



Special Senate Commission to Study
Non-Plurality Voting Methods and Runoff Elections
For General Assembly And General Officer
Primaries

Report

Submitted to the
Rhode Island State Senate
December 2023

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**SPECIAL SENATE COMMISSION TO STUDY NON-
PLURALITY VOTING METHODS AND RUNOFF
ELECTIONS FOR GENERAL ASSEMBLY AND
GENERAL OFFICER PRIMARIES**

Members

Senator Samuel D. Zurier
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Senator Leonidas P. Raptakis
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The Honorable Dominick J. Ruggiero
President of the Rhode Island Senate
State House
Providence, RI 02903

Dear President Ruggiero:

We are pleased to hereby submit the Final Report of the Special Senate Commission to Study Non-plurality Voting Methods and Runoff Elections for General Assembly and General Officer Primaries. Our Report represents the combined input of our Commission members and those who presented before the Commission to share their expertise and perspective on Non-plurality voting methods and runoff elections.

This study commission consisted of dedicated professionals representing state and municipal election officials as well as elected officials. We would like to express our gratitude to all members of the Commission for their willingness to take part in these discussions, and we appreciate the investment of the time and talent that they graciously provided.

This final report is the culmination of the hearings and discussions that began in March 2023 and ended December 2023. It contains information presented by various stakeholders with knowledge and expertise in various non-plurality voting methods and runoff elections in addition to input from commission members and the public.

Respectfully submitted,

Senator Samuel D. Zurier, Chair

EXECUTIVE SUMMARY

On January 31st, 2023, Senate Bill 46 was read and passed by the Rhode Island Senate creating a Special Senate Commission to Study Non-plurality Voting Methods and Runoff Elections for General Assembly and general Officer Primaries. The Commission chaired by Senator Samuel D. Zurier, was authorized to study the potential application of non-plurality voting on elections for General Assembly and General Officer candidates in Rhode Island. This Special Senate Commission consists of the following seven (7) members:

- Three (3) members of the Rhode Island Senate, not more than two (2) from the same political party,
- One (1) shall be a representative of the Board of Elections,
- One (1) shall be the Secretary of State, or designee,
- Two (2) shall be representatives from a board of canvassers or election officials of two (2) different cities or towns in the state

The Commission met seven times over the course of ten months (March 1, 2023, March 22, 2023, April 26, 2023, May 10, 2023, May 31, 2023, October 30, 2023 and December 2023) and was charged with presenting its findings and recommendations to the Senate President. This document represents the final report of the Special Senate Commission.

In an ideal democratic election, the winning candidate will gain support from a majority of a broad base of voters. Rhode Island's current voting system, with partisan primaries and plurality elections, has produced outcomes that fall short of that ideal, sometimes leaving voters questioning whether their elected officials truly represent the will of the majority. To address that issue, this Commission was established.

The Commission process was collaborative, with input and support from all members and presenters. After investigation, discussion and deliberation, the Commission approved this report.

Other states have enacted alternative voting systems in order to create conditions for elections to approach the democratic ideal more closely. This report analyzes four alternative voting systems from the standpoints of policy, implementation and potential legal issues. Two of the alternatives, namely top two and ranked choice, could provide opportunities to bring Rhode Island's elections closer to the ideal where a winning candidate receives a majority of all votes cast, but each also presents issues for voter education, election administration and potential legal challenges.

The commissioners did not reach a consensus as to whether the advantages presented for any one of the alternative voting systems justifies taking on the implementation, education and legal issues associated with it. Commission members, Senator Zurier and Senator Raptakis, support the consideration of legislation implementing a top two voting system. Senator Zurier also supports consideration of ranked choice and the top four voting system used in Alaska. Commission

member, Senator DeLuca, believes that voters, through a referendum, should decide whether Rhode Island's plurality voting system should be changed.

All commissioners agree that any change must be preceded by careful preparation and education for both voters and election officials, and that important legal issues should be resolved before any election under new procedures takes place.

The benefits of increased voter turnout and majority support are important and worthy goals to pursue through electoral system reform. With that said, voter confidence is equally critical to our democratic institutions and should not be tested or impaired by reform for its own sake. This report will inform the Senate about the benefits and costs of these alternatives as it considers responsive legislation.

Report

I. Current Voting System in Rhode Island

1. Description and History

Rhode Island's plurality voting system is the most common voting system used in the United States, with 48 states using plurality voting for at least one elected office and 36 states exclusively using plurality voting for every office and election.¹ (Myers presentation, 3/1/23)

Rhode Island has a partially open primary election system which allows voters to participate in any party's primary provided that the voter is a registered member of that party. Unaffiliated voters can register with a party on election day. In addition, voters may disaffiliate or change their party affiliation as soon as immediately after voting in a primary, or as late as 30 days before a primary election. (R.I.G.L. 17-19.1-24)

Pursuant to Rhode Island statutory law, all party primaries are elections and election laws apply to all primaries. (R.I.G.L. 17-15-43) The person receiving the largest number of votes in the primary election, even when less than a majority, shall be declared the nominated or elected person. (R.I.G.L. 17-15-20).

The General Assembly's exclusive authority to regulate voting systems is subject to the requirements of Article IV, Section 2 of the State Constitution, which reads as follows:

Section 2. Election by a plurality. In all elections held by the people for state, city, town, ward or district officers, the person or candidate receiving the largest number of votes cast shall be declared elected.

¹ <https://electionbuddy.com/blog/2022/01/27/plurality-vs-majority-voting/>

Rhode Island's voters originally adopted this section in 1893 to replace the previous procedure which stated, if no candidate for governor received a majority of votes the General Assembly sitting in grand committee would elect the governor from the top two vote getters. In one of the elections leading up to the amendment, the Democratic candidate received more votes than the Republican, but failed to win a majority due to a third-party candidate, but a Republican General Assembly elected his opponent. In another election, the Republican received more votes than the Democrat, but a split between a Republican Senate and Democratic House produced an impasse. Those elections provided an impetus to the change.

2. Issues

Through the course of the Commission's hearings, speakers and Commission members considered these concerns and issues with Rhode Island's plurality voting system:

1. In plurality voting, the candidate with the most votes wins, even if it is not a majority.² As a result, elections with more than two candidates present the issue that a candidate may win with a plurality that is below a majority. The "multi-candidate" issue has arisen in several recent Rhode Island gubernatorial elections and primaries. In the 2010 election, Independent Lincoln Chafee was elected Governor with 36.1% of the vote, defeating the Republican John Robitaille (33.6%), Democrat Frank Caprio (23.1%) and Moderate Ken Block (6.5%).³ The outcome raised the question as to whether a majority of all voters supported candidate Chafee and whether he would have won if voters had a choice between the top two primary candidates with the most

² https://www.canr.msu.edu/news/plurality_voting_isnt_the_only_option_for_elections; "Plurality voting isn't the only option for elections", Walcott, Michigan State University Extension, 2017.

³ https://www.ri.gov/election/results/2010/general_election/

votes. Similar results occurred in the 2014 election, and in the 2002 and 2022 Democratic Party gubernatorial primaries.⁴

When a candidate is elected without gaining a majority, voters who supported a different candidate may believe the winner lacks a sufficient popular mandate to advance their policies. This lack of a popular mandate can lead to a lack of cooperation between the executive and legislative branches of government.

2. Voter turnout is an important issue to study commission members. The constituency selecting the winner of the primary is limited to the voters in the party primary. That electorate is often significantly smaller than the voting population, first because voter participation in primaries is often lower than participation in general elections,⁵ and second because the primary electorate by definition excludes voters who do not affiliate with the party nominating the candidate. In districts where the voters generally favor one party over the other, a candidate who wins a low-turnout primary with less than a majority of the votes may become the odds-on favorite to win the general election. (Sasse, Dufault, 4/26/23 presentation)

The Rhode Island 2022 Republican gubernatorial primary race provided an example of the “low turnout” problem. Ashley Kalus won the nomination (and a place on the November ballot) with 17,188 votes, or 84% of the total of 20,539 Republican voters. At the same time, two unsuccessful Democratic primary candidates received substantially more primary votes, namely Helena Foulkes (33,931) and Nellie Gorbea (29,811), but did not appear on the November ballot.

⁴ Other examples include the gubernatorial election of 2014 (Gina Raimondo 41%/Allan Fung 36%/Robert Healey 21%) and the Democratic gubernatorial primaries in 2002 (Myrth York 39%/Sheldon Whitehouse 38%/Antonio Pires 22%) and 2022 (Dan McKee 33%/Helena Foulkes 30%/Nellie Gorbea 26%/Matt Brown 8%/Luis Munoz 3%). <https://www.ri.gov/election/results/>

⁵ In its presentation, the People’s Primary presenters stated that fewer than 20% of Rhode Island voters participate in primaries. (4/26/23 presentation)

In the general election, 357,670 voters participated, and Ms. Kalus received 38.9%, losing to Governor McKee's 57.9%.⁶ These two outcomes raise the question as to whether the November ballot gave general election voters who did not participate in the primary a choice among the candidates who had the broadest base of support.

3. The speakers from the People's Primary listed other concerns and objections to Rhode Island's current plurality system. In particularly large candidate fields in which candidates may focus their campaigns on a certain base of voters to obtain a plurality of votes while neglecting the rest of the electorate, even if that base is well below a majority of the electorate. In voting districts where a clear and persistent majority of voters favor one party over the other, elected officials may "fear being primaried if they reach across the aisle to pass legislation." (4/26/23 presentation, Sasse & Dufault; Open Primaries Background Information)

II. Non-plurality Voting Systems

Other states and municipalities have enacted non-plurality voting systems to address these and other issues. The Commission heard presentations concerning five principal alternatives, namely: (A) Ranked Choice Voting, (B) Top Two, (C) Runoff, and (D) Approval Voting. For each of these systems, the Report will provide a description followed by an analysis of policy (guided by the three major issues just described), implementation in Rhode Island, and Rhode Island legal issues.

A. Ranked Choice Voting

1. Description and History

⁶ https://www.ri.gov/election/results/2022/general_election/

In a ranked-choice voting system (RCV)⁷ 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.
2. If a candidate wins an outright majority of first-preference votes (i.e., 50 percent plus one), he or she will be declared the winner.
3. If, on the other hand, no candidates win an outright majority of first-preference votes, the candidate with the fewest first-preference votes is eliminated.
4. All first-preference votes for the failed candidate are eliminated, and second-preference choices on these ballots are then elevated to first-preference.
5. A new tally is conducted to determine whether any candidate has won an outright majority of the adjusted voters.
6. The process is repeated until a candidate wins a majority of votes cast.”⁸

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.⁹ Five states (Tennessee, Montana, South Dakota, Idaho and Florida) have banned the use of RCV. Twenty-six states have never used RCV. Fifty United States municipalities¹⁰ currently

⁷ The terms *instant-runoff voting* and *single-transferable voting* are sometimes used synonymously with ranked-choice voting.

⁸ [https://ballotpedia.org/Ranked-choice_voting_\(RCV\)](https://ballotpedia.org/Ranked-choice_voting_(RCV))

⁹ 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.

¹⁰ The U.S. Census Bureau reports there are 89,004 local governments in the United States but that number includes special districts like fire, library and water districts. There are approximately 35,886 local governments (cities and

use RCV, and nine more have approved its use in the next few years. On the other hand, between 20 and 24 other municipalities have stopped using RCV after previously adopting it.¹¹

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 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 it 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 court opined that the Act to Establish Ranked-choice Voting was unconstitutional as to those state office holders.¹²

Maine's legislature introduced a bill to amend Maine's constitution to address the court's decision. It did not pass. The legislature passed a bill that delayed implementation of RCV unless a constitutional amendment passed by 2021; otherwise RCV would be repealed. Following more litigation, the court struck down the unconstitutional part of RCV only. As a result, Maine voters use RCV in primary and general elections for United States Senator and Representative, and in

towns) similar to Rhode Island municipalities U.S. Census, 2012;
<https://www.census.gov/newsroom/releases/archives/governments/cb12-161.html>

¹¹ [https://ballotpedia.org/Ranked-choice_voting_\(RCV\)](https://ballotpedia.org/Ranked-choice_voting_(RCV)); <https://www.pewresearch.org/short-reads/2021/06/29/more-u-s-locations-experimenting-with-alternative-voting-systems/>

¹² <https://legislature.maine.gov/doc/1739>, Opinion of the Justices, 2017 ME 100, Docket No. OJ-17-1, May 23, 2017.

primary elections for State Senator, Representative and Governor, but not for those state offices in the general election. Maine also enacted an RCV option for local elections.

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 second-choice votes were tabulated and transferred, 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 eventually ruled that the democrat had won the general election. That election result took several months to be declared. The Maine governor 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." (Gideon presentation, 5/10/23)

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. In the first round, Steve DiMillo won 21% of the first place votes, compared to Patricia Washburn's 4%. In the fifth and final round of tabulations, Ms. Washburn was declared the winner 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)

Litigation continues in Maine around ranked choice voting, as do attempts to create a constitutional amendment to include state office holders in RCV. 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,

after explaining the extensive preparation and implementation work done in Maine, Speaker Gideon concluded that “overall [RCV] is really a positive for democracy...” (Id.)

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 gains a majority of first-choice votes, that candidate is the winner. If not, votes are redistributed following the RCV procedure until a candidate gains a majority of votes.

c. Presidential Primary Elections

In four states, Alaska, Hawaii, Kansas and Wyoming, the Democratic party used RCV for their presidential primaries or caucuses in 2020. Nevada used RCV for some caucus voters.¹³

2. Policy Analysis

On March 22, 2023, Deb Otis of FairVote, an advocacy group promoting ranked choice voting, presented her organization’s research to assert that ranked choice voting has advantages over plurality voting including that ranked choice voting:

- Promotes voter choice;
- Reduces or eliminates vote-splitting and strategic voting;

¹³ https://fairvote.org/report/ranked_choice_voting_in_2020_presidential_primary_elections/

- Promotes majority winners;
- Improves campaign civility because candidates must appeal to a broader group of voters;
- Improves representation for women and people of color.

Presenters to the study commission were asked how the various non-plurality voting systems affect voter turnout. Deb Otis, the FairVote presenter, Political Scientist, Professor Myers and Ben Williams, Program Principal, Elections and Redistricting at NCSL and the NCSL report provided by Mr. Williams, stated that there is not enough data to suggest that ranked choice voting increases voter turnout. Ms. Otis and Messrs. Sasse and Dufault from People’s Primary stated that the scheduling of the elections has a greater impact on voter turnout than the different voting systems. 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.) Maine’s former Speaker of the House, Sara Gideon, stated that RCV in Maine when RCV was adopted “doesn’t seem to have had a significant impact on turnout in primaries.” (May 10, 2023 presentation)

Mr. Williams from NCSL informed the commission about the results of studies of RCV. “When compared with non-runoff plurality voting, existing research indicates minimal or indeterminate impacts on overall voter turnout...This indicates that RCV’s impact on low-propensity voters may be minimal, to the extent it exists at all. But without controlling for other factors like mandatory voting laws and political culture differences, such anecdotal examples [of

increased voter turnout] should be taken with a grain of salt.”¹⁴ The NCSL report provides a comprehensive review of currently available studies of ranked choice voting. Those studies do not provide evidence to support any of the other claims of RCV advocates. *Id.* It is assumed that with greater use of RCV, including two states now using RCV statewide, more studies of that voting system may lead to solid evidence on whether RCV has the impact its supporters state.

In addition to these 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 vote could have been counted.

3. Implementation

Tabulation of the votes can take time under RCV. In 2018, Maine election officials needed eight days to conclude tabulating the votes for governor and for Congressional District 2. In 2022, Maine officials needed nine days to tabulate the votes in that Congressional district. Speaker Gideon noted that this could be an issue in Rhode Island since the primary date is late and close to the general election.

Speaker Gideon noted that voter comprehension in Maine was strong since there was a multi-faceted effort at voter education from the Secretary of State, the League of Women Voters, the ACLU, and many other advocacy groups that all came together to educate voters over the course of two years.

¹⁴ <https://www.ncsl.org/elections-and-campaigns/ranked-choice-voting-in-practice-implementation-considerations-for-policymakers>.

In addition to necessary changes in Rhode Island law described below, presenters stressed that an effective transition would require a robust voter education campaign would be needed with a suggested period of 2-4 years of education to allow voters to get acclimated to a new system of voting. (FairVote presentation, 3/22/23, NCSL presentation, 3/22/23, Gideon presentation, 5/10/23.) Commission members, Kathy Placencia, designee for, and Director of Elections for, the Secretary of State's office and Lori Anderson, representing a municipal board of canvassers and a member of the Coventry Board of Canvassers, also spoke about the importance of educating the voters before a new voting system is implemented. In addition, Commission member Lori Anderson, suggested there should be education specific to elderly voters. That education of voters would include the fact that same day election results are not possible in most RCV elections.

Commission members Miguel Nunez, Deputy Director of Elections for the Rhode Island Board of Elections, Kathy Placencia, Nick Lima, representing a municipal elections official and the Director of Elections for Cranston, and Lori Anderson as well as presenters to the commission stated that a change from a plurality voting system to a ranked choice voting system would require additional staff at the Board of Elections, the Secretary of State's office, and at all local boards of canvassers and local polling locations. Ms. Anderson also noted that it is already difficult to get people to agree to be poll workers, so a change in the voting system which requires poll workers to explain the system to voters at the polls, could make recruiting poll workers much more difficult.

The fiscal impacts for the new software and hardware equipment, additional tabulation expenses and staff, staff and materials for voter education efforts and additional staff at all polling locations, at the board of elections and elsewhere are additional costs that must be estimated and considered.

As noted by 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.¹⁵ As a result, under an RCV system, the ballot would contain a multi-line grid for each office voted on, rather than a single line listing the names of all the candidates. This could significantly increase the size of the ballot, requiring several pages. This can generate confusion and congestion at the polls due to the longer time needed to complete a ballot. The longer ballot may require additional voting machines and booths to accommodate the additional time needed for each voter, which in turn may mean larger polling locations would need to be located and used.

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 Project Fair Vote 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.¹⁶ (FairVote presentation, 3/22/23) NCSL's Ben Williams also noted that there is no issue with performing risk-limiting audits in RCV elections. (NCSL presentation, 3/22/23) 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)

Maine has stated that the cost of running the state's primary election system has increased more than 30% since RCV from approximately \$250,000 to \$442,000 in the first year.¹⁷ However,

¹⁵ Ms. Otis stated that voters typically are able to rank up to five candidates in a given election. (3/22/23 FairVote presentation) 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 would be set in law.

¹⁶ *See* "Post Election Audits and Ranked Choice Voting" (Ranked Choice Voting Resource Center, September 19, 2022), viewable at <https://drive.google.com/file/d/1bCxQ7gfhT2T8uQ-uLuRSHRxXp4JLkzP/view>

¹⁷<https://www.maine.gov/sos/cec/elec/upcoming/pdf/rcv.costs.2018.pdf>

all presenters, including commission members Kathy Placencia, Director of Elections with the Rhode Island Secretary of State's office and Miguel Nunez, Deputy Director of Elections with the Rhode Island Board of Elections office, whose offices are responsible for informing and registering voters and purchasing and maintaining the election equipment, agreed that the current equipment and technology used in Rhode Island to vote and to tabulate the votes can be upgraded to become compatible with ranked choice and other voting methods and ballots.

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.I. 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.

Pursuant to the requirements of the Rhode Island constitution,¹⁸ the Rhode Island Supreme Court gave a written opinion in response to a request from then Governor Vanderbilt that posed three questions of law regarding a bill that was pending in the Senate and House. The bill proposed to change elections in the city of Providence so city council members would be elected via ranked choice voting, then known as the Hare System. In *Opinion to the Governor*, 62 R.I. 316, 6 A.2d 147 (1939), the Rhode Island Supreme Court, held that the legislature does not have the power, under the constitution, to establish the “Hare System”¹⁹ for the city of Providence. *Id.*, 149. The Court also stated that the plurality requirement in the state’s constitution raises “serious questions” regarding the constitutionality of using ranked choice voting in Rhode Island. *Id.*, 152. The Court went on to say that the “additional difficulties” raised by the plurality requirement in the state’s constitution need not be discussed since the Court held “that the [ranked choice voting] system of proportional representation... is clearly repugnant to... our constitution.” *Id.* That ruling was based on the fact that multiple candidates were to be elected for all nine council seats but voters would effectively have only one vote in which they rank all the candidates.

In the two states that have enacted ranked choice voting for select offices, multiple lawsuits have been filed. Both Alaska and Maine endured years of litigation before and after each

¹⁸ Constitution of the State of Rhode Island, Article X, Sec. 3,

<https://www.rilegislature.gov/riconstitution/Constitution/ConstFull.aspx>

¹⁹ In *Opinion to the Governor*, the Rhode Island Supreme Court referred to the definition of the Hare System set forth in *Wattles v. Upjohn*, 211 Mich. 514, 179 N.W. 335 (1920). The Hare System employs a ranked choice ballot. When there is an election for a single-representative district, the Hare System is equivalent to RCV. When used for a multi-candidate district (such as several at-large seats), the Hare system sets a threshold or “quota” equal to 100% divided by the number of seats to be chosen. In the first round, any candidate that exceeds the threshold is elected. A random selection of the “surplus” votes that a winning candidate receives in excess of the threshold are then redistributed among the other candidates, beginning with the votes for the candidate with the largest “surplus.” They are redistributed to the second-choice of those voters. Any candidate who now exceeds the “quota” also is declared elected. The process continues in a similar manner until enough candidates receive votes that exceed the quota.

implemented the new laws. Hawaii’s law, which has ranked choice voting only when certain special elections are held, became effective in 2023, and is understood to be a way to test a limited use of ranked choice voting system. Hawaii has not used or scheduled a ranked choice election in 2023.

There has been a long legal battle over RCV in Maine. Maine voters approved RCV in 2016 and its use in the 2018 election resulted in the ouster of then republican Congressman Poliquin by democratic Congressman Golden. It was the first time in US history that a federal race was decided by RCV. Maine’s federal district court upheld the lawfulness of RCV in *Baber v. Dunlap*, 376 F. Supp. 3d 125, 145 (D. Me. 2018). Two years later, that court rejected a second constitutional challenge to Maine's RCV program in *Hagopian v. Dunlap*, 480 F.Supp.3d 288 (D. Me. 2020) . *See also Jones v. Sec. of State*, C.A. No1 AP 20-0016 (Maine Super. Ct. Aug. 24, 2020) (upholding lawfulness of voter petition containing a “peoples veto” of anti-RCV legislation), stay denied by the United States Supreme Court (Justice Breyer, Oct. 6, 2020, 20-A57).

Over the past five years, Alaska’s voting system has been shaped through court decisions. In *State v. Alaska Democratic Party*, 426 P.3d 901 (Alaska 2018), its Supreme Court held that independent candidates could not run in the Democratic Party primary; instead, the Party had the right to limit the primary ballot to Party members. In *Meyer, et al v Alaskans for Better Elections*, 465 P.3d 477 (Alaska 2020), the Court upheld the lawfulness of the form of the ballot initiative proposing the State’s top four primary voting system. In *Kohlhaas v. State of Alaska*, 518 P.3d 1095 (Alaska 2022), its Supreme Court rejected a Constitutional challenge to Alaska’s top four primary system of non-partisan primaries and ranked choice elections. The Alaska Supreme Court held that Kohlhaas failed to show that the Alaska Constitution prohibits the election system the

voters chose and failed to show that ranked-choice voting unconstitutionally burdens the right to vote.²⁰

Unlike the Rhode Island Constitution which requires elections by plurality for state and local elections, as did Maine's Constitution before it was amended to allow RCV, Alaska's Constitution does not require plurality voting. The Kohlhaas decision held that; "An election result is not "final" under ranked-choice voting while election officials are still tallying voters' preferences; they must be tallied completely to determine which candidates have won, and the count is not complete until each vote has been given full effect. Once the vote is final, the candidate "receiving the greatest number of votes" is elected governor. Therefore, the fact that the candidate who receives the most first-place votes may not ultimately win the election does not violate the Alaska Constitution."²¹

The same legal issues Maine faced because that state's constitution required plurality voting could exist for Rhode Island since our constitution also requires that elections be decided by plurality vote. In order to implement RCV for general elections in Rhode Island, changes would have to be made to the state constitution; and to several chapters of the general laws, including adding definitions for ranked choice voting and the "preferential majority" of RCV which is not the same as a "majority" in a traditional election.²² There is a possibility that implementing RCV elections for federal offices may not require an amendment to the state constitution. In addition, in order to implement an RCV system for primary elections several chapters of the general laws would have to be changed.

²⁰ In July, 2023, a pro-RCV group called Alaskans for Better Elections ("ABE") filed a complaint with the Alaska Public Offices Commission against an advocacy group named Alaskans for Honest Elections ("AHE"), which opposes RCV, claiming that AHE violated campaign finance laws. In a September 9, 2023 memo, the Commission staff submitted a report recommending a finding of violation. <https://www.alaskansforbetterelections.com/wp-content/uploads/2023/09/23-01-CD-2023.09.08-Staff-Report.pdf>

²¹ Kohlhaas v. State, 518 P.3d 1095, 1122 (Alaska 2022)

²² <https://www.uvm.edu/~dguber/POLS125/articles/langan.htm>, "Instant Runoff Voting: A Cure That is likely Worse Than the Disease", J.Langan, William and Mary Law Review, February 2005, volume 46, issue, 4, pages 1569-1595. RCV combines first place and non-first place votes to obtain a preferential "majority".

