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April 3, 2018

Michele Lumbert, Clerk
Kennebec County Superior Court
1 Court Street, Suite 101
Augusta, Maine 04330

Re: Maine Senate v. Matthew Dunlap, Secretary of State

Dear Ms. Lumbert:

Enclosed for filing in the above captioned matter, please find a Complaint, Summary Sheet and Filing Fee.

Please docket and file accordingly.

Sincerely,

FOR

Timothy C. Woodcock

TCW/eab
cc: Phyllis Gardiner, Asst. Atty. Gen.
enclosures

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-18-

SENATE OF MAINE, Plaintiff vs. MATTHEW DUNLAP, in his capacity as Secretary of State	)))))))))))	**COMPLAINT FOR DECLATORY JUDGMENT AND INJUNCTIVE RELIEF**

NOW COMES, the Maine Senate, by and through its attorneys, Timothy C. Woodcock, Esq., Ryan P. Dumais, Esq., and, Kady S. Huff, Esq., and files its Complaint for Declaratory Judgment and Injunctive Relief against Matthew Dunlap, Secretary of State of the State of Maine, as follows:

THE PARTIES

1. The Maine Senate was established by the Constitution of Maine at Article IV, Part Second, Sections 1 through 8.

2. Under the Constitution of Maine, the Maine Senate and the Maine House of Representatives hold the legislative power of Maine as set forth in Article IV, Part Third, Sections 1 through 16; with the legislative power also being invested in the people of Maine through Article IV, Part Third, Sections 17 through 20.

3. Matthew Dunlap is the Secretary of State, which office and the duties assigned to that office are established and set forth in the Constitution of Maine at Article V, Part Second, Sections 1 through 4.

4. Certain and particular duties for elections have been assigned to the Secretary of State by statute as set forth in his capacity as Secretary of State, Matthew Dunlap, under the

Constitution of Maine and as provided in Title 21-A, Maine Revised Statutes, exercises certain and particular duties in general, primary, and special elections, including recounts.

VENUE

5. Venue is properly situated in the Superior Court for Kennebec County pursuant to 14 M.R.S § 501, *et seq*.

6. Under Article IX, Section 16 of the Constitution of Maine, the City of Augusta, Kennebec County, State of Maine is the seat of the government of the State of Maine.

7. In accordance with Article IX, Section 16 of the Constitution of Maine, the Maine Senate exercises and discharges the powers accorded to it by Article IV of the Constitution of Maine in the City of Augusta.

8. In accordance with Article IX, Section 16 of the Constitution of Maine, Secretary of State, Matthew Dunlap, discharges his duties as Secretary of State as alleged above from his office in the City of Augusta.

STANDING

9. The Maine Senate has standing because, as alleged below, Secretary of State, Matthew Dunlap, has advised that, with respect to the development, implementation, and, administration of Ranked-Choice Voting, he intends to exercise powers that the legislative authority has never extended to him and that he intends to commit and expend public monies which the legislative authority has never appropriated for expenditure. The Secretary of State's exercise of these and other powers as set forth below would infringe and diminish the legislative authority of the State of Maine as set forth in Article IV of the Constitution of Maine, including that legislative authority which the Constitution has assigned to the Maine Senate.

COUNT I (DECLARATORY RELIEF)
(Lack of Appropriation by Legislative Authority for Development, Implementation, and, Administration of Ranked-Choice Voting)

10. The Maine Senate repeats and realleges the allegations set forth in Paragraphs 1 through 9 as if fully set forth herein.

11. Article IV of the Constitution of Maine allocates legislative power to the Maine Legislature, including the House of Representatives and the Maine Senate as well as, under the referendum process, to the people of Maine.

12. Article III, Section 1 of the Constitution of Maine provides that the sovereign authority of the State of Maine is divided between the three departments of Maine, the legislative, executive, and, judicial.

13. Article III, Section 2 of the Constitution of Maine expressly bars any person belonging to one department of the government of Maine from exercising the powers properly belonging to either of the other departments of the government of Maine.

14. The establishment and preservation of the separation of powers of the government of Maine is essential to the integrity of the government of Maine and the welfare, safety, and preservation of the liberties of the people of Maine.

15. Under the Constitution of Maine, the legislative authority is determined by the limits that the Constitution of Maine imposes on it.

16. Article IV of the Constitution of Maine reserves the authority to appropriate public monies to the legislative authority as set forth and provided therein.

17. Article IV of the Constitution of Maine further provides that monies may be appropriated by concurrence of the House of Representatives and the Senate, subject to the right of the Governor to veto such appropriation.

18. On November 8, 2016, the voters of the State approved a measure referred to the people pursuant to Article IV, Part Third, Section 18 of the Constitution of Maine entitled An Act to Establish Ranked-Choice Voting (hereinafter variously "the Act" or "the Ranked-Choice

Voting Act") which created a new method of casting ballots and receiving, sorting, counting, and, declaring votes for the offices of Governor, State Senator, and, State Representative, as well as for the offices of United States Senator and Representative to the United States House of Representatives, which applied to elections held on or after January 1, 2018.

