



TO: The Honorable Louis Luchini
The Honorable Chris Caiazzo, Co-Chairs
Members of the Joint Standing Committee on Veterans and Legal Affairs

DATE: April 12, 2021

RE: LD 1121 - An Act To Create an Open and Streamlined Primary System.

Good morning Senator Luchini, Representative Caiazzo, and members of the Joint Standing Committee on Veterans and Legal Affairs. My name is Will Hayward. I am here today as the Advocacy Program Coordinator for the League of Women Voters of Maine to testify neither for nor against LD 1121 - An Act To Create an Open and Streamlined Primary System.

In 2018 we concluded a formal study of primary elections and adopted a position in support of “semi-open” primaries over various forms of closed or fully open primaries for candidate selection at all governmental levels, an approach that we supported earlier today when this committee heard LD 231. The study did not reach a conclusion on nonpartisan primaries, and so we testify neither for nor against LD 1121 under consideration today.¹

We probably have more questions than answers on this bill. One set of issues has to do with the lack of practical experience and possible unintended consequences from what is proposed in LD 1121.

- We are not aware of any jurisdictions currently using this approach. This proposal is somewhat similar to one recently enacted in Alaska, but that new law has not yet gone into effect. While top-two primaries have been used in California, Washington, Nebraska and Louisiana, in each case the candidates for the general election are selected by plurality, rather than through ranked choice voting. In Alaska, the top four finishers advance to the general election with the winner chosen by ranked choice voting. This would not be possible for state offices in Maine due to the plurality clause in our constitution.
- Using RCV in an open primary also has the odd consequence that the general election will always be a contest between the same two candidates who “faced off” against each other in the final round of tabulations in the RCV primary. Voters will have already registered their choice between those two candidates on the RCV primary ballot. Some might ask, what is the point in asking voters months later to choose a second time between the same two candidates?

¹ “The LWVME neither supports nor opposes nonpartisan primaries. The LWVME will continue to monitor experience with nonpartisan primaries and re-examine this issue when the results of more empirical studies are available.”
http://www.lwvme.org/primary_study.html

- A top-two open primary may result in a general election between two candidates from the same party. This would occur any time two of a party's candidates each receive more than one-third of all the votes cast by voters of all parties who cast ballots in the primary..
- It is difficult to assess the effect this approach might have on independent candidates. Independent candidates in Maine have won elections, and it seems possible that a strong independent candidate could finish in the top two and access the ballot for the general election, but that would mean there might be some general election campaigns where either the Maine Democrats or the Maine Republicans is not involved and their candidate is not on the ballot.
- This bill would require independent and other candidates to compete more vigorously earlier in the election cycle, with a ripple effect on the qualification timeline and on campaign financing. It will require more money earlier in the campaign cycle, possibly calling for adjustments in the Maine Clean Election Act.

Some of the other benefits of this bill could be accomplished by LD 231, especially if RCV were extended to the general election for state offices. These benefits include enhanced voter participation in the primary, preserving the richness of the policy debate in the higher-profile general election, and eliminating the "spoiler effect." The League of Women Voters of Maine supports ranked choice voting that includes both primary and general elections. While RCV has been fully implemented for federal elections, we find our current situation, in which the general elections for Governor, State Senators, and State Representatives continue to be conducted by plurality, deprives voters of their full choice. While LD 1121 would ensure that those elected to state office have majority support, we favor a constitutional amendment enabling the use of ranked choice voting in general election races for state office.

Thank you for the opportunity to testify. I would be happy to answer any questions from the Committee.