

This is being submitted as an addendum to my 11/16/2023 letter to the Rhode Island Senate Commission on Non-Plurality Voting Methods.

This annotated version of the commission's draft report focuses only on the ranked choice voting section and aims to clarify misconceptions, add citations to relevant evidence, and represent my own testimony to the commission more fairly.

-Deb Otis, FairVote Action

A. Ranked choice voting

1. Description and History

In a ranked choice voting system (RCV)¹ voters rank candidates by preference on their ballots. Broadly speaking, the ranked choice voting process unfolds as follows for single-winner elections:

1. Voters rank the candidates for a given office by preference on their ballots. If a candidate wins an outright majority of the votes based on first-choice preferences (i.e., 50 percent plus one), he or she can be declared the winner immediately.
2. If, on the other hand, no candidates win an outright majority of votes based on first-choice preferences, the candidate with the fewest votes is eliminated.
3. All ballots ranking the eliminated candidate first are then counted for their next highest ranked active choice.

I suggest rewriting Step 3 because the previous version was factually incorrect. The prior version claimed that after a candidate elimination, second-preference choices on those ballots are elevated to first-preferences. This is incorrect. Ballots are never changed after the voter casts the vote, so no second-choice preference is ever elevated to first-choice. Instead, the ballot counts for its highest-ranked remaining candidate, without changing any of the choices the voter indicated.

4. A new tally is conducted to determine whether any candidate has won an outright majority or whether only two candidates remain.

I removed a comment about "adjusted voters" from step 4. No voters or voter preferences are ever adjusted. Their ballots continue to count as cast.

5. The process is repeated until a candidate receives a majority of the votes or until only two candidates remain.²

¹ The term instant runoff voting is sometimes used synonymously with ranked choice voting.

I removed the claim from this footnote that single-transferable voting is synonymous with ranked choice voting. The term "single transferable vote" is typically used to refer to multi-winner ranked choice voting elections in the United States (also called "proportional ranked choice voting"). The multi-winner version of ranked choice voting is very different from the single-winner ranked choice voting method being considered in Rhode Island.

² [https://ballotpedia.org/Ranked-choice_voting_\(RCV\)](https://ballotpedia.org/Ranked-choice_voting_(RCV))

As of August 2023, ranked choice voting, to different degrees, is used in three states. Maine implemented RCV in 2018 for federal and statewide elections. Alaska implemented RCV in 2022 for federal and certain statewide elections. Hawaii implemented RCV in 2023 for certain special elections.³

We removed the sentence claiming between 20 and 24 municipalities have repealed RCV after previously adopting it. The cited source is for cities that used a multi-winner version of RCV to achieve a form of proportional representation in city councils. That system is not under consideration in Rhode Island and was not the focus on this committee's report. Repeals of a different system that is not under consideration seem irrelevant.

a. Maine

In 2012, the Maine legislature began introducing bills to implement ranked choice voting after the governor was elected with 38% of the vote in a five-way race in 2010. None of the bills were enacted. However, the citizens' referendum on ranked choice voting passed in 2016. Litigation began with the enactment of ranked choice voting into law, as did further citizens' initiatives.

Pursuant to Maine's process, the 2016 citizens' referendum went to the legislature for implementation where the legislature could repeal or change it. The state senate requested an opinion from Maine's Supreme Court as to whether the referendum was constitutional. Maine's constitution requires the elections of state senator, state representative and governor by a plurality of all votes. A unanimous **advisory opinion** stated that the Act to Establish Ranked Choice Voting was unconstitutional as to general elections for those state office holders.⁴ (As discussed below, the Alaska Supreme Court later unanimously came to the opposite conclusion regarding similar language in its own state constitution, stating that the Maine court's "failure to pinpoint constitutional text, structure, or policies inconsistent with ranked-choice voting leaves us unconvinced by its analysis."⁵)

This is an area where more research was needed to give full context. I edited the above paragraph to note that the Maine opinion was an advisory opinion of the individual justices and not a holding of the Maine Supreme Judicial Court, and to clarify that another state supreme court has actually ruled on the same issue in Alaska and came to the opposite conclusion from the Maine advisory opinion.

