

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1474

S.P. 475

In Senate, May 10, 1993

**RESOLUTION, Proposing an Amendment to the Constitution of Maine
to Transfer the Responsibility for Recounts of Elections to the Judicial
Branch.**

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CAREY of Kennebec.
Cosponsored by Representative STEVENS of Sabattus.

2 **Constitutional amendment. RESOLVED:** Two thirds of each
branch of the Legislature concurring, that the following
amendment to the Constitution of Maine be proposed:

4 **Constitution, Art. IV, Part First, §5** is amended to read:

6 **Section 5. Election of Representatives; lists of votes**
8 **delivered forthwith; lists of votes examined by Governor; summons**
10 **of persons who appear to be elected; lists shall be laid before**
12 **the House.** The meetings within this State for the choice of
Representatives shall be warned in due course of law by qualified
14 officials of the several towns and cities 7 days at least before
the election, and the election officials of the various towns and
16 cities shall preside impartially at such meetings, receive the
votes of all the qualified electors, sort, count and declare them
in open meeting; and a list of the persons voted for shall be
18 formed, with the number of votes for each person against that
person's name. Cities and towns belonging to any Representative
District shall hold their meetings at the same time in the
20 respective cities and towns; and such meetings shall be notified,
held and regulated, the votes received, sorted, counted and
22 declared in the same manner. Fair copies of the lists of votes
shall be attested by the municipal officers and the clerks of the
24 cities and towns and the city and town clerks respectively shall
cause the same to be delivered into the office of the Secretary
26 of State forthwith. In the case of a disputed election, the
Secretary of State shall deliver the ballots and all accompanying
28 records to the Chief Justice of the Supreme Judicial Court. The
Chief Justice shall return a certificate determining the result
30 to the Governor. The Governor shall examine the returned copies
of such the lists and certificates and 7 days before the first
32 Wednesday of December biennially, shall issue a summons to such
the persons as--shall--appear--to who have been elected by a
34 plurality of all votes returned, to attend and take their seats.
All such lists shall be laid before the House of Representatives
36 on the first Wednesday of December biennially, ~~and they shall~~
~~finally-determine-who-are-elected.~~

38 **Constitution, Art. IV, Part Second, §3** is amended to read:

40 **Section 3. Election of Senators; lists of votes delivered**
42 **forthwith.** The meetings within this State for the election of
Senators shall be notified, held and regulated and the votes
44 received, sorted, counted, declared and recorded, in the same
manner as those for Representatives. Fair copies of the lists of
46 votes shall be attested by the clerks of the cities and towns or
other duly authorized officials and sealed up in open meetings
48 and such officials shall cause said lists to be delivered into
the office of the Secretary of State forthwith. In the case of a
50 disputed election, the Secretary of State shall deliver the

2 ballots and all accompanying records to the Chief Justice of the
3 Supreme Judicial Court. The Chief Justice shall return a
4 certificate determining the result to the Governor.

6 **Constitution, Art. IV, Part Second, §4** is amended to read:

8 **Section 4. Lists of votes examined by Governor; summons to**
9 **persons elected.** The Governor shall, as soon as may be, examine
10 the copies of such the lists and certificates, and at least 7
11 days before the said first Wednesday of December, issue a summons
12 to such the persons,--as shall appear to be who have been elected
13 by a plurality of the votes in each senatorial district, to
14 attend that day and take their seats.

16 **Constitution, Art. IV, Part Second, §5** is amended to read:

18 **Section 5. Procedure for filling vacancies.** ~~The Senate~~
19 ~~shall,--on said first Wednesday of December,--biennially determine~~
20 ~~who is elected by a plurality of votes to be Senator in each~~
21 ~~district.~~ All vacancies in the Senate arising from death,
22 resignation, removal from the State or like causes, and also
23 vacancies, if any, which may occur because of the failure of any
24 district to elect by a plurality of votes the Senator to which
25 said district shall be entitled shall be filled by an immediate
26 election in the unrepresented district. The Governor shall issue
a proclamation therefor and therein fix the time of such election.