B. Top Two voting system

1. Description and History

The Study Commission heard presentations describing top two or open primary systems from Professor Myers and from Messrs. Sasse and Dufault from the People’s Primary group. In a top two primary, also known as an open primary, all candidates are listed on the same ballot. The top two vote-getters advance to the general election regardless of their partisan affiliation; consequently, it is possible for two candidates belonging to the same political party to win in a top two primary and face off in the general election. (Myers, 3/1/23, Williams, NCSL, 322/23 and Sasse & Dufault, 4/26/23 presentations.)

California and Washington use a “top two” primary format.²³ Voters in California established a top two primary system for California's elective offices in 2010 which was first utilized in 2011. The “top two” format uses a common ballot, listing all candidates on the same ballot. In California, each candidate lists his or her party affiliation, whereas in Washington, each candidate is authorized to list a party “preference.” The top two vote-getters in each race, regardless of party, advance to the general election. Advocates of the "top two" format argue that it increases the likelihood of moderate candidates advancing to the general election ballot. Opponents maintain that it reduces voter choice by making it possible that two candidates of the same party face off in the general election. They also contend that it is tilted against minor parties

²³ Before enacting a “top two” voting system, California tried to implement a version of a blanket primary in which election ballots listed every candidate regardless of party affiliation. The candidate of each party who won the most votes became that party’s nominee for the general election. In *California Democratic Party v. Jones*, 530 U.S. 567 (2000) four different political parties whose rules prohibited nonmembers from voting in their primary filed suit against the Secretary of State. The United States Supreme Court held that California’s blanket primary violates a political party’s First Amendment right of association, because it “forces political parties to associate with” people who may not support the party and it takes away a party’s basic function to choose its own leaders. (*Id.*, 577)

who will face slim odds of earning one of only two spots on the general election ballot.” NCSL, [State Primary Election Types \(ncsl.org\)](https://www.ncsl.org/elections-and-campaigns/state-primary-election-types)

2. Policy Analysis

In a “top two” non-partisan primary, voters cast a ballot for a single candidate without ranking the other candidates in the same way that they vote in a plurality jurisdiction. The difference in this primary format is that two candidates emerge from a single primary rather than one candidate from each of two primaries. The outcomes of both the primary and general elections require a single tabulation, rather than the multiple tabulation rounds in ranked choice voting. The “top two” system nearly guarantees that the general election winner will gain majority support in the general election.²⁴

In terms of the three issues identified at the beginning of this report, a general election consisting of the top two vote getters solves the issue of ensuring a majority vote, as there are only two candidates on the ballot. However, if the nonpartisan primary election includes a large field of candidates with candidates affiliated with parties and independent candidates, the vote may become sufficiently fragmented so that the “top two” finishers reflect only a small percentage of the primary electorate. That would again raise the issue of the lack of a majority mandate.

Top two voting also changes the role of political parties. In Rhode Island, independent candidates and candidates from non-recognized political parties can obtain ballot access for the November election by filing a timely declaration of candidacy and obtaining the requisite number of valid signatures. In contrast, under top two voting, the November ballot is

²⁴ In California and Washington, the general election between the “top two” finishers takes place even if one of them gains majority support in this primary. This is because fewer voters participate in the primary when compared to the general election. Under “top two,” it would be theoretically possible for a write-in candidate to receive more votes than the margin between the two candidates on the ballot, in which case the winner would be the candidate with the greater plurality.

limited to the top two candidates in the primary election, even if those top two candidates are affiliated with the same political party.

As noted by the National Conference of State Legislatures:

“State and federal elections in Louisiana, and legislative elections in Nebraska, share some common traits with top-two primaries, but are distinct. In Louisiana, on the general election date, all candidates run on the same ticket. If no candidate receives over 50% of the vote, then the top two vote-getters face a runoff six weeks later. One way to look at this is to say there is no primary election just a general election for all candidates, with a runoff when needed. In Nebraska, legislators are elected on a nonpartisan basis. This means they run without a party designation, and all candidates are on the same nonpartisan primary ballot.” [State Primary Election Types \(ncsl.org\)](https://www.ncsl.org/elections-and-campaigns/state-primary-election-types)

Alaska has a hybrid voting system that combines elements of the different voting systems used in California and Maine. An issue with California’s top two non-partisan primary system is that it is vulnerable to the issue of campaigns focusing on a small base of voters. When each voter casts a vote for a single candidate from a potentially large field; one or both of the top two candidates may advance to the general election with a small percentage of the votes. As the number of candidates in the primary increases, so does their incentive to appeal to a smaller number of the electorate in order to reach a sufficient number of votes needed to advance. In contrast, Alaska’s top four primary system addresses that issue California has by advancing four candidates to the general election, reducing the risk of the general election ballot being limited to candidates with a relatively small number of supporters. In the general election, Alaska voters then use ranked choice voting to elect a candidate with an outright, first round of tabulation, majority or a ranked choice tabulated preferential majority.²⁵

²⁵ <https://www.uvm.edu/~dguber/POLS125/articles/langan.htm>, “Instant Runoff Voting: A Cure That is likely Worse Than the Disease”, J.Langan, William and Mary Law Review, February 2005, volume 46, issue, 4, pages 1569-1595. RCV combines first place and non-first place votes to obtain a preferential “majority”.

While Alaska’s top four primary may have unique advantages, other issues discussed in this section and the RCV voting system section, both pro and con, could also apply to the use of Alaska’s hybrid system.

3. Implementation

The Public Polity Institute of California, in a 2012 report argued that California’s top two primary system contributed to the increased presence of challengers in that state’s primaries:

“More incumbents faced primary challenges from within their own party this year than they have on average in the last five election cycles (42% vs. 18%). Redistricting does not fully explain this change, because incumbents in districts that changed a great deal were not substantially more likely to face a challenge than those in districts that did not change so much. Instead, the top-two was probably the stronger cause, since it gives primary challengers a better chance of appearing in the fall election. Indeed, almost all of the increase in primary challenges occurred in seats where the odds of a same-party runoff were the best.”²⁶

Richard Winger, editor and publisher of *Ballot Access News*, argued against Washington’s top two primary system in a 2010 filing in a Washington federal district court case. He stated that Washington’s primary system unduly burdens minor parties and their candidates; when only the top two vote getters may be on the ballot in the second round inevitably means that minor party candidates will never appear in the second round.²⁷

Peter Gemma, writing for *The Daily Caller* in 2017, argued that “a top-two primary distorts the meaning of a free and fair election,” citing electoral outcomes in California as evidence of this point:

“In 2016, as a result from an open/top two primary system, seven of California’s 53 U.S. house contests offered voters a one party choice; five of 20 state Senate contests and 15 of 80 state Assembly races had two members of the same party running against each other.

²⁶ <https://www.ppic.org/pbblicaiton/test-driving-california-election-reforms/> Test-driving California’s Election Reform, McGhee and Krimm

²⁷ https://ballotpedia.org/Top-two_primary#cite_ref-quotedisclaimer_7-0

California’s 2016 primary for U.S. Senate resulted in liberal Democrats Kamal Harris and Loretta Sanchez the only candidates facing off in the November election.”

Other statewide ballot initiatives to enact top two primaries include: Florida in 2020, which failed; Arizona in 2012, failed; California in 2010, won; Oregon in 2008, failed; California in 2004, failed; Washington in 2004, won.²⁸

4. Legal Issues

In 2004, when Washington approved a top two primary system for Washington's elective offices; three political parties including the Democratic and Republican parties filed suit against the state, contending that the top two primary system infringed upon the associational rights of political parties by denying them control over candidate endorsements. The United States District Court for the Western District of Washington found in favor of the plaintiffs and halted implementation of the voting system. The United States Court of Appeals for the Ninth Circuit affirmed the district court's ruling. However, in 2008, the United States Supreme Court reversed the Ninth Circuit's ruling, stating the new “election regulations specifically provide that the primary ‘does not...determine the nominee of a political party’”²⁹ thereby enabling Washington to implement its top two primary system. The top two primary system was first utilized in Washington in the 2008 election cycle.

Some of the legal issues the state of Washington faced could also present a challenge to the adoption of a top two voting system in Rhode Island. In order to implement a top two, or another number of the top vote getters in the primary elections, several chapters of the general laws would have to be changed. Although the top two voting system has been upheld in the Washington and

²⁸ https://ballotpedia.org/Top-two_primary

²⁹ *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008)

California courts that reviewed its constitutionality, it would be prudent to confirm its lawfulness, either through an advisory opinion or a constitutional amendment, before implementing this voting system in Rhode Island.

C. Runoff Elections

1. Description and History

A runoff election is a second election held to determine a winner when no candidate in the first election met the required threshold for victory. Runoff elections can be held for both primary elections and general elections.³⁰ The United States Department of Interior describes how, in 1964, Georgia implemented the majority vote, runoff elections law in an effort to preserve white political power in the white majority state by requiring a majority vote of over 50%.³¹

Seven states require a candidate to win a primary with a majority of the votes which is sometimes called absolute majority voting. To make that happen, primary runoff elections are used. Georgia is the only state that requires runoff elections for both the primary and general elections. Six of the nine states that have runoff elections use ranked choice voting ballots for their Uniformed and Overseas Citizens Absentee Voting due to the time constraint of turning around a runoff election. The three states with runoff elections that do not use RCV for their overseas voters are: North Carolina, South Dakota and Texas. (NCSL)

In Louisiana, on the general election date, all candidates run on the same ticket. If no candidate receives over 50% of the vote, then the top two vote-getters face a runoff six weeks later.

³⁰ The states that have runoff elections are mostly, but not exclusively, in the South: Alabama, Arkansas, Georgia, Mississippi, North Carolina, Oklahoma, South Carolina, South Dakota and Texas.

³¹ https://www.nps.gov/subjects/tellingallamericansstories/upload/CivilRights_VotingRights.pdf

One way to look at this is to say there is no primary election just a general election for all candidates, with a runoff when needed.

In addition, two more states—North Carolina and South Dakota—require runoffs in special circumstances: North Carolina will hold a primary runoff if requested by a second-place candidate, and the first-place candidate received less than 30% of the votes cast. In South Dakota, a primary runoff is required when no candidate wins more than 35% of the vote in a race with three or more candidates.

2. Policy Analysis

Issues with runoff elections include voter fatigue from voting for the same elected office 2-4 times over the course of a short time period and the campaigning each election entails. Fewer voters cast ballots in runoff elections than in general elections since general elections have multiple offices up for election and include ballot measures. In addition, the cost of having a second election, either after a primary or after a general election is an issue. (Myers, 3/1/23, Otis, 3/22/23 presentations)

3. Implementation

The mechanics of implementing a runoff election are not an issue but the additional cost and resources required, including staff, are the issues. Once the trigger for the runoff election is met, the actual election is run the same as the original election except that only the two runoff candidates are on the ballot. In other words, a runoff system may double the number of elections that have to take place if there is no majority winner at the primary and/or the general election stage. This will cause added expense, although the runoff election may be slightly less expensive than the original election due to a shorter ballot and there may be fewer polling places depending on whether it is a statewide seat or limited to a specific district.

4. Legal Issues

In order to implement a runoff voting system in Rhode Island’s general elections, changes would have to be made to the state constitution. There is a possibility that implementing runoff elections for federal offices may not require an amendment to the state constitution. In addition, in order to implement a runoff voting system for primary elections several chapters of the general laws would have to be changed.

D. Approval voting

1. Description

Approval voting is an electoral system in which voters may vote for any number of candidates that they find acceptable. The candidate receiving the most votes wins. Approval voting may be used in single-winner systems and multi-winner systems.

As of June 2021, approval voting had been implemented in two U.S. cities for local elections: Fargo, North Dakota, and St. Louis, Missouri.

In 2018 the voters in Fargo, North Dakota enacted approval voting and, in June 2020, Fargo became the first location to utilize the approval voting system in the United States.³² It was used in the city commissioner election which resulted in voters casting an average of 2.28 votes per ballot—42,855 votes across 18,805 ballots.³³

Approval voting was approved in St. Louis in 2020 and first used in St. Louis' 2021 top two mayoral primary election. Candidates ran in the primary election without partisan labels. Voters

³² <https://www.mprnews.org/story/2022/06/06/vote-for-everyone-you-like-fargo-tests-approval-voting>

³³ https://ballotpedia.org/Approval_voting#What_approval_voting_looks_like

could choose any number of candidates to vote for and the two candidates that received the most votes advanced to the general election.

In the mayoral primary, 44,571 people voted and cast 69,661 total votes—an average of 1.56 votes per ballot. Tishaura Jones was selected on 25,388 ballots. Fifty-seven percent (57%) of voters selected her on their ballots, and she received 36% of the total number of votes cast. Cara Spencer was selected on 20,659 ballots, coming in second. She was picked on 46% of ballots, and she received 30% of the total votes.

2. Policy Analysis

The Center for Election Science (CES) is an electoral reform advocacy organization that advocates for approval voting and helped pass approval voting in Fargo and St. Louis. CES argues that approval voting would elect more consensus winners than ranked choice and runoff elections would. The Center states that approval voting is simpler than ranked choice voting, ballots look the same, except you may vote for a number of candidates, results are easy to understand, and approval voting tends to elect consensus candidates and alternate candidates get a more accurate measure of support.

Approval voting advocates also say it “produces winners that reliably maximize voter satisfaction.³⁴ More specifically, approval voting accomplishes this feat by allowing voters to not only choose their favorite candidate but also hedge their bets by selecting other candidates that they also deem viable. For example, a voter can choose a second candidate (or more) who is between their own favorite candidate and a less preferred candidate but still within their range of acceptability.”³⁵

³⁴ Quinn, J. (2021). Voter Satisfaction Efficiency (VSE) | vse-sim. Working paper. <https://electionscience.github.io/vse-sim/VSE/>

³⁵ <https://link.springer.com/article/10.1007/s10602-022-09381-x#ref-CR30>, Hamlin, A., Hua, W. The case for approval voting. *Const Polit Econ* 34, 335–345 (2023). <https://doi.org/10.1007/s10602-022-09381-x>

Some argue that approval voting elects the least disliked candidate over the most liked candidate.

3. Implementation

Aaron Hamlin and Whitney Hua, from CES, wrote an article in the academic journal *Constitutional Political Economy*, stating that approval voting is easy to implement and avoids administration concerns, including factors such as education, ballot design, voting machines, tabulation procedures, and risk-limiting audits. (Id.)

Education campaigns for approval voting simply involve letting voters know that they may choose as many candidates as they wish and simple ballot directions give voters a reminder.

Ballot design for elections that use approval voting requires small adjustments from currently used plurality systems. The name-bubble design commonly used in plurality elections across the U.S. is employed by approval voting, with the only change being that voters are instructed that they can select more than one candidate. This would limit extra costs and strain on ballot printing. Most voting machines in use in the U.S. are able to handle approval voting in their current software implementation. The machines do need to be adjusted to allow voters to cast “overvotes,” which many machines are designed to prevent in their current operating software.

Tabulation procedures for approval voting are done precisely as they are in plurality elections; election officials simply add up the votes. The difference inherent to approval voting is that more than one vote is possible from each voter.

Finally, approval voting would allow risk-limiting audits to be conducted. *Hamlin and Hua, fn 16, citing Sarwate, A., Checkoway, S., & Shacham, H. (2011). Risk-limiting audits for nonplurality elections Technical Report for the Defense Technical Information Center, Sarwate, A.*

D., Checkoway, S., & Shacham, H. (2013). Risk-limiting audits and the margin of victory in non-plurality elections, Statistics Politics and Policy, 4(1), 29–64.

4. Legal Issues

Approval voting may run counter to the “one person, one vote” edict of the United States Supreme Court and, as a result, could prompt a legal challenge.³⁶ In order to implement approval voting for general elections in Rhode Island, changes would have to be made to the state constitution, and to several chapters of the general laws. There is a possibility that implementing approval voting elections for federal offices may not require an amendment to the state constitution. In addition, in order to implement an approval voting system for primary elections several chapters of the general laws would have to be changed.

In 2023 the North Dakota legislature passed a bill banning approval voting in the state but the governor vetoed that bill. The House overrode the governor’s veto however, the senate fell four votes short of the two-thirds majority needed to override that veto so the approval voting system remains in effect in Fargo.³⁷

There is an effort to bring approval voting statewide in Missouri but advocates say that the first step is a constitutional amendment which they are working to get on the 2024 ballot.³⁸

³⁶ *Reynolds v. Sims*, 377 U.S. 533, 558 (1964).

³⁷ <https://www.kvrr.com/2023/04/19/fargos-approval-voting-system-lives-on-after-state-senate-fails-to-override-veto/>

³⁸ <https://spectrumlocalnews.com/mo/st-louis/news/2023/01/13/missouri-political-notebook>

III. Findings and Recommendations

---Key questions to ask before enacting electoral reform in the primary or general elections include: what is the impact of the reform on voter turnout? Are there socioeconomic or other disparities that may result from using a new voting system? Will the reform generate more contested elections? Will the reform encourage candidates to focus on addressing and solving problems? Will the reform enhance voter trust? (People's Primary presentation, 4/26/23; Prof. Myers presentation, 3/1/23.)

---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. (People's Primary presentation, 4/26/23)

---Commission Chair Zurier and several speakers noted that increasing turnout at primaries is an important goal. Rhode Island's primaries typically have significantly lower turnout than the general elections. In the 2020 statewide general election 521,185 ballots were cast while only 93,033 ballots, or 17.9% of those from the general election, were cast in the statewide primary. (People's Primary presentation, 4/26/23 citing RI Secretary of State election results)

---Commission member, 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 so there would be no need to disaffiliate after voting. This may result in more people voting on primary day.

---Several presenters stated that the scheduling of the elections has a greater impact on voter turnout than the different voting systems. (Deb Otis, FairVote, presentation, 3/22/23; Gary Sasse and Guy Dufault, People's Primary presentation, 4/26/23)

---Commission member, Senator DeLuca stated that any change to how Rhode Islanders vote should come from the voters through a referendum presented to the voters of the state. The general assembly should not legislate a change to how Rhode Islanders vote.

---The study commission was not equipped to survey Rhode Island voters to determine the level of public support voters may have for non-plurality voting and runoff elections. A statewide non-profit, non-partisan group should conduct a statewide survey of Rhode Island voters with assistance from the Office of the Secretary of State.

---Testimony from several speakers, and documents presented to the commission, show that a healthy timeline should be incorporated into any legislation recommending a change in voting systems for any election in the state. The agreed upon recommendation, if any new voting system were to be implemented in Rhode Island, is a minimum of two years and; if RCV were to be implemented, up to 4 years, to prepare for the changes in voting, the education of voters and election officials and updating of voting equipment. (FairVote presentation, 3/22/23, NCSL presentation, 3/22/23, Gideon presentation, 5/10/23.)

---Fourteen members of the public either spoke to the commission in person and/or sent in written comments to the commission. Each of the fourteen expressed support for changes to the voting system in Rhode Island. Some support RCV, others support approval voting and some support open primaries with top two or four vote getters advancing to the general election. Jane Koster of the Rhode Island League of Women Voters told the commission members that the League has plans to conduct a study on RCV. (5/31/23, commission meeting)

---In terms of the issues identified at the beginning of this report, a general election consisting of the top two vote getters in a nonpartisan open primary election would ensure that the winner in the general election would receive a majority of the votes, since there would be only two candidates on

the general election ballot. However, if the nonpartisan primary election includes a large field of candidates both affiliated with parties and/or independents, the vote may become sufficiently fragmented so that the top two finishers reflect only a small percentage of the primary electorate. That would again raise the issue of the lack of a majority mandate.

---When compared with our current voting system, research does not indicate that any of the non-plurality systems studied would increase voter turnout or result in greater outreach by candidates.

--- In past Rhode Island primaries and elections with three or more candidates, the winner has been elected with a plurality as narrow as one-third or fewer of the votes, raising questions about whether that candidate truly reflects the will of the majority.

--- Any proposed reforms should be evaluated in terms of policy, implementation and legal issues as this study commission has done. Continued confidence in our elections is a critical factor to successful voting reforms.

---Senators Raptakis and Zurier contend that the top two voting system provides a way to increase the chance for majority support through a system that is relatively straightforward for voters and election officials to adopt. In fact, some municipalities already use a similar system for local elections. They hold that it can be implemented for federal elections without a significant legal challenge and constitutional concerns for statewide elections can be addressed through an advisory opinion request or a Constitutional amendment. One possible starting point would be the 2028 Presidential primary, which would allow voters and candidates to focus on the new system.

---Senator Zurier also wants Rhode Island to consider the advantages of ranked choice voting. He does not expect any significant legal barriers to implementing ranked choice for either primaries (both state and federal) or federal elections. He concludes that if legal and implementation issues

are resolved, the top four system in Alaska (or perhaps a modification to top three) may offer the best policy improvement to Rhode Island's voting system. He maintains that though it may not be legally necessary, voter approval of a constitutional amendment repealing Article IV, Section 2 would resolve the most significant potential legal challenge to ranked choice elections at the State level.

Addendum 1

2023 Senate Resolution 069 Senate Bill 2023-0046

<https://webserver.rilegislature.gov/BillText/BillText23/SenateText23/S0046.pdf>

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

SENATE RESOLUTION

CREATING A SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY VOTING
METHODS AND RUNOFF ELECTIONS FOR GENERAL ASSEMBLY AND GENERAL
OFFICER PRIMARIES

Introduced By: Senator Samuel D. Zurier

Date Introduced: January 30, 2023

Referred To: Placed on the Senate Consent Calendar

1 WHEREAS, Using non-plurality voting has the potential to expand the range of choices
2 available to voters and promote campaigns that are more positive and focused on issues; and

3 WHEREAS, The implementation of runoff elections would ensure that a winner of a
4 primary election won a majority of the votes in a given election, promoting majority support of a
5 candidate by the electorate; now, therefore be it

6 RESOLVED, That a special legislative commission be and the same is hereby created
7 consisting of seven (7) members: three (3) of whom shall be members of the Senate, not more
8 than two (2) from the same political party, to be appointed by the President of the Senate; one of
9 whom shall be a representative of the Board of Elections, to be appointed by the President of the
10 Senate; one of whom shall be the Secretary of State, or designee; and two (2) of whom shall be
11 representatives from a board of canvassers or election officials of two (2) different cities or towns
12 in the state, to be appointed by the President of the Senate.

13 All members of the study commission shall be registered voters of this state at the time of
14 their selection and at all times while they remain on the commission.

15 The purpose of said commission shall be to study the potential application of non-
16 plurality voting on elections for General Assembly and General Officer candidates, including, but
17 not limited to;

18 • Analyzing the current voting system and the requirements for implementing non-
19 plurality voting and runoff elections, including public education, voting equipment and

- 1 technology, ballot designs, and costs;
- 2 • Determining the level of public support for non-plurality voting and runoff elections;
- 3 • Reviewing the experience of other states in conducting elections using non-plurality
- 4 voting and runoff elections;
- 5 • Providing recommended changes in the law to implement non-plurality voting and
- 6 runoff elections; and
- 7 • Providing recommendations on making all voting systems used in the state compatible
- 8 with non-plurality voting, including a review of the availability and costs of necessary voting
- 9 equipment; study any other alternatives to single-ballot plurality voting the commission considers
- 10 relevant or useful.

11 Forthwith upon passage of this resolution, the members of the commission shall meet at

12 the call of the President of the Senate, who shall appoint a Chair of the commission.

13 Vacancies in the commission shall be filled in like manner as the original appointment.

14 A quorum of the commission shall consist of a majority of its membership, and the

15 membership of the commission shall receive no compensation for their services.

16 All departments and agencies of the state, shall furnish such advice and information,

17 documentary or otherwise, to the commission and its agents as is deemed necessary or desirable

18 by the commission to facilitate the purposes of this resolution.

19 The Joint Committee on Legislative Services is hereby authorized and directed to provide

20 suitable quarters for the commission; and be it further

21 RESOLVED, That the commission shall report its findings and recommendations to the

22 President of the Senate on or before October 31, 2023, and the commission shall expire on

23 December 31, 2023.

=====
LC000942
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

SENATE RESOLUTION

CREATING A SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY VOTING
METHODS AND RUNOFF ELECTIONS FOR GENERAL ASSEMBLY AND GENERAL
OFFICER PRIMARIES

1 This resolution would create a seven (7) member commission to study non-plurality
2 voting and runoff elections for General Assembly and General Officer primaries, and would
3 report back to the President of the Senate on or before October 31, 2023, and would expire on
4 December 31, 2023.

=====
LC000942
=====

Addendum 2

Commission Agendas and Meetings

**SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY VOTING METHODS AND
RUNOFF ELECTIONS FOR GENERAL ASSEMBLY AND GENERAL OFFICER PRIMARIES**

NOTICE OF MEETING

DATE: Wednesday, March 1st

TIME: 2:00 p.m.

