



TO: The Honorable Louis Luchini
The Honorable John Schneck, Co-Chairs
Members of the Joint Standing Committee on Veterans and Legal Affairs

DATE: May 6, 2019

RE: LD 1663 – An Act To Clarify Ranked-choice Voting Laws

Good morning. My name is Ann Luther. I'm here today as a volunteer for the League of Women Voters of Maine. LWVME testifies neither for nor against the Secretary of State's bill, LD 1663 – An Act to Clarify Ranked-choice Voting Laws.

The League of Women Voters of Maine is a nonpartisan political organization that has been working since 1920 to encourage informed and active participation in government, to increase understanding of major public policy issues, and to influence public policy through education and advocacy. We never support or oppose any political party or candidate.

Most of the provisions in LD 1663 are technical or housekeeping in nature and do not require comment. On one subject, LD 1663 fails to adequately address an important issue. We focus on a small number that raised questions for us.

We start from the premise that the Secretary of State does not intend any of these changes to reverse policy decisions incorporated into the ranked choice voting laws as written and previously enacted. There has been an extraordinary amount of public input on this law to date, as well as review and comment by election experts within the state and nationally. We have no issue with technical fixes or tweaks to make it easier to administer the law, but we oppose any provisions in an agency bill that would substitute new policy preferences for those already decided in the policy-making arena.

We think Section 2 of LD 1663 is unnecessary. The statute as written provides adequate flexibility for ballot design. The ballots used in the RCV elections in 2018 were prepared in compliance with the existing §601 and worked very well. In particular, we object to statutory language that requires, rather than allows, a separate ballot page for RCV contests.

We are a little uncertain how Section 4 would work. What happens if someone does write in a candidate who is not a declared candidate? Recognizing that such a write-in will not be counted, what happens to a ballot where the voter does this? We would support treating this as a skipped ranking, which could be stipulated in §723-A or in rule.

Regarding Section 5, we can see where a hypertechnical reading of §605 might allow for only one poster. Allowing that the Secretary of State “may” provide separate posters when there are RCV contests would cure that. In fact, we would be more supportive of a statutory change requiring such posters in elections that have both RCV and non-RCV contests.

Section 6 addresses counting ballots. The ballot counting provision in current law –§696 – was written with traditional elections in mind. Specifically, the current provision in §696 invalidates a ballot where there is more than one vote for a candidate. Of course, with ranked choice voting, the voter is permitted to “vote” for more than one candidate. But the voter filling out an RCV ballot should not be permitted to vote for more than one candidate *at any given ranking level*. Votes by that voter at other prior ranking levels in that race can and should be counted. This distinction is currently in the regulations adopted by the Secretary of State. But arguably those regulations conflict with §696. Therefore, §696 should be amended directly. This is more precise than the blanket approach in LD 1663 which could be interpreted to allow unlimited deviations through rulemaking from the longstanding ballot counting provisions in §696.

In Section 7 and Section 8, election officials are directed to post the counts of “first choice votes.” We agree with that approach. But labeling the “first choice votes” as the “unofficial results” is problematic. This designation essentially ignores the statutory ranked choice voting system. We think the local first round count in RCV races should be labelled precisely as what it is - a “first round count.” Referring to it as an “unofficial result” is not correct. It is not a result at all – official or unofficial – until the tabulation has proceeded. Implying that it is the “result” which is subject to being reversed by subsequent tabulations can generate confusion and lack of confidence in the process. This is especially true since many voters may understand that “unofficial results” are only reversed upon discovery of an error. An RCV tabulation does not reverse a result, and we should be careful not to suggest even indirectly that the subsequent tabulation is akin to the error-correcting process.

In Section 13 we don’t know why the Secretary of State proposes to omit the reference to subsection 4. We will be listening for the explanation to this.

We oppose Section 15 of the bill. The authors of the RCV law made a conscious decision to limit the number of choices to no fewer than 6. This was a policy decision. We note that the

Secretary of State did not find it necessary to utilize that provision in 2018, as 7 choices were permitted on the June Democratic Party gubernatorial primary ballot. Since there was apparently no problem with too many choices on the ballot in 2018, we don't see any reason for curtailing choices in the future and substituting the Secretary of State's judgment for that made by the authors of the RCV law as approved by the voters.

Finally, in Section 16, we note that, in a close race, it is mathematically possible that a relatively small error in an early counting round could eliminate a winning candidate prematurely. In an ideal world, we would allow any candidate to request a recount. Frivolous recount requests are deterred by the availability of the digital cast vote record in the days immediately following the RCV count and by existing provisions of law requiring the candidate to bear the costs of an unsuccessful recount. However, recognizing the complexity and time-consuming nature of RCV recounts involving more than the top three candidates, we would find this an acceptable and practical limitation if it were supported by a post-election audit.

Thank you, and I would be happy to answer any questions about our testimony.