Maine's legislature introduced a bill to amend Maine's constitution to address the court's decision. It earned majority support in both the State House and State Senate but did not achieve the two-thirds majority needed for a constitutional amendment.⁶ However, the Maine state legislature has expanded RCV to presidential elections and by passing a local option bill that allows cities and towns to use RCV.⁷

³ Hawaii will use RCV for special elections for federal offices and local council seats. The state senator that authored the law said it is a starting point and a test to see how the RCV system works.

⁴ <https://legislature.maine.gov/doc/1739>

⁵ *Kohlhaas v. State*, 518 P.3d 1095, 1121 (Alaska 2022).

⁶ <https://legiscan.com/ME/bill/LD202/2021>

⁷ <https://legiscan.com/ME/bill/LD859/2021>

Edited this paragraph to correct a deeply misleading claim, and add citations. The prior version gave the impression that the state legislature did not want to expand RCV when, in fact, they have done so.

In November, 2018, voters in Maine's Second Congressional District chose among four candidates using RCV. In the first round, Republican Bruce Poliquin held a narrow lead over the Democrat Jared Golden by a margin of 46.3%-45.6%. The remaining 8.1% of votes were divided between two independents (Tiffany Bond and William Hoar). When those voters' second choices were tabulated, Mr. Golden emerged the winner with 50.6% of the vote to Mr. Poliquin's 49.4%. Lawsuits were filed with the federal court which upheld ranked choice voting as constitutional. The Maine governor, Republican Paul LePage, signed the new Democratic Congressman's election certificate with the notation "stolen election." Speaker Gideon told the commission this story to "demonstrate how controversial changing a voting method can be and what it might feel like to some voters" but also acknowledged it's "a little embarrassing to share with you... a governor writing 'stolen election' on a United States Congressman's election certificate." (Gideon presentation 5/10/23).

Edited this paragraph to remove the assertion that the election result took several months to be declared. The [winner was determined](#) on November 15th, 2018. The assertion that it took months is factually incorrect.

The city of Portland, Maine has used RCV for more than a decade. Portland's 2021 election for Charter Review Commission provided a dramatic example of RCV's impact. Portland used a form of RCV for multi-winner offices called "sequential RCV" that is not recommended by leading RCV advocacy organizations and which they have since replaced with the more standard form of multi-winner RCV tabulation. The version used by Portland in 2021 is not under consideration anywhere in Rhode Island. Using that unusual form of "sequential RCV", in the first round, Steve DiMillo received 21% of the votes in the first round, compared to Patricia Washburn's 4%. After the first three of four winners had been elected, Ms. Washburn received more votes and was eventually declared the winner of the fourth seat over Mr. DiMillo by a margin of 3,478 to 2,276. Speaker Gideon stated that there were no formal complaints filed about the results of that election. (Gideon presentation, 5/10/23).

Edited this paragraph to clarify that this example is based on a voting method that is not under consideration in Rhode Island, was not considered by this study committee, and has since been replaced in Portland with the more standard form of multi-winner RCV. The prior paragraph was very misleading, suggesting that the sole election winner was someone with just 4% of first choices, hiding the fact that it was a multi-winner race using a different method than the one being considered in Rhode Island.

Speaker Gideon noted that the change to RCV has been a "confusing process" with a lot of legal action, legislative reconsideration, ballot initiatives... and these challenges follow along party lines." (Id.) However, Gideon also said, "Overall this is really positive for democracy and people feeling like their vote counts" and cited strong voter confidence and voter comprehension in Maine.

Removed the assertion that litigation continues in Maine. I am unaware of any ongoing litigation related to RCV and I don't see a citation.

B. Alaska

In addition to RCV in the general election, the State of Alaska enacted a top four voting system for the primary election. The primary is open to all candidates and candidates are permitted to identify their party affiliation. All candidates from all parties, as well as independent candidates, appear on the same primary ballot. Voters cast a ballot for a single candidate from this expanded field.

The four candidates with the highest number of votes qualify for the general election ballot. In the general election, voters use RCV to rank the four (or fewer) candidates. If a candidate receives a majority of votes based on first-choice rankings, that candidate is the winner. If not, votes are tabulated following the RCV procedure until only two candidates remain and the candidate with a majority of votes wins.

