



Department of the Secretary of State

Bureau of Corporations, Elections and Commissions

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JOINT STANDING COMMITTEE ON VETERANS AND LEGAL AFFAIRS

LD 202 “RESOLUTION, Proposing an Amendment to the Constitution of Maine To Implement
Ranked-choice Voting”

Testimony Provided by Shenna Bellows, Secretary of State
February 10, 2021

Senator Luchini, Representative Caiazzo and Members of the Committee:

The Secretary of State supports this legislation and stands ready to implement ranked choice voting for gubernatorial and state legislative races should the Legislature and the people of Maine determine that the constitutional amendment is appropriate. Ranked choice voting was successfully implemented in Maine starting with the June, 2018 election. At this time, based on statewide votes, legal decisions and the provisions of the Maine Constitution, the State of Maine is using ranked-choice voting for all of Maine's state-level primary elections, and in general elections only for federal offices, including the office of U.S. President. The ranked-choice rounds are used only in races in which there are more than two candidates. Attached to my testimony is a detailed description of how ranked choice voting works for legislators who wish to review the process and procedures in detail.

If the Committee is interested, the Maine State Archives stands ready to provide additional research materials to aid the Committee's decision-making. On the Maine State Legislature's website, there is a fascinating summary of constitutional amendments to the Maine State Constitution. It is important to recognize with regards to this amendment that the Maine State Constitution was amended by the 59th Legislature and a vote of the people of Maine to strike the word “majority” from the Constitution and replace it with “plurality,” with an effective date of October 20, 1880. Prior to this change, if no candidate won a majority, the state legislature chose the governor, and in 1879, Alonzo Garcelon, coming in a distant third in the election, was chosen by the legislature to be Governor. Terms were a single year then, and he was on the ballot again in September and again failed to secure a majority. Republican candidate Daniel Davis received the most votes but also failed to obtain a majority. Garcelon sought to maintain power through the legislative council, and in January of 1880, Maine witnessed an armed standoff in Augusta with General Joshua Chamberlain called to the State House to intervene. The Maine Supreme Judicial Court ended up ruling with the Republican candidate, Daniel Davis. In 1963, the Second Constitutional Commission of the State of Maine reviewed the Maine State Constitution and unanimously recommended an amendment preserving plurality.

We share this history to demonstrate that a constitutional amendment to expand ranked choice voting would be in keeping with Maine's history of careful review and amendment of the Maine State Constitution to meet the challenges of present day. Fortunately, we are able to bridge our differences through reasoned debate. We are happy to answer any questions the Committee may have and provide additional resources to the work session.

MEMO

To: Veterans and Legal Affairs Committee
From: Secretary of State Shenna Bellows
Date: February 10, 2021
Re.: Ranked-choice voting

Ranked-choice voting (RCV) was first implemented in the June 2018 primary election, and Maine is now using ranked-choice voting for all of Maine's State-level primary elections, and in general elections ONLY for federal offices, including the office of U.S. President. The ranked-choice rounds are used only in races in which there are more than two candidates. A [full timeline of RCV in Maine](#) is available on the Department of the Secretary of State's [RCV Resources webpage](#).

The Justices of the Maine Supreme Judicial Court issue a unanimous advisory opinion at the request of legislators in May 2017, concluding that the parts of the ranked-choice voting law that apply to general elections for State Representative, State Senator and Governor were unconstitutional under the Maine Constitution because the Maine Constitution requires the winners of those offices in a general election to be decided by a plurality. (Primary elections in Maine and elections for federal offices are governed by statute and not by the Maine Constitution.)

If a Constitutional amendment is passed to expand RCV to the gubernatorial race and State-level general elections, it would be implemented in the same manner used for the races to which it currently applies. While voters have largely found the concept of ranking candidates to be a simple concept, most are not familiar with the tabulation process and rules of RCV, which are worth reviewing:

Ranked-choice voting, sometimes called "instant run-off voting," allows voters to choose their candidates in order of preference, by marking candidates as their first, second, third, and subsequent choices. The votes are tabulated in rounds, with the lowest-ranked candidates eliminated in each round until there are only two candidates left.

A key distinction of Maine's RCV law is that the candidate who is determined to have received the majority of the votes (more than 50%) out of the two remaining in the final round is declared the winner. The easiest way to think of RCV is to visualize the process as multiple baskets, one for each candidate (let's call them A, B and C). This process is carried out by a computer algorithm during the RCV tabulation but is conducted by hand during RCV recounts. This explanation is a simplified version of a hand count process:

If you mark your ballot with Candidate A as your first choice, your ballot goes into Candidate A's basket on Election Night. Likewise, those who voted for Candidates B and C as their first choice will see their ballots in those candidates' respective baskets. Your municipal clerk counts only these first-choice votes in each basket. If no candidate receives a majority of the votes (more than 50%) on Election Night, the voting will move into ranked-choice voting rounds.