PLACE: Room 313

- I. Call meeting to order
- II. Remarks from the Chairperson, Senator Samuel Zurier
- III. Description of Rhode Island's current election system, Kathy Placencia, Director of Elections, Rhode Island Department of State, Office of the Secretary of State
- IV. Analysis of Rhode Island's current election system, Adam Myers, Ph.D, Providence College Professor
- V. Adjournment

No public testimony will be received during this meeting.

Patricia Breslin
Senate Legal Counsel
401-276-5536
pbreslin@rilegislature.gov

**SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY VOTING
METHODS AND RUNOFF ELECTIONS FOR GENERAL ASSEMBLY AND GENERAL
OFFICER PRIMARIES**

NOTICE OF MEETING

DATE: Wednesday, March 22, 2023

TIME: 2:00 P.M.

PLACE: Senate Lounge – State House

AGENDA:

- I. Call meeting to order
- II. Deb Otis, FairVote
Ranked Choice Voting
 - a. Explanation of ranked choice voting, hybrid models, other non-plurality methods.
 - b. Experiential lessons from other jurisdictions.
 - c. Impacts on turnout, candidate selection, and voter trust.
- III. Ben Williams, NCSL
Non-plurality voting methods in the US
 - a. Explanation of non-plurality voting methods
 - b. Experiential lessons from other jurisdictions
 - c. Impacts on turnout, candidate selection and voter trust
 - d. Studies on non-plurality voting methods
 - e. Best practices
- IV. Adjournment

No public testimony will be received during this meeting.

The meeting will be televised by Capitol Television, which can be seen on Cox Communications Channels 15 and 61 for high definition, i3Broadband (Formerly Full Channel) on Channel 15 and on Channel 34 on Verizon.

Live streaming is available at <https://www.rilegislature.gov/CapTV/Pages/default.aspx>.

Patricia Breslin Senate
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POSTED: MONDAY, MARCH 20, 2023, 10:00 A.M.

**SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY
VOTING METHODS AND RUNOFF
ELECTIONS FOR GENERAL ASSEMBLY AND GENERAL OFFICER
PRIMARIES**

NOTICE OF MEETING

DATE: Wednesday, April 26, 2023
TIME: 2:00 P.M.
PLACE: Senate Lounge – State House

AGENDA:

- I. Call meeting to order

- II. Gary Sasse, founding Director of the Hassenfeld Institute for Public Leadership at Bryant University, People’s Primary
Guy Dufault, People’s Primary

State primary election options and runoff elections
 - a. Explanation of various primary election options and runoff elections.
 - b. Experiential lessons from other jurisdictions.
 - c. Impacts on turnout, candidate selection, and voter trust.

- III. Adjournment

No public testimony will be received during this meeting.

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Patricia Breslin Senate Legal
Counsel 401-276-5536
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POSTED: WEDNESDAY, APRIL 19, 2023, 2:45 P.M.

**SENATE COMMISSION TO STUDY NON-PLURALITY VOTING METHODS AND
RUNOFF ELECTIONS FOR GENERAL ASSEMBLY AND GENERAL
OFFICER PRIMARIES**

NOTICE OF MEETING

DATE: Wednesday, May 10, 2023

TIME: 2:00 P.M.

PLACE: Senate Lounge – State House

AGENDA:

- I. Call meeting to order
- II. Sara Gideon, former Speaker of the Maine House of Representatives Maine's exploration of and actions taken on alternative voting methods
 - a. Landscape of Maine elections and voting
 - b. Legislative, referendums and judicial action in the implementation of ranked choice voting
 - c. Review of ranked choice voting in action in state, federal and municipal elections
 - d. Analysis of ranked choice voting in action between 2018 and 2022
- III. Adjournment

No public testimony will be received during this meeting.

The meeting will be televised by Capitol Television, which can be seen on Cox Communications Channels 15 and 61 for high definition, i3Broadband (Formerly Full Channel) on Channel 15 and on Channel 34 on Verizon.

Live streaming is available at <https://www.rilegislature.gov/CapTV/Pages/default.aspx>.

Steven Hayes
Chief Legal Counsel
Office of the President of the Senate 401-222-
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shayes@rilegislature.gov

POSTED: FRIDAY, MAY 5, 2023, 11:00 A.M.

SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY VOTING METHODS AND RUNOFF ELECTIONS FOR GENERAL ASSEMBLY AND GENERAL OFFICER PRIMARIES

NOTICE OF MEETING

DATE: Wednesday, May 31, 2023

TIME: 2:00 P.M.

PLACE: Senate Lounge – State House

AGENDA:

- I. Call meeting to order
- II. Commission Member discussion
- III. Public comment
- IV. Adjournment

This meeting is open to the public.

The meeting will be televised by Capitol Television, which can be seen on Cox Communications Channels 15 and 61 for high definition, i3Broadband (Formerly Full Channel) on Channel 15 and on Channel 34 on Verizon. Live streaming is available at <https://www.rilegislature.gov/CapTV/Pages/default.aspx>.

PUBLIC TESTIMONY PROCEDURAL INFORMATION WRITTEN TESTIMONY

- Written testimony is strongly encouraged and may be submitted to pbreslin@rilegislature.gov.
- Indicate your name and organization when applicable.
- **DEADLINE:** Written testimony should be submitted no later than three (3) hours prior to the posted meeting time. Every effort will be made to share written testimony submitted before the deadline with commission members prior to the hearing. Testimony received after deadline will be posted to the website as soon as possible.
- For faster processing, it is recommended that testimony is submitted as a PDF file.
- Written testimony submitted to any commission of the Rhode Island Senate is considered public and will be posted to and will be accessible on the General Assembly website. After posting to the General Assembly website, submitted documents may be accessible at <https://www.rilegislature.gov/commissions/NPVC/SitePages/members.aspx>.

VERBAL TESTIMONY Individuals may testify in person.

If you have any questions please contact pbreslin@rilegislature.gov or 401-276-5556.

**SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY VOTING
METHODS AND RUNOFF ELECTIONS FOR GENERAL ASSEMBLY AND
GENERAL OFFICER PRIMARIES**

NOTICE OF MEETING

DATE: Monday, October 30, 2023

TIME: 2:00 P.M.

PLACE: Senate Lounge – State House

AGENDA:

- I. Call meeting to order
- II. Member discussion regarding findings and recommendations
- III. Adjournment

No public testimony will be received during this meeting.

The meeting will be televised by Capitol Television, which can be seen on Cox Communications Channels 15 and 61 for high definition, i3Broadband (Formerly Full Channel) on Channel 15 and on Channel 34 on Verizon. Live streaming is available at <https://www.rilegislature.gov/CapTV/Pages/default.aspx>.

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**SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY VOTING
METHODS AND RUNOFF ELECTIONS FOR GENERAL ASSEMBLY AND
GENERAL OFFICER PRIMARIES**

NOTICE OF MEETING

DATE: Tuesday, December 19, 2023
TIME: 2:00 P.M.
PLACE: Senate Lounge – State House

AGENDA:

- I. Call meeting to order

- II. Final report

- III. Adjournment

No public testimony will be received during this meeting.

The meeting will be televised by Capitol Television, which can be seen on Cox Communications Channels 15 and 61 for high definition, i3Broadband (Formerly Full Channel) on Channel 15 and on Channel 34 on Verizon. Live streaming is available at <https://www.rilegislature.gov/CapTV/Pages/default.aspx>.

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Senate Legal Counsel
401-276-5536
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POSTED: WEDNESDAY, DECEMBER 13, 2023, 11:55 A.M.

Addendum 3

Commission Meeting Presentations

1. March 1, 2023
2. March 22, 2023
3. April 26, 2023
4. May 10, 2023
5. May 31, 2023
6. October 30, 2023

**SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY VOTING METHODS AND
RUNOFF ELECTIONS FOR GENERAL ASSEMBLY AND GENERAL OFFICER PRIMARIES**

NOTICE OF MEETING

DATE: Wednesday, March 1st

TIME: 2:00 p.m.

PLACE: Room 313

- I. Call meeting to order
- II. Remarks from the Chairperson, Senator Samuel Zurier
- III. Description of Rhode Island's current election system, Kathy Placencia, Director of Elections, Rhode Island Department of State, Office of the Secretary of State
- IV. Analysis of Rhode Island's current election system, Adam Myers, Ph.D, Providence College Professor
- V. Adjournment

No public testimony will be received during this meeting.

Patricia Breslin
Senate Legal Counsel
401-276-5536
pbreslin@rilegislature.gov

March 1, 2023

<https://ritv.devosvideo.com/show?video=b34a8b48006d&apg=817504e5>

Kathy Placencia, Director of Elections, Rhode Island Department of State, Office of the Secretary of State, Description of Rhode Island's current election system

<https://www.rilegislature.gov/commissions/NPVC/commdocs/3-1-23%20SOS%20Presentation.pdf>

Adam Myers, Ph.D, Providence College Professor, Analysis of Rhode Island's current election system

<https://www.rilegislature.gov/commissions/NPVC/commdocs/3-1-23%20Myers%20-%20Electoral%20Systems%20Presentation.pdf>



Senate Commission - Non-Plurality Voting Methods

Rhode Island's Current Election System
Kathy Placencia - Elections Director
Secretary of State Gregg M. Amore

March 1, 2023



Gregg M. Amore
Secretary of State

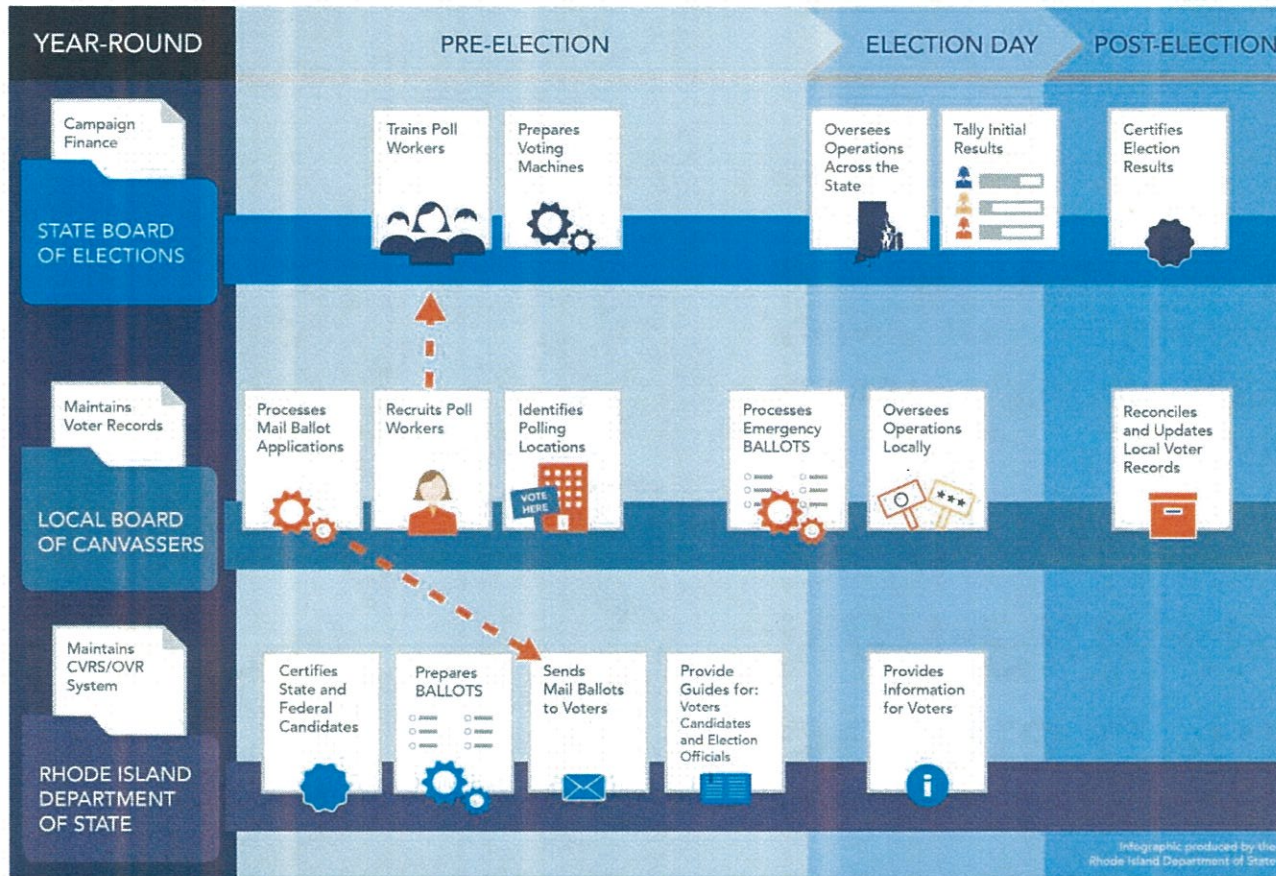


Rhode Island
Department of State

Elections Administration in Rhode Island



Gregg M. Amore
Secretary of State



Rhode Island
Department of State

Kathy Placencia, Elections Director - 03-01-2023

Department of State

- Manages the Central Voter Registration System (CVRS)
- Certifies federal and state candidates
- Designs all ballots
- Sends all mail ballots
- Provides information for voters, candidates, and election officials



Board of Elections

- Tests voting equipment
- Distributes voting equipment and supplies to polling locations
- Provides election results
- Oversees election operations across the state
- Conducts recounts
- Conducts risk-limiting audits
- Certifies elections



Rhode Island's Voting Equipment

- **Election Systems & Software (ES&S)**
 - DS-200 voting machines
 - DS-850 mail ballot tabulator
 - ExpressVote ballot marking devices
- **KNOWiNK**
 - Electronic poll books



Voting Methods in Rhode Island

Mail ballot voting

- No excuse mail ballots

Early voting

- 20 days prior to Election Day at a location designated by your city/town

Election Day

- 7AM – 8PM at your assigned polling location

2020

- Mail ballot voters - 32.64%
- Early voters - 28.71%
- Election Day voters - 38.65%

2022

- Mail ballot voters - 9.49%
- Early voters - 19.85%
- Election Day voters - 70.66%



Election Results/Winners

Article IV, Section 2 of the Rhode Island Constitution

“...the person or candidate receiving the largest number of votes cast shall be declared elected.”

Rhode Island General Law 17-15-29 - Number of votes required to nominate or elect

“...the person receiving the largest number of votes, although less than a majority of all the votes cast for the candidates for a particular office, shall be declared nominated or elected.”



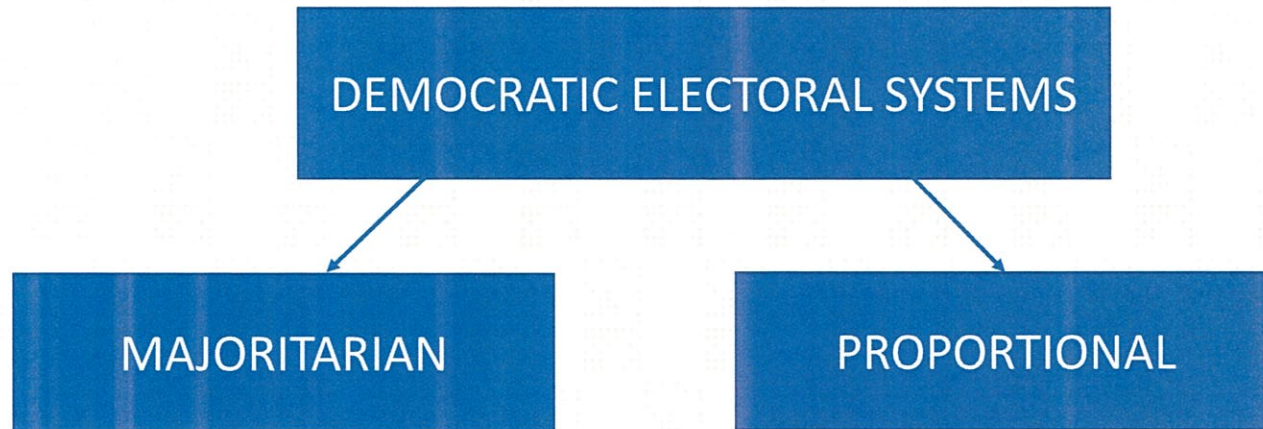
The Rhode Island Electoral System in Comparative Perspective

Adam S. Myers

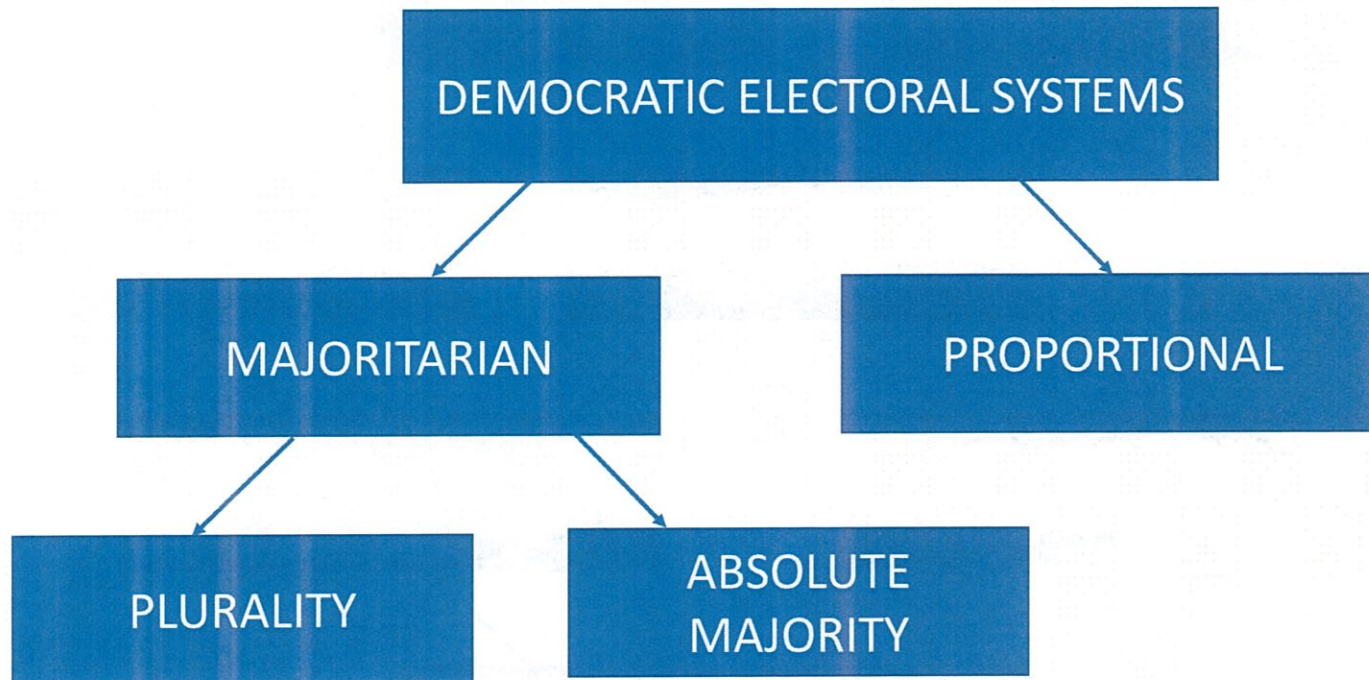
Presentation to the RI Senate Alternative Voting Systems Study Commission

March 1, 2023

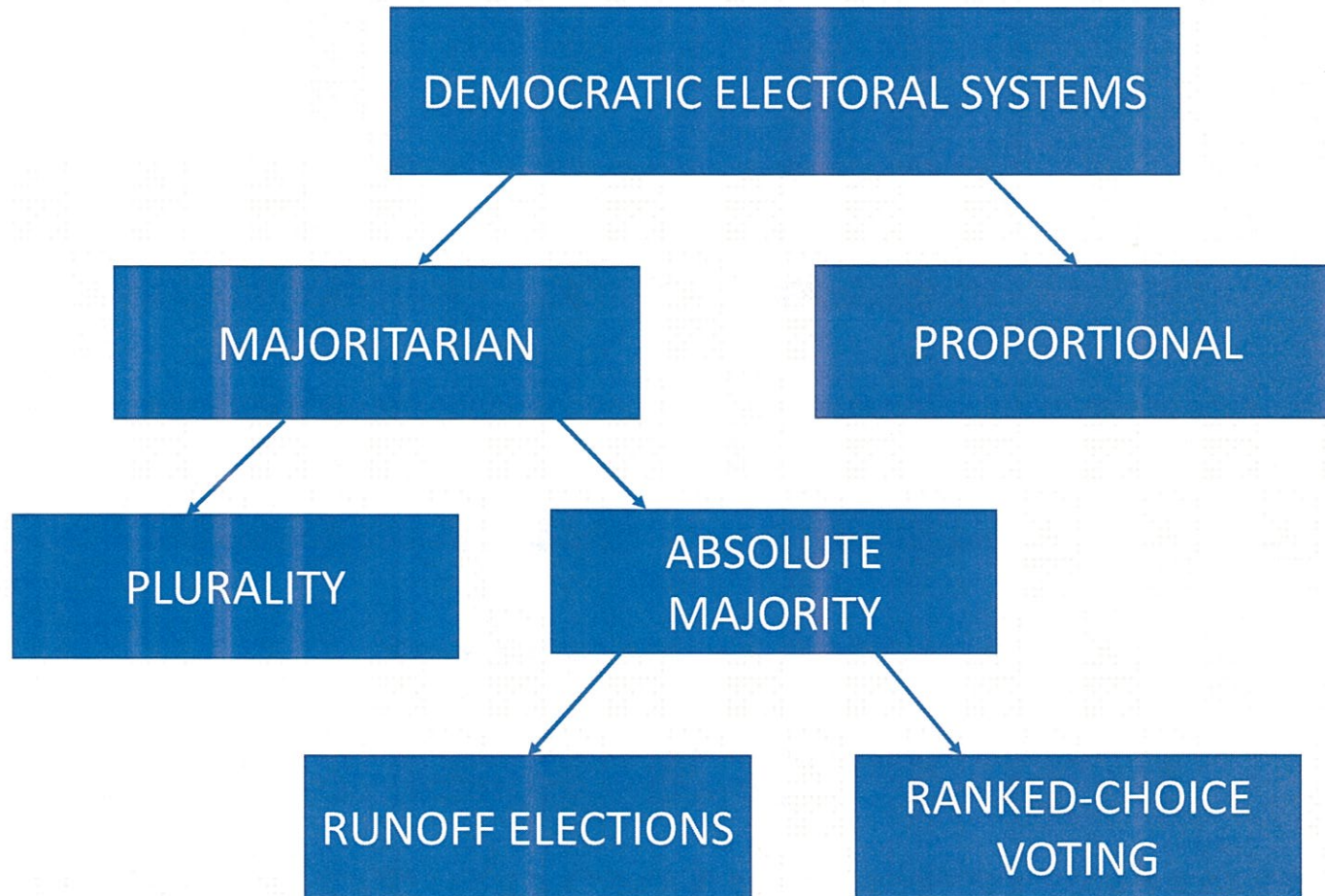
CLASSIFYING DEMOCRATIC ELECTORAL SYSTEMS



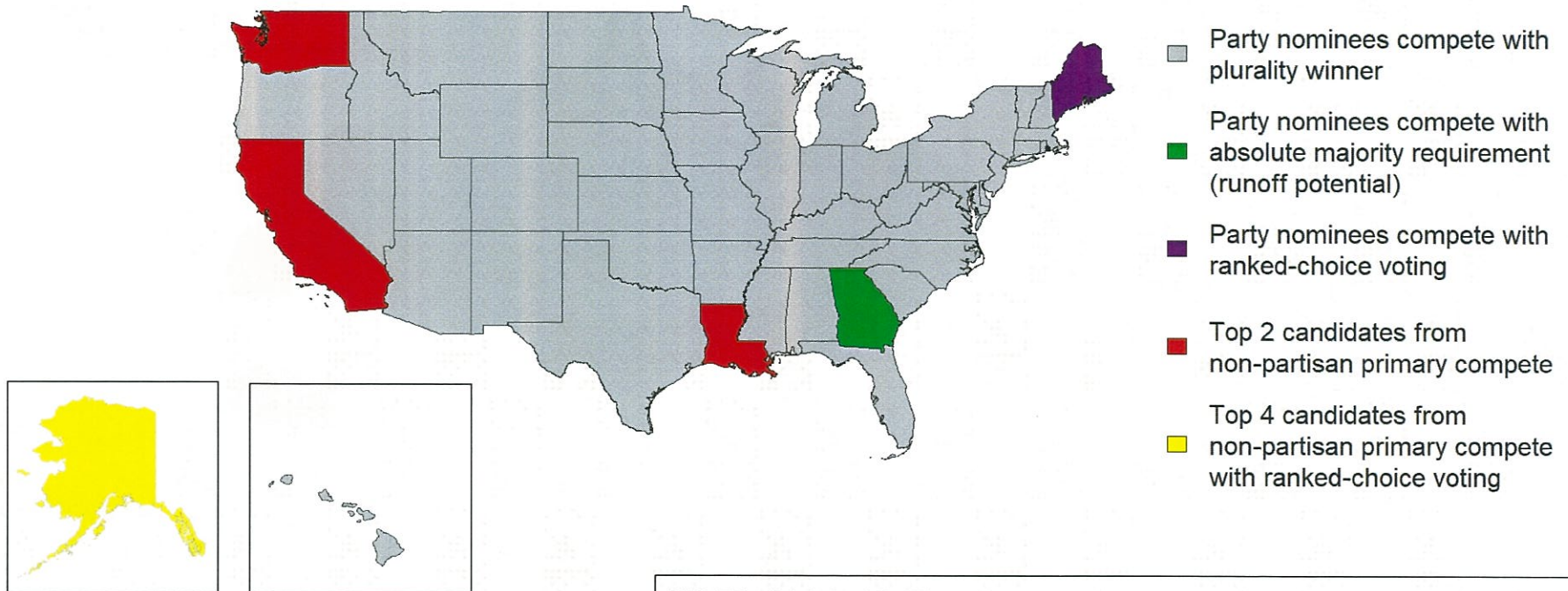
CLASSIFYING DEMOCRATIC ELECTORAL SYSTEMS



CLASSIFYING DEMOCRATIC ELECTORAL SYSTEMS



ELECTORAL PROCESS BY STATE: GENERAL ELECTIONS



NOTE: IN SOME STATES, THE ELECTORAL PROCESS VARIES BY OFFICE. THE MAP ABOVE SHOWS THE PROCESS FOR CONGRESSIONAL RACES.

