

# MAINE STATE LEGISLATURE

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**Legislative Record**  
**House of Representatives**  
**One Hundred and Twenty-Eighth Legislature**  
**State of Maine**

**Daily Edition**

**First Special Session**

beginning October 23, 2017

beginning at page H-1188

The Following Communication: (H.C. 340)

**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
SPEAKER'S OFFICE  
AUGUSTA, MAINE 04333-0002**

October 23, 2017  
Honorable Robert B. Hunt  
Clerk of the House  
2 State House Station  
Augusta, Maine 04333

Dear Clerk Hunt:  
Please be advised that, Governor Paul R. LePage rescinded his October 20, 2017 withdrawal of the following nominations:

On October 23, 2017

Honorable MaryGay Kennedy of Brunswick, Honorable Ann M. Murray of Bangor and Honorable Robert E. Murray, Jr. of Bangor for reappointment as Justices to the Maine Superior Court.

Judge Susan E. Oram of Auburn and Judge Bruce A. Jordan of Veazie for reappointment as District Court Judges.

These nominations are currently pending confirmation before the Senate.

Sincerely,  
S/Sara Gideon  
Speaker of the House

**READ** and with accompanying papers **ORDERED PLACED ON FILE.**

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

**PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE**

Bill "An Act To Delay Further the Implementation of Certain Portions of the Marijuana Legalization Act" (EMERGENCY) (H.P. 1140) (L.D. 1651)

Sponsored by Representative FREDETTE of Newport. (GOVERNOR'S BILL)

Joint Select Committee on **MARIJUANA LEGALIZATION IMPLEMENTATION** suggested.

On motion of Representative FREDETTE of Newport, **TABLED** pending **REFERENCE** and later today assigned.

**ORDERS**

On motion of Representative LONGSTAFF of Waterville, the following House Order: (H.O. 47)

**ORDERED**, that Representative Susan M. W. Austin of Gray be excused June 20 for personal reasons.

**AND BE IT FURTHER ORDERED**, that Representative Karen A. Gerrish of Lebanon be excused July 20 for health reasons.

**AND BE IT FURTHER ORDERED**, that Representative Chad Wayne Grignon of Athens be excused July 1 for personal reasons.

**AND BE IT FURTHER ORDERED**, that Representative Scott M. Hamann of South Portland be excused June 1 for personal reasons.

**AND BE IT FURTHER ORDERED**, that Representative Matthew A. Harrington of Sanford be excused July 1 and 20 for personal reasons.

**AND BE IT FURTHER ORDERED**, that Representative Jonathan L. Kinney of Limington be excused July 20 for legislative business.

**AND BE IT FURTHER ORDERED**, that Representative Richard S. Malaby of Hancock be excused July 1 for personal reasons.

**AND BE IT FURTHER ORDERED**, that Representative Donald G. Marean of Hollis be excused July 20 for personal reasons.

**AND BE IT FURTHER ORDERED**, that Representative Andrew J. McLean of Gorham be excused July 20 for personal reasons.

**AND BE IT FURTHER ORDERED**, that Representative Matthew G. Pouliot of Augusta be excused March 9 for personal reasons.

**AND BE IT FURTHER ORDERED**, that Representative Lois Galgay Reckitt of South Portland be excused August 2 for personal reasons.

**AND BE IT FURTHER ORDERED**, that Representative Beth Peloquin Turner of Burlington be excused July 20 and August 2 for personal reasons.

**AND BE IT FURTHER ORDERED**, that Representative Karleton S. Ward of Dedham be excused June 13 for legislative business and June 27 for personal reasons.

**READ and PASSED.**

**REPORTS OF COMMITTEE**

**Divided Report**

Five Members of the Committee on **VETERANS AND LEGAL AFFAIRS** report in Report "A" **Ought to Pass as Amended by Committee Amendment "A" (H-567)** on Bill "An Act To Bring Maine's Ranked-choice Voting Law into Constitutional Compliance"

(H.P. 1137) (L.D. 1646)

Signed:

Senator:

CARPENTER of Aroostook

Representatives:

CASÁS of Rockport

HICKMAN of Winthrop

MONAGHAN of Cape Elizabeth

SCHNECK of Bangor

Four Members of the same Committee report in Report "B" **Ought to Pass as Amended by Committee Amendment "B" (H-568)** on same Bill.

