

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-18- 24

THE COMMITTEE FOR RANKED-)
CHOICE VOTING, LUCAS ST.)
CLAIR, JIM BOYLE, MARK DION,)
MARK EVES, SEAN FAIRCLOTH,)
DIANE RUSSELL, BETSY SWEET,)
and BEN CHIPMAN)

Plaintiffs,)

v.)

MATT DUNLAP, as MAINE)
SECRETARY OF STATE,)

Defendant.)

**COMPLAINT FOR
DECLARATORY JUDGMENT**

The Committee for Ranked-Choice Voting (the "Committee") and Maine candidates for public office Lucas St. Clair, Jim Boyle, Mark Dion, Mark Eves, Sean Faircloth, Diane Russell, Betsy Sweet and Ben Chipman (collectively, the "Candidates"), through their undersigned counsel, state the following as their Complaint against Defendant Maine Secretary of State (the "Secretary"):

Introduction

1. Plaintiffs ask the Court to declare Ranked-Choice Voting, as adopted by a majority of Maine's voters in 2016, shall be implemented by the Secretary as the method of election for the offices of Governor, state Representative, state Senator, U.S. Representative and U.S. Senator in the June 2018 primary elections. The Ranked-Choice Voting law (the "Law") is constitutional in its application to primary elections and general elections for federal offices. The Law is properly in

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effect after a People's Veto suspended legislation that delayed implementation. Nonetheless, the Secretary has refused to implement the necessary systems for implementation of the Law for the upcoming 2018 elections. The Candidates, meanwhile, are left guessing which method of election will decide their respective races. Such uncertainty threatens irreparable injury to the Candidates because each intends to tailor their costly campaigns for public office to the method of election that will decide the primaries. Failure to implement the Law additionally threatens the validity of any election conducted by the Secretary using an illegal election system.

Jurisdiction and Venue

2. This Court has jurisdiction over this Complaint for Declaratory Judgment pursuant to 14 M.R.S.A. §§ 5951-5963 and Rule 57 of the Maine Rules of Civil Procedure.

3. Venue is properly laid in Kennebec County Superior Court pursuant to 14 M.R.S.A. § 505, because the Secretary conducts state business from his principal office located in the City of Augusta, Kennebec County, Maine.

Parties

4. Plaintiff The Committee for Ranked-Choice Voting is a Maine nonprofit corporation with a primary place of business in Gorham, Maine.

5. Plaintiff Lucas St. Clair, a citizen of Hampden, Maine, is a candidate seeking the Democratic Party's nomination for the office of U.S. Representative in the June 2018 primary election.

6. Plaintiff Jim Boyle, a citizen of Gorham, Maine, is a candidate seeking the Democratic Party's nomination for the office of Governor in the June 2018 primary election.

7. Plaintiff Mark Dion, a citizen of Portland, Maine, is a candidate seeking the Democratic Party's nomination for the office of Governor in the June 2018 primary election.

8. Plaintiff Mark Eves, a citizen of North Berwick, Maine, is a candidate seeking the Democratic Party's nomination for the office of Governor in the June 2018 primary election.

9. Plaintiff Sean Faircloth, a citizen of Bangor, Maine, is a candidate seeking the Democratic Party's nomination for the office of Governor in the June 2018 primary election.

10. Plaintiff Diane Russell, a citizen of Portland, Maine, is a candidate seeking the Democratic Party's nomination for the office of Governor in the June 2018 primary election.

11. Plaintiff Betsy Sweet, a citizen of Hallowell, Maine, is a candidate seeking the Democratic Party's nomination for the office of Governor in the June 2018 primary election.

12. Plaintiff Ben Chipman, a citizen of Portland, Maine, is a candidate seeking the Democratic Party's nomination for the office of state Senate in the June 2018 primary election.

13. Defendant Matt Dunlap serves as the Maine Secretary of State, with a

primary place of business in Augusta, Maine, in Kennebec County. Mr. Dunlap is named in his official capacity.

Standing

14. The Candidates have standing to bring this Complaint because the Secretary's indications that he will fail to implement the Law has established an active dispute of real interest as to the method of tallying votes in the upcoming 2018 elections.

15. The nondiscretionary application of the Law in the 2018 elections presents a concrete and specific legal issue that had a direct, immediate and continuing impact on the Candidates seeking to tailor their respective campaigns to account for the method that votes will be tallied in their upcoming elections.