WHAT COMPARING ACROSS STATES TELLS US ABOUT RHODE ISLAND'S ELECTORAL SYSTEM

- Rhode Island's current electoral system is very much in line with those of other states.



WHAT COMPARING ACROSS STATES TELLS US ABOUT RHODE ISLAND'S ELECTORAL SYSTEM

- Rhode Island's current electoral system is very much in line with those of other states.
- What is unusual about Rhode Island elections is not our electoral system, but rather the way our electoral system interacts with our party system.



OPTIONS FOR RHODE ISLAND BASED ON WHAT OTHER STATES HAVE DONE

- **The Georgia Model**
 - Party primaries and general elections with absolute majority requirement and runoff potential.



OPTIONS FOR RHODE ISLAND BASED ON WHAT OTHER STATES HAVE DONE

- The Georgia Model
 - Party primaries and general elections with absolute majority requirement and runoff potential.
- **The Texas Model**
 - Party primaries with absolute majority requirement and runoff potential; general elections via plurality.



OPTIONS FOR RHODE ISLAND BASED ON WHAT OTHER STATES HAVE DONE

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- **The Maine Model**
 - Party primaries and general elections with ranked-choice voting



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- The Maine Model
 - Party primaries and general elections with ranked-choice voting
- **The California Model**
 - Non-partisan primaries followed by top-two general elections



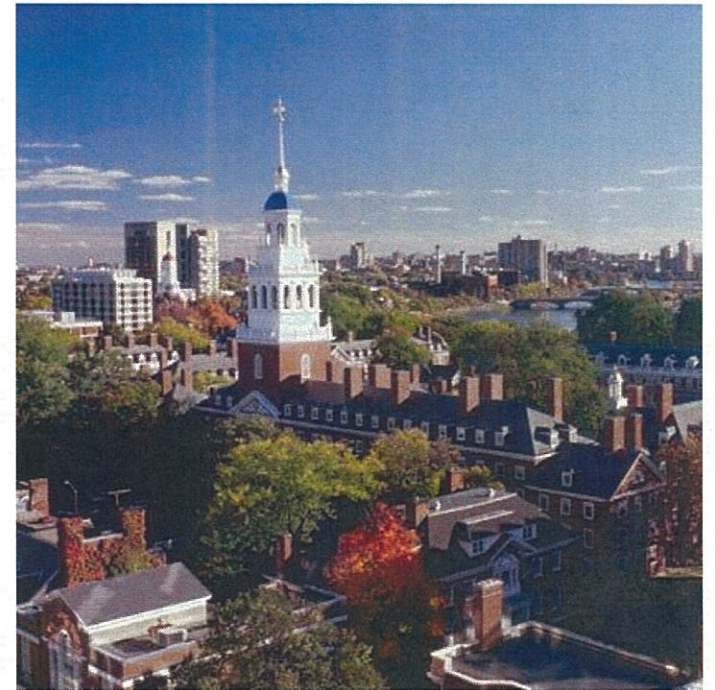
OPTIONS FOR RHODE ISLAND BASED ON WHAT OTHER STATES HAVE DONE

- The Georgia Model
 - Party primaries and general elections with absolute majority requirement and runoff potential.
- The Texas Model
 - Party primaries with absolute majority requirement and runoff potential; general elections via plurality.
- The Maine Model
 - Party primaries and general elections with ranked-choice voting
- The California Model
 - Non-partisan primaries followed by top-two general elections
- **The Alaska Model**
 - Non-partisan primaries followed by top-four general elections with ranked-choice voting



ADDITIONAL OPTIONS BASED ON WHAT SOME MUNICIPALITIES HAVE DONE

- Single transferable vote
(Cambridge, MA)



ADDITIONAL OPTIONS BASED ON WHAT SOME MUNICIPALITIES HAVE DONE

- Single transferable vote
(Cambridge, MA)

- Approval voting plus top-two runoff
(St. Louis, MO)



Issues to Consider in Assessing Voting Systems

Implications for turnout

Voter understanding of the process

Socioeconomic differences in use of new voting methods

Voter faith in the process

Implications for candidate strategy and outcomes in government

Cost of adopting new voting systems

THANK YOU!

**SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY VOTING
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Non-plurality voting methods in the US
 - a. Explanation of non-plurality voting methods
 - b. Experiential lessons from other jurisdictions
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POSTED: MONDAY, MARCH 20, 2023, 10:00 A.M.

March 22, 2023

<https://ritv.devosvideo.com/show?video=49bfa9b7d726&apg=817504e5>

Deb Otis, Fairvote, Ranked Choice Voting

<https://www.rilegislature.gov/commissions/NPVC/commdocs/3-22-23%20RCV%20for%20RI%20study%20commission,%20Fairvote.pdf>

Ben Williams, National Conference of State Legislatures, Non-plurality voting methods in the United States

https://www.rilegislature.gov/commissions/NPVC/commdocs/3-22-23%20Rhode%20Island%20Presentation%20on%20Alternative%20Voting%20Systems_Marc%20h%202023.pdf



Rhode Island Presentation on Non-Plurality Voting Methods

Ben Williams, Principal, Elections and Redistricting

March 22, 2023

Defining Alternative Voting Systems

- NCSL working definition
 - A system where the candidate with the most votes wins, and the number of choices a voter can select equals the number of officeholders being elected.
- Other definitions
 - Pew Research Center: a voting method “other than the standard single-winner, plurality system most American voters know.”
 - Center for Election Science: a voting method that fosters “real” competition, chooses a “real” winner, and is easy to understand.

What are Alternative Voting Systems?

Three common examples

- Ranked Choice Voting/Instant Runoff Voting
- Approval Voting
- STAR Voting

Questions to ask when analyzing each system

- How does it work?
- Is it used by local or state governments?
- Which features make it distinct from traditional plurality voting?
- Does it achieve its objectives?



Report 

Ranked Choice Voting in Practice: Implementation Considerations for Policymakers

Updated September 28, 2022



Related Topic: [ELECTIONS](#)

Easily browse the critical components of this report...

Select a Section to Jump To 

Introduction

In most American elections, the winning candidate is the one who receives the most votes, even if most voters selected someone else. Some states in the Deep South hold runoffs between the top two vote-getters if no candidate receives at least 50% of total votes, ensuring whoever wins is supported by a majority of the electorate. In a small but growing number of states and municipalities, another majoritarian system—ranked choice voting, or RCV—is used. RCV combines the general election and the runoff by letting voters select—or “rank”—the candidates in order of preference. If no candidate receives 50% of the first-choice votes, the lowest-ranking candidate is eliminated, and their second-place votes are reallocated among the remaining candidates. The process repeats itself until a winner is selected. Variations of RCV exist for different

Ranked Choice Voting – Synopsis

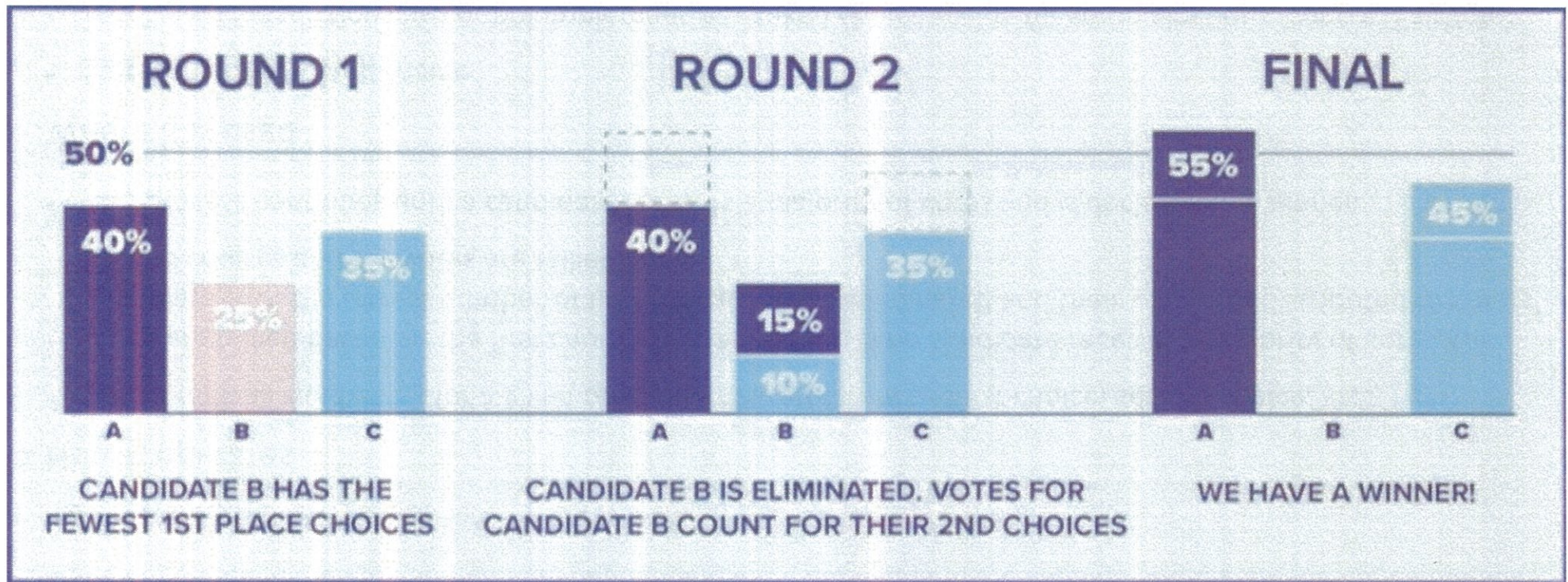
○ How it operates

- Voters rank all candidates for a given office by their preference—first choice, second choice, etc.
- Votes are tallied based on the first choice on every ballot. If no candidate receives a majority of votes, the candidate with the lowest number of first choice votes is eliminated and their votes are distributed to voters' second choices and the votes are tallied again.
- This process continues until a candidate receives a majority of votes and is declared the winner.

○ Where it is used

- Statewide: Alaska and Maine
- Locally: 60 jurisdictions use or are implementing ranked choice voting for some elections (source: FairVote)
- Ranked choice voting is by far the most prevalent alternative voting system used in the United States.

Ranked Choice Voting Visualized



Where Ranked Choice Voting is Used

Localities

- When: since early 20th century (varies)
- Form: Varies (traditional and multi-winner most common)
- Applies to: Municipal and county elections

Maine

- When: since 2018
- Form: Traditional
- Applies to: Statewide elections for federal office

Alaska

- When: since 2022
- Form: Traditional, combined with top-four primary
- Applies to: All statewide elections

Notable Elections with Ranked Choice Voting

○ Maine

- 2018 election, 2nd Congressional District*
 - Jared Golden (D) defeats Bruce Poliquin (R) in second round of voting.
- 2022 election, 2nd Congressional District
 - Jared Golden (D) defeats Bruce Poliquin (R) in second round of voting.
- 2020 election, U.S. Senate
 - Susan Collins (R) wins in first round of voting.

○ Alaska

- 2022 special election, at-large Congressional district
 - Mary Peltola (D) defeats Sarah Palin (R) in second round of voting.
- 2022 election, at-large Congressional district
 - Mary Peltola (D) defeats Sarah Palin (R) in second round of voting.
- 2022 election, Governor
 - Mike Dunleavy (R) wins in first round of voting.

Options Besides Ranked Choice Voting

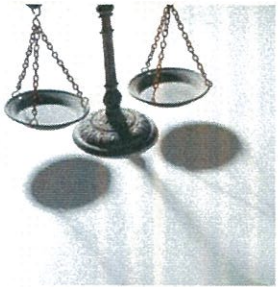
Approval Voting

- How it works
 - Voters cast votes for as many candidates as they like in a given race, rather than for a single candidate.
 - The votes are tallied and the candidate with the highest number of votes wins the election.
- Where is it used?
 - Fargo, North Dakota
 - St. Louis, Missouri
 - The U.N. (selecting the Secretary-General)

STAR Voting

- Means “Score then Automatic Runoff”
- How it works
 - First, voters score each candidate on a scale.
 - Second, the two candidates with the highest scores move on to a runoff.
 - Third, votes are assigned to whichever candidate a voter scored higher, and a winner is chosen.
- Where is it used?
 - Nowhere in the United States

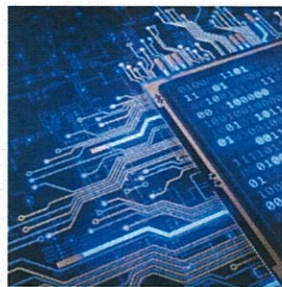
Alternative Voting Systems – Things to Consider



Moderating effects?



Politically beneficial?



Is it auditable?



Cost to adopt?

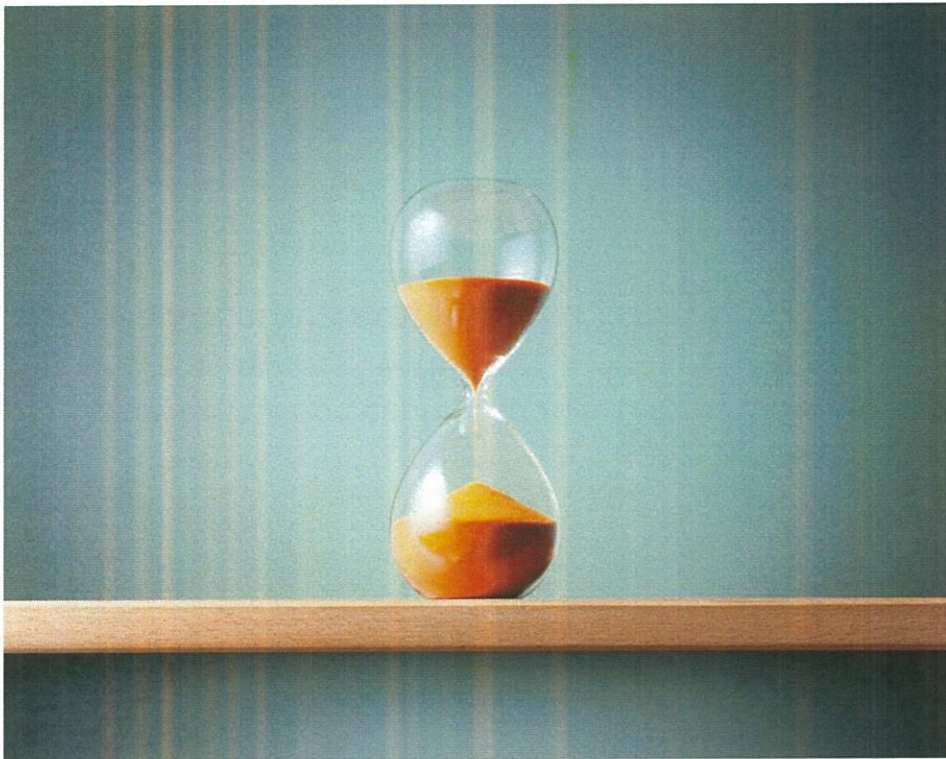


Impacts on administrators?



Voter education?

General Criticisms of Alternative Voting Systems



- They can be difficult for voters to understand without public education efforts.
- Evidence on their ability to moderate politics is mixed.
- While inexpensive, switching to alternative voting systems is not free.
- They can complicate the work of election officials.

Specific Criticisms of Each System

Ranked Choice Voting

- Ballot exhaustion could lead to a “majority winner” with fewer than 50% of votes cast in initial tally

Approval Voting

- Does not guarantee a majority winner
- Used far less frequently than ranked choice voting, so fewer test cases to identify concerns

STAR Voting

- No real-world examples to study
- Unclear if auditable
- Potentially more confusing than other available options

Final Thoughts

- Look at the studies that are available, but keep in mind the sample size of elections to analyze is limited.
- Even if promised benefits of adopting an alternative voting system do occur, the degree of impact can vary depending on a system's structure.
- These potential reforms are only one part of a much broader electoral system and can be considered holistically.
- None of these potential reforms is a “silver bullet” for whatever may ail politics.



Ben Williams

Principal, Elections &
Redistricting Program

Reach Out Anytime!

Email

ben.williams@ncsl.org

Phone

1-303-856-1648

FAIRVOTE

Ranked Choice Voting:

Overview & Lessons Learned

- ▶ Deb Otis, FairVote Director of Policy and Research



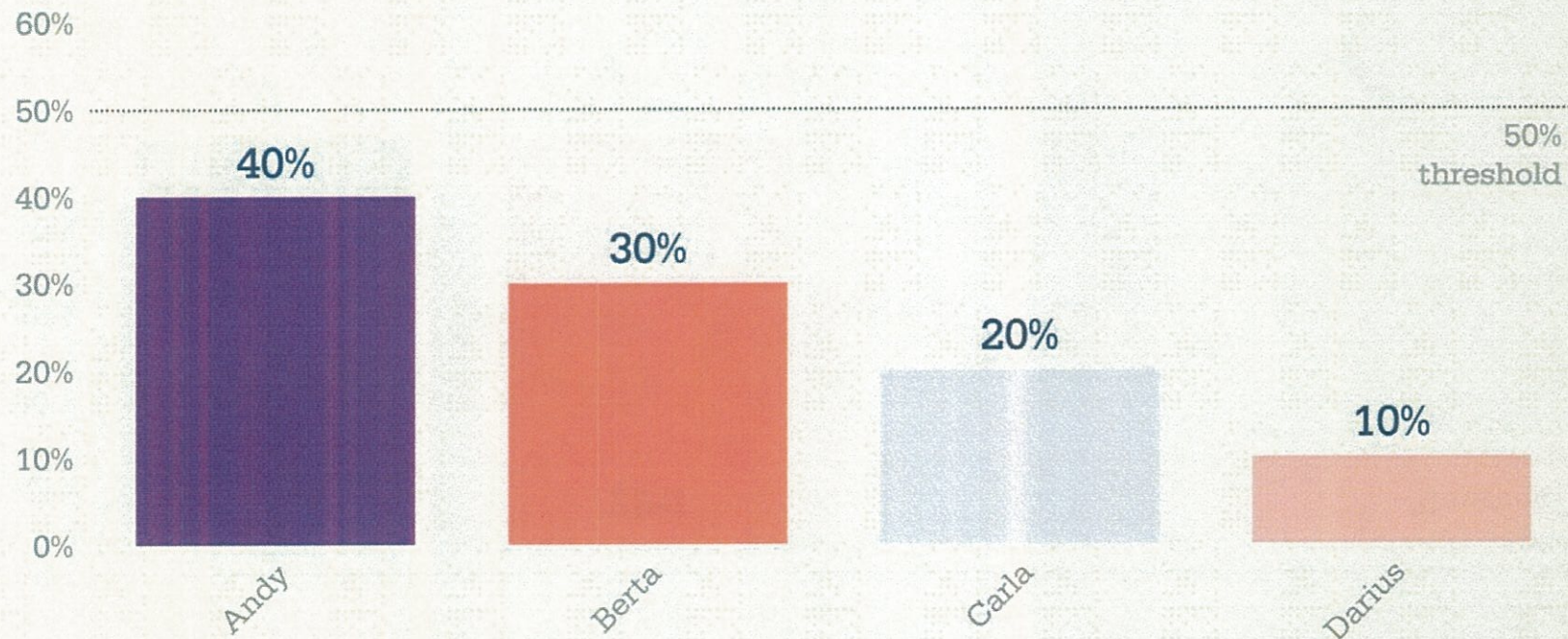
WHAT IS RANKED CHOICE VOTING



- ▶ Voters have the option to **rank candidates** in order of their preference.
- ▶ RCV **promotes majority winners**. If no candidate has a majority of first-choice preferences, candidates are eliminated one-by-one in an **“instant runoff”** until there is a majority winner.
- ▶ It’s a **simple change with powerful impacts** for our democracy.

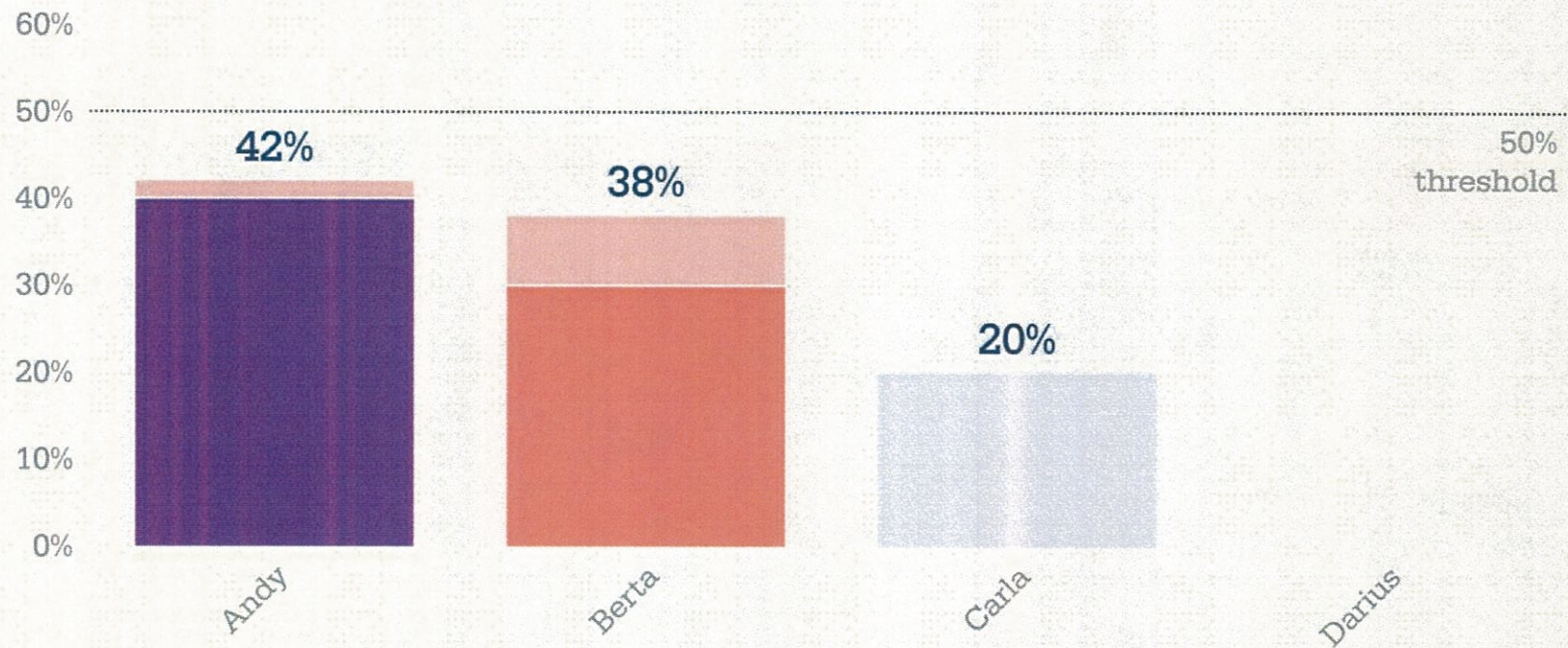


ROUND 1



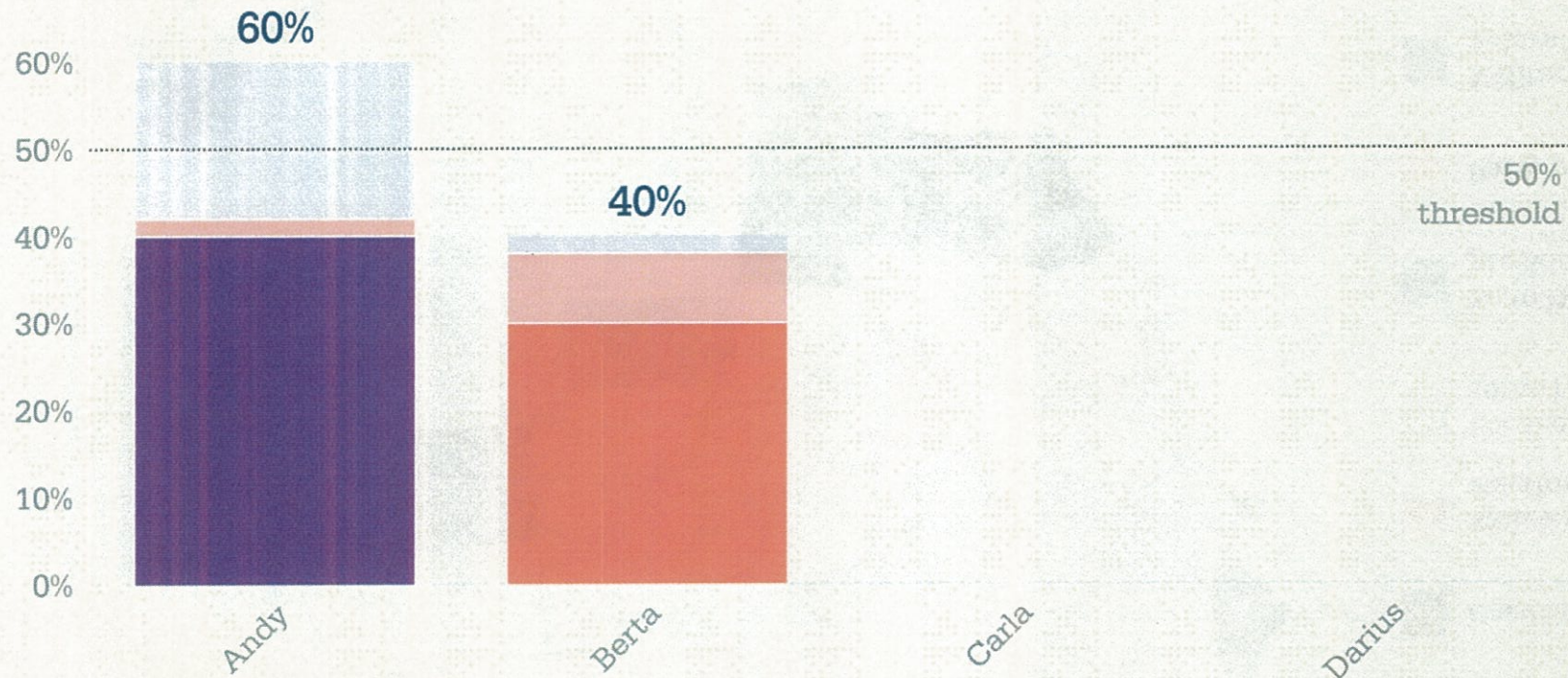
No candidate has more than half of 1st choices. The last-place candidate will be eliminated.

