

STATE OF MAINE

**BEFORE THE JUSTICES OF THE
MAINE SUPREME JUDICIAL COURT**

Docket No. OJ-17-1

In the Matter of Request for Opinion of the Justices

**BRIEF OF
LARRY DIAMOND**

Larry Diamond
Hoover Institution
434 Galvez Hall
Stanford University
Stanford, CA 94305-6003

Introduction

I am a senior fellow at the Hoover Institution and the Freeman Spogli Institute at Stanford University in California. I am co-editor of the *Journal of Democracy*, and for six and a half years I directed the Center on Democracy, Development, and the Rule of Law at Stanford University. I have spent the last 35 years studying democracy and voting, and I have written, edited or co-edited over 50 books on democracy, including a volume on *Electoral Systems and Democracy*. I write to bring to the Court's attention what my research and the work of the Center have found concerning the threats to our democracy and the importance of ranked-choice voting ("RCV") as a critical step in restoring our democracy. Because the people of Maine have enacted ranked-choice voting, this important step should be given every benefit of the doubt and its constitutionality upheld unless clearly prohibited. I agree with the arguments of the Committee for Ranked-Choice Voting and Fair Vote on those questions, but I write separately to stress the importance of the measure passed by the voters as a critical step in restoring our democracy.

Importance of the Passage of Ranked-Choice Voting

American democracy is in trouble. Our politics is more polarized and our government more dysfunctional than at any time in memory. Congress is

deadlocked and divided into warring partisan camps. Public confidence in Congress is at an all-time low.¹

The two-party system, as now structured, is failing us. Decades ago, the party primary was a democratic innovation to take the process of candidate selection away from the political bosses and open it up to the people. Today, a larger but more damaging minority dominates the nominating process — the ideological extremes in each party, who pour forth in low-turnout primary elections. As a result of the unrepresentative nature of the primary electorates, party nominees are increasingly either selected from the extreme wings of their party or, if they are incumbents, they are driven toward more extreme positions than they would otherwise favor in order to secure the re-nomination of their parties. Consequently, the center has virtually disappeared in the Congress. On Capitol Hill, there used to be some discernible overlap between Republicans and Democrats in ideological orientations. Today there is literally none.

Add to this the distortion of huge flows of special-interest money and the intensely negative tone of most political campaigns, and it is no wonder why more and more Americans are disenchanted with their politics and their political choices.

¹ (https://google.com/url?q=http://www.gallup.com/poll/1597/confidence-institutions.aspx&sa=D&ust=1475760861576000&usg=AFQjCNHHeRRF6N_mRa9GWP-N5p6N4sUzQA).

Sixty-three percent of Americans do not think the federal government has the consent of the governed², according to a Rasmussen poll, and 86 percent think our political system is broken and does not serve the interests of the American people³, according to pollster Douglas Schoen. Eighty-one percent believe it is important to have independent candidates run for office⁴.

The Tea Party and the impassioned left have brought energy and conviction to our politics, but their uncompromising stances are not in tune with majority sentiment. A majority of Americans believe it is more important for our national political leaders “to compromise to get things done”⁵ (53 percent) than “to stick to their beliefs even if little gets done” (21 percent), according to Gallup.

Americans want more choice, more openness, more flexibility and compromise, but our political institutions are producing the opposite. Only by reforming our institutions can we reshape our politics. The way our representatives and governing officials get elected shapes and constrains the way they govern. If politicians must fear being “tea-partied” if they compromise, compromise will be shunned and polarization will continue to deadlock our

² (https://www.google.com/url?q=http://www.rasmussenreports.com/public_content/what_america_thinks/2016_06)
³

(<https://www.google.com/url?q=http://www.changetherule.org/wpcontent/uploads/2014/10/OpinionSurvey.pdf&sa=D&ust=1475760861578000&usg=AFQjCNGDuN1RiLtXirm2dqDmZHNvNiB9YQ>)

⁴ (<https://www.google.com/url?q=http://www.changetherule.org/wpcontent/uploads/2014/10/OpinionSurvey>)

⁵ (https://www.google.com/url?q=http://www.gallup.com/poll/195707/americans-continue-political-leaderscompromise.aspx&sa=D&ust=1475760861579000&usg=AFQjCNFdp4iiMCC2im6jFnzLxjA26_sbvw)

https://www.gallup.com/poll/195707/americans-continue-political-leaderscompromise.aspx&sa=D&ust=1475760861579000&usg=AFQjCNFdp4iiMCC2im6jFnzLxjA26_sbvw

system. If moderation and compromise are rewarded at the polls, then our democratic system will call forth, as Abraham Lincoln hoped it would in his first inaugural address, “the better angels of our nature.”⁶

On November 8, Mainers summoned the better angels in our politics by voting yes on Question 5, which will implement ranked-choice voting in state and national elections, including for governor, Legislature and Congress. The ability to rank in preference all the candidates running for office rather than to vote for only one is intrinsically more democratic. But there are huge practical reasons why it is likely to invigorate our politics and reduce polarization.