In Round 1, the candidate with the fewest ballots in their basket is eliminated. (Note: If there are several candidates running, multiple candidates can be eliminated in the same round. This is called "batch elimination" and is implemented for all candidates for whom it would be mathematically impossible to reach more than 50% of the votes.)

Let's say Candidate B is eliminated as the lowest vote-getter in Round 1, so we look at the ballots in their basket to see if those voters had a second choice. If the voters who marked Candidate B as their first choice then chose Candidate A or C as their second choice, their ballot is moved to that candidate's basket.

If they chose only Candidate B as their first choice and did not make any other rankings OR they marked their ballot all the way across for Candidate B as their first, second and third choice, their ballot is “exhausted” because they have voted only for a candidate who is no longer in the race. Those ballots go into a basket for exhausted ballots and those votes will not be part of the final round tally that determines the winner.

We then go into Round 2. As we are down to only two candidates, A and C, this is the final round. Whichever candidate has more ballots in their basket is the winner, as they have the majority of the votes in the final round.

While all of the “what-ifs” of ranked-choice voting are explained on the RCV Resources webpage, particularly the [rules that govern RCV](#), here are a few key points about marking a ranked-choice ballot:

- Many voters confuse “rankings” with “rounds.” The rankings are your choices for which candidate you want as your first, second, third, etc. choice. The rounds are the tabulation process conducted by Elections staff. For example: A vote for only one candidate *ranked* as the first choice will carry forward through all the *rounds* of tabulation until that candidate is eliminated from the race. If that candidate is not eliminated, the voter’s choice is counted as part of the final round tabulation that determines the winner.
- If you vote for more than one candidate in a single ranking (i.e. two candidates as your first choice), your vote won’t count since we won’t be able to tell which candidate you really want, same as in a plurality race.
- If you decide to skip a ranking, your choice will be bumped up to the previous ranking for counting during the rounds.
- If you decide to skip two or more rankings, we’ll only count the rankings you marked *before* the double skipped rankings.
- If you only want to vote for one candidate, you can do so. If you choose the same candidate in multiple rankings, only your first-choice vote will be counted and will carry forward into subsequent rounds, so this is the same as a single first-choice vote.

Below is an explanation of the Department of the Secretary of State’s process for conducting a ranked-choice voting tabulation:

After Election Day concludes, the municipal clerks in each town and city in Maine have two days to submit their unofficial election results to the Secretary of State’s Office, per Maine law. As those results begin to come in, the Secretary of State will confer with the Deputy Secretary in charge of the Elections Division to determine whether it appears there will be a winner in each RCV race.

To win the race outright, a candidate must receive more than 50% of the first-choice votes as counted on Election Night. If no candidate appears to have achieved this, based on initial unofficial results reports from the municipalities, the Secretary of State will make the determination to proceed with the ranked-choice voting tabulation(s).

The Secretary will advise the contracted courier service to begin collection of election materials from all the affected municipalities as soon as possible after the election. In towns and cities that use tabulator devices to count the ballots, the courier will pick up the associated memory devices in sealed packages. In those towns that hand count their ballots, the courier will pick up the actual ballots, which are transported in the official metal ballot boxes, with locks and serialized tamper-proof seals.

All of these voting materials, representing the votes cast by every Maine voter, will be delivered to a central tabulation site in Augusta, where they will once again be securely stored for the RCV tabulation process, in a locked room with very limited access for certain staff members of the Elections Division. The processing area, likewise, is secured for staff access only. In addition to physical security, neither the computers nor the ballot tabulator device are networked or enabled for Internet access.

Soon after the election, the RCV tabulation process will begin. This is a public proceeding open for observation to interested parties. Staff work during regular business hours on the tabulation processing. Elections staff will process all the election materials, which includes:

- Unlocking and unsealing each ballot box and loading all the physical paper ballots into the high-speed tabulator
- Unsealing and uploading all the memory devices
- Hand-entering any ballots that the tabulator cannot process

Results tabulation will be subject to the expediency of the ballot/memory device collection and staff processing time. While the time required to complete the process is difficult to ascertain, a statewide RCV tabulation can take 1.5 to 2 weeks, approximately.

When all the uploading is complete, all the vote data is loaded into the results program on an unconnected computer and the RCV tabulation software applies the rules, per Maine law, to run the rounds and determine the election result. The Secretary of State will make a public announcement two hours before running the actual tabulation to alert any members of the press and public who may want to be present.

As a rule, the Elections Division does not share election results until they are official and certified, signed by the governor up to 20 days after the election. However, in the interest of maintaining an open process during the tabulation of the ranked-choice voting races, the office will share the unofficial results of the ranked-choice voting rounds, including which candidate was eliminated in each round, and how those votes were redistributed to other candidates (or other final disposition including overvotes, exhausted ballots, etc.) These results may be updated during the certification process, if any upload or data entry errors are discovered during the accuracy review, after the initial tabulation is complete.

As always, official results for all races will be available and posted 20 days after the election as Excel files on the Election Results page. For each election, the Secretary will make a public announcement of which races will require the RCV tabulation process, with information about the location and time when the work will begin.