ROUND 2



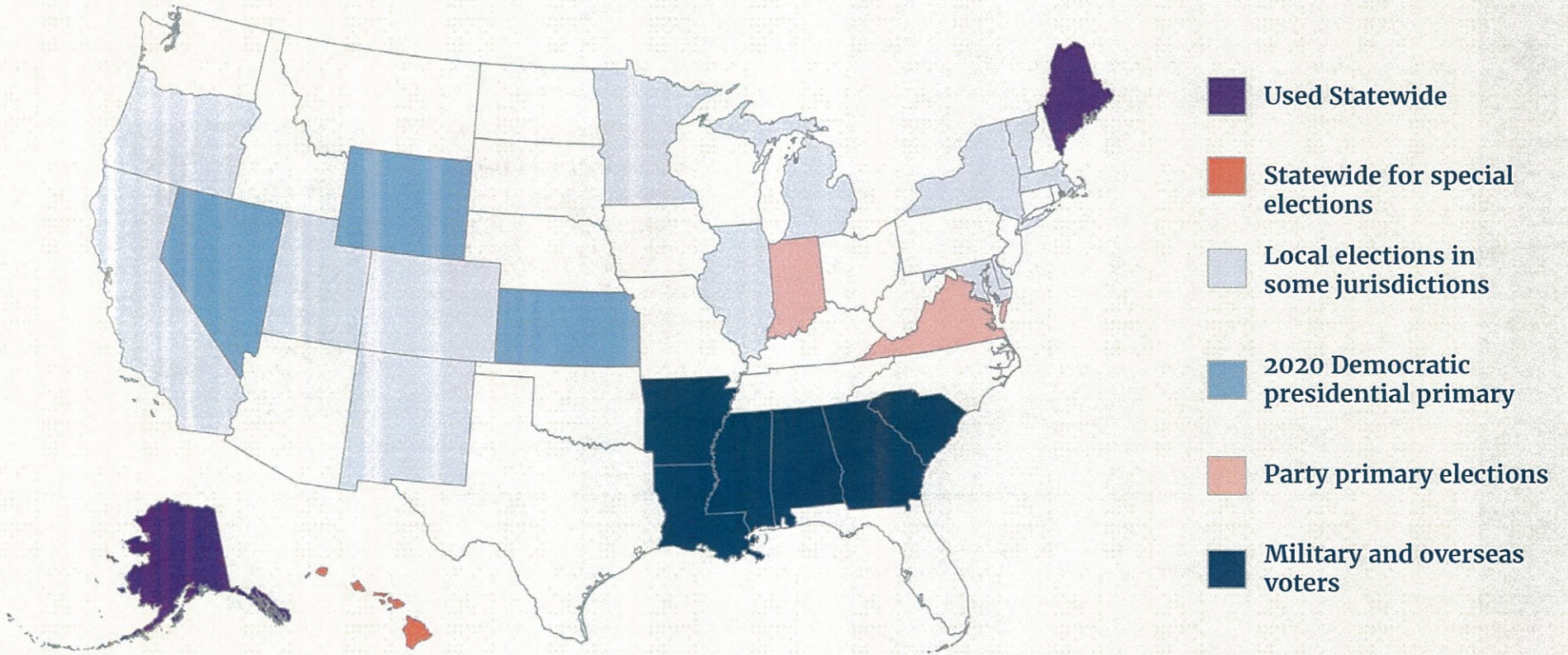
Darius is eliminated. Those ballots count for the voters' 2nd choices.

ROUND 3



Carla is eliminated. Those ballots count for the voters' next choices.
Andy wins the election.

WHERE IS RCV USED?



HOW RCV TRANSFORMS ELECTIONS

AV

- ▶ Promotes voter choice
- ▶ No more vote-splitting & strategic voting
- ▶ Promotes majority winners
- ▶ Improves campaign civility
- ▶ Improved representation for women & people of color
- ▶ Creates incentives for broader engagement with voters

HOW DOES RCV WORK IN PRACTICE?



Voters like RCV & use rankings

- 77% in NYC
- 62% in Utah
- 94% in Santa Fe
- 71% of voters rank 2+ candidates (more in competitive races!)
- Voters of color tend to use more rankings

RCV encourages “sincere voting”

- In Utah, voters said they were more likely to vote for their honest favorite by a 30-to-1 margin!

RCV elects winners with broad support

- All winners have majority of final-round votes
- Two-thirds of races have majority of *total* votes cast.
- 73% of voters ranked the winner in their top 3

HOW DOES RCV WORK IN PRACTICE?



RCV improves the tone of campaigns

- Less mudslinging, more “issues” campaigning
- Candidates must appeal to a broader group of voters

RCV improves representation

- Over the last decade, women won half of municipal RCV races
- NYC has most diverse city council in history
- Voters of color tend to use more rankings

RCV saves \$\$ by eliminating runoffs

- Turnout declines in runoffs by 30% - 40%
- Runoffs are expensive; RCV saves \$10M for NYC

WHERE IS THE RESEARCH MORE MIXED?



Unclear impact on voter turnout.

- Other factors drive turnout, like election timing, competitiveness, etc.
- Ballot style doesn't appear to have a strong impact.

Unclear impact on voter trust.

- Voters who have used RCV report that they like it and trust the outcome.
- Voters who have not used RCV are sometimes skeptical.
- One study found that poll respondents were uneasy with the possibility of a “come from behind win” in RCV, but not in two-round runoffs.



RANKED CHOICE VOTING HAS MANY USES

- ▶ General elections
- ▶ Party primaries
- ▶ Presidential primaries
- ▶ With or without “open primaries”
- ▶ Multi-seat offices



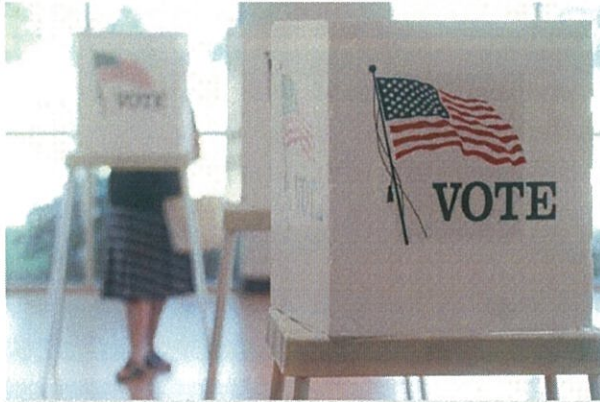
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NCSL Report

Ranked Choice Voting in Practice: Implementation Considerations for Policymakers



Updated September 28, 2022

Related Topic: [ELECTIONS](#)

Introduction

In most American elections, the winning candidate is the one who receives the most votes, even if most voters selected someone else. Some states in the Deep South hold runoffs between the top two vote-getters if no candidate receives at least 50% of total votes, ensuring whoever wins is supported by a majority of the electorate. In a small but growing number of states and municipalities, another majoritarian system—ranked choice voting, or RCV—is used. RCV combines the general election and the runoff by letting voters select—or “rank”—the candidates in order of preference. If no candidate receives 50% of the first-choice votes, the lowest-ranking candidate is eliminated, and their second-place votes are reallocated among the remaining candidates. The process repeats itself until a winner is selected. Variations of RCV exist for different types of elections, including races with multiple winners.

Advocates of RCV claim the system has many benefits over traditional American elections, including:

- More positive campaigning because candidates have an incentive to be voters’ second-choice option.
- Reduced political polarization, because only candidates with broad support can win.

- Eliminating the “spoiler effect,” empowering voters to select third-party candidates without hindering the “lesser of two evils.”
- Cost savings over traditional runoff elections.

This report collates existing research on these and other questions into 18 sections. NCSL also surveyed local election officials implementing or currently running elections using RCV to gather insights on a series of administrative questions. Each section is written to be understood as a stand-alone report. No additional context is needed. The questions are divided into two sections: administrative and policy. NCSL offers this information in the hope that it’s useful to policymakers considering RCV legislation but does not take a position on whether the system should be adopted.

NCSL gratefully acknowledges the members of its Advisory Panel on Ranked Choice Voting, who provided assistance and valuable feedback on the project:

- New Hampshire Rep. Barbara Griffin (R)
- Alaska Rep. Jonathan Kreiss-Tomkins (D)
- Utah Rep. Jeff Stenquist (R)
- Colorado Rep. Chris Kennedy (D)
- Kansas Sen. Elaine Bowers (R)
- Vermont Sen. Jeanette White (D)
- Rebecca Power, Montana Legislative Services
- Matt Gehring, Minnesota Legislative Counsel
- Ryan Williamson, The Election Center
- Rozan Mitchell, elections clerk, Utah County, Utah
- Walter Olson, senior fellow, Cato Institute
- Deb Otis, director of research, FairVote
- Will Adler, senior technologist, Center for Democracy and Technology

Glossary of Terms

- **Exhausted vote**

When a ranked choice ballot becomes inactive and cannot be advanced in the tabulation for a contest because there are no further valid rankings on the ballot. Exhausted ballots are not necessarily cast by mistake; the voter could have intentionally left some candidates unranked.

- **Overvote**

A phenomenon that occurs when the number of selections made by a voter in a contest is more than the maximum number allowed. Overvotes result in spoiled ballots.

- **Plurality voting**

(aka first-past-the-post) An election system in which a candidate who receives more votes than any other wins but does not need to receive an absolute majority (more than 50%).

- **Ranked choice voting**

(aka instant runoff voting) An election system which allows each voter to rank candidates in order of the voter's preference, and votes are counted in rounds using a series of runoff tabulations to eliminate candidates with the fewest votes, with a winner only selected once a candidate receives a majority of votes in a single winner contest.

- **Residual vote**

A ballot where too many candidates are ranked, or fewer candidates are ranked than permitted.

- **Spoiled ballot**

A ballot which contains a voter error or is otherwise marred and is not tabulated.

- **Spoiler candidate**

A non-winning candidate whose presence on the ballot affects which candidate wins. Unrelated to spoiled ballot.

- **Statistical significance**

An analytical way to quantify whether a result is likely due to chance or likely is due to a specific cause.

What factors affect the cost of switching to RCV?

It costs money to implement ranked choice voting (RCV), as is the case with virtually any change in a voting system. Prior to this report, no comprehensive studies had explored the costs associated with switching to RCV from a traditional plurality-winner voting system. A key focus of NCSL's survey of local election officials who conduct elections using RCV was

to determine the cost of switching to RCV, particularly given how salient fiscal concerns are to policymakers.

NCSL's survey focused on the one-time costs associated with transitioning to RCV, not recurring costs associated with repeated use of RCV. While some costs could be construed as recurring, they are costs jurisdictions will face at the moment of transition and are thus included below. The survey asked offices to estimate the following costs:

- Equipment changes or software costs needed to conduct RCV elections, if any.
- Costs associated with educating voters on how to cast an RCV ballot.
- Any additional purchases of single-use items like ballot paper, perhaps in anticipation of an increase in ballot spoilage in the first election using RCV, or because RCV ballot items take up more space than plurality ballot items.
- The total cost of labor dedicated to implementing any of the above changes.
- The total cost of labor dedicated to implementing RCV above and beyond the above changes.

Of the local election jurisdictions that answered these questions, the average cost of switching to RCV was estimated at \$154,759. Excluding the highest and lowest outliers, the average drops to \$39,679. The median cost, which is less sensitive to outliers, is \$17,000. Because jurisdictions using RCV vary in size, cost-per-voter may be a better metric of costs to jurisdictions. The mean cost per voter was 94 cents; the median cost was 43 cents.

The key factors affecting transition costs are the size of the jurisdiction, whether consultants or outside groups were brought in to smooth the transition to RCV, and the cost of labor to a local election office. One jurisdiction reported its greatest expense was retaining legal counsel to help determine a permissible way to implement RCV under state law. One county that conducts RCV on behalf of its cities reported passing on a fixed amount to cities to cover their transition expenses, including the cost of a license to an RCV add-on, but unanticipated expenses ended up costing the county more than it received in fees under its contracts with the cities.

Costs can be offset by savings depending on circumstances. In fact, switching to RCV can be a net money saver if, by using RCV, an election and a runoff election can be combined into a single election, or a primary election can be consolidating with a general election. Total savings can be significant. According to a [report published by FairVote and Third Way](#), runoff elections frequently exceed 50% of the cost of the first election. The possible savings per runoff could be in the hundreds of thousands, if not higher. The exact calculation will vary depending on a jurisdiction's circumstances.

Conclusion

NCSL's survey found the average cost of switching to RCV was \$154,759 among responding jurisdictions. When the highest (\$1,000,000) and lowest (\$0) amounts were excluded, the average dropped to \$39,673. The median cost was \$17,000. Costs-per-voter averaged 94

cents; the median cost was 43 cents. According to NCSL's survey, the key factors impacting the cost of switching to RCV included labor, whether any existing equipment needed to be replaced or supplemented, whether legal or public affairs expertise was acquired to ease the transition, and the size of the jurisdiction. Savings are possible if a RCV election can be used to combine two separate elections, such as a primary and a primary runoff.

What technology is required to use RCV?

Any election system requires the following: a method of marking ballots (which can be as simple as voter-supplied pens for filling in bubbles) and a method of tabulation for in-person votes; inclusive options for voters with disabilities; options for sending ballots to overseas voters; and options for mailing absentee ballots to eligible voters. If a jurisdiction conducts post-election audits, these systems must comply with any record-keeping or other auditing requirements as well. A report by the RCV advocacy group FairVote recommended jurisdictions ask their vendors whether equipment changes are needed to conduct elections with RCV. The number of changes needed to conduct an election with RCV will vary depending on the jurisdiction, and getting answers from potential vendors can help with decision-making. NCSL's survey of local election officials implementing RCV asked for an itemized list of election equipment that was replaced, modified or enhanced to allow elections to be conducted using RCV. Table 1 shows the number of jurisdictions that reported replacing equipment or software of various kinds.

Equipment/Software Type	Number of Jurisdictions Making Alteration
Ballot design software	3
Ballot marking device	3
Ballot printer	2
Ballot scanner/tabulator	8

Table 1. Equipment Switches to Implement Ranked Choice Voting

Note: Equipment and software replacement is required when existing equipment is nearing the end of its useful life, regardless of whether RCV is implemented.

Conclusion

Any election system needs to design ballots, print ballots, permit voters to mark ballots process voted ballots, tabulate votes, report unofficial results on election night, and depending on state law, provide an auditable trail. RCV does not fundamentally change these basics. No additional equipment is necessary to conduct an election using RCV, and all election equipment currently on the market likely has the capacity to run RCV elections—so any jurisdiction that plans to replace existing but potentially outdated equipment will gain this capability. To minimize potential technology costs, jurisdictions considering switching can check with their existing vendors to see if software patches or equipment changes would be necessary to carry out RCV elections.

How realistic is it to run statewide RCV elections when technology from more than one vendor is in use in the state?

It is common that within a given state, counties or local jurisdictions use different voting systems. In theory, this diversity could make running statewide RCV elections harder. [Maine is the only state](#) that, so far, has used ranked choice voting for any statewide offices. [According to Verified Voting](#), a nonpartisan organization that tracks election equipment use in local jurisdictions, Maine's localities run elections with hand-marked paper ballots tabulated either by hand or with tabulators from the vendor Election Systems & Software (ES&S). Ballot marking devices are available for voters with disabilities. No jurisdictions in Maine use direct recording electronic voting equipment, or DREs.

Later this year, [Alaska will become the second state](#) to conduct statewide RCV elections. Unlike Maine, Alaska's elections are run at the state level, a product of its vast size and lowest-in-the-country population density. Like Maine, Alaska's elections are entirely run with hand-marked paper ballots, but all Alaskan ballots are tabulated with machines produced by Dominion Voting Systems. Also, like Maine, Alaska offers ballot marking devices for voters with disabilities and does not offer DREs.

Just because the two states currently or soon running elections with RCV have only one voting technology vendor uniform statewide does not prove that such systems are necessary. NCSL could not identify any research analyzing the ability of running a multi-jurisdiction RCV election on different equipment types. NCSL's survey only had one response from a jurisdiction that runs ranked choice voting elections statewide: Portland, Maine. NCSL's survey asked respondents to comment on whether other jurisdictions in their states used different equipment. The survey found that uniformity is fairly common among responding jurisdictions, with only one state—Minnesota—reporting that different equipment is used.

Conclusion

NCSL could not find any research indicating whether uniform election equipment is needed to conduct statewide elections using RCV. Of the two states using or implementing RCV statewide—Maine and Alaska—both do use the same equipment throughout each state. NCSL's survey found that nearly all states with multiple localities using RCV also have uniform voting equipment. If a state permits county clerks to select their own election equipment and the state chooses to use RCV for statewide elections, the state legislature may seek to mandate minimum capacities for equipment certified for use in the state. Dialogue between legislators and election officials in your state would clarify exact needs, particularly if your state does not currently use the same equipment types statewide.

What impact does RCV have on ballot design and the number of ballot styles required, given a mix of RCV and non-RCV contests?

NCSL's survey of local election officials asked a number of questions (see the Appendix) about many aspects of ranked choice voting implementation, including whether RCV increased the difficulty or number of ballot designs a jurisdiction needed to create. Of the 15 responses received, three are in the process of implementing RCV and have yet to design a ballot. Of the remaining twelve, five (42%) reported no increase in the number of ballot designs, while seven (58%) reported creating additional designs to conduct RCV elections. Some of those designs were due to other rules, such as a requirement that each office be listed on separate ballot pages, and thus were not due to RCV itself. Others reported difficulty designing ballots with a mix of RCV and non-RCV elections, because many jurisdictions only use RCV for select races.

The question about the time dedicated to ballot design was included to capture whether labor costs were higher, even if additional ballot designs ultimately were not needed. Of those twelve responding jurisdictions, only two (17%) reported no additional time spent on design, five (41.5%) reported a small increase in the amount of time required and the remaining five (41.5%) reported a significant increase in the amount of time required. A majority of LEOs said designing instructions for the newly created ballots was a significant hurdle. Multiple LEOs noted their vendors helped with the design process, and a handful noted they selected ballot design vendors specifically because of their experience with other jurisdictions using RCV.

Conclusion

According to NCSL's survey, a majority of jurisdictions currently running RCV elections increased the number of ballot designs they produced when adopting RCV, and that the first RCV ballot design took more time than non-RCV ballot design. It appears some of those costs, such as crafting new ballot instructions, are one-time expenses, while others like longer ballot proofing times are likely to recur in each election. But despite this, a majority of jurisdictions reported these costs were either non-existent or minimal, rather than significant, and were likely to diminish over time.

What voter education efforts are required?

NCSL's survey of local election officials included a question on how their offices educated the public about RCV. Of the 15 responses received, three came from offices that are in the process of implementing RCV and have not yet conducted a RCV election. Of the remaining 12, one—Cambridge, Mass.—implemented RCV so long ago that the education efforts used at the time are unknown. The 11 remaining offices reported a variety of techniques, including:

- Educational flyers as inserts in absentee ballots sent to voters.
- Printing instructions on completing an RCV ballot on the ballot itself.
- Web dissemination, including through social media platforms like Facebook.
- Newspaper advertisements.
- [Conducting a mock RCV election](#) and inviting the public to participate.
- Holding informational sessions at community centers and other local events like farmers markets.
- Publishing a page on RCV on the local election office's website.
- Producing videos on RCV in partnership with a public affairs company.
- Partnering with community organizations like the League of Women Voters.
- Special trainings on RCV for candidates running in those elections.

None of the local election officials surveyed said any specific public education effort was critical, nor did any report that their efforts were insufficient. Costs, including staff time, are addressed in other sections of this report.

In their 2019 paper, [Self-Reported Understanding of Ranked Choice Voting](#), Todd Donovan, Caroline Tolbert and Kellen Gracey analyzed voters' comprehension of voting instructions by system type in California (winner take all, top two, plurality winners and RCV). They found that with the exception of the state's top-two system, nonwhite voters reported lower levels of comprehension than white voters, and the disparity was highest for RCV. When all survey respondents were considered, RCV had neither the lowest or highest comprehension rates among the four polled voting systems, and racial disparities existed across all voting system types. This led the authors to conclude that to the extent any racial disparities existed with voter comprehension of RCV, those disparities were likely correlated with systemic disparities rather than any difficulty in understanding RCV. A [report by New America](#) found that voters understand RCV, despite critics' claims to the contrary.

Conclusion

NCSL's survey found that election offices use a myriad of methods to educate the public on RCV. None of the methods were described as either critical or unnecessary, which makes sense—most election offices merely seek to educate the public as best they can and do not audit their own techniques. While research on public education for RCV is limited, one study from California suggests racial and educational disparities in comprehending RCV could exist, and policymakers may want to pay close attention to how education efforts reach those groups. A 2019 study suggests that voters have little trouble making the switch from traditional voting systems to RCV. More research is needed to draw firmer conclusions on which techniques might best address those disparities.

How can RCV elections best be audited?

To ensure that election equipment and procedures used to count votes during an election worked properly and the election yielded the correct outcome, many states require that

election officials conduct a post-election audit. While the phrase can be used to mean a variety of election validation efforts, it generally refers to checking paper ballots or records against the results produced by the voting system to ensure accuracy. Although post-election audits may lead to a full recount if errors are detected, they differ from a recount in that they are conducted regardless of the margins of victory. Nearly all states require some form of post-election audit.

Until recently, few resources existed explaining how, specifically, ranked choice voting elections are best audited. A recent report from the Ranked Choice Voting Center explains how risk-limiting audits (RLAs) can be used in some types of RCV elections. Unlike traditional audits which count a percentage of ballots cast in each election, RLAs randomly select a small selection of ballots and hand count a specific race on those ballots. Counting continues until a level of statistical certainty about the accuracy of the count is reached. RLAs are used in a handful of states, though their use is increasing.

The Ranked Choice Voting Resource Center found existing software and technology can conduct an RLA in RCV elections that select a single winner, but not in RCV elections with multiple winners (e.g., a city council race where several offices are filled at once). Given that RLAs can be conducted in different ways, [RCVRC recommends a technique](#) that compares the paper ballot against the machine's record for that ballot.

Conclusion

The Ranked Choice Voting Resource Center report on RLAs in RCV elections is the most comprehensive resource identified by NCSL. As requirements for more precise audit processes increase, and the use of RCV increases, the nexus of the two will likely be explored further either by election officials or researchers, or both.

What impact does RCV have on residual vote rates and ballot rejections?