I updated the description of procedure. If no candidate wins with a majority in the first round, then the tabulation continues until only two candidates remain.

In a pre-election challenge to the system, a plaintiff attempted to argue that ranked choice voting violated the state constitution's provision that "[t]he candidate [for governor] receiving the greatest number of votes shall be governor." The Alaska Supreme Court unanimously rejected this argument, holding that ranked-choice voting does not "require" a majority of votes cast in order to win, ranked-choice voting "does not contravene the purpose behind" the relevant provision (i.e., "eliminating the risk of an election with no winner"), and the supreme court "should be very slow in determining that [an] act is unconstitutional, until we can put our finger on the very provisions of the Constitution which prohibit it."⁸ The Court rejected the contrary advisory opinion from Maine, noting that "the Maine Supreme Judicial Court treated the result obtained after the first round of counting as if it were final, without pointing to any text in its constitution that requires votes to be counted in that way or that limits the way a vote can be cast or expressed. The court discussed at length the history of the Maine constitution's plurality provision and the state's history of failed elections but did not explain how ranked-choice voting is any more likely to result in a failed election than single-choice voting."⁹

I'm suggesting adding this paragraph to provide equivalent legal analysis for Alaska as that provided for Maine above. Without this, it could come across as cherry-picking cases without full consideration of the evidence.

C. Presidential primary elections

Four state Democratic parties used RCV for their presidential primaries or caucuses in 2020, and one additional state used RCV for some voters (Nevada for early voters only, who comprised 70% of total participants.)¹⁰

⁸ *Kohlhaas v. State*, 518 P.3d 1095, 1119, 1120, 1100 (Alaska 2022).

⁹ *Id.* at 1121.

¹⁰ [Ranked choice voting in 2020 presidential primary elections](#), 2020

Research on those five contests finds that RCV benefits parties by letting them coalesce around consensus nominees and prevents wasted votes that occur when candidates withdraw from the primary after voters have already cast early or mail-in ballots.¹¹

2. Policy Analysis

On March 22, 2023, Deb Otis of FairVote, an advocacy group promoting ranked choice voting, presented to the study commission and claimed there are advantages for ranked choice voting over plurality voting including that ranked choice voting:

- Promotes voter choice;
- Reduces or eliminates vote-splitting and strategic voting
- Promotes majority winners;
- Improves campaign civility because candidates must appeal to a broader group of voters;
- Improves representation for women and people of color.

This committee finds evidence of these claims in the relevant literature. Below we explore how Ms. Otis's claims hold up in practice.

- RCV does apparently expand voter choice, with over 70% of voters choosing to rank multiple choices,¹² although one experimental study suggests the rate might differ between informed voters and uninformed voters (70% of uninformed respondents ranked, compared to 86% of informed respondents.)¹³ RCV also expands voter choice by lowering the barriers to running for office, and early evidence suggests it encourages more candidate entry, including more diverse candidate entry. For example, one paper observes the number of candidates doubled in Minneapolis after the implementation of RCV¹⁴ and another points to the positive impacts for women and women of color in particular.¹⁵
- There is limited evidence about whether RCV reduces strategic voting, but one exit survey from Utah finds that RCV voters are more likely to vote for their honest favorite candidate, as reported in local media.¹⁶
- Evidence also finds that RCV promotes majority winners significantly better than two-round runoff elections. Although runoffs are also designed to produce a majority winner, the near-universal decline in turnout in the second round¹⁷ means far fewer voters determine the winner in a two-round runoff than in RCV.

¹¹ [Lessons from the Use of Ranked Choice Voting in American Presidential Primaries](#), 2021

¹² <https://fairvote.org/resources/data-on-rcv/#number-of-rankings-used>

¹³ [Ranked-Choice Voting and Political Expression: How Voting Aids Narrow the Gap between Informed and Uninformed Citizens](#), 2021.

¹⁴ [Voter Participation with Ranked Choice Voting in the United States](#), 2016.

