

## Ranked-Choice Voting in Maine: Timeline

<b>Resolves 2003, Ch. 117</b>	Directed Secretary of State to “conduct a thorough study of the feasibility of establishing instant run-off voting in the State.”
<b>Report on the Feasibility of Instant Runoff Voting</b> Jan. 15, 2005	Report by Secretary of State Dunlap <ul style="list-style-type: none"> <li>Explained that San Francisco has used “ranked choice voting” since 2004 for the Board of Supervisors, mayor, and other city offices. Cambridge, Mass. has used a “proportional representation voting” system to elect municipal officials since 1941 (it combines ranked choice voting and voting for several candidates to fill multiple seats into one process).</li> <li>Reviewed challenges of implementing a system in Maine, potential costs (<i>e.g.</i>, tabulation and voter education) and lack of potential federal funds for this specific purpose.</li> </ul>
<b>An Act To Establish Ranked-Choice Voting</b> <b>Referendum Election</b> Nov. 8, 2016 <small>(388,273 in favor; 356,621 opposed)</small>	<p><b>Offices:</b></p> <ul style="list-style-type: none"> <li>U.S. Senator</li> <li>U.S. Representative</li> <li>Governor</li> <li>State Senator</li> <li>State Representative</li> </ul> <p>Effective date: 1/1/18</p> <p><b>Application:</b> All elections (primary, general and special) for the enumerated offices after <b>January 1, 2018</b>.</p> <p><b>“Winner”:</b> A candidate who receives &gt;50% of the votes cast in the first round wins. If that does not occur, the Secretary of State conducts sequential rounds of counting votes, in which the lowest vote recipient is dropped and the next place candidates listed by people who voted for the dropped candidate are counted, “the candidate with the <b>most votes</b> is declared the winner of the election.”</p> <ul style="list-style-type: none"> <li>If there is a tie, the candidate chosen by lot is defeated</li> </ul>
<b>Maine Senate questions to SJC</b> Feb. 2, 2017 <small>(See Maine Constitution excerpts.)</small>	<ol style="list-style-type: none"> <li>Whether the Act’s requirement that the Secretary of State count the votes centrally in multiple rounds violates the Maine Constitution’s requirements that local officials sort, count, declare and record the votes for State Representative (art. IV, pt. 1, §5), State Senator (art. IV, pt. 2, §3) and Governor (art. V, pt. 1, §3).</li> <li>Whether the Act violates the Maine Constitution’s requirements that the person who wins a “plurality” of the votes for State Representative (art. IV, pt. 1, §5), State Senator (art. IV, pt. 2, §4) or Governor (art. V, pt. 1, §3) is the person who has been elected to those offices?</li> <li>Whether the Act’s provision that a tie vote is decided “by lot” conflicts with the Maine Constitution’s requirement that when there is a tie vote for Governor, the members of the Legislature meet in joint session and vote to declare the Governor (art. V, pt. 1, §3)?</li> </ol>
<b>Opinion of the Justices</b> 2017 ME 100 May 23, 2017  Note: Advisory opinions are an “opinion” and have no precedential effect. Me. Const. art. VI, §3.	<ul style="list-style-type: none"> <li><b>Answered Question 2 in the affirmative:</b> In a [general] election for Governor, State Representative or State Senator in which there are 3 or more candidates, by preventing recognition of the candidate who won a <i>plurality</i> of votes returned as the winner and instead subjecting the votes to successive rounds of counting until a candidate obtains a <i>majority</i> of votes, the Act violates Article IV, Part 1, §5; Article IV, Part 2, §4; and Article V, Part 1, §3. <ul style="list-style-type: none"> <li>Relied on history of those constitutional provisions, all of which originally provided that the candidate with the “majority” of votes won; if there was no “majority” the original constitution provided for new elections (Representatives) or legislative elections (Senator or Governor). A series of elections with no majority caused great public unrest, causing all 3 provisions to be amended by 1880 to require a “plurality” of votes to win.</li> <li>Note: “<b>plurality</b>” means “the highest number of votes” and “<b>majority</b>” means “more than one-half” of the votes. <i>Opinion of the Justices</i>, 2017 ME 100, ¶61, n.36.</li> </ul> </li> <li><b>Declined to answer Questions #1 or #3:</b> Not a “solemn occasion.”</li> <li><b>Upshot:</b> Ranked-choice voting is unconstitutional as a method of conducting the general elections for Governor, State Senator and State Representative. But, no opinion given whether unconstitutional for the primary elections for these offices or elections for any other offices.</li> </ul>