16. The Candidates have a personal stake in the outcome of this dispute because the proper implementation of the Law for the 2018 elections will alter both the Candidates' campaign strategy, and the potential outcomes of the upcoming elections.

17. The Secretary is not immune from a declaratory judgment action where no damages are sought.

Application of the Law

18. Maine voters, in November 2016, overwhelmingly supported the Ranked-Choice Voting initiative calling for ranked-order ballots to be used to determine all elections for the offices of Governor, state Representative, state Senator, U.S. Representative and U.S. Senator.

19. The Law was codified at 21-A M.R.S.A. §§ 1(27-C), 732-A, and originally scheduled to take effect in January 2018.

20. The Maine Legislature in February 2017 asked the Maine Supreme Judicial Court for an *Opinion of the Justices* as to the constitutionality of Ranked-Choice Voting in general elections for state offices.

21. The Supreme Judicial Court, in an opinion recorded at 2017 ME 100, advised that aspects of the Law violated provisions of the Maine constitution requiring general elections for the offices of Governor, state Representative and state Senator to be decided by a plurality of the votes cast.

22. In fact, primary elections are governed exclusively by statute at 21-A M.R.S.A. § 723; federal elections—both primary and general—are controlled by Maine statute and provisions of the U.S. Constitution that do not reference election by plurality.

23. The Legislature in October 2017 passed a law delaying implementation of the Law, which took effect on November 4, 2017.

24. Voters subsequently brought a “People’s Veto” to suspend the Legislature’s delay of Ranked-Choice Voting and put the Law back into immediate effect, pursuant to the Maine Constitution, art. 4, pt. 3, § 17(1).

25. The constitutional limitations of ranked-choice voting raised by the Supreme Judicial Court’s *Opinion of the Justices* are wholly resolved by the language of the “People’s Veto” because the amended Law excludes the use of ranked-choice voting in general elections for Governor, state Representative or

state Senator.

26. Suspending the delay of Ranked-Choice Voting required 61,123 petition signatures to be filed with the Secretary no later than February 2, 2018.

27. More than 80,000 petition signatures supporting suspension of the delayed Ranked-Choice Voting implementation were actually filed on February 2, including more than 72,175 voters' signatures already verified and certified by the voters' respective town clerks.

28. Pursuant to the Maine Constitution, art. IV, pt. 3, § 17(2), the filing of the People's Veto petition on February 2 suspended the Legislature's delayed implementation of the Law and put Ranked-Choice Voting into immediate effect.

29. The Secretary does not have discretion to implement the Law in effect however he deems appropriate.

30. The Secretary, nonetheless, has publicly stated that he plans to take no action to implement Ranked-Choice Voting until petition signatures are re-verified by his office over the next month, causing irrecoverable delays to the necessary implementation procedures.

31. The Secretary has indicated concern that delayed implementation would undermine public confidence in the election process, telling a documentary filmmaker in a recorded interview on January 31, 2018, "I'm opposed to doing it [ranked-choice voting] too quickly." Additionally, the Secretary told the Associated Press for a February 2, 2018 article that "[t]he more time goes by, the more doubt could take root in people's mind about the legitimacy of the election."

32. Meanwhile, the Secretary has indicated his intention to take no action for at least another 30 days while already-certified People's Veto petition signatures are re-verified.

The Secretary's Opposition to Implementing the Law

33. The Secretary has aggressively campaigned to avoid implementation of the Law.

34. Since Ranked-Choice Voting was adopted by voters in November 2016, the Secretary has taken no substantive steps toward implementation of the new voting system that he characterizes as unduly complex.

35. The Secretary has publicly degraded the Law with inflammatory characterizations, stating that implementation of the Law would be analogous to "leaving a loaded revolver on a swing set," and that the Law required "taking a rocket to the moon without a rocket."

36. The Secretary, meanwhile, privately disclosed to members of the Maine Legislature that he has no intention to implement the Law for the 2018 elections.

37. The Secretary has claimed that the Secretary of State's Office lacks sufficient funding to pay for implementation and/or sufficient rulemaking authority to put the Law into effect.

38. In fact, the Secretary has refused offers of funding to pay for implementation of the Law, and has ignored provisions of law that grant him rulemaking authority to implement the Law.

39. Appearing in February 2017 before the Legislature's Joint Appropriations and Financial Affairs Committee, which controls the Secretary of State's Office budget, the Secretary testified that his office did not require significant new funding in order to implement the Law for the 2018 elections.