¹⁵ [The Alternative Vote: Do Changes in Single-Member District Voting Systems Affect Descriptive Representation of Women and Minorities?](#), 2018

¹⁶ [Did Utahns like ranked choice voting? A new poll has answers](#), 2021

¹⁷ [Primary elections and decline in voter turnout, 1994-2022](#), 2022

- The question of campaign civility is well-researched. Researchers have approached this question by analyzing campaign statements¹⁸ or media activity¹⁹ and by polling voters about their attitudes.^{20, 21} In both cases, the research finds that RCV campaigns are in fact more positive.
- The final question about whether RCV increases diversity in elected office is also well researched. Some studies show a significant increase in women and people of color running under RCV^{22,23,24} while others show modest or no impact.²⁵

While the evidence suggests that the five benefits outlined by Ms. Otis are true in practice, there are two areas where presenters indicated RCV may not deliver benefits over Rhode Island's current voting method.

I added the above section in its entirety, including citations for all claims. The prior version neglected to examine any of my claims of RCV's benefits, despite the available scholarly evidence.

Presenters to the study commission were asked how the various non-plurality voting systems affect voter turnout. Presenters indicated that there is not enough data to suggest that ranked choice voting increases voter turnout, and that the scheduling of the elections has a greater impact on voter turnout than the different voting systems. Additionally, Ms. Otis, Professor Myers, Mr. Williams, and Mr. Dufault also explained that there is not enough data available to suggest that RCV has any impact on voter trust of elections (3/1/22, Professor Myers presentation, 3/22/23 FairVote and NCSL presentations, 4/26/22 People's Primary presentation, Sara Gideon's May 10, 2023 presentation).

In addition to the claimed advantages, the Rhode Island 2023 Democratic Primary for the First Congressional District revealed another possible advantage for RCV when one candidate (Don Carlson) suspended his campaign after early voting began. According to Board of Elections data, 270 voters cast early ballots for Mr. Carlson that were effectively nullified before the election took place. Had those voters used a ranked choice ballot, their second choice would have been counted.

3. Implementation

Tabulation of the votes can be done as quickly as for non-RCV elections, but it can also take time in jurisdictions that do not have the necessary election infrastructure. While it took Maine officials eight days to collect the ballots before running the RCV tabulation in 2018, other RCV locations produce results on election night, like San Francisco, CA, and Boulder, CO. Most RCV jurisdictions produce RCV results on election night or the following day.

¹⁸ [Rating Rankings: Effect of Instant Run-off Voting on participation and civility](#), 2020

¹⁹ [Using Campaign Communications to Analyze Civility in Ranked Choice Voting Elections](#), 2021

²⁰ [Campaign civility under preferential and plurality voting](#), 2016

²¹ [Candidate Civility and Voter Engagement in Seven Cities with Ranked Choice Voting](#), 2017

²² [The Alternative Vote: Do Changes in Single-Member District Voting Systems Affect Descriptive Representation of Women and Minorities?](#), 2018

²³ [Election Reform and Women's Representation: Ranked Choice Voting in the U.S.](#), 2021

²⁴ [Ranked choice voting elections benefit candidates and voters of color](#), 2021

²⁵ [Ranking Candidates in Local Elections: Neither Panacea nor Catastrophe for Candidates of Color](#), 2023

Re-wrote the above paragraph to include more evidence to avoid the impression of cherry-picking just one example.

Presenters stressed that an effective transition would require a robust voter education campaign with a suggested period of 2-4 years of education, although Ms. Otis noted that Rhode Island's existing election infrastructure means their implementation timeline could be significantly shorter. Commission members Kathy Placencia and Lori Anderson also spoke about the importance of educating the voters. In addition, Lori Anderson who is also a member of the Coventry Board of Canvassers suggested there should be education specific to elderly voters.

Commission members Miguel Nunez, Kathy Placencia, Nick Lima and Lori Anderson as well as presenters stated that a change from a plurality voting system to ranked choice voting system could require additional staff capacity. However, assertions that more staff would be required at the Board of Elections, the Secretary of State's office, and at all local boards of canvassers and local polling locations don't seem to rely on any evidence. Ms. Anderson noted that a change in the voting system could make recruiting poll workers more difficult, although there are no reports of similar challenges from other jurisdictions that have implemented RCV.