Few studies on RCV look at more than one jurisdiction at a time. In fact, NCSL's original research did not find any multi-jurisdiction research on whether RCV might lead to more mistakes on the part of voters, which would lead to more ballots being rejected (or "spoiled") and not counted. A [new report from the Ranked Choice Voting Resource Center](#) found that while variations in how RCV choices are presented to voters could impact ballot rejection rates, changing from one type of RCV to another led to the greatest increases in ballot rejection, highlighting the importance of public education efforts by election officials. Additionally, NCSL identified two single-jurisdiction case studies on the topic. The first analyzed a series of recent elections in San Francisco, which has used ranked choice voting for local offices since 2002. The [2015 paper by Francis Neely and Jason McDaniel](#) found no statistically significant difference in spoilage between RCV and non-RCV elections. While they did find that racial minorities, older voters, poorer voters, women and voters who immigrated from another country had higher rates of ballot spoilage, those disparities existed regardless of election type. Across all elections they

considered, while critics worry that voters will only mark their first choice candidate, this study found that voters were more likely to rank all candidates than to just mark their first or second choice. Voters were most likely to rank all candidates; the only exceptions were the 2006 board of supervisors' race and the 2007 mayoral race, when a plurality of voters ranked only one or two choices. Neely and McDaniel concluded that any voters that did not rank every possible candidate did not do so because of so-called "ballot fatigue," or exhaustion with deciphering voting rules that leads voters to cease filling out the ballot, and was instead either a misunderstanding of the rules or an intentional omission of lower rankings.

A more recent survey of 2020 Democratic primary voters found similar results. [Joseph Coll's study of 2020 Democratic primary voters](#) offers valuable insight on ballot spoilage. Coll asked a sample of primary voters who cast RCV ballots to fill out a hypothetical ballot of his own design. He found that [12% of respondents](#) did not rank all possible candidates, and that younger voters, racial minorities and women were more likely to rank fewer candidates than permitted—though many of those disparities were so small they may not be statistically significant.

Neither of the studies addressed potential differences between the residual vote rate or ballot rejection rate of in-person versus absentee ballots in RCV elections. While detailed instructions could be included with an absentee ballot mailed to voters, these voters lack the opportunity to ask an election judge for assistance. More research on this topic would be welcome.

Conclusion

Existing research on voter errors that may lead to ballot rejection focuses mainly on specific examples (voters in San Francisco and 2020 Democratic presidential primary voters whose state parties used RCV). While NCSL cannot draw conclusions from two isolated examples, their evidence is largely in agreement: in neither case did RCV itself trigger higher rates of voter errors, and any disparities that did exist between different groups of voters extended to non-RCV elections as well. Recent research from the Ranked Choice Voting Resource Center supports these findings, but additional peer-reviewed research would be helpful.

Will RCV slow down the release of election results, and if so, how can that be addressed?

In NCSL's survey of local election officials, of the 12 responding jurisdictions that have already implemented RCV, nine reported delays. These jurisdictions often used emphatic language to describe how delayed the results were. Three reported no delays.

The survey responses focus on two sources of delay: jurisdictions choosing not to run instant runoff until all ballots from all precincts are received, and that some tools like the [Universal RCV Tabulator](#) may not be certified to by regulators and thus cannot be used

to produce unofficial election results. One jurisdiction noted that RCV ballots had higher rates of contested elections, and the resulting adjudication process further slowed the release of results. Many jurisdictions noted they aim to release RCV election results within 24 hours of polls closing, rather than the night of the election.

Some of the survey responses offered ideas on how to improve the process. One respondent said they did not begin tabulating RCV elections until the following morning, which was well known within the community. Another office suggested that regardless of a jurisdiction's size, it should abandon hand tabulation of ballots and use mechanical tabulators with an instant runoff algorithm once all ballots are received. A different office suggested publishing the first through third choice votes on election night but waiting to run the official tabulation until the following day. One election office noted their post-election surveys found that voter dislike of delays was outweighed with satisfaction in the majority winners RCV produces.

One important caveat: it is not uncommon for some jurisdictions to post their first unofficial results the day after an election. In a [blog on FairVote's website](#), Rich Robinson noted that many jurisdictions that run RCV elections struggle to produce any results on election night, regardless of election type. Policymakers may want to consider the existing capacity of their local election offices to produce quick results when assessing the relative speed of RCV.

Conclusion

NCSL's survey found that local election officials believe RCV delays the release of unofficial election results. Some respondents recommended changes to expedite the process, and others noted that voters reported satisfaction with RCV despite the delays. But with broad consensus that it does cause delays, policymakers may wish to weigh that against other factors when considering RCV legislation.

How can administrators best adjust to RCV?

While NCSL's survey of local election officials did not specifically ask how administrators can best adjust to RCV, there were many recommendations in survey responses. Summarized, these include:

- Pursuing multiple public education channels and methods to reach a wide swath of voters.
- Preparing the public for a potential delay in the release of election results.
- Educating candidates on how the RCV process works so they can be stewards of that information with the public.
- Speaking with vendors or consultants to assist with things like ballot design to reduce costs of adopting RCV.

Many pro-RCV organizations produce resources for election administrators to use. The Ranked Choice Voting Resource Center has an entire [webpage dedicated to making adoption of RCV easier](#) on administrators. FairVote maintain a similar webpage with resources on ballot designs, tabulation, and a sample RFP for RCV-capable equipment.

Conclusion

In addition to elections tech vendors, several organizations offer resources to election officials that may assist with adjusting to RCV. While some of these organizations expressly advocate for RCV, responses to NCSL's survey indicate election officials use (or would like to use) these resources more than they currently do. Apart from outside resources, local election officials may find the most value in contact their peers who run elections using RCV. Even when unsolicited, many offered ideas on how adopting RCV could be easier for others in the future.

How are election results best shown with RCV?

NCSL's survey of local election officials conducting elections using ranked choice voting did not address how results are best shown for RCV elections, and so far no peer-reviewed research exists. The Center for Civic Design (CCD), a nonpartisan organization that provides insight on design for voting and other civic activities, addresses this question in [Design Principles for Ranked Choice Voting](#). CCD recommends the following practices:

- When reporting results, show the winner before explaining the counting process.
- First, describe what happens in each round, then follow with a visual display.
- Show all rounds of counting. Include vote totals for each candidate, the number of votes removed or added, the number of inactive ballots, and a "goal line" for the winners.
- Make it easy to see the number of votes transferred to each candidate during each round.
- Show the number of ballots that are no longer being counted because all ranked candidates have been eliminated in the result list. Differentiate these ballots from the ones that still have votes for non-eliminated candidates.
- Make it easy for users to navigate both forward and back to see the process of counting.

CCD web resources include an interactive demonstration on [how to display RCV results](#). Some local election offices dedicate [websites to explaining RCV tabulation](#) to the public in advance of election night.

The Ranked Choice Voting Resource Center (RCVRC) has a [similar list of recommendations](#):

- Release a preliminary round-by-round tally on election night
- Continue to release preliminary tallies as more votes are counted

- Conduct vote total checks with each release of preliminary results
- Publish the full ballot record so that anyone can verify the result
- Make use of tools for visualizing RCV results
- Clearly communicate expectations, timelines and results.

A 2019 paper by Bridget Eileen Tenner and Gregory Warrington recommends against using bar charts to visualize election results using RCV. They recommend any visualization of election results achieve the following objectives, irrespective of election type: (i) be easy to understand; (ii) clearly indicate a winner; (iii) reflect the methodology of the election; and (iv) summarize the ballots that were cast. They recommend [accumulation charts](#), which show second-choice votes in a different color than first-place votes, as a possible solution.

Conclusion

As part of its commitment to nonpartisanship and avoiding taking positions on issues, NCSL does not recommend any best practices for showing RCV results. The Center for Civic Design recommends local election offices adopt several different practices to best visualize ranked choice voting results, as does the paper by Tenner and Warrington and the research from the Ranked Choice Voting Resource Center. Absent peer-reviewed research, these stand out among an otherwise quiet research area. Policymakers and election officials may look to jurisdictions already using RCV for additional inspiration or models.

When and how does RCV have an impact on turnout?

Scant research exists on RCV's impact on voter turnout, and most is anecdotal. The research that does exist offers mixed conclusions. Deloitte economist Eamon McGinn investigated whether the adoption of RCV in the Minneapolis-St. Paul region in 2009 impacted turnout in the cities' municipal elections. He concluded that, when controlling for other variables, [turnout rose nearly 10%](#). However, [a similar study by political scientists David Kimball and Joseph Anthony](#) concluded that while RCV does mitigate the significant drop off in turnout between primary elections and any subsequent runoffs by combining them into one election, impacts on turnout in non-runoff elections are negligible.

Proponents of RCV often point to international examples, such as Australia, to indicate the potential for increased turnout when switching from a plurality voting system to RCV. Australia offers a compelling comparative example to the United States: it is a fellow former English colony in the same common law tradition, and its settlement and migration patterns are similar. Unlike the United States, Australia has a strong tradition of high voter turnout. [According to Pew](#), over 80% of Australians cast a ballot in the 2019 parliamentary elections, while just over 55% of Americans cast a ballot in the 2016 presidential election. But Australia's [compulsory voting](#) laws and nearly century-long history of using RCV make a comparison challenging without further research controlling for these differences.

Because comparing elections across different jurisdictions can be challenging, a case study example from New York City is included to shed additional light on the topic. New York City

is the most populous jurisdiction in the United States using RCV. Spurred by concerns over the costs of its primary election runoffs in municipal elections and significant runoff turnout decreases, the city council referred a measure to voters [to use RCV in contested municipal primaries in future elections](#). It passed with [over 73%](#) of votes in favor and was implemented for the first time in 2021. While comparisons across years are anecdotal and do not control for other factors, they can provide insight into voter behavior and interest in the process. In 2013, the last open mayoral election conducted with first-past-the-post voting, 772,241 votes were cast. In 2021, the first mayoral election conducted with ranked choice voting, 998,000 votes were cast—[a 22.6% increase](#).

While not directly related to the causal relationship between RCV and turnout, it should be noted that in areas of the country dominated by a single party using RCV can significantly increase turnout in decisive elections. For example, imagine a fictional county, which we will call Evergreen County. Evergreen County is dominated by Party A, whose candidates almost always win general elections by overwhelming margins over candidates from Party B. Because of this consistency, the most competitive election in the county for any given office is Party A's primary. Because primary elections tend to have lower turnout than general elections, a relatively small number of voters in Party A's primary effectively chooses the winner for every office in Evergreen County. Advocates argue that if primaries were eliminated and replaced with an all-comers general election using RCV, the number of voters participating in the outcome-determinative election would increase.

Conclusion

When compared with non-runoff plurality voting, existing research indicates minimal or indeterminate impacts on overall voter turnout. RCV appears to offer a small-to-moderate increase in turnout for primary runoff elections because the rates of spoilage and waste are cumulatively less than the decrease in turnout between a plurality election and a subsequent runoff. Anecdotal evidence from the Minneapolis-St. Paul region and New York City indicate greater turnout benefits are possible, and countries with widespread RCV use like Australia have significantly higher turnout than the average American election. This indicates that RCV's impact on low-propensity voters may be minimal, to the extent it exists at all. But without controlling for other factors like mandatory voting laws and political culture differences, such anecdotal examples should be taken with a grain of salt.

Will a change to RCV have disparate impacts on any specific groups of voters?

Ranked choice voting is different. As seen in the administrative sections of this report, switching to RCV imposes transition costs on local jurisdictions that make the switch, although these are hard to quantify and may be offset by other factors, such as no longer needing to hold runoff elections. Voters face "costs" too because they must learn how to vote using the new method.

Disparate impacts on voters can be assessed by measuring the number of ballots where voters either choose more candidates than permitted or select fewer than permitted and their ballots are “exhausted,” or eliminated from counting in later runoff rounds. Election offices publish these statistics with general election results, enabling researchers to analyze their rates over time and across different types of voting systems. Because American elections use secret ballots, demographic data on who is casting these ballots does not exist. Only research using statistical tools like regression analyses can shed light on possible disparate impacts RCV may have on particular groups.

As one academic noted, choosing fewer candidates than permitted “is often attributed to voter fatigue, ballot confusion, or voter ignorance.” But not ranking some or all non-first choice preferences could be a conscious choice by voters, and research recommends not assuming this phenomenon results from voter mistakes or confusion. The best analysis was conducted by political scientist Joseph Coll. In his research on the 2020 Democratic primaries that used RCV, Coll surveyed 1000 voters on their experience voting ranked choice ballots. He found that 68.4% of primary voters said voting using RCV was very or somewhat easy, compared to just 19.7% of voters who said it was somewhat or very hard. He found that older voters were more likely to report difficulty voting using RCV, which falls in line with existing research. After applying a regression to the dataset, Call concluded that—despite expectations—the attribute associated with choosing fewer candidates than permitted is age. Absent this factor, there was no statistically significant difference between voters on partisanship (moderate versus liberal), gender or wealth.

While Call did not analyze race as a factor, a report from Todd Donovan, Caroline Tolbert and Kellen Gracey did. They concluded that while [Black, Latino and Asian voters](#) reported lower levels of understanding on how to vote using RCV, those disparate impacts closely mirror those groups’ lower comprehension of plurality voting systems, meaning lower minority group comprehension of RCV is likely due to factors unassociated with RCV.

Conclusion

The challenges posed by ranked choice voting do not differ greatly from those imposed by existing voting systems. Limited research indicates that while minority groups report lower levels of comprehension on how to vote using RCV, this lower understanding mirrors reduced comprehension rates in elections broadly. Socioeconomic status, relative partisan lean, and sex identification have not been shown to impact voters’ ability to successfully cast a ballot using RCV. Among all groups of voters, only age was tied to overvoting or ballot exhaustion.

Will RCV increase or decrease polarization?

Ranked choice voting proponents claim it solves many political ills. Perhaps none is as prominent as the claim that it decreases political polarization. By forcing candidates to compete for “second choice” votes, RCV recalibrates candidates’ incentives by rewarding broad appeal in the electorate with a greater likelihood of winning non-first choice votes,

which could be the difference between the original first choice and the eventual winner. RCV's impact on polarization inevitably varies on its use case (e.g., primary vs. general election), so this section will briefly survey the existing research.

General Elections

The largest U.S. jurisdiction using RCV for general elections is Maine, which used RCV for federal elections in 2018 and 2020. While advocates point to the Pine Tree State as an example of RCV's moderating tendencies, preliminary research suggests RCV had only a modest impact on reducing polarization. Analyzing the 2020 elections in Maine that used RCV, [preliminary research](#) indicates RCV did decrease polarization, but only modestly. In fact, Maine's relative and longstanding political moderation compared with the rest of the U.S. accounted for much more of the state's relatively low polarization in 2020. While the researchers did conclude RCV's effect on reducing polarization exceeded traditional runoff voting systems, it fell short of its billing as a silver bullet.

Primaries

While ignored in the administrative section of this report, ranked choice voting has found increasing traction in state primaries. More than 280,000 Democratic voters participated in [ranked choice primaries in 2020](#), and in 2021 the Virginia Republican Party used RCV to nominate its candidates for statewide office. Research indicates that the candidates emerging from these primaries had broader coalitions than some of their opponents, and the nominees in three cases—Democrat Joe Biden in 2020, New York mayor Democrat Eric Adams, and Virginia Republicans Glenn Youngkin, Winsome Sears, and Jason Miyares—all went on to general election victories. This has [led some media outlets to conclude](#) that, based on these limited cases, RCV does live up to advocates' claims.

Conclusion

Per limited research, ranked choice voting modestly decreased political polarization in general elections in Maine, while it led to broadly appealing—and victorious—candidates emerging from some party primaries. New systems are emerging that merit more consideration, particularly Alaska's top-four primary that put all candidates on one ballot regardless of party, from which four candidates go on to the general election conducted with RCV. But there is no conclusive evidence as of today to suggest that RCV has a significant impact on polarization.

Are there situations where RCV might benefit one party or ideology over another?

Ranked choice voting may change parties' political incentives, but NCSL could not identify any research expressly analyzing whether RCV benefits one political party or another. Advocates claim this should not matter, that RCV is neutral and simply rewards whichever

candidate offers the broadest appeal. Despite scant research, an academic paper from Maine does provide some insight.

[In their analysis of the 2020 federal elections in Maine](#), Joseph Cerrone and Cynthia McClintock looked at a number of different aspects of RCV, including its effect on polarization, voter satisfaction with the system, and voter familiarity with RCV's rules. In their satisfaction discussion, they note that Republican voters in Maine were highly dissatisfied with RCV because they followed political cues from the Maine Republican Party, which vehemently opposed RCV's adoption in the state. The Maine Republican Party's opposition was likely grounded in data: Cerrone and McClintock noted that Maine had a long history of Republican plurality winners due to minor party candidates receiving significant shares of general election votes that may have otherwise gone to Democratic candidates. These plurality winners were typically—but not always—Republican. Because RCV would allow these third-party voters to cast a second-choice vote for Democrats, they said, the system could be seen as more beneficial to Democrats than Republicans in the state.

Conclusion

RCV may benefit whichever party “loses” more potential votes to third party (or “spoiler”) candidates, though assuming whether Democrats or Republicans would automatically garner second- or third-place votes from third party voters in any given jurisdiction is fraught. More research in this areas is needed before drawing conclusions with a high degree of certainty.

Is there a particular niche for RCV in primaries or other specific kinds of elections?

Some advocates of ranked choice voting argue that primary elections may be the best way to use RCV. After all, primaries are semi-private operations by and for political parties, and are sometimes run by the parties themselves. [According to FairVote](#), Democratic voters used RCV in primaries and caucuses in five states (Alaska, Nevada, Hawaii, Kansas, and Wyoming) in the 2020 presidential election. Since 2020, RCV has been used in Democratic and Republican party elections and conventions in Delaware, Indiana, Minnesota, Nebraska, New Mexico, Oklahoma, Utah and Virginia.

While most states set policy for primaries by statute, some states' laws permit parties the flexibility to experiment with different nominating systems, including conducting party-run primaries using RCV. This could offer advocates a new way to introduce voters to the practice where politics or other factors may hinder its adoption in general elections.

There is another reason that RCV might be particularly useful in primary elections: it is a way to whittle down a large candidate field to just the one who will go on to the general election, while ensuring that they have wide support. In fact, RCV ensures that the winner has support from a majority of voters.

RCV is also used by some of the states that employ a primary runoff system. There, a majority of votes is required to win a primary, and a runoff will occur if no candidates receive 50% + 1 votes in the first election. Six of those states—Arkansas, Alabama, Georgia, Louisiana, Mississippi and South Carolina—use RCV to [ensure that overseas voters have a voice](#) in a primary runoff; if no runoff occurs, the ranked ballots are not tabulated, and the voter's first choice is counted as their vote. This method saves time and money by not requiring a ballot to be mailed out and mailed back to the election office within the time window required by the Uniform and Overseas Citizens Absentee Voting Act, commonly known as UOCAVA.

Conclusion

NCSL takes no position on the wisdom of adopting RCV or adopting it in some circumstances versus others. When most people think about the adoption of RCV, they think of Maine and Alaska which have adopted it for the general elections for major offices. But RCV exists in many specialized situations in other states, either for certain types of ballots (like those for overseas voters) or certain types of nominating processes, whether they be party-run primaries, caucuses or conventions. These uses indicate that even if a state does not wish to adopt RCV for statewide or municipal elections, there may be particular use cases that are of interest to policymakers.

What state laws and processes may intersect with RCV, such as home rule or a preference for a uniform voting system?

Except for Maine and Alaska, ranked choice voting in the United States is used exclusively at the local level. Some states, including Virginia and Utah, have adopted laws explicitly allowing localities to use RCV for local elections if they choose. But absent such a specific grant of authority, how does existing authority between states and localities influence a locality's ability to adopt RCV on its own?

The 10th Amendment to the U.S. Constitution expressly reserves all unenumerated rights to the states; it makes no mention of local governments. Decades of judicial and statutory evolution have led most states to adopt the position that absent a broad delegation of power, localities may only exercise the powers expressly granted to them by the state. This is known as "Dillon's Rule." To give localities more flexibility, some states have adopted so-called "[home rule](#)" laws that permit cities and counties autonomy over certain areas of policy. The specific parameters of home rule vary from state to state. Only nine states lack constitutional or statutory systems to create home rule: Alabama, Idaho, Indiana, Maryland, Mississippi, New York, Rhode Island, Vermont, and Virginia.

Even if state law allows localities to adopt ranked choice voting, or they may adopt it under home rule, other factors may come into play. If states procure election equipment on behalf of localities, or if their voting systems requirements limit what systems counties may procure, the supplied machines and technology could lack the ability to run an election using RCV. Many states' home rule laws are least permissive on fiscal affairs, so localities

may have little wiggle room to make the procurements necessary to switch to RCV. The [Ranked Choice Voting Resource Center](#) has analyzed the legal feasibility of adopting RCV in all 50 states as part of its “RCV Maps” project.

Conclusion

Several factors impact a city, town or county’s ability to adopt RCV for local elections. By determining the answers to the following questions, localities can ascertain whether they can adopt RCV:

- Does state law expressly permit (or prohibit) localities from adopting RCV?
- Absent on-point guidance, does state law grant home rule to localities?
- If state law grants home rule to localities, does it include the ability to adopt a voting system?

Depending on the answer to question 1, and if “yes” is the answer to questions 2 and 3, a jurisdiction likely has the legal authority to adopt RCV; an in-state attorney will be able to give a definitive answer, although consult an attorney before proceeding. Legal hurdles aren’t the only thing deciding factor; jurisdictions will still face the financial costs in labor, materials, and equipment procurement.

Are non-RCV voting systems (such as approval voting) better suited to some states’ circumstances?

FairVote, an organization which advocates for the widespread adoption of ranked choice voting, maintains a webpage on alternatives to RCV. These alternatives are:

- **Range voting**, also known as score voting, where voters assign a value to each candidate within a defined range such as 1-10. According to FairVote, it has never been used in a public election and is used infrequently by private associations.
- **Approval voting**, which allows voters to vote, or “approve,” as many candidates as they wish. It is currently used for municipal elections in Fargo, North Dakota and St. Louis, Missouri.
- **Condorcet-type rules**, also known as Condorcet voting, allows voters to rank candidates in order of preference and the candidate with the most positive relative associations—that is, the one who compares best to their competitors—wins the election. It is a different method for tabulating a ranked ballot and shares many similarities to RCV as it exists in the United States, though for many voters the experience of casting a ballot is the same.

Of these alternatives, range voting has little literature and less traction with the public, making a comparative case next to impossible. Condorcet-type rules are merely a different method of counting ranked ballots, one in which, unlike with RCV, a candidate with no first-place votes could—in theory—emerge victorious. Of these alternatives, only approval voting receives significant attention, and even then, it is scant.

Proponents of approval voting argue it has [comparative advantages over RCV](#), including simpler ballot design and easier (and quicker) tabulation of results. [Proponents of RCV argue](#) that approval voting fails to guarantee majority rule, is susceptible to strategic voting because of the incentive to vote for only a single candidate to avoid diluting the vote, and does not require a core level of support to win an election, unlike in RCV where first place votes play a critical role in winning.

Beyond policy debates, some alternative voting systems may be more workable under existing state law than others. Take Maine for example. In 2016, voters approved a ballot measure to adopt RCV for state legislative, executive, and federal offices. But the state supreme court unanimously ruled the provisions of the Maine Constitution requiring that state officeholders be elected by plurality meant that RCV, which prohibits plurality victories, could not proceed for those offices. While additional legal guidance would be necessary to further assess the situation, approval voting does not necessarily require majority support for a candidate to win and may be more compatible for state offices under their existing constitutional framework.

Conclusion

While many alternatives to RCV exist, only approval voting has any traction in the United States—and its adoption is a distant second behind RCV among alternatives to plurality voting systems. Proponents of both systems argue theirs is superior to the other. In the end, state laws and constitutions may bar one alternative or the other from being used in a particular state. Legislators and others should consult counsel to determine if any legal barriers exist to their preferred system's implementation before proceeding with legislation—unless, of course, the legislation remedies the legal barrier.

Does RCV introduce unique security issues?

Risk comes in many different flavors. Physical security is front and center in [many recent debates on elections](#). Other risks include difficulty in casting a ballot and potential voter confusion about how the system operates. The question is, does RCV introduce unique security issues despite RCV and plurality election jurisdictions using the same kinds of equipment?

In very rare circumstances, small jurisdictions using RCV may tabulate ballots by hand, which can be time consuming and difficult to scale up for wider adoption. By far most jurisdictions use electronic tabulators certified by the U.S. Election Assistance Commission. While the risk of external manipulation is greater than zero, it is no greater in an election where RCV is used than any other election. The [Ranked Choice Voting Resource Center](#), a prominent organization that conducts original research on RCV, recommends using machines to tabulate ranked ballots because they can deliver unofficial results more rapidly. In general, NCSL did not find any research suggesting that the software, machines or other equipment associated with RCV poses a greater or unique cybersecurity risk than plurality elections.

Conclusion

Cybersecurity is a key issue election officials face when crafting policies and procedures to safeguard voting. While adopting RCV for the first time carries risks inherent with adopting any new procedures, NCSL could not find any research or evidence suggesting the tools and methods used to conduct RCV carry greater risks than traditional, plurality elections.