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<p><b>An Act To Bring Maine’s Ranked-choice Voting Law into Constitutional Compliance</b></p> <p>P.L. 2017, ch. 316</p> <p>Nov. 4, 2017</p>	<p>Express purpose of the original bill was to “amend[] the ranked-choice voting law to bring it into compliance with the Constitution of Maine.”</p> <p>As enacted, however, the law provided that ranked-choice voting would <u>only</u> occur as follows:</p> <p><b>Offices:</b></p> <ul style="list-style-type: none"> <li>• U.S. Senator</li> <li>• U.S. Representative</li> <li>• Governor</li> <li>• State Senator</li> <li>• State Representative</li> </ul> <p><b>Application:</b> All elections (primary, general and special) for the enumerated offices after <b>December 1, 2021</b>.</p> <p><b>Automatic Repeal:</b> But, unless the Maine Constitution is amended to authorize the Maine Legislature to determine the method by which the Governor, State Senators and State representatives are elected, the ranked-choice voting laws are repealed in their entirety on <b>December 1, 2021</b>.</p> <p>Effective date: 2/5/18</p>
<p><b>People’s Veto Petition</b></p> <p><b>Petition filed: Feb. 2, 2018</b></p> <p>Vote to be held: June 12, 2018</p> <p>(See results later in timeline.)</p>	<p>The People’s Veto provision of the Maine Constitution (art. IV, pt. 3, §17) allowed the petition to seek to prevent all or specified portions of P.L. 2017, chapter 316 from taking effect. It could not otherwise change any language in the law.</p> <p>As drafted the people’s veto petition would make ranked-choice voting occur as follows:</p> <p><b>Offices / Elections:</b></p> <ul style="list-style-type: none"> <li>• U.S. Senator – all elections</li> <li>• U.S. Representative – all elections</li> <li>• Governor – primary only</li> <li>• State Senator – primary only</li> <li>• State Representative – primary only</li> </ul> <p><b>Application:</b> return statute to original Act’s implementation date of <b>January 1, 2018</b>.</p> <p><b>Automatic Repeal:</b> removed – thus, the ranked-choice voting laws would not automatically be repealed on December 1, 2021, even if no constitutional amendment is ratified.</p> <p><b>Effect of petition:</b> Submission of the people’s veto petition with the required number of signatures automatically suspended the challenged portions of P.L. 2017, chapter 316, <b>including the delayed effective date of ranked-choice voting</b>, until a statewide election could be held on June 12, 2018—the same date scheduled as the primary elections for U.S. Senator, U.S. Representative, Governor, State Senator and State Representative. Thus, due to the people’s veto petition, these primaries would be conducted by ranked-choice voting.</p>
<p><b>Committee for Ranked-Choice Voting v. Secretary of State</b></p> <p>Superior Court</p> <p><b>April 3, 2018</b></p>	<p>Committee on Ranked-Choice Voting sought a declaratory judgment that the Secretary of State had to implement ranked-choice voting in the primary elections due to the people’s veto petition.</p> <p><b>Problem:</b> 21-A MRSA §723(1) (after people’s veto petition) provided: “In a primary election, the person who receives a <i>plurality</i> of the votes cast for that office, is nominated for that office . . .”</p> <p><b>Outcome:</b> Superior Court decides that ranked-choice voting should proceed despite Legislature’s failure to amend §723(1). Both parties indicated they would not appeal this decision.</p>
<p><b>Maine Senate v. Secretary of State</b></p> <p>Law Court</p> <p>2018 ME 52</p> <p><b>April 17, 2018</b></p>	<p>On the day of the Superior Court decision in <i>Committee for Ranked-Choice Voting v. Secretary of State</i> (above), the Maine Senate initiated suit against the Secretary of State to halt the implementation of ranked-choice voting in the primary election to be held June 6, 2018 (date of people’s veto vote).</p> <p><b>Procedure:</b> Superior Court submits 7 questions to Law Court under Rule 24(a) of the Maine Rules of Appellate Procedure, including the following 3 substantive questions :</p> <ol style="list-style-type: none"> <li>1. If Secretary of State uses state funds for ranked-choice voting, does that violate the Legislature’s appropriations authority or separation of powers, given that the general appropriation to the Secretary of State in the biennial budget does not contain language expressly referencing ranked-choice voting?</li> <li>2. Does Secretary of State have sufficient statutory authority to arrange for retrieval and transportation of ballots from municipalities to a central location for tabulation?</li> </ol>