19. The Act as approved by the voters did not appropriate or otherwise authorize the expenditure of money to implement Ranked-Choice Voting.

20. The Office of Fiscal and Program Review estimated the cost of implementing Ranked-Choice Voting as approved by the voters on November 8, 2016 at $1,500,000.

21. In a sworn affidavit submitted to the Justices of the Supreme Judicial Court Deputy Secretary, Julie Flynn, cited and relied on the foregoing estimate of the Office of Fiscal and Program Review.

22. Later, the Office of Fiscal and Program Review estimated the cost of L.D. 1646, which, as introduced, would have implemented Ranked-Choice Voting, at $684,790 for Fiscal Year 2017-2018 for the Secretary of State to develop, implement, and administer Ranked-Choice Voting at $684,790 with an additional estimated cost of $96,768 for the Department of Public Safety for Fiscal Year 2017-2018.

23. In a public statement following the Secretary of State's certification of the requisite number of signatures for the petition to exercise the right of popular veto as set forth in Article IV, Part Third, Section 17 of the Constitution of Maine, Secretary of State Dunlap advised that it would cost $1,500,000 to implement Ranked-Choice Voting and urged the Legislature to appropriate such monies.

24. In Paragraph 54 of its complaint against the Secretary of State in *The Committee for Ranked-Choice Voting, et al. v. Matt Dunlap, as Secretary of State*, Civil Action Docket No. CV-18-24, the plaintiffs alleged that the Secretary of State had "sufficient authority and financial means to timely implement the [Ranked-Choice Voting] Law for the 2018 elections". *Complaint of the Ranked-Choice Voting Committee, et al,* at ¶ 54.

25. In his Answer to the allegations in Paragraph 54, the Secretary admitted that he had the authority to timely implement Ranked-Choice Voting law but denied all other allegations in that paragraph, including that he had "sufficient financial means" to implement the law. *Answer of Secretary of State Matt Dunlap*, at ¶ 54.

26. The Secretary of State and the Deputy Secretary of State have testified that the Office of the Secretary of State will be expending public monies to develop, implement, and administer Ranked-Choice Voting even though the legislative authority of Maine has never appropriated public monies for that purpose.

27. The commitment and expenditure of public monies by the Secretary of State without authorization by the legislative authority of Maine violates the Separation of Powers provided for in the Constitution of Maine as well as the statutory laws of Maine.

WHEREFORE, the Maine Senate prays that this Court declare that the authority to appropriate monies lies solely with the legislative authority of the State of Maine as set forth in Article IV of the Constitution of Maine; and,

That the legislative authority has not exercised its appropriating authority under Article IV of the Constitution of Maine to appropriate or otherwise authorize the expenditure of public funds to any person or officer, including the Secretary of State, to develop, implement, and, administer Ranked-Choice Voting in the June 12, 2018 primary elections;

That, to the extent that the Secretary of State is claiming the right to use public monies that have not been appropriated or otherwise authorized for the development, implementation, and, administration of Ranked-Choice Voting for such purposes, the Secretary of State is acting outside of his constitutional and statutory powers and is exercising powers which the Constitution of Maine has reserved solely to the legislative authority, including the Maine Senate and is in violation of Article III, Section 2 of the Constitution of Maine; and,

That this Court issue a preliminary injunction and, upon further consideration, a permanent injunction barring the Secretary of State from committing and expending public funds of the State of Maine for the development, implementation, and, administration of Ranked-

Choice Voting in the June 12, 2018 primary elections and all other elections unless and until such time as the legislative authority of Maine appropriates public funds for that purpose.

COUNT II (DECLARATORY JUDGMENT)
(Lack of Legislative Authority to Develop, Implement, and, Administer Ranked-Choice Voting)

28. The Maine Senate repeats and realleges the allegations set forth in Paragraphs 1 through 27 as if fully set forth herein.

29. The Act as approved by the voters did not provide authority for the Secretary of State to develop, implement, and, administer Ranked-Choice Voting.

30. In Article II and Article IV, Part First, Section Five, Article IV, Part Second, Section Three, and, Article V, Part First, Section Three, the Constitution of Maine has always placed primacy on the electoral process and the integrity of that process.

31. The procedures for receiving, sorting, counting, and, declaring the votes as set forth in Article IV, Part First, Section Five, Article IV, Part Second, Section Three, and Article V, Part First, Section Three have served as the basis for the statutory process for conducting primary elections under Title 21-A of the Maine Revised Statutes.

32. The election procedures set forth in Title 21-A provide detailed directions to the Secretary of State, local election officials, and, with respect to recounts, to the Maine State Police for the purpose providing clear guidance and authority in the conduct of Maine's elections.

