these reasons, we respectfully encourage you to pass LD 1666.

David O'Brien
Policy Director
[RepresentUs](https://represent.us)