40. Then in October 2017, appearing before the Legislature again after the Secretary of State's budget was appropriated based on the Secretary's February 2017 requests, the Secretary then claimed that implementation was impossible without an estimated \$1.5 million in new money.

41. In fact, implementation of the Law for the June 2018 primary election can be completed for less than \$500,000.

42. The actual cost of implementing the Law for the June 2018 primary elections is well within the Secretary's discretionary budget, appropriated by the Legislature to pay for unanticipated expenses related to elections and recounts.

43. Private organizations advocating for implementation of the Law have offered to donate funds to pay for associated expenses, but the Secretary has refused to accept assistance.

44. The Secretary has falsely claimed that he lacks sufficient administrative rulemaking authority to implement the law.

45. Pre-existing provisions of law provide the Secretary with the necessary rulemaking authority to implement the Law. For example, the Secretary has broad authority to format the ballot as he deems proper pursuant to 21-A M.R.S.A. § 601, has authority to make all reasonable rules related to the use of voting machines

pursuant to 21-A M.R.S.A. § 813, and has authority “to adopt rules governing the conduct and procedures for a recount” pursuant to 21-A M.R.S.A. § 737-A (12)

46. Additionally, 21-A M.R.S.A. § 723-A(5-A) was amended in October 2017 to guarantee the Secretary’s broad authority to implement the Law by “adopt[ing] rules for the proper and efficient administration of elections determined by ranked-choice voting.”

47. The Secretary has no valid or lawful basis to refuse implementation of the Law for the 2018 primary elections.

COUNT I
Declaratory Judgment

48. The Candidates repeat and reallege each and every allegation set forth in Paragraphs 1 through 47 above.

49. There is a real and substantial controversy between the parties in that the Ranked-Choice Voting Law is properly in effect and required to be utilized as the method of tallying votes for both the June 2018 primary elections, and the November 2018 general federal elections, but the Defendant Secretary of State has heretofore refused implementation.

50. The Candidates have standing to raise these issues before the Court because the method of tallying votes for the 2018 elections has direct, immediate and continuing impact on the Candidates and their campaigns for public office, granting each a personal stake in the Secretary’s wrongful refusal to implement the Law.

51. The Law is required to tally votes for primary elections for party

nominations to the offices of Governor, state Representative, state Senator, U.S. Representative and U.S. Senator, and general elections for U.S. Representative and U.S. Senator.

52. The Law's application to primary elections and general federal elections does not violate *any* provision of the Maine Constitution, because Maine primary elections and federal general elections are governed by Maine statutes, *not* the Maine Constitution.

53. Statutory provisions allowing plurality election for candidates in primary elections and candidates in federal general elections were wholly superseded when the Law took effect.

54. The Secretary has sufficient authority and financial means to timely implement the Law for the 2018 elections.

55. Should the Secretary oppose implementation of the Law on Constitutional grounds, the Secretary bears the burden of establishing the Law's constitutional infirmity.

56. This Court has jurisdiction to determine the legal rights of the parties concerning the application of the Ranked-Choice Voting Law, pursuant to 14 M.R.S.A. §§ 5951-5963.

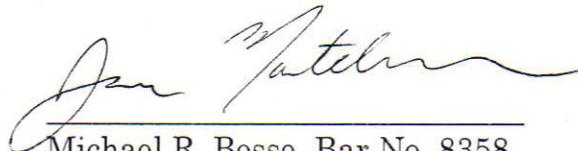
WHEREFORE, Plaintiffs The Committee for Ranked-Choice Voting, Lucas St. Clair, Jim Boyle, Mark Dion, Mark Eves, Sean Faircloth, Betsy Sweet, Diane Russell and Ben Chipman respectfully request that the Court:

1. Declare that provisions of the Ranked-Choice Voting Law, as codified at 21-A M.R.S.A. §§ 1(27-C), 732-A, governing primary elections and federal general elections are properly in effect and in accord with the Maine Constitution.

2. Declare that the Maine Secretary of State shall implement the Ranked-Choice Voting Law for the June 2018 primary elections of political party nominees for the offices of Governor, state Representative, state Senator, U.S. Representative and U.S. Senator.

3. Grant such other and further relief as the Court deems just and proper.

Dated at Portland, Maine, this 16th day of February, 2018.



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