33. In the Second Session of the 128th Legislature, the Legislature enacted L.D. 1646, as amended. (Attachment A). The aforementioned rule-making authority was originally enacted as part of L.D. 1646 (Attachment A, at Section § 10 (codified at 21-A M.R.S § 723-A(5-A)) and was contingent on the Secretary developing making a full report to the Legislature on how Ranked-Choice Voting should be implemented. Attachment A at § 12 (uncodified).

34. On February 2, 2018, a petition was filed with the Secretary of State pursuant to Article IV, Part Third, Section 17 of the Constitution of Maine which suspended certain section of L.D. 1646, as enacted, but which did not suspend Section 10 of L.D. 1646; that is, 21-A M.R.S § 723-A (5-A).

35. The filing of the Article IV, Part Third, Section 17 petition had the effect of suspending Section 13 of L.D. 1646, as enacted, but leaving effect Section 10—Section 723-A(5-A). Without the report required by Section 13 of L.D. 1646, as amended, the standards set forth in Section 10—21-A M.R.S. 723-A(5-A) lack sufficient standards to constitute a lawful delegation by the legislative authority to the Secretary of State to develop and issue rules over the electoral process.

36. Neither the Legislature nor the people of Maine acting pursuant to Article IV have authorized any executive officer to develop election procedures without first specifying to such executive officer measures binding on that officer that would ensure that the elections have the integrity and openness required by Article IV, Part First, Section 5.

WHEREFORE, the Maine Senate prays that this Court declare that, by itself, Section 10 of L.D. 1646, as amended—that is, 21-A M.R.S § 723-A(5-A)—lacks sufficient standards to constitute a valid delegation of lawmaking and rulemaking authority by the Legislative department to the Secretary of State for the development, implementation, and administration of Ranked-Choice Voting in the June 12, 2018 primary elections; and,

That the Secretary of State's exercise of rulemaking authority over elections under Section 723-A(5-A) constitutes an arrogation of authority of the Legislative department under Article IV of the Constitution of Maine; and,

That the Secretary of State's exercise of rulemaking authority over elections under Section 723-A(5-A) violates the Separation of Powers provided in the Constitution of Maine and, in particular, by Article III, Sections 1 and 2; and,

That this Court issue preliminary and mandatory injunctions prohibiting the violation of the Separation of Powers and, in particular, Article III, Sections 1 and 2 of the Constitution of Maine.

COUNT III (DECLARATORY JUDGMENT)
(Lack of Authority to Take Possession of Ballots)

37. The Maine Senate repeats the allegations set forth in Paragraphs 1 through 36 above as if fully set forth herein.

38. Section 737-A of Title 21-A provides that, where a recount is requested for the offices of Senator, Representative, or for a county office ,the Secretary of State must notify the Maine State Police who, by direction of Section 737-A, must take "physical control of all ballots and related materials involved in the recount as soon as possible." 21-A M.R.S. § 737-A. Section 737-A further provides that, where a recount statewide office, congressional office, or referendum, the Maine State Police must take possession of the ballots and related materials but that the Secretary of State "may direct the State Police to retrieve ballots from certain voting jurisdictions so that the recount may be conducted in stages..." *Id.*

39. Section 737-A constitutes a directive from the Legislature to the Maine State Police to take physical control of municipally-cast ballots and related materials when properly notified that a recount has been requested.

40. Except for recounts provided for in Title 21-A, M.R.S § 737-A, *et seq.*, neither the Legislature or the people of Maine have authorized any persons, including law enforcement officers, to take custody of ballots which have been cast in municipalities and which, by law, have been commended to the possession, custody, and control of particular and designated municipal officials.

41. Except for recounts provided for in Title 21-A M.R.S § 737-A, *et seq.*, neither the Legislature nor the people of Maine acting pursuant to Article IV have authorized any executive officer, including the Secretary of State, to order municipal officials to relinquish custody of

ballots to any person or official, to allow municipal ballots to removed from said municipal officials, and, to be delivered to any other person, including the Secretary of State.

42. In testimony before a committee of the Legislature, the Secretary of State and the Deputy Secretary of State asserted that the Office of the Secretary of State would seek to enlist the assistance of law enforcement officers, including members of the Maine State Police, wardens of Inland Fisheries and Wildlife, and, other law enforcement officers from departments, agencies, or political subdivisions yet to be identified to remove ballots from the possession, custody, and control of the designated municipal officials charged with such maintaining such possession, custody, and control.

43. Draft Rules issued by the Secretary of State provide that the "RCV count" will be held at a central location "in a suitable facility in Augusta..." and provides further that, "[t]he Secretary of State is responsible for security of the storage and counting space." ch. 535, 29-250, § 5(1).

44. The Draft Rules issued by the Secretary of State provide further that, "the Secretary of State will notify the Department of Public Safety (DPS) and the affected municipalities that election materials will be retrieved." *Id.* at §5(2). The Draft Rules further state that, "DPS is responsible for coordinating and supervising the retrieval of all ballots and/or memory devices, as applicable, from the affected municipalities; transportation of these materials to the RCV counting facility; and, ensuring the security of these materials while in DPS custody." *Ibid.*

45. Neither the Legislature nor the legislative authority of the people of Maine has authorized the Office of the Secretary of State to exercise authority over any executive branch officials, including members of the Department of Public Safety, wardens of Inland Fisheries and Wildlife, or any other law enforcement officers from departments, agencies or political subdivisions yet to be identified.