Signed:

Senator:

COLLINS of York

Representatives:

DILLINGHAM of Oxford

FARRIN of Norridgewock

HANINGTON of Lincoln

Two Members of the same Committee report in Report "C" **Ought Not to Pass** on same Bill.

Signed:

Senator:

MASON of Androscoggin

Representative:

WHITE of Washburn

One Member of the same Committee reports in Report "D" **Ought to Pass as Amended by Committee Amendment "C" (H-569)** on same Bill.

Signed:

Representative:

LUCHINI of Ellsworth

**READ.**

Representative LUCHINI of Ellsworth moved that the House **ACCEPT** Report "A" **Ought to Pass as Amended**.

Representative FREDETTE of Newport **REQUESTED** a roll call on the motion to **ACCEPT** Report "A" **Ought to Pass as Amended**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The **SPEAKER**: The Chair recognizes the Representative from Monmouth, Representative Ackley.

Representative **ACKLEY**: Thank you, Madam Speaker. Madam Speaker, as you recall...I rise today to support the measure. As you recall, ranked-choice voting became law by way of Citizen's Initiative last November. When 388,000 Mainers voted for this new election process, what they said was that from now on, the majority rules. From now on it will take a majority of votes to win an election. In light of the solemn occasion, where three of the ten last -- three of the ten election types were identified as being possibly inconsistent with the Constitution, what this bill does is it pauses them until such time as the voters have an opportunity to consider whether they want to change the Constitution. The other seven races, as enacted by the Citizen's Initiative, would begin in June of 2018. There have been numerous objections to ranked-choice voting, and it is my hope that by the end of today we will have ample information to answer all of the questions that have been raised over many years. I'll begin by answering five.

The issue of constitutionality is the first. The Maine Supreme Judicial Court had no problem with seven of the races identified in my bill that came to us from the Citizen's Initiative.

Administrative authority: There has been some unresolved debate regarding whether the existing authority to administer elections of our Secretary of State is enough for him to implement ranked-choice voting. And though I am not yet convinced that there is a real need for it, this bill includes explicit delegation of rule-making authority to the Secretary of State for that very purpose, so that there can be no question in anyone's mind that the Secretary of State of Maine is responsible, and authorized, to implement ranked-choice voting with minor technical rule-making authority.

Third is cost, and it has not gone unnoticed that the fiscal note currently associated with this bill is \$1.5 million. How it is that a bill that proposes to remove, or pause, three elections has a \$1.5 million price tag is beyond me, but it is what it is. We are actually reducing the number of elections from current statute and the fiscal note says \$1.5 million. Even the \$1.5 million has some highly questionable assumptions built in to that projection. In fact, third-party analysis of the fiscal impact of this bill, in testimony in Committee, demonstrated that that figure is about five times too high. Data from comparable states using similar equipment indicates that we could expect ranked-choice voting to be completely implemented for somewhere between \$196,000 to \$273,000, realizing that we have a budget that exceeds \$7 billion, Madam Speaker. We ended the year putting \$36 million into a rainy day fund whose balance exceeds \$193 million. It will be tough for anyone to

keep a straight face while saying that we can't afford \$273,000 to implement a law that the citizens of Maine told us to put in place.

Time has been questioned. Some have theorized that it could take years to implement ranked-choice voting, and yet the State of North Carolina took exactly 86 days. There is plenty of time to implement by June of 2018, particularly because we are not the first in the country to do it. Certainly we'll have the advantage of learning from elsewhere.

Complexity has been an objection. The suggestion that Maine voters are just not up to the task of understanding how to use ranked-choice voting in the voting booth does not measure up. We've used multiple voting methods in municipal elections for centuries. The experience with ranked-choice voting in other states and municipalities, some here in Maine, show that it is easy, that it is doable, and that well over 95% of the voters who use it like it. If there is any additional voter education needed, it should be noted that this is exactly what the voters of the State of Maine have asked for.