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<p><b>Baber et al. v. Dunlap</b></p> <p>U.S. District Court – Maine</p> <p><b>Nov. 15, 2018</b></p> <p><i>Preliminary ruling on request for temporary restraining order to prevent use of RCV in Congressional election</i></p>	<p>On Nov. 13, Candidate Poliquin and several voters who voted only for Poliquin filed suit in federal district court seeking a court order preventing the Secretary of State from conducting RCV tabulation and requiring the Secretary of State to declare him the winner of the election.</p> <p><u>Arguments:</u> Plaintiffs argued RCV violated the following provisions of the U.S. Constitution (1) Art. I, §4, which allows states to prescribe the manner of holding elections for U.S. Senators and Representatives—prior case law had upheld other state’s laws declaring plurality candidates the winner of these elections; (2) the Due Process clause of the 14th Amendment—in that the RCV process was fundamentally unfair and prevented them from casting effective votes; (3) the Equal Protection clause of the 14th Amendment—in that some voters were unfairly permitted to express a preference for more than one candidate; and (4) the 1st Amendment—in that RCV burdened their right to express support for their candidate.</p> <p><u>Outcome:</u> In this preliminary order, the court denied Plaintiff’s request for temporary relief, concluding that preventing tabulation through RCV was not mandated by the U.S. Constitution because (1) Art. I, §4 likely allows states to experiment with the election process in this manner; (2) changing the rules of the election, after votes have been cast, was more likely to offend due process than allowing RCV tabulation to proceed; (3) RCV likely does not deny equal protection; it was designed to enable every voter the opportunity to express a preference for the candidates most likely to win the election and preventing RCV tabulation would deny more than 20,000 voters their right to be counted in the contest between the top 2 candidates; and (4) the RCV Act encourages 1st Amendment expression by allowing third party and unenrolled candidates to participate in elections and voters to support those candidates without producing a spoiler effect.</p>
<p><b>Certification of Results</b> (Poliquin v. Golden election)</p> <p><b>Nov. 26, 2018</b></p>	<p>The Secretary of State’s Office certified the final RCV-tabulated results of the race for U.S. Representative – District 2 (after 2 rounds of RCV tabulation) as follows:</p> <p style="text-align: center;">Golden (142,440) vs. Poliquin (138,931)</p> <p>** While 289,624 votes were represented in round 1 results, only 281,371 votes were represented in round 2 results due to overvotes, undervotes, and ballot exhaustion.</p>
<p><b>Baber et al. v. Dunlap</b></p> <p>U.S. District Court – Maine</p> <p><b>Dec. 13, 2018</b></p> <p><i>Final ruling</i></p>	<p>After the election results were certified, Bruce Poliquin requested a recount. While that recount was underway, the federal district court issued its final decision in <i>Baber v. Dunlap</i>.</p> <p>In this final decision, the federal district court reaffirmed the reasoning in its Nov. 15, 2018 decision denying Plaintiff’s request for a temporary restraining order. The court concluded that RCV did not violate any of the asserted provisions of the U.S. Constitution for essentially the same reasons outlined above and denied the request for permanent injunctive relief.</p> <p>Bruce Poliquin initially appealed this decision to the First Circuit Court of Appeals but later withdrew the appeal. In addition, he asked that the recount be discontinued.</p>
<p><b>An Act To Clarify Ranked-choice Voting Laws</b></p> <p><b>P.L. 2019, ch. 320</b></p> <p><b>June 17, 2019</b></p>	<p>This law made several technical changes to the RCV statutes, including:</p> <ul style="list-style-type: none"> <li>• Defining RCV elections as those where <math>\geq</math> candidates appear on the ballot for an office</li> <li>• Requiring RCV contests to be grouped together on the ballot with separate instructions</li> <li>• Specifying that municipalities count and report only the first votes cast in RCV contests</li> <li>• Clarifies that the Maine Constitution’s provisions for a tie vote (ex: general election for Governor) apply to RCV contests; otherwise the Secretary of State decides the winner by lot for a tie in a primary election and special elections are ordered in non-primary elections</li> <li>• Limits to the top three candidates the right to request a recount in of an RCV election</li> <li>• Allows Secretary of State to limit voters to ranking no fewer than 5 candidates per office</li> </ul> <p>Effective date: 9/19/2019</p>