46. The assertion by the Office of the Secretary of State over law enforcement officers, as aforesaid, without the express authority of the Legislature or the legislative authority

of the people of Maine exceeds the authority invested in the Secretary of State by the Constitution of Maine and the statutory law of Maine.

WHEREFORE, the Maine Senate prays that this Court declare that neither the Maine Legislature nor the people of Maine acting under Article IV of the Constitution of Maine have authorized or directed the Department of Public Safety or any other law enforcement officials to take physical possession of the ballots and related materials in the possession, custody and control of municipal election officials for the purpose of effecting the of counting "rounds" of voting under the Ranked Choice Voting Act; and,

That neither the Maine Legislature nor the people of Maine acting under Article IV of the Constitution of Maine have authorized the Secretary of State to request or direct the Department of Public Safety or any other law enforcement officials to take physical possession of the ballots and related materials in the possession, custody and control of municipal election officials for the purpose of effecting the counting of "rounds" of voting under the Ranked-Choice Voting Act; and,

That, the Department of Public Safety and all other law enforcement officials lack the authority to take physical possession of ballots and related materials from municipal election officials for the purpose of effecting the counting of "rounds" of voting under the Ranked-Choice Voting Act; and,

That the Secretary of State lacks the authority to request or direct the Maine State Police and any other law enforcement officials to take physical possession of ballots and related materials for the purpose of effecting the counting of "rounds" of voting under the Ranked-Choice Voting Act; and,

That, should the Department of Public Safety or other law enforcement officials take physical possession of the ballots and related materials from the lawful possession, custody, and control of municipal election officials for the purpose of effecting the counting of "rounds" of voting under the Ranked Choice Act, such law enforcement officials will have arrogated the authority of the legislative department under Article IV to authorize and delimit such action; all

in violation of the Separation of Powers set forth in the Constitution of Maine and, in particular, in Article III, Sections 1 and 2; and,

That, should the Secretary of State request or direct the Department of Public Safety or other law enforcement officials to take physical possession of ballots and related materials from the possession, custody, and control of municipal election officials for the purpose of effecting the counting of "rounds" of voting under the Ranked-Choice Voting Act, the Secretary of State will have arrogated the authority of the Legislative department under Article IV to authorize and delimit such action, all in violation of the Separation of Powers set forth in the Constitution of Maine and, in particular, in Article III, Sections 1 and 2; and

That this Court issue preliminary and mandatory injunctions prohibiting the violation of the Separation of Powers and, in particular, Article III, Sections 1 and 2 of the Constitution of Maine.

COUNT IV (DECLARATORY JUDGMENT)
(Lack of Authority to Surrender Possession of Ballots)

47. The Maine Senate repeats the allegations set forth in Paragraphs 1 through 46 above as if fully set forth herein.

48. The Rules issued by the Secretary of State provide, *inter alia*, that, "DPS is responsible for...retrieval of ballots and/or memory devices, as applicable, from the affected municipalities..." ch. 535, 29-250, § 5(2).

49. The Rules issued by the Secretary of State further provide that, "[m]unicipalities that used the digital scan tabulators to tabulate their ballots will provide DPS with all memory devices containing results and cast vote records for the election." *Ibid.*

50. The Rules issued by the Secretary of State further provide that, "[i]f any ballots were not scanned by tabulator, the municipality must seal these ballots in a separate tamper-proof container from the fully scanned and counted ballots, and must provide the contained unscanned ballots to DPS along with the memory devices. Municipalities that hand-counted

their absentee and election day ballots must provide DPS with all tamper-proof containers used to seal the hand-counted ballots cast in the election." *Ibid.*

51. Except for recounts provided for in Title 21-A, M.R.S § 737-A, *et seq.*, neither the Legislature nor the people of Maine have authorized the Secretary of State to require any municipal election officials to perform the tasks and duties as set forth in the Draft Rules as alleged above.

52. Except for recounts provided for in Title 21-A, M.R.S § 737-A, *et seq.*, neither the Legislature nor the people of Maine acting under Article IV of the Constitution of Maine have authorized any municipal officials charged with the custody of ballots which have been cast in their respective municipalities to surrender possession, custody and control of those ballots to the Department of Public Safety or any other officials.

53. Except for recounts provided for in Title 21-A M.R.S § 737-A, *et seq.*, neither the Legislature nor the people of Maine acting pursuant to Article IV have authorized any executive officer, including the Secretary of State, to direct municipal officials charged with the custody of the ballots which have been cast in their respective municipalities to surrender possession, custody and control those ballots to other persons.

WHEREFORE, the Maine Senate prays that this Court declare that neither the Maine Legislature nor the people of Maine acting under Article IV of the Constitution of Maine have authorized or directed municipal election officials to surrender possession, custody or control of the ballots and related materials to the Department of Public Safety or any other law enforcement officials the purpose of effecting the of counting "rounds" of voting under the Ranked Choice Voting Act; and,

That neither the Maine Legislature nor the people of Maine acting under Article IV of the Constitution of Maine have authorized the Secretary of State to request or direct municipal election officials to surrender possession, custody or control of the ballots and related materials to the Department of Public Safety or any other law enforcement officials the purpose of effecting the of counting "rounds" of voting under the Ranked Choice Voting Act; and,

That the Secretary of State lacks the authority to request or direct the municipal election officials to surrender possession, custody, and control over ballots and related materials for the purpose of effecting the "rounds" of counting under the Ranked-Choice Voting Act; and,

That, municipal election officials who surrender physical possession, custody or control of the ballots and related materials to any other person for the purpose of effecting the counting of "rounds" of voting under the Ranked Choice Act, such law enforcement officials will have arrogated the authority of the legislative department under Article IV to authorize and delimit such action; all in violation of the Separation of Powers set forth in the Constitution of Maine and, in particular, in Article III, Sections 1 and 2, and,

That, should the Secretary of State request or direct municipal election officials to surrender possession, custody and control of the ballots and related materials to any other person, including but not limited to the Department of Public Safety or any other law enforcement officials, for the purpose of effecting the counting of "rounds" of voting under the Ranked-Choice Voting Act, the Secretary of State will have arrogated the authority of the Legislative department under Article IV to authorize and delimit such action, all in violation of the Separation of Powers set forth in the Constitution of Maine and, in particular, in Article III, Sections 1 and 2; and,

That this Court issue preliminary and mandatory injunctions prohibiting the violation of the Separation of Powers and, in particular, Article III, Sections 1 and 2 of the Constitution of Maine.

COUNT V (DECLARATORY JUDGMENT)
(Legislative Authority over Title 21-A)

54. The Maine State Senate repeats and realleges the allegations set forth in Paragraphs 1 through 53, as if fully set forth herein.

55. Title 21-A, M.R.S § 723(1) provides that primary elections are to be determined by a plurality of the votes. 21-A M.R.S § 723(1).

56. Although the referendum approving Ranked-Choice Voting on November 8, 2016 added a definition at 21-A M.R.S § 1(27-C) that included primary elections, did not change the substantive provision at Section 723(1) which required that primary elections be determined by a plurality of the votes cast.

57. In the Second Session of the 128th Legislature, the Legislature considered L.D. 1646, "An Act to Bring Ranked- Choice Voting into Constitutional Compliance". (Attachment B).

58. As introduced, L.D. 1646 would have amended Section 723(1) to strike the plurality requirement and replace it with ranked choice voting. Attachment B, at Section 5.

59. The committee of jurisdiction, however, struck Section 5 altogether from L.D. 1646 and L.D. 1646 as so amended, and with other amendments, was enacted into law.

60. The action of the Legislature as to L.D. 1646 left intact the plurality requirement of Section 723(1) and that provision remains in full force and effect.

WHEREFORE, the Maine Senate prays that this Court declare that, Secretary of State lacks the authority to amend Title 21-A; and,

That Section 723(1) remains in full force and effect; and,

That the Draft Rules of the Secretary of State must be revised to remain in compliance with Section 723(1) and, to declare further that, to the extent such Draft Rules are inconsistent with Section 723(1), they are null and void and constitute an arrogation by the Secretary of State of legislative authority allocated to the Legislative department under Article IV and that such action by the Secretary of State is all in violation of the Separation of Powers set forth in the Constitution of Maine and, in particular, Article III, Sections 1 and 2; and,

That this Court issue preliminary and mandatory injunctions prohibiting the violation of the Separation of Powers and, in particular, Article III, Sections 1 and 2 of the Constitution of Maine.

Respectfully submitted,

Dated:

Timothy C. Woodcock BY

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LAW WITHOUT GOVERNOR'S SIGNATURE

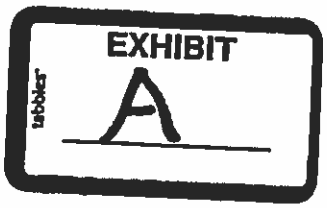
NOVEMBER 4, 2017

CHAPTER

316

PUBLIC LAW

STATE OF MAINE



IN THE YEAR OF OUR LORD

TWO THOUSAND AND SEVENTEEN

H.P. 1137 - L.D. 1646

An Act To Implement Ranked-choice Voting in 2021

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1, sub-§27-C, as enacted by IB 2015, c. 3, §1, is repealed and the following enacted in its place:

27-C. Elections determined by ranked-choice voting. "Elections determined by ranked-choice voting" means:

A. Primary elections for the offices of United States Senator, United States Representative to Congress, Governor, State Senator and State Representative;

B. General and special elections for the offices of United States Senator and United States Representative to Congress; and

C. General and special elections for the offices of Governor, State Senator and State Representative.

This subsection is repealed December 1, 2021 unless, prior to that date, the voters of the State ratify an amendment to the Constitution of Maine, Article IV, Part First, Section 5, Article IV, Part Second, Sections 4 and 5 and Article V, Part First, Section 3 authorizing the Legislature, by proper enactment, to determine the method by which the Governor and members of the State Senate and House of Representatives are elected.

Sec. 2. 21-A MRSA §1, sub-§35-A, as enacted by IB 2015, c. 3, §2, is amended to read:

35-A. Ranked-choice voting. "Ranked-choice voting" means the method of casting and tabulating votes in which voters rank candidates in order of preference, tabulation proceeds in sequential rounds in which last-place candidates are defeated and the candidate with the most votes in the final round is elected.

This subsection is repealed December 1, 2021 unless, prior to that date, the voters of the State ratify an amendment to the Constitution of Maine, Article IV, Part First, Section 5, Article IV, Part Second, Sections 4 and 5 and Article V, Part First, Section 3 authorizing

the Legislature, by proper enactment, to determine the method by which the Governor and members of the State Senate and House of Representatives are elected.

Sec. 3. 21-A MRSA §601, sub-§2, ¶J, as enacted by IB 2015, c. 3, §3, is amended to read:

J. For ~~offices elected~~ elections determined by ranked-choice voting, the ballot must be simple and easy to understand and allow a voter to rank candidates for an office in order of preference. A voter may include no more than one write-in candidate among that voter's ranked choices for each office.

This paragraph is repealed December 1, 2021 unless, prior to that date, the voters of the State ratify an amendment to the Constitution of Maine, Article IV, Part First, Section 5, Article IV, Part Second, Sections 4 and 5 and Article V, Part First, Section 3 authorizing the Legislature, by proper enactment, to determine the method by which the Governor and members of the State Senate and House of Representatives are elected.

Sec. 4. 21-A MRSA §695, first ¶, as amended by PL 2001, c. 516, §10, is further amended to read:

Except for elections determined by ranked-choice voting, the following provisions apply to the counting of ballots. The election clerks shall count the ballots under the supervision of the warden as soon as the polls are closed, except that if, in the opinion of the municipal clerk the public interests will best be served, referendum ballots may be counted on the day immediately following the election, as long as the count is completed within 24 hours after the polls are closed. If referendum ballots are counted under this exception, the municipal clerk is responsible for the security and safekeeping of the ballots until the count has been completed.

Sec. 5. 21-A MRSA §722, sub-§1, as amended by PL 2017, c. 141, §2, is further amended to read:

1. How tabulated. The Secretary of State shall tabulate all votes that appear by an election return to have been cast for each question or candidate whose name appeared on the ballot. For ~~offices elected~~ elections determined by ranked-choice voting, the Secretary of State shall tabulate the votes according to the ranked-choice voting method described in section 723-A. The Secretary of State shall tabulate the votes that appear by an election return to have been cast for a declared write-in candidate based on a recount requested and conducted pursuant to section 737-A, subsection 2-A.

Sec. 6. 21-A MRSA §723, sub-§1, as amended by PL 2017, c. 248, §5, is further amended to read:

1. Primary election. In a primary election held before December 1, 2021, the person who receives a plurality of the votes cast for nomination to any office, as long as there is at least one vote cast for that office, is nominated for that office, except for write-in candidates under paragraph A. In a primary election held on or after December 1, 2021, the person who is determined the winner pursuant to section 723-A for nomination

to any office, as long as there is at least one vote cast for that office, is nominated for that office, except for write-in candidates under paragraph A.

A. A write-in candidate who complies with section 722-A and who fulfills the other qualifications under section 334 may be nominated at the primary election if that person receives a number of valid write-in votes equal to at least twice the minimum number of signatures required under section 335, subsection 5 on a primary petition for a candidate for that office.

B. The Secretary of State shall immediately certify by mail the nomination of each person nominated by the primary election.

Sec. 7. 21-A MRSA §723, sub-§2, as amended by PL 2017, c. 248, §6, is further amended to read:

2. Other elections. In any other election except for those determined by ranked-choice voting, the person who receives a plurality of the votes cast for election to any office, as long as there is at least one vote cast for that office, is elected to that office, except that a write-in candidate must also comply with section 722-A.

Sec. 8. 21-A MRSA §723-A, sub-§2, as enacted by IB 2015, c. 3, §5, is amended to read:

2. Procedures. Except as provided in subsections 3 and 4, the following procedures are used to determine the winner ~~in~~ of an election ~~for an office elected~~ determined by ranked-choice voting. Tabulation must proceed in rounds. In each round, the number of votes for each continuing candidate must be counted. Each continuing ballot counts as one vote for its highest-ranked continuing candidate for that round. Exhausted ballots are not counted for any continuing candidate. The round then ends with one of the following 2 potential outcomes.

A. If there are 2 or fewer continuing candidates, the candidate with the most votes is declared the winner of the election.

B. If there are more than 2 continuing candidates, the last-place candidate is defeated and a new round begins.

Sec. 9. 21-A MRSA §723-A, sub-§5, as enacted by IB 2015, c. 3, §5, is amended to read:

5. Effect on rights of political parties. For all statutory and constitutional provisions in the State pertaining to the rights of political parties, the number of votes cast for a party's candidate for an office ~~elected~~ determined by ranked-choice voting is the number of votes credited to that candidate after the initial counting in the first round described in subsection 2.

Sec. 10. 21-A MRSA §723-A, sub-§5-A is enacted to read:

5-A. Rules. The Secretary of State shall adopt rules for the proper and efficient administration of elections determined by ranked-choice voting. At a minimum, rules required under this subsection must include procedures, as determined appropriate by the

Secretary of State, for requesting and conducting recounts of the results as determined in the rounds of tabulation described in subsection 2. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 11. 21-A MRSA §723-A, sub-§6, as enacted by IB 2015, c. 3, §5, is amended to read:

6. Application. This section applies to elections held on or after ~~January 1, 2018~~ December 1, 2021.

Sec. 12. 21-A MRSA §723-A, sub-§7 is enacted to read:

7. Contingent repeal. This section is repealed December 1, 2021 unless, prior to that date, the voters of the State ratify an amendment to the Constitution of Maine, Article IV, Part First, Section 5, Article IV, Part Second, Sections 4 and 5 and Article V, Part First, Section 3 authorizing the Legislature, by proper enactment, to determine the method by which the Governor and members of the State Senate and House of Representatives are elected.

Sec. 13. Secretary of State to report. The Secretary of State shall conduct an evaluation of implementation of ranked-choice voting for primary elections for the offices of United States Senator, United States Representative to Congress, Governor, State Senator and State Representative and general and special elections for the offices of United States Senator and United States Representative to Congress, including, but not limited to, identification of statutory conflicts between Initiated Bill 2015, chapter 3 as amended by this Act and relevant provisions of the Maine Revised Statutes. The evaluation must include an estimate of the costs associated with the implementation of ranked-choice voting. No later than January 2, 2019, the Secretary of State shall submit a report to the joint standing committee of the Legislature having jurisdiction over election matters, including recommended legislation, for the administration of ranked-choice voting for the elections as described in this section. The joint standing committee of the Legislature having jurisdiction over election matters is authorized to submit legislation based on the report described in this section to the First Regular Session of the 129th Legislature.

Sec. 14. Contingent legislation. If the Maine Revised Statutes, Title 21-A, section 723-A is repealed pursuant to Title 21-A, section 723-A, subsection 7, the joint standing committee of the Legislature having jurisdiction over election matters shall submit a bill to the Second Regular Session of the 130th Legislature to reflect the repeal of ranked-choice voting provisions found in the Maine Revised Statutes.

EXHIBIT
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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document **No. 1646**

H.P. 1137 House of Representatives, August 2, 2017

An Act To Bring Maine's Ranked-choice Voting Law into Constitutional Compliance

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

Rlt B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative ACKLEY of Monmouth.

Printed on recycled paper

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1, sub-§27-C, as enacted by IB 2015, c. 3, §1, is repealed and the following enacted in its place:

27-C. Elections determined by ranked-choice voting. "Elections determined by ranked-choice voting" means:

A. Primary elections for the offices of United States Senator, United States Representative to Congress, Governor, State Senator and State Representative;

B. General and special elections for the offices of United States Senator and United States Representative to Congress; and

C. General and special elections for the offices of Governor, State Senator and State Representative.

This paragraph takes effect only if an amendment to the Constitution of Maine, Article IV, Part First, Section 5, Article IV, Part Second, Sections 4 and 5 and Article V, Part First, Section 3 that authorizes the Legislature, by proper enactment, to determine the method by which the Governor and members of the State Senate and House of Representatives are elected is ratified.

Sec. 2. 21-A MRSA §601, sub-§2, ¶J, as enacted by IB 2015, c. 3, §3, is amended to read:

J. For ~~offices elected~~ elections determined by ranked-choice voting, the ballot must be simple and easy to understand and allow a voter to rank candidates for an office in order of preference. A voter may include no more than one write-in candidate among that voter's ranked choices for each office.

Sec. 3. 21-A MRSA §695, first ¶, as amended by PL 2001, c. 516, §10, is further amended to read:

Except for elections determined by ranked-choice voting, the following provisions apply to the counting of ballots. The election clerks shall count the ballots under the supervision of the warden as soon as the polls are closed, except that if, in the opinion of the municipal clerk the public interests will best be served, referendum ballots may be counted on the day immediately following the election, as long as the count is completed within 24 hours after the polls are closed. If referendum ballots are counted under this exception, the municipal clerk is responsible for the security and safekeeping of the ballots until the count has been completed.

Sec. 4. 21-A MRSA §722, sub-§1, as amended by PL 2017, c. 141, §2, is further amended to read:

1. How tabulated. The Secretary of State shall tabulate all votes that appear by an election return to have been cast for each question or candidate whose name appeared on the ballot. For ~~offices elected~~ elections determined by ranked-choice voting, the Secretary of State shall tabulate the votes according to the ranked-choice voting method described in section 723-A. The Secretary of State shall tabulate the votes that appear by

an election return to have been cast for a declared write-in candidate based on a recount requested and conducted pursuant to section 737-A, subsection 2-A.

Sec. 5. 21-A MRSA §723, sub-§1, as amended by PL 2017, c. 248, §5, is further amended to read:

1. Primary election. In a primary election, the person who ~~receives a plurality of the votes cast~~ is determined the winner pursuant to section 723-A for nomination to any office, as long as there is at least one vote cast for that office, is nominated for that office, except for write-in candidates under paragraph A.

A. A write-in candidate who complies with section 722-A and who fulfills the other qualifications under section 334 may be nominated at the primary election if that person receives a number of valid write-in votes equal to at least twice the minimum number of signatures required under section 335, subsection 5 on a primary petition for a candidate for that office.

B. The Secretary of State shall immediately certify by mail the nomination of each person nominated by the primary election.

Sec. 6. 21-A MRSA §723, sub-§2, as amended by PL 2017, c. 248, §6, is further amended to read:

2. Other elections. In any other election except for those determined by ranked-choice voting, the person who receives a plurality of the votes cast for election to any office, as long as there is at least one vote cast for that office, is elected to that office, except that a write-in candidate must also comply with section 722-A.

Sec. 7. 21-A MRSA §723-A, sub-§2, as enacted by IB 2015, c. 3, §5, is amended to read:

2. Procedures. Except as provided in subsections 3 and 4, the following procedures are used to determine the winner ~~in~~ of an election ~~for an office elected~~ determined by ranked-choice voting. Tabulation must proceed in rounds. In each round, the number of votes for each continuing candidate must be counted. Each continuing ballot counts as one vote for its highest-ranked continuing candidate for that round. Exhausted ballots are not counted for any continuing candidate. The round then ends with one of the following 2 potential outcomes.

A. If there are 2 or fewer continuing candidates, the candidate with the most votes is declared the winner of the election.

B. If there are more than 2 continuing candidates, the last-place candidate is defeated and a new round begins.

Sec. 8. 21-A MRSA §723-A, sub-§5, as enacted by IB 2015, c. 3, §5, is amended to read:

5. Effect on rights of political parties. For all statutory and constitutional provisions in the State pertaining to the rights of political parties, the number of votes cast for a party's candidate for an office ~~elected~~ determined by ranked-choice voting is the

number of votes credited to that candidate after the initial counting in the first round described in subsection 2.

Sec. 9. 21-A MRSA §723-A, sub-§5-A is enacted to read:

5-A. Rules. The Secretary of State shall adopt rules for the proper and efficient administration of elections determined by ranked-choice voting. At a minimum, rules required under this subsection must include procedures, as determined appropriate by the Secretary of State, for requesting and conducting recounts of the results as determined in the rounds of tabulation described in subsection 2. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill amends the ranked-choice voting law to bring it into compliance with the Constitution of Maine by applying the provisions of the law only to primary elections for the offices of United States Senator, United States Representative to Congress, Governor, State Senator and State Representative and general and special elections for the offices of United States Senator and United States Representative to Congress. The bill does not allow ranked-choice voting to be used for general and special elections for the offices of Governor, State Senator and State Representative unless an amendment to the Constitution of Maine, Article IV, Part First, Section 5, Article IV, Part Second, Sections 4 and 5 and Article V, Part First, Section 3 that authorizes the Legislature, by proper enactment, to determine the method by which the Governor and members of the State Senate and House of Representatives are elected is ratified.

The bill requires the Secretary of State to adopt routine technical rules for the administration of ranked-choice voting, including the administration of recounts.

FISCAL NOTE REQUIRED

(See attached)

Approved: 07/19/17 [illegible]

128th MAINE LEGISLATURE

LD 1646 **LR 2379(01)**

An Act To Bring Maine's Ranked-choice Voting Law into Constitutional Compliance

Fiscal Note for Original Bill
Sponsor: Rep. Ackley of Monmouth
Committee: Not Referred
Fiscal Note Required: Yes

Fiscal Note

Current biennium cost increase - General Fund
Current biennium cost increase - Highway Fund

Fiscal Detail and Notes

This bill implements ranked-choice voting for primary elections and general and special elections for the offices of United States Senator and United States Representative to Congress. The Department of Secretary of State will require General Fund appropriations of $684,790 in fiscal year 2017-18 and $542,440 in fiscal year 2018-19 and the Department of Public Safety will require $96,768 annually beginning in fiscal year 2017-18. It will also require Highway Fund allocations to the Department of Public Safety of $52,106 annually beginning in fiscal year 2017-18.