That brings me to my final point, Madam Speaker, which is the most important one. My friend, Secretary Dunlap, and I agree on one very important point. He said recently, voting, and I quote, "Voting is a sacred altar. This is the cornerstone of the democratic principle of self-governance." Ranked-choice voting was enacted by Citizen's Initiative. That's the process that is enshrined in the Maine State Constitution, the document that every Legislature, every legislator in this room, has sworn to uphold. What drives democracy is the trust that each voter has that their vote is counted, and that their vote actually counts. If we let the fear of change result in a delay or an override of the method that the voters of Maine have told us to use, we will be undermining the voters' faith and their power -- their faith in the power of their vote, their faith in self-government, and we will be stoking the flames of fear and cynicism that might take our state to a darker place. From now on, Madam Speaker, it should take a majority to win an election. That's what the voters said. Candidates should not choose voters. Voters should get to choose from many candidates. We, as legislators, have an obligation to be reasoned and to be reasonable. This bill respects the will of the Maine voters and the Maine Constitution. Thank you, Madam Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Brooksville, Representative Chapman.

Representative **CHAPMAN**: Thank you, Madam Speaker. Friends and Colleagues of the House, I rise to discuss a few matters involved with ranked-choice voting, and, in particular, to answer some points of misinformation that are widely circulating.

The first, I want to note that, whether or not the citizens understood what they were voting for and the implications and the consequences of what they were voting for, I would remind members that, at the same time, they were deciding on which candidate to elect to sit here, today, and I will tell you that I am absolutely certain, in my district at least, the citizens were better informed about the question -- the referenda questions, including ranked-choice voting, than they were about the candidates, including myself; and I find it disturbing that we would accept their decision, however ill-informed, for ourselves, and not accept their decision on a referenda -- on any of the referenda questions, including this one.

On the matter of constitutionality, let it be clearly understood that the laws that are passed, enacted by this Legislature, or laws that are enacted by the citizens, as ranked-choice voting has been, are constitutional, by definition,

unless and until the court renders a decision that changes the law. Let me just repeat that. The laws, the ranked-choice voting law that is on the books right now that the citizens enacted, is constitutional and will remain so.

Now, the next point is a little bit subtle. Maine Supreme Judicial Court has not issued a decision, they have not issued a ruling, they have not even issued an opinion. They have not issued any advice. And if you are concerned that I might be inaccurate, I invite you to read the 51 pages which is the opinion of the justices of the Supreme Judicial Court, it's not an opinion of the court. And to that point, the justices themselves on page 11 say, and I'll quote, just taking out a few of the extraneous citations, "Advisory opinions represent the advice of the individual justices. They are not binding on the justices individually, or together, in any subsequent case that may come before the law court, and they have no precedential value or conclusive effect." That means an advisory opinion of the justices do not set precedent, and the advisory opinion of the justices have no conclusive effect, meaning it doesn't change law. Therefore, ranked-choice voting, the law in the State of Maine today, is constitutional and will be unless and until the court, not the justices, but the court, decide otherwise. Now, that gets us to a slightly sticky matter, which is why would the justices of the court offer the opinion of advice to the other body that they have in these 51 pages, and I cannot know that answer, so I'm going to speculate merely for the sake of understanding what they might have intended, wanted us to do. And I put myself in their shoes for a moment in thinking about, would I like a case to come before me if I were a sitting justice in which my decision, at the end of the day, will select the winner of an election, as the US Supreme Court did in the year 2000? And the answer is no. If I were sitting in their -- standing in their shoes I would not want to be in that position, simply because whatever selection I made would be damaging to the reputation of the court, as I believe the selection in the year 2000 was damaging to the reputation of the US Supreme Court; and there's no way around that. Whatever the decision is will be met with disapproval by a great number of people. On the other hand, it's not our job to protect the court from an uncomfortable position they may find themselves in in the future.

Now, another reason why the justices may have issued this advisory opinion, when it was asked for by the other body, would be clearly to encourage us to fix a potential problem; and there are two ways of fixing that potential problem. One is to clarify the Constitution by a Constitutional Amendment, and we've chosen not to do that yet; and the other way is to overturn the citizens' enacted law, which we have not done yet either. And I'm suggesting that the more appropriate approach is to clarify it with a constitutional change than overturning the citizens' will, in spite of the fact that we've done that a couple times already.

So, in the matter of dealing with the constitutional issue, the other way that we can deal with it is simply move ahead and, as the law requires, hold our next elections by ranked-choice voting, and then, if a case should come before the court, deal with the outcome of the decision when that decision is made. Now, it's interesting: within these 51 pages, the way I read it, and admittedly I may be putting my own interpretation on it, but I see the justices, in issuing their advisory opinion, laying out the pathway of argument for why, in fact, the current law is constitutional. The justices actually point out that a majority is a plurality, for example.