- **NCSL on Appendix**

Questions from NCSL Survey of Local Election Officials

Upcoming State Elections to Decide 578 Legislative Races in November

Voters in three states will go to the polls on Tuesday, Nov. 7 and Louisiana voters head to the polls on Saturday, Nov. 18. These four states will determine the outcome of 578 legislative races of the nation's 7,386 legislators.

Elections

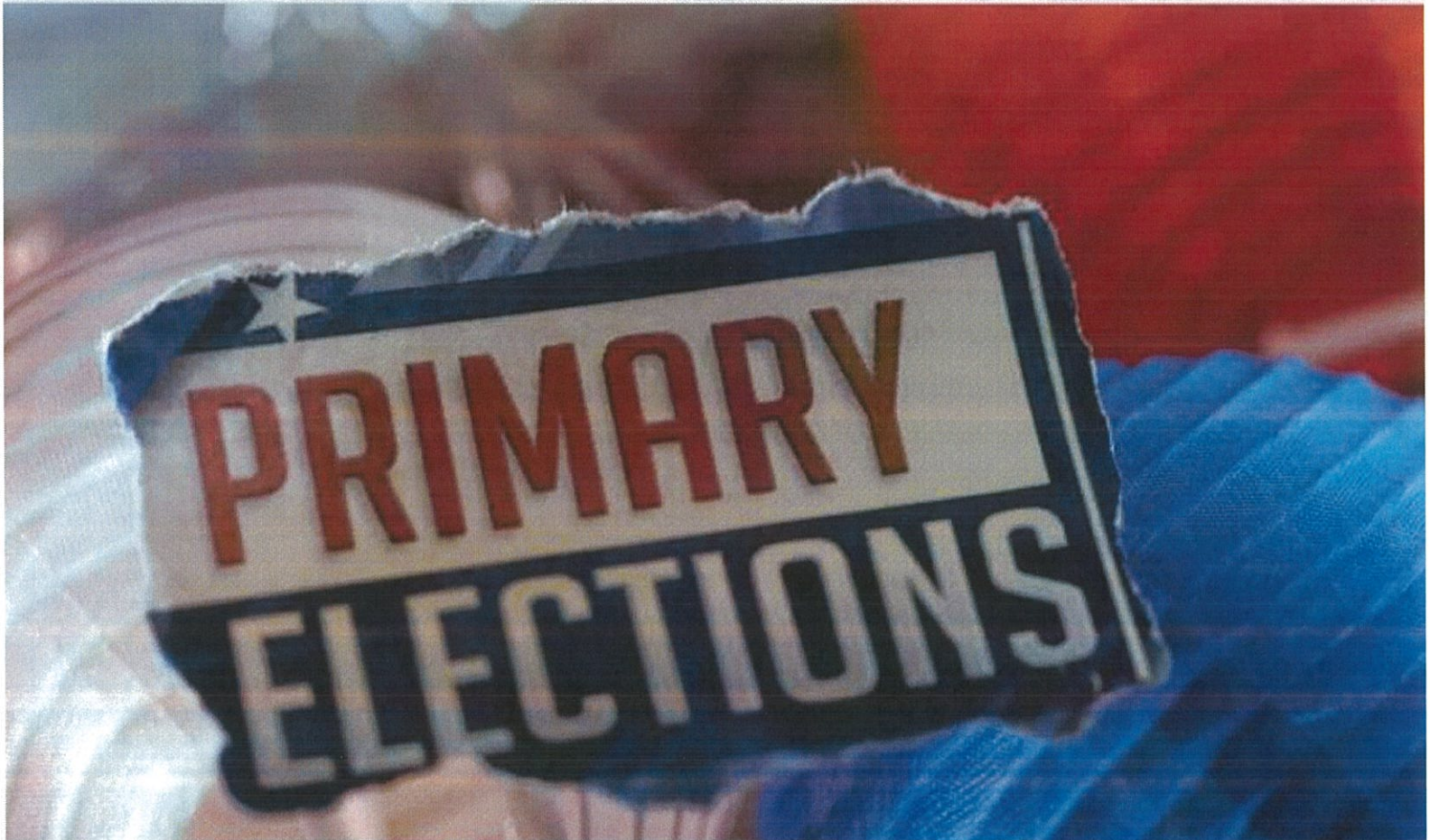
Updated October 23, 2023

LINK TO THIS REPORT:

<https://www.ncsl.org/elections-and-campaigns/ranked-choice-voting-in-practice-implementation-considerations-for-policymakers>.

ELECTIONS AND REDISTRICTING

Primaries: Many Ways to Select a Party Nominee



**PRIMARY
ELECTIONS**



NATIONAL CONFERENCE OF STATE LEGISLATURES

NOVEMBER | 2020

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Introduction

A century ago, political parties did not select their nominees through primary elections. Instead, parties ran their own processes using their own rules, and hearing from—mostly—party stalwarts, with little role for rank-and-file members. In other words, nominees were selected in the proverbial smoke-filled back room.

Half a century ago, primaries were still uncommon. By then, in an effort to be more inclusive, caucuses had largely replaced insider decision-making. At a caucus, the rank-and-file could express support for the candidates of their choice. Still, only highly motivated party members attended caucuses, then or now.

Over the last few decades, most parties have switched from caucuses to primary elections to select their nominees for general elections. The motivating factor was—again—to permit participation by more party members, continuing a century-long trend.

Of course, state practices regarding primaries vary considerably. Perhaps the most important variable is, who can participate in the primary? It used to be that only members of a party—those who had affirmatively registered with that party—could participate. That is still the case in eight states, and there is a strong rationale: A primary is a party function, so shouldn't party members be the only ones to choose their nominees? Courts have been largely supportive of this reasoning.

After the theoretical debate about whether a party primary should allow nonparty members to participate, turnout is often the next concern. Many elements impact turnout besides the type of primary used: whether statewide candidates are on the ballot (especially if it is a hotly contested race), traditional patterns of voter participation in the state, the level of partisanship in the state (the more partisan, the higher participation in primaries) and even the weather.

That said, primary type matters too. The Bipartisan Policy Center's (BPC) report, [2018 Primary Election Turnout and Reforms](#), notes that 19.9% of the eligible electorate participated in 2018's state primaries. To increase turnout in primaries, it referenced an earlier BPC report, [Governing in a Polarized America: A Bipartisan Blueprint to Strengthen our Democracy](#), recommending that states "adopt open or semi-open primaries to allow independents and/or members of the opposite party to cast ballots in a political primary." Most research points to a small but measurable increase in turnout correlating with how open a primary is.¹

¹ See:

- [Study on California Primary System and Turnout](#): Discusses how the new top two primary system in California may affect turnout and other factors that influence primary turnout.
- [University of New Orleans study](#): Argues open primaries increase turnout.
- [LWV study on Florida primary](#): Argues that Florida's closed primary system decreases turnout.
- [CU Boulder study on U.S. Primaries](#): Concludes a minor effect on turnout based on primary system.

Whatever the case, the changing partisan makeup of the electorate begs the question, turnout for whom? Now, [more voters are unaffiliated](#) with any political party than are affiliated as Democrats or Republicans. To give these unaffiliated voters a chance to participate in determining what candidates make it to the general election ballot, some states have shifted to permitting unaffiliated voters, or even voters of other political parties, to participate in any primary.

This report answers many of the key questions legislators may have if they are considering changing their state’s primary type. This report does not attempt to answer questions about presidential preference primaries.

States use different terminology to refer to voters who are not registered with a political party: unaffiliated, nonpartisan, undeclared, independent, decline to select, decline to state, other and non-affiliated. NCSL uses “unaffiliated.”

[Section 1](#) looks at who can participate in a primary, and the merits of different options.

[Section 2](#) looks at the legal landscape on primaries, summarizing guidance from the Supreme Court.

[Section 3](#) answers these questions:

- [Who is in charge of primaries, the state or the political party?](#)
- [Must the two major parties use the same nominating system within a state?](#)
- [In which states is a majority vote required, and thus, where are primary runoffs used?](#)
- [When is a primary held, and what are the political consequences of that choice?](#)
- [Is the presidential primary held with the state primary?](#)
- [What relationship, if any, do primary types and Election Day registration have?](#)

[Section 4](#) reviews the nexus between ranked choice voting and primary elections.

[Section 5](#) and [Section 6](#) provide tables, resources and acknowledgements.

For more information, please contact NCSL’s elections and redistricting team at elections-info@ncsl.org.

Section 1: Primary Systems in Use in the United States

In most states, political parties use primaries to select their nominees to run in the general election. How those primaries work varies state by state. The common ground is that, throughout the nation, *only* registered voters can participate in primaries.

But can *every* registered voter participate in a primary? That question is more alive now than ever. On one hand, it seems to make sense that allowing all voters, not just those affiliated with a party, would increase turnout in primaries.

On the other hand, the constitution gives Americans the right to free association, and a state telling a party that they must include others may tread on that right. Telling a party that they *can't* include others may tread on that right as well. Litigation is not decisive on this point; see [Section 2](#) for more details on the legal landscape for primaries.

Political analysts use the phrases “open” and “closed” to refer to various primary systems, but those categories are too broad for detailed comparisons. NCSL has created a taxonomy that is more precise. It is based entirely on who gets to vote in the primary: just registered members of the party, or other voters too—and if so, which other voters?

These definitions are detailed below, ordered from most restrictive to most open. See [Table 1](#) for a summary table of primary types.

Closed Primaries

A voter seeking to vote in a closed primary must first be a party member. Typically, the voter affiliates with a party on his or her voter registration application, and it is through an update to the voter registration record that party affiliation changes can be made. This system deters “cross-over” voting by members of other parties, or by independent or unaffiliated voters, and may contribute to a strong party organization.

Unaffiliated voters: Cannot participate.

Ten states use closed primaries: Delaware, Florida, Kentucky, Maryland, Nevada, New Hampshire, New Mexico, New York, Oregon and Pennsylvania.

Partially Closed Primaries

In this system, state law permits political parties to choose whether to allow voters unaffiliated with any party to participate in their nominating contests. The decision can shift before each election cycle. In this system, parties can still exclude members of opposing parties. This system gives the parties more flexibility from year-to-year about which voters to include, and it gives the two parties power over their own systems—they do not have to make the same choice. At the same time, it can create uncertainty about whether or not certain voters can participate in party primaries in a given year.

Unaffiliated voters: May be able to participate, depending on the party's decision.

Seven states use partially closed primaries: Alaska, Connecticut, Idaho, North Carolina, Oklahoma, South Dakota and Utah.

Case Study: New Mexico's Primaries

In 2019 and 2020, the New Mexico legislature passed a number of changes to its election laws, including provisions governing primaries. Some policymakers and reporters have described these provisions as creating “open primaries.” Based on the definitions in this report, however, New Mexico remains a “closed primary” state—albeit a unique one.

Starting in 2021, New Mexico’s election code will enable voters to register to vote—or to change their party affiliation—up to Election Day. Commonly described as “same-day” registration, the provisions apply to all voters, including those who are unaffiliated. This provision means that unaffiliated voters can use same-day registration to join a political party and vote in a primary. If they want to return to being an independent voter, they must file paperwork with the secretary of state’s office to change back after the election.

The 2020 special session’s SB 4 clarified that the ability to make a last-minute change to party affiliation does not extend to already-affiliated voters—thus preventing same-day “crossover” party changes. The specific provision is:

“A voter whose political party affiliation on the voter's certificate of registration is with a major political party shall not be allowed to change party affiliation when updating an existing certificate of registration or registering to vote at an early voting site or polling place during a primary election.” (Section E)

Proponents for this combination of measures see them as opening up primaries for unaffiliated voters while preventing mischief by partisans who might want to interfere in another party’s selection of candidates. Opponents see the provisions as confusing at best, and possibly reducing voter choice. Opponents further argue that unaffiliated voters generally oppose joining major political parties on principle and thus are unlikely to change their registration back and forth for each primary.

Open to Unaffiliated Voters

A number of states *require* that parties allow unaffiliated voters to participate in the primary of their choice (while prohibiting voters who are registered with one party to vote in another party’s primary). This system differs from a true open primary because a Democrat cannot cross over and vote in a Republican party primary, or vice versa. Party affiliation can be switched back to “unaffiliated” after the election. In Colorado, unaffiliated voters must choose just one party’s ballot, but it does not change their unaffiliated status. The voter’s choice is public information.

Unaffiliated voters: Can participate.

Eight states use primaries open to unaffiliated voters: Arizona, Colorado, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island and West Virginia.

Note: New Mexico and New Hampshire require that unaffiliated voters declare affiliation with the party whose primary ballot they select in order to vote in that party’s primary. Some analysts see this as a way for unaffiliated voters to participate in primaries, but because it requires affiliative—even if short lived—we are not considering these two states as open to unaffiliated voters in this report.

Partially Open Primaries

This system permits voters to cross party lines, but they must either publicly declare their ballot choice, or their ballot selection may be regarded as a form of registration with the corresponding party. Political parties keep track of who votes in their primaries as a means of identifying their supporters.

Unaffiliated voters: Can participate.

Six states use partially open primaries: Illinois, Indiana, Iowa, Ohio, Tennessee and Wyoming.

Open Primaries

“Open primary” states do not register voters by party, either at the time of registration or when a primary ballot is selected. In an open primary, voters may choose which party’s ballot to vote, and this decision is private and does not register the voter with that party. In this system, voters can cast a vote across party lines for the primary election. Critics argue that the open primary dilutes the parties’ ability to nominate a candidate of their choice. Supporters say this system gives voters maximal flexibility, maintains their privacy, and also may force candidates to appeal to a broader section of the electorate.

Unaffiliated voters: Can participate.

Fifteen states use open primaries: Alabama, Arkansas, Georgia, Hawaii, Michigan, Minnesota, Mississippi, Missouri, Montana, North Dakota, South Carolina, Texas, Vermont, Virginia and Wisconsin.

“Top Two” and “Top Four” Primaries

The “top two” primary format uses a common ballot that lists all candidates on the same ballot. In California, the ballot includes each candidate’s party affiliation, whereas in Washington, each candidate is authorized to list a party “preference” but does not have to. The top two vote-getters in each race, regardless of party, advance to the general election. Advocates of the “top two” format argue that it increases the likelihood of moderate candidates advancing to the general election ballot. Opponents maintain that it reduces voter choice by making it possible that two candidates of the same party face off in the general election. They also contend that it is tilted against minor parties who will face slim odds of earning one of only two spots on the general election ballot.

California and Washington use a “top two primary”, and Alaska will use a “top four” primary for future elections. Alaska adopted this policy in 2020 when voters narrowly approved Measure 2, which also calls for the use of ranked choice voting for general elections.

Unaffiliated voters: Can participate.

Other Primary Processes

In **Louisiana** (LSA-R.S. 18:402), on the general election date, as set by federal law for the first Tuesday after the first Monday in November (2 U.S. Code § 7), all candidates run on the same ballot. If no candidate receives a majority of the votes (50% +1), then the top two vote-getters face a runoff six weeks later. One way to look at this process is to say there is no primary election--just a general election for all candidates, with a runoff when needed. In 2020, the Louisiana legislature enacted [SCR 55](#), creating a Closed Party Primary Task Force to study and make recommendations about switching from the current system to a closed primary system.

In **Nebraska** (Neb. Rev. St. § 32-401), a partisan primary is used for members of congress and statewide office holders. Legislators, on the other hand, are elected on a nonpartisan basis, without a party designation, and with all candidates on the same nonpartisan primary ballot. The top two vote-getters advance to the general election. This system is common for local nonpartisan offices in many parts of the nation.

For information on changes made by states to their primary types, 2010 – present, see [Table 2](#).

Section 2: The Legal Landscape for Primary Elections

Under the U.S. Constitution, the states have the power to regulate the time, place and manner of elections. As different candidate nominating systems have emerged over time, a tension has arisen between the states' power to regulate these systems and the First Amendment rights afforded to voters as well as political parties based on freedom of association. In the last 40 years, as primaries became the dominant mechanism for political parties to identify their general election candidates, the U.S. Supreme Court has weighed in on this conflict in four notable cases concerning the constitutionality of varying state primary systems.

In **Tashjian v. Republican Party of Connecticut (1986)**, the Court considered a challenge to a Connecticut statute that required voters wishing to participate in a party primary to be registered members of that party. In 1984, the Republican Party of Connecticut issued a rule that allowed unaffiliated voters to vote in Republican primaries for federal and statewide offices, even though state law called for closed primaries. The Republican Party then filed suit challenging the constitutionality of the Connecticut law, arguing it restricted the First Amendment rights of the Party to enter into political association with individuals of its own choosing. The District Court ruled in favor of the Party, and the Court of Appeals affirmed. The Supreme Court ruled that the First Amendment prevents a state from implementing regulations that significantly affect a political party's right to define their membership: "The State of Connecticut's interest in preventing raiding was not sufficient basis for statute mandating closed primaries, where political party wished to open its primary elections only to unaffiliated voters and not to members of other political parties, and election statute provided that [an] unaffiliated voter could register as [a] party member as late as noon on last business day preceding primary." This case set a precedent; from then on, the Court would heavily weight a party's First Amendment rights as compared to a state's interest in regulating primary elections.

The next challenge to come before the Supreme Court was in 2000, in **California Democratic Party v. Jones**. The Democratic Party challenged California's blanket primary system, in which any voter could vote for a candidate regardless of party affiliation. The Court struck down the California system, reasoning that the blanket primary impermissibly burdened the party's right to select its own representative. The Court ruled that California did not assert a compelling enough state interest; the state had offered rationales including ensuring candidates were widely represented and increasing turnout. This decision then led to the Ninth Circuit Court of Appeals invalidating Washington's blanket primary system in **Washington State Republican Party v. Washington (2006)**.

The Supreme Court considered a suit challenging Oklahoma's semi-closed primary system in **Clingman v. Beaver (2005)**. State law allowed parties to open their primaries to independent voters, but voters registered for one party could not vote in a different party's primary. The Libertarian Party sought to open their primary to all registered voters, but the state only agreed to allow independent voters to participate in the Libertarian primary. The Libertarian Party and various voters challenged the primary statute on First Amendment grounds. The Supreme Court ruled that the "Constitution grants States broad power to prescribe the time, places, and manner of holding elections for Senators and Representatives, which power is matched by state control over the election process for state offices." Further, "Oklahoma's semi-closed primary system, under which a political party could invite only its own registered members and voters registered as Independents to vote in its primary, did not severely

burden the associational rights of the state's citizenry, so as to require application of strict scrutiny when the system was challenged as unconstitutionally burdening First Amendment right to freedom of political association." The Court upheld Oklahoma's semi-closed primary system, marking a departure from the previous two cases (**Tashjian v. Republican Party of Connecticut** and **California Democratic Party v. Jones**) in that the Court sided with the state and its interests in this case.

The Supreme Court again considered Washington state's primary system in **Washington State Grange v. Washington State Republican Party (2008)**. Following the invalidation of Washington's blanket primary system, voters passed an initiative implementing a "top two" primary system. A challenge was soon brought by multiple political parties. The Court upheld the top two system, relying on the state's constitutional power to regulate elections, and reasoning that the parties' assertion of the possibility of voter confusion as to which candidate was preferred by the party was based on speculation. This case continued the trend set in **Clingman v. Beaver** of the Court siding with state interests in disputes over primary election systems.

Conclusion: The Supreme Court is yet to weigh in directly on the constitutionality of primary systems in which a voter can choose to participate in the party primary of their choice. In other words, whether open primaries—no matter how that phrase is defined—also bump up against the right of free association—has not been tested in the highest court yet, and lower court rulings have been inconsistent.

Case Study: New Mexico Litigation

A New York based organization, Open Primaries Education Fund, representing four New Mexico voters, filed suit in 2018 seeking to invalidate New Mexico's closed primary system. They were represented in court by Paul Bardacke, the former New Mexico Attorney General. The suit was filed as a writ of mandamus directly to the state supreme court, seeking to bypass the lower courts.

The plaintiffs argued that the state's closed primary system violated the "anti-donation" clause of the state constitution, which prohibits government support for private entities. Because primaries are publicly funded, the plaintiffs asserted that this was an unconstitutional donation to private entities, the political parties. The attorneys for the state countered that primaries are a government function managed by the secretary of state and county clerks, and therefore the clause relied on by the plaintiffs did not apply.

Although the New Mexico secretary of state was a vocal supporter of open primaries, she was also the named defendant in the lawsuit and defended the law in court, arguing that the legislature should decide on any changes. Lawmakers had considered legislation to establish open primaries before and during this litigation, but the bills failed.

The New Mexico supreme court ruled in favor of the state in a summary order that did not address the substantive arguments in the case or provide guidance to plaintiffs or defendants as to the rationale for their decision.

Section 3: Other Ways Primaries Differ Between the States

Each state's election system is unique, and how they structure their primaries is unique as well. While a primary is likely to be run with the same ground rules as are used for general elections (when and how absentee voting is permitted, polling place standards, voter identification requirements, etc.), a number of primary-specific questions remain.

Who is in charge of primaries, the state or the political party?

Caucuses are run by political parties, and in recent years party-run presidential primaries have cropped up. State primary elections so far have been run by the state, following state law. The cost of primary elections is borne by the state, with South Carolina as an exception, where the political parties are required to provide some funding for the primaries. (Note: presidential preference primaries have more variation than state primaries. Between 2016 and 2020, [11 states replaced caucuses](#) with primaries.)

Must the two major parties use the same nominating system within a state?

In most states, all major parties must hold their primaries on the same day, following the same rules about who can participate and how the election will be run. For state primaries, Alaska and Idaho allow each party to determine its preferred primary process. This may be advantageous when the two parties are in disagreement about their preferences, and perhaps for the minority party in a heavily one-party state. The minority party might prefer to gather at a convention, or, as in the 2020 presidential nominating process, run a separate election under their own auspices.

In which states is a majority vote required, and thus where are primary runoffs held?

Seven largely southern states require a candidate to win a primary election with a majority of the votes: Alabama, Arkansas, Georgia, Mississippi, Oklahoma, South Carolina and Texas. If no candidate for a given office receives 50%+1 of the vote in the primary election, a separate [primary runoff election](#) is scheduled for a few weeks later. In that second election, only the top two vote-getters run, ensuring that one of them will receive a majority. (In addition, North Carolina uses runoffs with a 30% threshold; South Dakota uses runoffs only for the offices of U.S. Senator, U.S. Representative and governor; and Vermont uses runoffs but only in the case of a tie vote.) The advantage of having a majority vote requirement is that the party nominee has proven to have broad support; a disadvantage is that the state pays to run two separate elections, the primary and the runoff.

When are state primaries held, and what are the consequences of that choice?

Each state makes its own decision on when to hold its state primaries. State primaries begin in early spring and the last few are held in early September. (Primaries cannot be held any later than that because federal law requires that general election ballots be sent to military and overseas voters at least 45 days in advance of the general election; primaries held after approximately September 10 would make preparation for mailing out general election ballots to overseas voter's problematic.)

The choice of state primary dates dictates candidate filing dates and marks the beginning of the campaign season. On average, in any two-year election cycle, one or two state legislatures move their state primary date earlier or later. To see state and presidential primary dates in 2020, see [Table 3](#).

The Bipartisan Policy Center (BPC) recommends coordinating with nearby states to hold primaries on the same day. In fact, the BPC suggests a single national primary day for federal (congressional) primaries. [The Brookings Institute](#) also favors a national primary day. These ideas have not gained

traction. Evidence from naturally occurring shared dates is correlated with a modest increase in participation, perhaps because nearby states may share media markets.

Is the presidential primary held on the same date as the state primary?

Every four years, presidential preference primaries (PPPs) are an option states can, and mostly do, use. (As recently as 50 years ago, only a handful of states had a PPP, with most state parties determining their preferred presidential candidate through caucuses or other means.)

The laws in 31² states plus D.C. call for their presidential preference primary or presidential nominating event to be held separately from (and earlier than) their state primary. The perceived advantage is that states get more attention early in the season before the candidate pool has been narrowed or the final candidate has already been determined. (In 2020, because of COVID-19, three of these states—Connecticut, Georgia and New York—moved their presidential primary later in the year to coincide with their state primary.)

The laws in 19 states³ call for their presidential preference primary to be held in conjunction with their state primary. This only works when the state primary is scheduled in June or earlier, in time to identify the party's presidential preference before the summer conventions. The advantage is that one election can serve two purposes, offering significant cost savings for the state. It is likely that turnout is improved, because of the interest in the presidential race.

What relationship, if any, do primary types and Election Day registration have?

Based on a cross tabulation of states that have Election Day registration and their primary types, there is not an obvious correlation. Of the 19 states that have implemented Election Day registration:

- 2 states use closed primaries (Maryland and Nevada).
- 3 states use partially closed primaries (Connecticut, Idaho, and Utah).
- 3 states open primaries to unaffiliated voters (Colorado, Maine and New Hampshire).
- 2 states use partially open primaries (Iowa and Wyoming).
- 7 states use open primaries (Hawaii, Illinois, Michigan, Minnesota, Montana, Vermont and Wisconsin).
- 2 states use top two primaries (California and Washington).

² Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming.

³ Alabama, Arkansas, California, Indiana, Illinois, Kentucky, Maryland, Mississippi, Montana, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Texas, West Virginia—this adds to 19

Section 4: Ranked Choice Voting and Primaries

What is Ranked Choice Voting?