Under ranked-choice voting, successful candidates must appeal to a majority of voters, because if no one wins a majority of first-preference votes, then lower-preference voters of the least popular candidates are transferred until someone emerges with a majority. This makes it much more likely that the winner will be someone open to moderation and compromise. And that is the only way to get things done in our democracy. Electing legislators through RCV could help to reduce gridlock and get legislation moving again. It would likely also make for better campaigns that are less mired in the politics of personal destruction, since a multi-candidate race raises the risks of going brutally and personally negative. As Howard Dean recently observed in an article endorsing the RCV system, “needing

⁶ (<https://www.google.com/url?q=http://www.bartleby.com/124/pres31.html&sa=D&ust=1475760861580000&usg=AFQjCNHfMPHf4ZEQvXQBHn-FeD5pykKCvQ>).

to reach out to more voters leads candidates to reduce personal attacks and govern more inclusively.”

RCV would also stimulate greater political choice and competition, and probably greater voter participation as well. This system solves the well-known “spoiler problem” in American democracy – the fear that a vote for a third-party or independent candidate will be wasted and will thus enable the victory of the candidate that the voter likes least. Under ranked-choice voting, voters who don’t like the established party choices will no longer have to worry about wasting their votes — they can vote their conscience or heart with a first preference, and rank their “less bad” option second. Under ranked-choice voting, more independents — who, I have found, tend to shy away from running⁷ because they don’t want to waste their time being a “spoiler” — will come forward and present their case. And smaller parties, including the Greens and Libertarians, also will have a fairer shot at being heard. As a result of all of this, elections will be more interesting, inclusive, and fair, and thus will attract wider voter interest.

Ranked-choice voting is a modest reform in two other respects. First, because it requires candidates to win a majority of the vote in a single-member-district, it does not lead to a multi-party system; rather, it encourages the two predominant parties to lean toward moderation and compromise. This has been the

⁷ (https://www.google.com/url?q=http://www.politico.com/story/2016/05/bloomberg-independents-nochance-223358%23ixzz4M2VhP4CT&sa=D&ust=1475760861582000&usg=AFQjCNEsk_eRA0dIYHx00-gFt4HfP1aofg)

effect in Australia. Since RCV was adopted for the lower house of parliament there nearly a century ago, the two main parties (moderate left and moderate right) have regularly won most, but not all, of the seats. Second, RCV is perfectly compatible with the preservation of the party primary as the means for choosing a party's nominee in the general election. Indeed, a strong case could be made that using RCV within each party primary would increase the odds of more moderate figures winning party primaries (and certainly RCV should be used to avoid a primary run-off election, as Maine has chosen).⁸

Ranked-choice voting is a reform whose time is coming in the United States. Several cities — including Oakland, San Francisco and Portland⁹ — are already using it,¹⁰ and there is interest in other states, including in Minnesota for local elections.¹¹

In the American federal system, crucial political reforms have often happened first in one state and then spread to others. Maine's implementation of

⁸ The best way to break the trend toward polarizing outcomes in party primaries, however, would be to widen the voter base in those contests through at least partially open primaries (in which independents could vote in either party primary but not both), and by moving the primary election date as far back toward the general election as possible. In 2014, well over half the states held their party primaries before the end of June – more than four months before the general election. The further in advance of the general election, the lower voter interest (and thus turnout) is likely to be. And in addition, the longer the general election campaign, the more expensive it is. Several American states (including Florida) held their primaries in late August, and a few shortly after Labor Day (perhaps the ideal time, as it would still leave two months for the general election campaign).

⁹ (<https://www.google.com/url?q=http://bangordailynews.com/2011/09/15/politics/portland-to-deployranked-choice-voting-for-mayoral-election/&sa=D&ust=1475760861583000&usg=AFQjCNF-7suJniiBLt3VawdKCNVLUw9RQ>)

¹⁰ (https://www.google.com/url?q=http://www.fairvote.org/where_is_ranked_choice_voting_used&sa=D&ust=1475760861583000&usg=AFQjCNF6LJXQUR105VvXOHDfxGGcGKmlA)

¹¹ (https://www.google.com/url?q=http://www.fairvote.org/new_legislation_in_13_states_to_expand_use_of_ranked_choice_voting_in_2016&sa=D&ust=1475760861584000)

ranked-choice voting could light a fire of reform momentum in other states. Certainly the outcome of its first RCV elections in 2018 would be closely watched around the country. This is why Question 5 was the second most important vote in the U.S. last November, and one that I very much hope will be upheld. Maine is leading the effort to make the U.S. a better democracy.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Larry Diamond". The signature is fluid and cursive, with a large loop at the end.

Dated: March 3, 2017

Larry Diamond

Hoover Institution
434 Galvez Hall
Stanford University
Stanford, CT 94305-6003

CERTIFICATE OF SERVICE

I, Larry Diamond, hereby certify that I have this 3rd day of March, 2017, caused copies of the foregoing Brief to be served on counsel for the parties listed below, by depositing the same in the United States mail, first-class postage prepaid, addressed as follows:

Dated: March 3, 2017

Larry Diamond