Okay, let me move on beyond the constitutionality question and the opinions of the justices of the Supreme Judicial Court,

not the advice -- it was not advice of the court but of the justices. There are some complications with ranked-choice voting in some people's minds. Every voting system has its attributes, some of those attributes are beneficial, some of those attributes are perhaps detrimental. Our former system of election had some attributes that people find beneficial: its relative simplicity, for example; and have some attributes that are seen largely as detrimental, such as a spoiler effect, a race to the bottom, a vote for the least worst of the worst rather than the best of the best, etc. And I won't go into those details, except to indicate that one of the potential complications of ranked-choice voting that has been mentioned is that there would be a delay in finding out who won; and there is no reason why there should be a delay unless, of course, it's so close that there's some -- a recount is necessary, which is the situation that we used to have as well. The reason why there is no need for a delay is there is no need for, and it's actually undesirable, to collect the ballots in one location. I understand the fiscal note was drawn up as though that would be a requirement. It certainly is not a requirement. It's an unfortunate mistake by the Attorney General's office, in a letter issued by them, that suggested that there was a requirement that ballots be centrally collected. There is no such requirement and, as I say, it would be very undesirable to do so. I'm concerned that people may not take my word for pointing out that it is both best and possible to have the ballots locally tabulated and the information merely sent to the Secretary of State's office, as was done in our former election system, under ranked-choice voting. So, I want to take a moment to illustrate why that is the case. I'm going to simplify this a little bit, but we're going to assume three candidates, and under our former election system a local ballot clerk team would count the ballots and determine the number of votes for Candidate A, B, and C, and transmit those three numbers by fax, telephone, or email, or some communication mechanism, to the Secretary of State's office. Under ranked-choice voting what would happen, instead, is the ballot clerks look to see what the permutations are of the voters, that is to say the ordering, and in the case of three there's six. It's either A-B-C, A-C-B, B-A-C, B-C-A, or C-A-B or C-B-A. And so those six numbers get transmitted to the Secretary of State's office rather than the three. Obviously, ranked-choice voting could be done by paper and pencil and the additions of the permutations, just as the additions of the number of votes in the older system could be done by paper and pencil, but they won't be. They'll be done by a spreadsheet or perhaps even a slightly fancier spreadsheet to run the algorithms, but they can all be checked by hand, that's the transparency benefit; and there is no need to transport any ballots unless, as in the former system, there is a need for a recount. Now, some may say, well, there are more opportunities for a recount with the multiple iterations that go through determining the winner in a ranked-choice voting system. And yes, that's true, but that doesn't mean the probability of recounts goes up, because most of those recount possibilities that happen in between the iterations of the process would not affect the outcome and don't have to be resolved. So there is no added problem with recounts.

Now, finally, I want to get to the matter of the Secretary of State's office and their ability to handle the job that the citizen-enacted law requires of them. I, like many of us in this chamber, were -- I was concerned about the possibility that the task might be a bit on the daunting side for an election office that is accustomed to our former election system and unfamiliar with our new and present election system. And so I

put in a bill earlier in the first regular session of this term, to establish a task force to help implement ranked-choice voting. And the reason I bring it up only is that the Secretary of State's office, in the person of the deputy of the department that handles elections, many of you know Ms. Julie Flynn, testified on behalf of the Secretary of State's office that they did not need any help, they understood exactly how to implement it, they had the resources to implement, they had the ability to implement it, they knew how to implement it, and, quite frankly, in my private conversations with Ms. Flynn after her public testimony, I'm quite convinced that she's well aware of many of the subtle details that come into play, and has been for, by now, six months. The citizens enacted this law in November of last year. There was plenty of time then, there was plenty of time in April when they indicated that they did not need the Legislature's help in working through the details, and there's even plenty of time now for the Secretary of State's office to deal with the details of the implementation of ranked-choice voting. Now, having gone through all of those things, I apologize for taking so much time, Madam Speaker, but I thought it important that we clarify those matters. I thank you very much.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Sirocki.

