STATE OF MAINE

BEFORE THE JUSTICES OF THE
SUPREME JUDICIAL COURT

DOCKET NO. OJ-26-1

IN THE MATTER OF
REQUEST FOR OPINION OF THE JUSTICES

RESPONSIVE BRIEF OF LEAGUE OF WOMEN VOTERS OF MAINE

In Response to the Court's Procedural Order
Dated February 11, 2026

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INTRODUCTION

All parties who briefed the issues – the eight who agree that L.D. 1666 comports with the plurality provisions, as well as the two who contend that L.D. 1666 is unconstitutional (the Republican National Committee (RNC) and the Attorney General (AG)) – concur that this is a solemn occasion and that the Justices should opine. Accordingly, this brief will respond only regarding reasons that L.D. 1666 does not violate the plurality provisions of the Maine Constitution.

ARGUMENT

I. L.D. 1666 Does Not Conflict with the Plurality Provisions.

A. The History of the Plurality Provisions Shines a Spotlight on Their Meaning and Limited Scope.

It is not often that the Justices will be called to interpret a constitutional term whose purpose is so clear and discrete. As everyone agrees, the plurality provisions were enacted in response to a series of failed elections in the mid-19th century,[1] which had resulted in widespread discontent and more than one constitutional crisis –

[1] As the AG observes, "[t]hirty-two elections between 1820 and 1875 included at least one race for Senator that failed to produce a winner, with as many as 19 failed elections in a single year." AG Br. 9.

including, in 1878, the election of a gubernatorial candidate (the ignominious Alonzo Garcelon) who had finished *third* in the statewide popular vote.[2] This electoral dysfunction, as everyone also agrees, was caused by the Maine Constitution's original requirement that candidates for Representative, Senator, and Governor be elected by a "majority" of votes. AG Br. 8-10; RNC Br. 14. To solve this problem, the People removed the old "majority" requirement, which could lead to a failed election, and replaced it with the current "plurality" provisions, which ensure successful popular elections. Simple problem, simple solution.

There is nothing in this history to suggest that by enacting the plurality provisions, the People intended to freeze the then-predominant balloting methods in amber. AG Br. 22; RNC Br. 14. Setting aside that the text of the plurality provisions does not support this theory (a flaw addressed in greater detail below, and which has been amply briefed already), it also fails as a matter of common sense. The framers were

[2] Kenneth T. Palmer, *Development of the Maine Constitution: The Long Tradition, 1819-1988*, 28 Me. History J. 126, 135 (1989); Tinkle, *The Maine State Constitution* 12 (2d ed. 2013). Wikipedia observes, albeit without citation, that this was "the only gubernatorial election in the history of the United States where the winning candidate did not win any county in the state." Wikipedia, *1878 Maine gubernatorial election*, https://en.wikipedia.org/wiki/1878_Maine_gubernatorial_election (last visited Mar. 17, 2026).

concerned only with preventing failed elections and ensuring successful, single-day elections that carry out the People's will. The plurality provisions do not, and have no reason to, restrict the method by which the People *articulate* that will; a successful election is a successful election whether it employs a single-choice or ranked-choice balloting method. After all, the failed elections that prompted the plurality provisions had themselves taken place under a single-choice balloting regime. The undisputed historical evidence does not support the theory of the RNC and AG that the plurality provisions were intended to "lock in" the single-choice balloting method, any more than they locked in any other particular aspect of 19th-century voting. Maine's 19th-century electors handwrote their ballots, but we do not interpret the Constitution's requirement that elections be on "written ballot" to require that modern electors handwrite the names of their selections. Me. Const. art. II, § 1.

After the 1879 election, in interpreting another of the Constitution's provisions relating to the conduct of elections, the Justices had occasion to make a very similar point. *Opinions of the Justices*, 70 Me. 560 (1880). The Legislature had passed a law authorizing the correction of "defective"

returns by the "substitut[ion]" of "a duly attested copy of the record." P.L. 1877, ch. 212; *see Opinions of the Justices*, 70 Me. at 561. The Governor propounded questions to the Justices regarding the apparent conflict between the 1877 statute and the constitutional requirement that the governor "examine the returned copies of such lists," as well as the (then-already-enacted) requirement that Representatives be elected "by a plurality of all votes *returned*." *Id.* (emphasis in original) (quoting Me. Const. art. III, § 5).