As noted by Rhode Island Board of Elections commission member designee Miguel Nunez, the ranked choice ballot is more complex. For each office, the ballot contains a grid, with rows containing the names of the candidates and columns for the voter's first choice, second choice, and so on.²⁶ This could significantly increase the size of the ballot if there were many races contested by three or more candidates. This could potentially generate congestion at the polls due to the longer time needed to complete a ballot, although, again, there are no reports of this issue from other jurisdictions that have adopted RCV.

Rhode Island law requires that a risk-limiting audit be performed to verify the machine count by selecting a random sample of ballots to compare to the machine voting outcome. See R.I.G.L. §17-19-37.4. Ms. Otis of FairVote stated that there is software available to perform risk-limiting audits in RCV elections and some RCV jurisdictions are beginning to implement risk-limiting audits.²⁷ NCSL's Ben Williams also noted that there is no issue with performing risk-limiting audits in RCV elections. Commission member Kathy Placencia from the Secretary of State's office noted that if Rhode Island were to move away from the plurality voting system upgrades would be needed to conduct risk-limiting audits. (3/1/23 presentation)

The Maine Secretary of State's office has stated that the cost of implementing RCV was approximately \$100,000, including software and hardware upgrades, lease of a high-speed ballot tabulator, the courier service to bring the ballots and memory devices to the centralized

²⁶ Ms. Otis stated that voters typically are able to rank up to five candidates in a given election. Thus, if (as was the case in Rhode Island's 2023 CD-1 primary) there were twelve candidates on the ballot, voters would rank their top five choices. The number of choices to rank could be set in law or could be left to the Secretary of State's office.

²⁷ See "Post Election Audits and Ranked Choice Voting" (Ranked Choice Voting Resource Center, September 19, 2022), viewable at <https://drive.google.com/file/d/1vLvquz6UNT33BABjpT0-OTAVL5hSw5zV/view>

tabulation site. It's important to note that about half of Maine's voting locations do not have voting equipment, so the courier service securely transported ballots or flash drives from all localities for central tabulation and attributed to additional costs associated with the central counting facility.²⁸

Re-wrote the section on Maine's cost because we were unable to verify the figures in the prior version, and added a citation where one was previously missing.

4. Legal Issues

Since 1663, the Rhode Island general assembly has held exclusive jurisdiction over the conduct of elections in the state. "[T]he general assembly, at least since the royal charter of 1663, was vested with such authority not only over the elections of the state at large but also over the elections in the [municipalities]." *Opinion to the House of Representatives, 96 A.2d 627, 80 R.R. 288 (1953)* In 1843, with the adoption of the Rhode Island Constitution, that original authority was preserved in Article II, section 2 of the Rhode Island Constitution which continued the general assembly's exclusive power to conduct elections in the state. In addition, this long history of the general assembly's exclusive authority over the conduct of elections has been expressly reaffirmed by amendments to the constitution. *Id.*

Article II, Section 2 of the constitution further states that "The general assembly shall provide by law for the nomination of candidates... for the time, manner and place of conducting elections; for the prevention of abuse, corruption and fraud in voting..." Further evidence of the general assembly's exclusive jurisdiction over elections is found in the Rhode Island General Laws which, since 1901, have mandated plurality voting for elections of senators and representatives in congress. R.I.G.L. 17-4-6. In 1947, the general assembly enacted laws for primary elections which mandate that plurality voting determines the person nominated or elected in primary elections. R.I.G.L. 17-15-29.

The Rhode Island Constitution contains language similar to that found in the Maine and Alaska state constitutions that "the person or candidate receiving the largest number of votes cast shall be declared elected."²⁹ As the Alaska Supreme Court decision cogently demonstrates, such a constitutional provision does not preclude the ability of the state to adopt RCV.³⁰ In a ranked-choice voting election, it is always the case that the final result will be determined in a single election and it is always the case that the candidate with the largest number of votes at the end of tabulation is elected. Under ranked-choice voting, it is often the case that the candidate who receives the largest number of votes will also receive a majority of the votes cast, but this is neither always true nor required, as the Alaska Supreme Court's opinion explains.