Representative **SIROCKI**: Thank you, Madam Speaker. I heard a few things mentioned here, today, that I think might need a little clarification as well. My source is from Public Broadcasting System, [PBS.org](http://PBS.org), an article entitled "How ranked-choice voting could make voters more open to third-party candidates." The State of North Carolina was mentioned here, and in the research of this article...it's best if I read this. "Legislators in states with traditional runoffs are more likely to consider instant runoffs. In Georgia, where primary runoff turnout has been as low as 12 percent of eligible voters, Republican state Rep. Buzz Brockway proposed a commission to study ranked-choice voting -- and hit a wall. 'What in the world are you doing?' his colleagues said. 'I think we ought to at least sit down and talk about it,' he said. Even if states were ready to switch to instant runoffs, though, they face a practical obstacle in technology. 'Policymakers often think it's the right way to go but then they hit the bump into reality,' said Rob Richie, executive director of FairVote, a nonpartisan election reform group that advocates for ranked-choice voting. 'Their current voting equipment can't do it.' When North Carolina tried ranked-choice voting for a judicial election in 2010" -- just judicial election, we're not talking the very broad measure that was passed by the voters here in the State of Maine -- "state elections officials had to sort ballots manually." You can't push one button and have everything work. What we had in North Carolina was a workaround."

I'd also like to respond to the notion that ranked-choice voting offers a true majority. With ranked-choice voting, ballots are exhausted, they're discarded, they're thrown away, so what ranked-choice voting does is offers a majority of the leftover ballots and, again, in quotes here, "a 2014 academic study concluded that an instant runoff...does not ensure that the winning candidate will have received a majority of all votes cast, only a majority of all valid votes in the final round of tallying." Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Acceptance of Report "A" Ought to Pass as Amended. All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 468**

YEA - Ackley, Alley, Austin B, Bailey, Bates, Battle, Beebe-Center, Berry, Blume, Brooks, Bryant, Cardone, Casas, Collings, Cooper, Daughtry, DeChant, Denno, Doore, Duchesne, Dunphy, Farnsworth, Fay, Frey, Fuller, Gattine, Golden, Grant, Grohman, Hamann, Handy, Herbig, Hickman, Higgins, Hogan, Hubbell, Hymanson, Jorgensen, Kornfield, Kumiega, Lawrence, Longstaff, Luchini, Madigan C, Madigan J, Martin J, Martin R, Mastraccio, McCrea, McCreight, McLean, Melaragno, Monaghan, Nadeau, O'Neil, Parker, Perry, Pierce T, Reckitt, Riley, Rykerson, Sanborn, Schneck, Sheats, Spear, Stanley, Sylvester, Tepler, Terry, Tipping, Tucker, Warren, Zeigler, Madam Speaker.

NAY - Austin S, Black, Bradstreet, Campbell, Cebra, Chace, Chapman, Corey, Craig, Dillingham, Espling, Farrin, Foley, Fredette, Gerrish, Ginzler, Guerin, Haggan, Hanington, Hanley, Harlow, Harrington, Harvell, Hawke, Head, Johansen, Kinney J, Kinney M, Lockman, Lyford, Marean, McElwee, O'Connor, Ordway, Parry, Perkins, Picchiotti, Pickett, Pierce J, Pouliot, Prescott, Reed, Sampson, Sanderson, Sherman, Simmons, Sirocki, Skolfield, Stearns, Stetkis, Stewart, Strom, Sutton, Theriault, Timberlake, Tuell, Turner, Vachon, Wadsworth, Wallace, Ward, White, Winsor, Wood.

ABSENT - Babbidge, Bickford, Fecteau, Gillway, Grignon, Herrick, Hilliard, Malaby, Mason, Moonen, Seavey, Talbot Ross.

Yes, 74; No, 64; Absent, 12; Excused, 1.

74 having voted in the affirmative and 64 voted in the negative, with 12 being absent and 1 excused, and accordingly Report "A" **Ought to Pass as Amended** was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-567)** was **READ** by the Clerk and **ADOPTED**.

Under suspension of the rules, the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules, the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-567)** and sent for concurrence.

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By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

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At this point, the Speaker recognized the Representative from Biddeford, Representative FECTEAU and he was added to the roll call of the First Special Session of the 128th Legislature.

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The following items were taken up out of order by unanimous consent:

**COMMUNICATIONS**

The Following Communication: (S.P. 607)

**MAINE SENATE  
128TH LEGISLATURE  
OFFICE OF THE SECRETARY**

October 19, 2017

Honorable Michael D. Thibodeau

President of the Senate

128th Legislature

Honorable Sara Gideon

Speaker of the House

128th Legislature

Dear President Thibodeau and Speaker Gideon: