



TO: The Honorable Senator Louis J. Luchini,
The Honorable Representative John Schneck, Co-chairs
Members of the Joint Standing Committee on Veterans and Legal Affairs

DATE: February 6, 2019

RE: LD 114 - An Act to Establish Open Primaries for Certain Federal and State
Offices.

Good morning Senator Luchini, Representative Schneck, and members of the Joint Standing Committee on Veterans and Legal Affairs. My name is Debra McDonough. I am a resident of Scarborough. I am here today as a volunteer member of the League of Women Voters' Advocacy Committee to testify neither for nor against LD 114 - An Act to Establish Open Primaries for Certain Federal and State Offices.

In 2018 we concluded a formal study of primary elections and adopted a position in support of "semi-open" primaries over various forms of closed or fully open primaries for candidate selection at all governmental levels, an approach that we will support when this committee hears LD 211 next week. The study did not reach a conclusion on nonpartisan primaries and so we testify neither for nor against LD 114 under consideration today. ¹

We would like to share our observations as you consider this bill.

- We are not aware of any jurisdictions currently using this approach. While top two primaries have been used in California, Washington, Nebraska and Louisiana, in each case the candidates for the general election are selected by plurality, rather than through ranked choice voting.

¹ "The LWVME neither supports nor opposes nonpartisan primaries. The LWVME will continue to monitor experience with nonpartisan primaries and re-examine this issue when the results of more empirical studies are available." http://www.lwvme.org/primary_study.html

- While the data is not conclusive, open primaries may increase voter turnout by opening the primary election to unenrolled voters. Semi-open primaries, as proposed in LD 211, may have a similar effect.
- Any top-two open primary may result in a general election between two candidates from the same party. The use of ranked choice voting ensures that this would only occur when one party's candidates capture more than 2/3s of the primary votes. In a "safe" jurisdiction like this, pundits have pointed out that the competitive race occurs in the primary, which typically has lower voter participation. In these cases, it may be more appropriate to bring this choice to the general electorate, rather than leaving it in the hands of primary voters.
- It is difficult to assess the effect this approach might have on independent candidates. Independent candidates in Maine have won elections, and it seems possible that a strong independent candidate could finish in the top two and access the ballot for the general election. It is currently the case that independent candidates can access the general election ballot with support that is weaker than support for party candidates that have lost their primary. These weaker candidates inject a degree of unpredictability, also known as the spoiler effect, into the general election that would be reduced by requiring all candidates to participate equally in the primary.
- Limiting the general election to two candidates would reduce the richness of the policy debate in the higher profile general election and may contribute to more negative campaigning. We prefer extending ranked choice voting to the general election as a solution to this problem.
- This bill would require independent and other candidates to compete more vigorously earlier in the election cycle, with a ripple effect on the qualification timeline and on campaign financing for independent and small-party candidates. It may require more money earlier in the campaign cycle, possibly calling for adjustments in the Maine Clean Election Act.
- It is difficult to assess the effect this approach might have on established political parties. Parties could continue to recruit candidates and set party platforms. In the absence of a strong independent candidate, most general election races will continue to feature a Democrat and a Republican, but given Maine's history of support for independent candidates, we expect that this proposal will result in some general

election races where either the Maine Democrats or the Maine Republicans are excluded.

- While all voters, regardless of party affiliation, will rank the same set of candidates, partisan voters may rank the candidates from their own party at the top of their ballot such that many of these ballots would resemble ranked choice ballots from a party primary. Unenrolled voters may prefer to rank all candidates, rather than choosing one party in which to enroll, as they must do today (or by choosing the primary ballot for one party, as proposed in LD 211).

As you may be aware, the League of Women Voters of Maine has an established position in support of ranked choice voting that includes both primary and general elections. While this system has been implemented for federal elections, we find our current situation, in which the general election for Governor, State Senators and State Representatives continue to be conducted by plurality, to be unsatisfactory. While LD 114 would ensure that those elected to state office have majority support, we favor a constitutional amendment enabling the use of ranked choice voting in general election races for state office.