28 **Constitution, Art. V, Part First, §3** is amended to read:

30 **Section 3. Election; votes to be returned to Secretary of**
31 **State; Secretary of State to lay lists before the Senate and**
32 **House of Representatives; provision in case of tie.** The meetings
33 for election of Governor shall be notified, held and regulated
34 and votes shall be received, sorted, counted and declared and
35 recorded, in the same manner as those for Senators and
36 Representatives. Copies of lists of votes shall be sealed and
37 returned to the secretary's office in the same manner and at the
38 same time as those for Senators. In the case of a disputed
39 election, the Secretary of State shall deliver the ballots and
40 all accompanying records to the Chief Justice of the Supreme
41 Judicial Court. The Secretary of State for the time being shall,
42 on the first Wednesday after the first Tuesday of January then
43 next, lay the lists returned or, in the case of a disputed
44 election, the certificate of the Chief Justice of the Supreme
45 Judicial Court to the secretary's office before the Senate and
46 House of Representatives to be by them examined, ~~together with~~
47 ~~the ballots cast if they so elect, and they shall determine the~~
48 ~~number of votes duly cast for the office of Governor, and in~~
49 In case of a choice by plurality of all of the votes returned
50 they shall declare and publish the same. If there shall be is a

2 tie between the 2 persons having the largest number of votes for
3 Governor, the House of Representatives and the Senate meeting in
4 joint session, and each member of said bodies having a single
5 vote, shall elect one of said 2 persons having so received an
6 equal number of votes and the person so elected by the Senate and
7 House of Representatives shall be declared the Governor.

8 **Constitution, Art. VI, §7** is enacted to read:

10 **Section 7. Determination of disputed elections.** If, after
11 a recount conducted by the Secretary of State, a candidate for
12 office disputes the results of an election in accordance with
13 procedures adopted by law, and if the number of disputed votes
14 exceeds the margin of victory in the election, the Chief Justice
15 of the Supreme Judicial Court shall determine the result of the
16 election. The Chief Justice may appoint a single justice of the
17 Supreme Judicial Court or of the Superior Court to hear and
18 determine the dispute. The Chief Justice or a single justice may
19 appoint a special master. If a single justice is appointed, the
20 single justice shall report the outcome to the Chief Justice for
21 certification. The decision of the justice who hears the dispute
22 is final and not appealable. The Chief Justice shall certify the
23 outcome of all disputed elections to the Governor and the
24 Secretary of State.

26 ; and be it further

28 **Constitutional referendum procedure; form of question; effective**
29 **date. Resolved:** That the municipal officers of this State shall
30 notify the inhabitants of their respective cities, towns and
31 plantations to meet, in the manner prescribed by law for holding
32 a statewide election, at a statewide election, on the Tuesday
33 following the first Monday of November following the passage of
34 this resolution, to vote upon the ratification of the amendment
35 proposed in this resolution by voting upon the following question:

36 "Do you favor amending the Constitution of Maine to give the
37 Chief Justice of the Supreme Judicial Court the
38 responsibility to determine the result in disputed
39 elections?"

42 The legal voters of each city, town and plantation shall
43 vote by ballot on this question and designate their choice by a
44 cross or check mark placed within the corresponding square below
45 the word "Yes" or "No." The ballots must be received, sorted,
46 counted and declared in open ward, town and plantation meetings
47 and returns made to the Secretary of State in the same manner as
48 votes for members of the Legislature. The Governor shall review
49 the returns and, if it appears that a majority of the legal votes
50 are cast in favor of the amendment, the Governor shall proclaim

2 that fact without delay and the amendment becomes part of the
Constitution on the date of the proclamation; and be it further

4 **Secretary of State shall prepare ballots. Resolved:** That the
6 Secretary of State shall prepare and furnish to each city, town
and plantation all ballots, returns and copies of this resolution
necessary to carry out the purpose of this referendum.

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10

STATEMENT OF FACT

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This resolution proposes an amendment to the Constitution of
Maine to give the Chief Justice of the Supreme Judicial Court the
14 responsibility to determine the result in disputed elections.
The resolution implements a recommendation of the Commission on
16 Election Practices convened by the Secretary of State.