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<p><b>An Act To Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine</b></p> <p><b>P.L. 2019, ch. 539</b></p> <p><b>Jan. 12, 2020</b></p>	<p>This law was passed to be enacted in the House during the First Regular Session of the 129th Legislature and then tabled in the Senate. It was carried over and enacted by the Senate on Aug. 26, 2019, during the First Special Session. The Governor left the law unsigned, and it therefore became law without her signature on Jan. 12, 2020, after the Second Regular Session commenced.</p> <ul style="list-style-type: none"> <li>• In the meantime, on Sept. 10, 2019, a People’s Veto petition was filed.</li> </ul> <p><b>Offices / Elections:</b></p> <ul style="list-style-type: none"> <li>• U.S. President - primary elections (but selection of delegates to national conventions decided by party rules)</li> <li>• U.S. President - general election for presidential electors</li> </ul> <p>Effective date: 6/16/20 (<i>see Payne v. Dunlap</i>, 2020 ME 110, discussed below).</p> <p><b>Contingent Effective Date:</b> The law’s provisions implementing RCV for presidential primary elections was contingent on adoption of a law adopting a presidential primary election in the State. This contingency was met earlier, during the First Regular Session, when the Legislature enacted P.L. 2019, ch. 445, to hold presidential primaries beginning March 2020.</p>
<p><b>Presidential Primary Election</b></p> <p>March 3, 202</p>	<p>The Secretary of State took the position that P.L. 2019, ch. 539 (above), although having been finally passed for enactment by the Legislature on Aug. 26, 2019, would not be effective until 90 days after adjournment of the Second Regular Session, which adjournment had not yet occurred. Thus, the presidential primary was conducted using plurality voting, not RCV.</p>
<p><b>Payne v. Dunlap</b></p> <p>Law Court</p> <p>2020 ME 110</p> <p><b>Aug. 13, 2020</b></p> <p><i>Concluding that the application and petition for a people’s of P.L. 2019, ch. 539 (RCV in presidential elections) had been timely filed.</i></p>	<p><b>Background:</b></p> <ul style="list-style-type: none"> <li>• LD 1083, which had passed the House in the First Regular Session, was enacted by the Senate on Aug. 26, 2019 during the one-day First Special Session. The law was presented to the Governor that day; she announced she would not sign it.</li> <li>• 10 days later, Kouzounas and others (the applicants) filed an application for a people’s veto of the legislation. The Secretary of State accepted but did not process the application.</li> <li>• On Jan. 12, four days after the Legislature convened the Second Regular Session without receiving a veto from the Governor, the Revisor’s Office chaptered the law as P.L. 2019, ch. 539 and the applicants filed a second application for a people’s veto on Jan. 16, 2020.</li> <li>• The Second Regular Session of the Legislature adjourned on March 17 (due to pandemic).</li> <li>• Ninety (90) days later, on June 15, 2020, the applicants filed a people’s veto petition containing what appeared to be more than the number of required signatures.</li> </ul> <p><b>Issues:</b> what was the effective date of the law—<i>i.e.</i>, the deadlines for the people’s veto application and petition—and was the people’s veto application was filed in a timely manner.</p> <ul style="list-style-type: none"> <li>• <b>Key:</b> If the petition was validly and timely filed, it would suspend the effect of law pending a vote on the people’s veto referendum on the November election day; thus, preventing use of RCV in the November 2020 presidential general election in Maine.</li> </ul> <p><b>Outcome:</b> The Law Court concluded that the 90-day time period in which a people’s veto petition could be filed under Me. Const. art. IV, pt. 3, §17 was triggered by the adjournment of the Second Regular Session, <i>i.e.</i>, the session in which all of the steps necessary to enactment of the law were completed. In addition, 21-A M.R.S. §901’s requirement that the application be filed “within 10 business days after adjournment of” the relevant legislative session did not prevent the filing of an application before adjournment of that legislative session.</p> <ul style="list-style-type: none"> <li>• P.L. 2019, ch. 539 was thus suspended by the filing of the people’s veto petition.</li> <li>• Further proceedings regarding the people’s veto appear below (<i>Jones v. Secretary of State</i>)</li> </ul>

