

The Maine Heritage Policy Center Testimony to Oppose LDs 1196, 1365, 1477 Ranked-Choice Voting

Senator Luchini, Representative Schneck and distinguished members of the Committee on Veterans and Legal Affairs, my name is Adam Crepeau and I serve as a policy analyst at The Maine Heritage Policy Center. Thank you for the opportunity to provide testimony in opposition to LDs 1196, 1365 and 1477.

LD 1196 would amend the Constitution of Maine to require candidates for the offices of governor, state senator and state representative to receive a majority of votes cast in an election rather than a plurality, which is the current standard. LD 1365 would change the Constitution of Maine to require a majority vote for governor. By changing this language in the constitution, these state-level elections would be decided by ranked-choice voting.

Currently, ranked-choice voting can only be used for federal and primary elections. The Maine Supreme Judicial Court issued an advisory opinion in 2017 that read, “In essence, the [Ranked-Choice Voting Act] is inapplicable if there are only two candidates, and it is in direct conflict with the Constitution if there are more than two candidates.”¹ Because of this, the Constitution must be amended in order for ranked-choice voting to be used in general election races at the state level. The Maine Heritage Policy Center is opposed to LDs 1196 and 1365 for several reasons.

First and foremost, the logic behind these bills is backwards. Typically, statutes are changed to conform with the constitution, not vice versa. Because we allow unconstitutional initiatives to appear on our ballot, we are now in a situation where we are trying to amend the constitution to conform with state statute -- this is not a recipe for good governance.

Second, these bills are solutions in search of a problem. The Maine Heritage Policy Center believes there should be good reason to amend the Constitution of Maine. There is nothing wrong with the winner-by-plurality system that Maine currently employs for state-level elections. In fact, the current system counts all votes, while ranked-choice voting does not do so. Please consider the following example:

In the 2018 general election for the Second Congressional District, 8,253 ballots were exhausted after the first round. These ballots represent almost three percent of the total votes cast for candidates (excluding exhausted ballots on Election Day). If exhausted ballots in the subsequent rounds of this ranked-choice voting election were counted in the final tally, Rep. Jared Golden would have received only 49 percent of the vote; less than a majority. But since exhausted ballots are excluded from the final denominator in ranked-choice tabulating, Jared Golden received a “majority” with less than half of all votes cast on

¹ https://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2017/17me100.pdf

Election Day.² Thus, ranked-choice voting is a gimmick used to create a faux majority, whereby enough votes are eliminated to make it appear as though a candidate won with over 50 percent of the vote. To be clear, The Maine Heritage Policy Center is against changing the constitution to conform with an unconstitutional law that never should have appeared on our ballots in the first place.

The Maine Heritage Policy Center is also opposed to LD 1477. LD 1477 would allow the legislature, or the people of Maine through the direct initiative process, to determine if elections for state senator, state representative, and governor are elected by a plurality or majority vote instead of it being definitive in the Constitution of Maine. This legislation would be dangerous if enacted because it would make the state's elections extremely malleable. This bill is akin to gerrymandering because it would allow the party in power to decide how elections are conducted. In other words, the Constitution of Maine needs to be the authority on how votes are counted in the state of Maine.

According to the Maine Supreme Judicial Court, the passage of the Ranked-Choice Voting Act was the first time a change in election for governor, state senator, and state representative had been enacted through statute rather than through a constitutional amendment.³ If LD 1477 passed, regular changes to election law in Maine would likely become the norm rather than a rarity. This legislation is a slippery slope that could expose our election system to serious abuse through partisan political disputes. Elections should remain within the purview in our state constitution rather than dictated at the whim of the political party in power.

To that end, The Maine Heritage Policy Center urges the committee to vote, "Ought Not to Pass" on LDs 1196, 1365 and 1477. Thank you.

² <https://www.maine.gov/sos/cec/elec/results/index.html>

³ https://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2017/17me100.pdf