The Justices disagreed that the statute conflicted with the Constitution. They took a common-sense approach that did not transform a broad constitutional term into a strict formal prescription, identifying that the "object of the constitutional provisions respecting elections is to furnish as many safeguards as may be against a failure, either through fraud or mistake, correctly to ascertain and declare the will of the people as expressed in the choice of their officers and legislators." *Id.* As to whether the constitutional "return" provision precluded the Legislature from permitting the substitution of an attested copy of a return, the Justices explained that "where the constitutional requirement has not been fully, or has been defectively, executed by town officers, it is in aid

of the constitutional provision to supply the omission or deficiency as nearly and as correctly as may be." The Justices did not need to resort to elaborate syntactical analysis of the "return" provisions to conclude that the 1877 statute, which did not hinder the expression of the voters' will, was constitutional.[3]

It can often be difficult to discern the specific purpose of a constitutional provision. This is not one of those times. L.D. 1666 concords with, indeed it furthers, the purpose of the plurality provisions.

B. The Constitutional Text "Plurality of All Votes Returned" Does Not Limit "Votes" to Single Non-contingent Preferences

The Attorney General also errs in his construction of the Constitutional text. The relevant text that the AG seeks to define is the word "plurality," and he looks to Black's Law Dictionary for a definition as "the greatest number (esp. of votes)." AG Br. 21. But then, instead of attempting to explain how L.D. 1666 could result in the election of a

[3] As it happens, the Governor who propounded these questions was Alonzo Garcelon, and the impetus for the questions was that he was then leading efforts to disqualify ballots from the 1879 election "both for 'inaccurate' candidate names (specifically in the form of abbreviations) and for a lack of strict compliance with certification requirements." Tyler Quinn Yeargain, *New England State Senates: Case Studies for Revisiting the Indirect Election of Legislators*, 19 U.N.H. L. Rev. 335, 397 (2021); *see* Tinkle at 12. Governor Garcelon had wanted a different answer from the Justices than he received, so he disregarded the Opinion and declared his preferred candidates to have been elected – a defiance of the election results that culminated in the 1880 constitutional crisis involving Joshua Chamberlain. *See* Tinkle at 12.

candidate who has not received "the greatest number" of votes, the Attorney General substitutes similar legal-sounding phrases, such as "first plurality" or "plurality system," that nowhere appear in the Constitutional text. AG Br. 21, 23; *accord* RNC Br. 13, 24. If phrases, with no legal meaning and which appear nowhere in the Constitution, are necessary to argue that the person receiving the most ranked-choice votes has somehow not received the most votes, then L.D. 1666 must be constitutional.

Similarly, the Attorney General invents a distinction between "a plurality of all 'ballots' returned," (a standard he concedes is satisfied by ranked-choice voting) and "a plurality of all 'votes' returned" (a standard he argues, erroneously, is not). AG Br. 25. In a seemingly incompatible argument, the RNC looks to the word "ballot" in a different way, making a convoluted argument that a ranked-choice ballot cannot be a ballot at all. RNC Br. 19-20. These distinctions are red herrings. Maine's Constitution nowhere says that a "ballot" can (or cannot) include contingent preferences but a "vote" can include only a single preference. Indeed, the Justices have previously used "ballot" in interpreting the plurality provisions in their formulation that the "foundation and great

bulwarks" of Maine's "popular government" is "the will of the people, *as expressed by the ballot*." *Opinions of the Justices*, 70 Me. 570, 586-87 (1880) (emphasis added). Nothing in the text of the Constitution provides that a ranked-choice ballot is a less constitutionally permissible method of obtaining the will of the people than a single-choice ballot. And nothing in the text of L.D. 1666 provides anything other than "the will of the people as expressed by the ballot": the person with the most votes wins. As a matter of fact, a ranked-choice ballot provides a more comprehensive expression of the will of the people.[4]