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<p><b>Hagopian et al. v. Dunlap</b></p> <p>U.S. District Court – Maine</p> <p><b>Aug. 14, 2020</b></p> <p><i>Denying request for preliminary injunction to prevent RCV in U.S. Senate race</i></p>	<p><u>Arguments:</u> 4 voters who supported Susan Collins for Senate requested a preliminary injunction invalidating RCV on constitutional grounds, asserting that data from the 2018 RCV races show:</p> <ul style="list-style-type: none"> <li>• Violation of U.S. Const. 1st and 14th Am. rights (1) to vote effectively and (2) not to be compelled to vote for someone they don’t support (<i>i.e.</i>, by ranking all candidates)</li> <li>• Violation of U.S. Const. 14th Am. procedural due process (not elucidated in opinion)</li> <li>• Violation of U.S. Const. 14th Am. equal protection</li> <li>• Violation of U.S. Const. 26th Am. right to vote based on age</li> </ul> <p><u>Outcome:</u> Court rejects expert’s interpretation of data from 2018 RCV contests and finds lack of proof that RCV: prevents voters from voting effectively (instead court concludes voters choose how many candidates to rank); forces voters to vote for anyone; results in disparate treatment of anyone; or denies or abridges older voters the right to vote (as compared to younger voters).</p>
<p><b>Jones v. Secretary of State</b></p> <p>Law Court</p> <p>2020 ME 113</p> <p><b>Sept. 22, 2020</b></p> <p><i>Concluding that insufficient signatures had been submitted with the people’s veto petition regarding P.L. 2019, ch. 539 (RCV in presidential elections).</i></p>	<p><u>Background:</u></p> <ul style="list-style-type: none"> <li>• June 15: Petition filed for people’s veto of P.L. 2019, ch. 539, An Act To Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine</li> <li>• July 15: Secretary of State concludes insufficient signatures were submitted</li> <li>• Aug. 24: After an appeal to the Superior Court and several remands to the Secretary of State, Secretary of State determines only 62,101 signatures were valid—966 fewer than the necessary 63, 067 signatures. The Superior Court vacated, concluding that 988 of the signatures were improperly invalidated by the Secretary of State because collected by circulators who were not registered voters in their municipalities of residence at the time they collected signatures.</li> <li>• Sept. 8: Law Court dismissed Secretary of State and RCV proponents’ motion to stay the Superior Court’s judgment, concluding it was automatically stayed under the Maine Rules of Civil Procedure, Rule 62(g). (2020 ME 111)</li> </ul> <p><u>Issue:</u> Does the requirement in Me. Const. art. IV, p. 3, §20 that each “circulator” of a citizen’s initiative or people’s veto petition be registered to vote in his or her Maine municipality of residence while circulating the petition violate the First Amendment?</p> <p><u>Outcome:</u> Although the U.S. Supreme Court had invalidated a Colorado residency requirement in <i>Buckley v. American Constitutional Law Foundation, Inc.</i>, 525 U.S. 182 (1999)—based on voter-registration statistical evidence that the Colorado requirement limited the pool of potential circulators and testimony of individuals who did not register to vote as a form of protest and who would then be prevented from circulating petitions—the Law Court concluded that there was insufficient proof that the Maine requirement imposed a similar burden. There was no evidence reflecting statewide registration statistics in this case; instead, the record showed that less than 2% of this petition’s circulators were unregistered when they collected signatures. Those individuals were not opposed to registering; indeed, they registered in their place of residence after collecting signatures. This minimal burden was justified by the Secretary of State’s interest in using the voter registration process as a simple, quick way to verify the circulator’s Maine residency (a requirement earlier held valid by the Law Court in <i>Hart v. Secretary of State</i>, 1998 ME 189).</p> <ul style="list-style-type: none"> <li>• Thus, the people’s veto petition had insufficient signatures to place the question whether RCV should be used in presidential elections on the November 2020 ballot.</li> </ul> <p><u>Notes</u> (1) A petition by the proponents of the people’s veto petition to stay the mandate pending an appeal to the U.S. Supreme Court was denied by the Law Court on Oct. 1, 2020 (2020 ME 117) and (2) their subsequent request for an injunction was denied by Justice Breyer on Oct. 6, 2020.</p>

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<b>General Election Day Nov. 3, 2020</b>	<p>Maine conducted its first general election for U.S. Presidential elector under the RCV System.</p> <ul style="list-style-type: none"><li>• In the first round of RCV counting, Joe Biden won 52.5% of the Statewide vote; Joe Biden won 59.4% of the First Congressional District vote and Donald Trump won 51.7% of the Second Congressional District vote. Thus, there was no need to proceed past the first round of RCV—<i>i.e.</i>, the counting of each voter’s first-choice candidate.</li></ul> <p>It was also unnecessary to proceed past the first round of votes for the elections for U.S. Senator (Susan Collins won 50.4% of the vote) or Representative to Congress (each congressional race had only 2 candidates).</p>
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