²⁸ From the presentation and Q&A session and [document](#) of the webinar, "[Maine's RCV Primary: A Firsthand Account from the Secretary of State](#)," hosted by the Ranked Choice Voting Resource Center on August 2, 2018.

²⁹ Rhode Island Const. Art. IV, § 2.

³⁰ *Kohlhaas v. State*, 518 P.3d 1095, 1118-23 (Alaska 2022).

This issue was also raised and addressed positively by the Massachusetts Supreme Judicial Court in dicta in *Moore v. Election Comm’rs*, 35 N.E.2d 222, 226 (Mass. 1941). There, the Court observed that the Massachusetts constitution provides that in “all elections of civil officers . . . the person having the highest number of votes shall be deemed and declared to be elected.” The Court pointed out, quite simply, that “candidates receiving the largest numbers of effective votes counted in accordance with the plan are elected, as would be true in ordinary plurality voting.”

Nor is the Maine Supreme Judicial Court’s advisory opinion to the contrary necessarily persuasive. As the leading scholarly commentary on this issue notes, the Maine justices’ analysis of the issue was remarkably brief—only three sentences—and failed to analyze or explain why a “first-preference ranking” alone should be treated for constitutional purposes as the voter’s vote.³¹

The only Rhode Island opinion to raise this question left the issue undecided.³²

As for federal legal challenges, every single federal claim ever raised against ranked-choice voting has failed in every federal and state court to consider such a claim.

This section was entirely re-written to focus on relevant legal questions for single-winner elections and to include directly on-point cases and scholarship not included in the prior version.

III. Findings and Recommendations

- The key questions being asked by this commission include: How will these reforms solve the problems with plurality winners, how will these reforms impact voter turnout, and how will these reforms incentivize elected officials to pursue good policy without the fear that if they reach across the aisle they will be challenged in the primary by a candidate who only appeals to a small base of voters instead of a majority of the electorate.
- According to the People’s Primary presentation, over the last 20 years 45% of General Assembly seats were decided in the primary because the general election for the seat was uncontested by a second party.

³¹ Richard H. Pildes & G. Michael Parsons, *The Legality of Ranked-Choice Voting*, 109 Calif. L. Rev. 1773, 1812-17 (2021).

³² In *Opinion to the Governor*, the Rhode Island Supreme Court invalidated a multi-winner form of ranked choice voting known as the “Hare system” on the grounds that the system gave voters one vote and the Court stated that the relevant constitutional provision—which provided a “right to vote in the election of all civil officers”—required the voter to be able to cast as many votes as seats to be elected. 6 A.2d 147 (R.I. 1939). For present purposes, this opinion is largely inapplicable insofar as the relevant provision in the state constitution has since been amended, the relevant multi-winner system now allows a single vote to count across multiple candidates, and Rhode Island is currently only considering the use of single-winner ranked choice voting rather than any multi-winner version of ranked choice voting. The opinion noted in passing that the constitution also requires that the candidate that receives the largest number of votes shall be declared elected, but the opinion did not analyze or explain why this provision raised questions about ranked choice voting or how this provision might apply for single- or multi-winner races.

- Chair Zurier and several speakers noted that increasing turnout at primaries is an important goal. Senator Raptakis spoke about the bill he sponsored, S-2023-115, which allows unaffiliated voters to vote in either party's primary without declaring a party. This may result in more people voting on primary day.
- Given the desire to increase participation in primary elections, the combination of all-party primaries and RCV (often known as top-four RCV) could address the concerns about both turnout and non-majority winners.
- Presidential primaries present a viable small-scale test of RCV for Rhode Island, and solve problems unique to presidential primaries such as wasted votes going to withdrawn candidates. Rhode Island could easily be ready to implement RCV by the next presidential primary in 2028.
- Testimony from several speakers and from documents presented to the commission show that a healthy timeline should be included into any legislation recommending a change in voting systems. Experts varied from recommending several months to several years. A change for 2024 falls outside of the recommendations of most speakers, but 2025 or later would fall within the target.
- The study commission was not equipped to survey RI voters to determine the level of public support voters may have for non-plurality voting and runoff elections. The study commission finds that a survey of Rhode Island voters would assist legislators in determining whether a new voting system is warranted.