Further, it is hard to understand the Attorney General's refusal to engage with the analysis of *Kohlhaas v. State*, 518 P.3d 1095 (Alaska 2022), and instead simply to dismiss it as a decision "out of a different jurisdiction and interpreting a different constitution with a different history." AG Br. 23. Maine's Constitutional text, which provides that a candidate for governor wins by "a plurality of all of the votes returned," is no narrower than Alaska's constitutional requirement that the candidate "receiving the greatest number of votes shall be governor."

[4] *See, e.g.*, Br. of Five Maine Voters 8-12; Br. of Me. State Sen. Pres. & Me. State Speaker of the House 19-22; Br. of League of Women Voters of Me. 31-32; Br. of Fairvote & Me. Women's Lobby 18-22; Br. of Dmitry Bam 25.

Kohlhaas, 518 P.3d at 1118, 1121 (recognizing similarity of relevant provisions of Maine and Alaska constitutions). After all, as the AG's cited definition shows, the "plurality of all votes" simply means "the most votes." *Kohlhaas* is directly on point, and the AG's refusal to engage with or even attempt to rebut its reasoning is revealing.

Just as nothing in the history or purpose of the plurality provisions mandates counting single-choice votes or precludes counting ranked-choice votes, nothing in the Constitutional text suggests that one method of counting votes is constitutional and the other is not.

C. Ranked-Choice Voting Under L.D. 1666 Is a Single Election, Not a Series of Runoffs

In an apparent effort to invoke the specter of failed elections, both the AG and the RNC assert that ranked-choice voting operates as a series of runoff elections. AG Br. 22, 25-29; RNC Br. 25. They are mistaken.

In a runoff system, time passes and circumstances change between the first election and the runoff election. Candidates continue to campaign, money is expended, and the state must organize and fund another election. Voters must take time to attend the polls again on the day of the runoff election. Most importantly, voters must make a *new decision* in the runoff election. They choose from a different slate of

candidates than in the first election, based on the new information they have received in the interim (from the continued campaigning, not to mention the results of the initial election). Even the *voter pool* changes: some voters who participated in the first election might not participate in the runoff election (even if their most-preferred candidate is in the runoff), and some people who did not vote in the first election may decide to show up for the runoff. A runoff is, in short, a different election than the initial election. *See Rockefeller v. Matthews*, 459 S.W.2d 110, 112 (Ark. 1970) (rejecting argument that "run-off election" held "two weeks after the general election" was "no more than a continuation of the general election").

Ranked-choice voting does not share these characteristics. Under L.D. 1666, there will be a single election, held on a single day, at which every voter will receive the same ballot with the same full list of candidates. A voter will receive no new information during the split-second between marking "1" next to Candidate X's name and "2" next to Candidate Y's. All voters who participate in that one election will cast a single ballot – a voter's ballot may, if they wish, convey more information about how the voter wants their vote to be counted, but it is still a single

vote in a single election. *See* Br. of Richard H. Pildes & G. Michael Parsons 23-26 (collecting authorities distinguishing runoff elections from ranked-choice voting).

It is hardly novel that a mathematical process must be completed in order to determine the winner of a ranked-choice election; counting single-choice votes, too, is a mathematical process. The tabulation process does not constitute multiple elections. It merely counts the votes.

CONCLUSION

Where a constitutional provision is susceptible to multiple interpretations, the "more restrictive interpretation should be disregarded" if it "does not effectuate the overall intent" of the provision. *Opinion of the Justices*, 673 A.2d 1291, 1299 (Me. 1996). L.D. 1666 ascertains the will of the people by determining who gets the most votes in a single popular election. L.D. 1666 fully comports with the text, history, and purpose of the plurality provisions, and the Justices should so opine.

Respectfully Submitted,

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