Ranked choice voting (RCV) is a vote counting system, not a primary type. In a [ranked choice voting](#) system, whether or not the election is a primary or a general election, voters rank all the candidates for a given office by their order of preference—first choice, second choice, etc. The votes are first tallied based on the first choice on every ballot. If no single candidate wins a first-round majority of the votes, then the candidate with the lowest number of votes is eliminated and another round of vote tallying commences. If a voter's first choice is eliminated, then the vote goes to the second choice on their ballot and so on. Eventually one candidate receives a majority (over 50%) and wins the election. The result is similar to traditional [runoff elections](#), but voters make just one trip to the polls. That is why RCV is also known as “instant runoff voting.” RCV works for multi-winner elections as well.

While much of the debate about RCV is about how the system works, the underlying question is whether having elections won by a plurality—the highest vote-getter—or by a majority—over 50% of voters is preferable. A number of state constitutions are clear that a plurality determines an election's winner; others are silent. It is up to policymakers to decide if an elected official who won based on a plurality below the 50% mark can be an effective leader. That is, will they represent the greater population or feel the need to focus only on the needs of their base?

RCV can be used in any kind of primary—open, closed, top two, etc. The vote counting system does not dictate who can participate in an election.

Some say that RCV is particularly useful in primaries. In primaries with many candidates, as was the case in the Republican presidential field in 2016 and the Democratic presidential field in 2020, RCV would mean voters could select their true first choice, and have more well-known or traditional candidates as their second, third and so on choices.

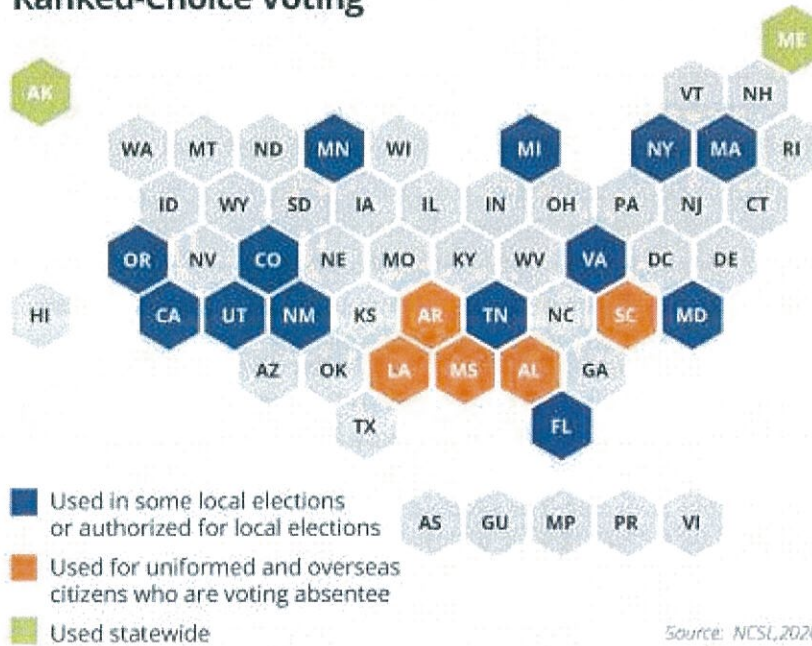
RCV could also be used to combine a primary with a general election. In Louisiana, on the general election date nominees from all parties run together, and a runoff between the top two vote getters is held the first Saturday in December. Louisiana—or any state that chose to do so—could combine the first election and the runoff election into one RCV election.

Considerations:

- The cost of running primaries would be eliminated, and the candidate filing deadline would be later in the year. The cost of runoff elections would also be eliminated.
- The requirement to get on the ballot would need to be reviewed, perhaps set higher than to get on a primary ballot.
- Is the public served by having a smaller pool of candidates to choose from at the general election? In other words, is it advantageous to use a two-step process?
- Does the state's voting technology support a RCV election?
- Would RCV boost the participation and visibility of minor party or independent candidates, and is that a value the state wants to pursue?
- As a new form of voting, RCV does require public education efforts but tends to be popular once implemented.

Where is RCV used now?

Ranked-Choice Voting



- At the state level, Maine was the first to adopt RCV for presidential primaries, state primaries and general elections, including presidential elections. In 2020, Alaska adopted RCV for presidential elections, state primaries and general elections, but not for primaries.
- The Democratic state parties in Alaska, Hawaii, Kansas and Wyoming used RCV in their recent presidential preference primaries. These events were run by the parties, not by the state. RCV can help winnow a large field of candidates.
- Twenty or more municipalities use ranked choice voting. This is often available to home rule municipalities without any statutory or constitutional changes.
- Alabama, Arkansas, Louisiana, Mississippi and South Carolina are among the states that require a majority vote to establish a party's nominee, and thus use primary runoffs. These states provide instant runoffs for overseas voters. One ranked choice primary ballot is sent to overseas voters. If their first-choice candidate doesn't make it to the primary runoff, their second-choice candidate is counted in the runoff.

Section 5: Conclusion, Resources and Acknowledgements

One of the thorniest election policy concerns that state legislatures address is how primary elections, or party nominating functions more broadly, are best run. Historically, the trend (albeit a slow one) is to allow more voters to participate, but that runs directly counter to the belief that political parties are private entities and can therefore determine who participates.

In recent years, the changing complexities of the American electorate and particularly the increase in the number of voters who do not affiliate with a major party have led to more legislative interest in a full array of options.

With that in mind, this report offers a lens into the options currently used around the nation. While we have “bucketed” state primary systems based on NCSL’s taxonomy (closed, partially closed, partially open, open to unaffiliated voters, open primaries and top two primaries), we fully recognize that the specifics of each state’s system make each state’s system unique. In other words, the categories are helpful, but not definitive.

We note, too, that new options are developing all the time. Alaska voters approved a citizen initiative in 2020 that creates a “top four” primary system, with the general election to be run with ranked choice voting. Louisiana, which has used a system where the nation’s general election serves as the primary, with a runoff scheduled weeks later for decades. In 2021, its legislature will be studying other options.

In fact, the state of state primaries is fluid, and one of the areas where policy is most changeable. This report is intended to provide insights for those who are thinking of future needs and not as a limited menu of options.

NCSL Resources and Acknowledgements

- [State Primary Election Types](#)
- [2020 State Primary Dates](#)
- [Ranked Choice Voting](#)
- [Primary runoffs](#)

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Section 6: Appendices

Table 1: Who Can Vote in a State Primary and How Do They Register

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
Alabama (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	Within fourteen days prior to the election. Code of Ala. § 17-3-50 Voter needs to be registered and may choose which primary or party ballot to vote. It holds that voter to that affiliation in case of a runoff election. However, it does not register the voter with that party.	No. Ala. Code § 17-3-52	No.
Alaska (Partially Closed Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: political parties to choose whether to allow unaffiliated voters to participate before each election cycle.	Thirty days before an election. Alaska Stat. § 15.07.070	Yes.	Yes.
Arizona (Open to Unaffiliated Voters Primary)	Democrats: their primary only Republicans: their primary only Unaffiliated: either major party primary	Twenty-nine days before an election. Ariz. Rev. Stat. § 16-120	Yes. Ariz. Rev. Stat. § 16-152	Yes.
Arkansas (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	Thirty days before an election. Ark. Const. Amendment 51, §9 Voter needs to be registered and may choose which primary or party ballot to vote. It holds that voter to that affiliation in case of a runoff election. However, it does not register the voter with that party.	Yes.	No, Arkansas does not have online voter registration.

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
California (Top Two Primary)	A common ballot listing all candidates with top two vote-getters advancing to the general election. Democrat: any candidate. Republican: any candidate. Unaffiliated: any candidate.	Fifteen days before an election. Same-day registration is permitted 14 days before an election and on Election Day. Cal. Elec. Code § 2102, Cal. Elec. Code § 2170	Yes. Cal. Elec. Code § 2150	Yes, to change your political party preference, you must re-register to vote.
Colorado (Open to Unaffiliated Voters Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: either major party primary.	Eight days before an election to receive a ballot by mail. Deadlines for voter registration drives are 22 days before an election. Colo. Rev. Stat. § 1-2-201	Yes. Colo. Rev. Stat. § 1-2-204	Yes, under Colorado’s “Find My Voter Registration.” After finding their record, the voter can change party affiliation.
Connecticut (Partially Closed Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: political parties to choose whether to allow unaffiliated voters to participate before each election cycle. Conn. Gen. Stat. § 9-431	The registration deadline is up to noon the day before the primary. Conn. Gen. Stat. § 9-23g A voter switching political affiliation must do it three months before election.	Yes.	Yes.
Delaware (Closed Primary)	Democrats: their primary only. Republicans: their primary only Unaffiliated: none	Before a primary election: anytime except from the last Saturday in May through the date of the primary. 15 Del. C. § 2049	Yes. Del. Code tit. 15, § 1302	Yes.

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
		<p>Before a presidential primary: anytime except from the 59th day before the presidential primary through the date of the election. 15 Del. C. § 3189</p> <p>The last date to register to vote for any presidential primary, primary and general election shall be the fourth Saturday prior to the date of the election. 15 Del. C. § 2036</p>		
Florida (Closed Primary)	<p>Democrats: their primary only.</p> <p>Republicans: their primary only.</p> <p>Unaffiliated: none.</p>	<p>The deadline to submit a party change before a primary election is twenty-nine days before that election. Fla. Stat. § 97.055</p>	<p>Yes. Fla. Stat. § 97.052</p>	<p>Yes.</p>
Georgia (Open Primary)	<p>Democrats: either major party primary.</p> <p>Republicans: either major party primary.</p> <p>Unaffiliated: either major party primary.</p>	<p>Twenty-nine days before an election. Ga. Code § 21-2-224</p>	<p>No.</p> <p>Ga. Code Ann. § 21-2-221.2, Ga. Code Ann. § 21-2-220</p>	<p>No.</p>
Hawaii (Open Primary)	<p>Democrats: either major party primary.</p> <p>Republicans: either major party primary.</p> <p>Unaffiliated: either major party primary.</p> <p>HRS § 12-31</p>	<p>Twenty-nine days before an election.</p> <p>Same-day registration is permitted during early voting and on Election Day. Hawaii Rev. Stat. §11-24</p>	<p>No. Haw. Rev. Stat. § 11-15</p>	<p>No,</p>
Idaho (Partially Closed Primary)	<p>Democrats: their primary only.</p> <p>Republicans: their primary only.</p>	<p>For a primary election, an elector may change their political party affiliation or become “unaffiliated” by filing a signed form with the county</p>	<p>Yes. Idaho Code § 34-411</p>	<p>Yes, affiliate with a political party or change your status</p>

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
	Unaffiliated: political parties to choose whether to allow unaffiliated voters to participate before each election cycle.	<p>clerk no later than the last day a candidate may file for partisan political office prior to such primary election. Idaho Code § 34-704. (5 p.m., on the tenth Friday preceding the primary election).</p> <p>An “unaffiliated” elector may affiliate with the party of the elector's choice by filing a signed form up to and including Election Day. Idaho Code § 34-1002. (Application for absentee ballot).</p> <p>An “unaffiliated” elector may affiliate with the party of the elector's choice on or before Election Day, by declaring such political party affiliation to the poll worker.</p>		to unaffiliated.
Illinois (Partially Open Primary)	<p>Democrats: either major party primary but must declare their ballot choice.</p> <p>Republicans: either major party primary but must declare their ballot choice.</p> <p>Unaffiliated: either major party primary but must declare their ballot choice.</p>	<p>Registration deadline is twenty-eight days before an election. Sixteen days before if registering online.</p> <p>Election Day registration is permitted from twenty-seven days before the election and on Election Day. 10 ILCS 5/4-6, 4-16, 5-5, 6-29, 1A-16.5</p> <p>In Illinois, a voter is not required to declare a party at the time they register to vote and is considered independent until the time the voter casts a party ballot at a primary election.</p>	No. 10 Ill. Comp. Stat. Ann. 5/1A-16	No.

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
		There is no form to change party affiliation.		
Indiana (Partially Open Primary)	Democrats: either major party primary but must declare their ballot choice. Republicans: either major party primary but must declare their ballot choice. Unaffiliated: either major party primary but must declare their ballot choice.	Registration deadline is twenty-nine days before an election. Ind. Code §3-7-13-10 A voter must select either a Democratic or Republican ballot to vote in the primary election. In Indiana, your party affiliation is determined by how you voted in the last primary election in which you voted.	No. Ind. Code Ann. § 3-7-31-5, Ind. Code Ann. § 3-7-22-5	No.
Iowa (Partially Open Primary)	Democrats: either major party primary but must declare their ballot choice. Republicans: either major party primary but must declare their ballot choice. Unaffiliated: either major party primary but must declare their ballot choice.	Voters can change their party affiliation any time before Election Day or at the polling place on Election Day. Iowa Code § 43.42 Any registered voter who desires to change or declare a political party affiliation may, before the close of registration for the primary election, file a written declaration stating the change of party affiliation with the county commissioner of registration who shall enter a notation of such change on the registration records. Iowa Code § 43.41	Yes. Iowa Code § 48A.11	Yes.
Kansas	Democrats: their primary only.	Twenty-one days before an election.	Yes.	Yes, a voter must re-

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
(Open to Unaffiliated Voters Primary)	Republicans: their primary only. Unaffiliated: either major party primary.	Kan. Stat. §25-2311	Kan. Stat. § 25-2309	register each time they change their party affiliation for voting.
Kentucky (Closed Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: none.	A voter may change their political party registration at any time on or before December 31 to remain eligible to vote in the following political party primary election. KRS § 116.045	Yes. Ky. Rev. Stat. § 116.155	Yes.
Louisiana	N/A - all candidates run on the same ticket in general elections.	Changes must be made at least 20 days prior to an election if registering through the online registration system with a Louisiana driver's license or Louisiana special ID card or 30 days prior to an election if registering in person or by mail. La R.S. 18:101(B) and La R.S. 18:135(C)	Yes. La. Rev. Stat. § 18:104	Yes.
Maine (Open to Unaffiliated Voters Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: either major party primary.	By the close of business on the 15th day before the election.	Yes.	No, Maine does not have online voter registration
Maryland (Closed Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: none.	The deadline to change party affiliation is twenty-one days before an election. To change party affiliation, a voter can use Maryland's Online Voter Registration System (OLVR) or submit a new voter registration application or a signed written request to your local board of elections.	Yes. Md. Code, Elec. Law § 3-202	Yes.

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
Massachusetts (Open to Unaffiliated Voters Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: either major party primary.	Twenty days before an election.	Yes.	Yes.
Michigan (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	Registration deadline is fifteen days before an election. There is no political party registration requirement in Michigan. Any registered voter can participate in the primary. The voter must make a ballot selection in writing by completing the Application to Vote/Ballot Selection Form on Election Day; or on the Absent Voter Ballot Application form. Mich. Comp. Laws Serv. § 168.615c	No.	No.
Minnesota (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	Registration deadline is twenty-one days before an election. Minn. Stat. Ann. §201.054, 201.061	No. Minn. Stat. § 201.071	No.
Mississippi (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	Registration deadline is thirty days before an election.	No. Miss. Code § 23-15-39	No, Mississippi does not have online voter registration.
Missouri (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	Registration deadline is twenty-seven days before an election. Mo. Rev. Stat. § 115.135	No.	No.

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
Montana (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	Registration deadline is thirty days before an election. MCA 13-2-301, MCA 13-2-304	No. Mont. Code § 13-1-210	No, Montana does not have online voter registration.
Nebraska	All candidates are on the same nonpartisan primary ballot.	A voter may change party affiliation at any time.	Yes. Neb. Rev. Stat. § 32-312	Yes.
Nevada (Closed Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: none.	Registration deadline is twenty-eight days before an election in-person; postmarked twenty-eight days before if registering by mail; five days before if registering online.	Yes.	Yes.
New Hampshire (Open to Unaffiliated Voters Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: either major party primary.	A voter may change your party affiliation or at any scheduled meeting of the supervisors of the checklist except for during the period of time between the first day of the filing period for the primary election and/or the presidential primary election and the date of the primary election itself. Six to thirteen days before an election, depending on local supervisors of the checklist. N.H. Rev. Stat. §654:7, 654:7-a	Yes. N.H. Rev. Stat. Ann. § 654:7	No, New Hampshire does not offer online voter registration.
New Jersey (Open to Unaffiliated Voters Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: either major party primary.	A registered voter who wishes to change their party affiliation must file a Political Party Affiliation Declaration Form 55 days before a Primary Election. N.J. Stat. § 19:31-13.2, N.J. Stat. § 19:23-45	Yes, optional. N.J. Stat. § 19:31-6.4	No.
New Mexico	Democrats: their primary only.	A voter needs to fill out a new registration form to change	Yes.	Yes.

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
(Closed Primary)	Republicans: their primary only. Unaffiliated: none.	party affiliation twenty-eight days before an election. N.M. Stat. § 1-4-8	N.M. Stat. § 1-4-5.4	
New York (Closed Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: none.	The voter registration form is used to change party enrollment. A change of enrollment needs to be received by February 14 each year before the June primary. NY CLS Elec § 5-210	Yes. N.Y. Elec. Law § 5-210	Yes.
North Carolina (Partially Closed Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: political parties to choose whether to allow unaffiliated voters to participate before each election cycle.	Registration deadline is twenty-five days before an election. N.C. Gen. Stat. Ann. § 163-82.6 The North Carolina Voter Registration Application may be used to change party affiliation. The change notification must be signed, and should be sent to the appropriate county board of elections by the voter registration deadline	Yes. N.C. Gen. Stat. § 163-82.4	Yes, Division of Motor Vehicles (DMV) customers may update their voter registration, including party affiliation through the DMV's Online Voter Registration Service.
North Dakota (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	N/A - North Dakota does not maintain or require voter registration.	N/A - North Dakota does not maintain or require voter registration.	N/A - North Dakota does not maintain or require voter registration.
Ohio (Partially Open Primary)	Democrats: either major party primary but must declare their ballot choice. Republicans: either major party primary	Registration deadline is thirty days before an election. Ohio Rev. Code Ann. §3503.19 A voter declares a political party affiliation by requesting the	No. Ohio Rev. Code § 3503.14	No.

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
	but must declare their ballot choice. Unaffiliated: either major party primary but must declare their ballot choice.	ballot of a political party in a partisan primary election.		
Oklahoma (Partially Closed Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: political parties to choose whether to allow unaffiliated voters to participate before each election cycle.	The last day a voter may change their political affiliation is March 31. Changing party affiliation is not allowed from April 1 through August 31. All requests to change party affiliation submitted after March 31 will be processed September 1. Okla. Stat. tit. 26, § 4-119	Yes. Okla. Stat. tit. 26, § 4-109.3; Okla. Stat. tit. 26, § 4-112	Yes.
Oregon (Closed Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: none.	Registration deadline is twenty-one days before an election. Ore. Rev. Stat. § 247.017	Yes.	Yes.
Pennsylvania (Closed Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: none.	Fifteen days before an election. 25 P.S. § 3071	Yes.	Yes.
Rhode Island (Open to Unaffiliated Voters Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: either major party primary.	To vote in a party primary you must disaffiliate from any other party at least 30 days before the primary date. R.I. Gen. Laws Section 17-9.1-24	Yes. R.I. Gen. Laws Section 17-9.1-6, R.I. Gen. Laws Section 17-9.1-7, R.I. Gen. Laws Section 17-9.1-9	Yes.

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
South Carolina (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	Thirty days before an election. S.C. Code Ann. § 7-5-150	No, S.C. Code § 7-5-320	No, South Carolina does not have online voter registration.
South Dakota (Partially Closed Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: political parties to choose whether to allow unaffiliated voters to participate before each election cycle.	To change party affiliation, a voter must update their voter registration by completing a voter registration form, then mail or return to their county auditor fifteen days before an election. S.D. Codified Laws § 12-4-15, S.D. Codified Laws § 12-4-5	Yes.	No, South Dakota does not have online voter registration.
Tennessee (Partially Open Primary)	Democrats: either major party primary but must declare their ballot choice. Republicans: either major party primary but must declare their ballot choice. Unaffiliated: either major party primary but must declare their ballot choice.	Registration deadline is thirty days before an election. Tenn. Code Ann. § 2-2-109	No. Tenn. Code § 2-2-116	No.
Texas (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	Registration deadline is thirty days before an election. Tex. Elec. Code § 13.143 A registered voter is not required to pre-register or take any steps towards affiliating themselves with a party before voting in a party's primary election. Tex. Elec. Code § 162.003, 162.006	No. Tex. Elec. Code § 13.121, Tex. Elec. Code § 13.122	No, Texas does not offer online voter registration.

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
Utah (Partially Closed Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: political parties to choose whether to allow unaffiliated voters to participate before each election cycle.	To change political parties, a voter will need to update their voter registration online, by mail, or in-person by the voter registration deadline of eleven days before an election. Utah Code Ann. § 20A-2-107, Utah Code Ann. § 20A-2-102.5	Yes. Utah Code § 20A-2-104	Yes.
Vermont (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	All registered voters can vote in the primary election—but can only vote on one ballot. Same-day registration is permitted through Election Day. Vt. Stat. Ann. Tit. 17, § 2144	No. 17 V.S.A. § 2145	No, there is no party registration in Vermont.
Virginia (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	Virginia does not have registration by political party. Registration deadline is twenty-eight days before an election. Va. Code Ann. § 24.2-416	No. Va. Code Ann. § 24.2-418	No, Virginia does not have registration by political party.
Washington (Top Two Primary)	A common ballot listing all candidates with top two vote-getters advancing to the general election. Democrat: any candidate. Republican: any candidate. Unaffiliated: any candidate.	Washington does not register voters by political party or party affiliation. The registration deadline is no later than eight days before the day of the primary. Rev. Code Wash. § 29A.08.140	No. Wash. Rev. Code § 29A.08.210	No, Washington does not register voters by political party or party affiliation.
West Virginia (Open to Unaffiliated Voters Primary)	Democrats: their primary only. Republicans: their primary only. Unaffiliated: either major party primary.	Any registered voter who desires to change his or her political party affiliation may do so by filing, no later than the close of voter registration. Voter registration closes on the	Yes. W. Va. Code § 3-2-5	Yes.

	Who can vote in a state primary?	What is the deadline for affiliating with a political party?	Does registration give voters an opportunity to affiliate?	Can a voter change affiliation through an online voter registration portal?
		twenty-first day before the election. W. Va. Code § 3-2-22, W. Va. Code § 3-2-6		
Wisconsin (Open Primary)	Democrats: either major party primary. Republicans: either major party primary. Unaffiliated: either major party primary.	All registered voters can vote in the primary election but can only vote on one ballot. Twenty days before an election if registering online or by mail. Friday before election if registering in-person. Wis. Stat. § 6.28	No. Wis. Stat. § 6.33	No, Wisconsin does not register voters by party affiliation.
Wyoming (Partially Open Primary)	Democrats: either major party primary but must declare their ballot choice. Republicans: either major party primary but must declare their ballot choice. Unaffiliated: either major party primary but must declare their ballot choice.	To change your party affiliation, a voter must complete the Wyoming Voter Registration Application & Change Form and submit it to their county clerk's office not later than fourteen days before the primary election. Wyo. Stat. § 22-3-102	Yes. Wyo. Stat. § 22-3-103	No, Wyoming does not have online voter registration.

Table 2: Changes to State Primary Types, 2010 - present

State	Year Enacted	Bill/Ballot Measure	Change
Alaska	2020	Measure 2	From Partially Closed to Top Four
New Mexico	2020	Senate Bill 4	Closed to Open to Unaffiliated Voters
Colorado	2016	Colorado Proposition 108	Closed to Open
Utah	2014	Senate Bill 54	Partially Open to Partially Closed
Idaho	2011	House Bill 351	Open to Partially Closed
California	2010	California Proposition 14	Closed to Top Two
Washington	2004	Washington Initiative 872	Blanket Primary to Top Two (when blanket primary was declared unconstitutional)

Table 3: State Primary Dates in 2020

State	State Primary Date	Presidential Primary Date
Alabama	March 3* March 31 runoff (rescheduled to July 14)	March 3
Alaska	Aug. 18	April 4 (Democratic only)
Arizona	Aug. 4	March 17 (Democratic only)
Arkansas	March 3 March 31 runoff	March 3
California	March 3	March 3
Colorado	June 30	March 3
Connecticut	Aug. 11	April 28 (rescheduled to August 11)
Delaware	Sept. 15	April 28 (rescheduled to July 7)
District of Columbia	No district-specific primary	June 2
Florida	Aug. 18	March 17
Georgia	May 19 (rescheduled to June 9) July 21 runoff (rescheduled to August 11)	March 24 (rescheduled to June 9)
Hawaii	Aug. 8	April 4 (Democratic only)
Idaho	May 19	March 10
Illinois	March 17	March 17
Indiana	May 5 (rescheduled to June 2)	May 5 (rescheduled to June 2)
Iowa	June 2	Feb. 3 (caucus)
Kansas	Aug. 4	May 2 (Democratic only; in-person voting was cancelled, and the election was held entirely by mail.)
Kentucky	May 19 (rescheduled to June 23)	May 19 (rescheduled to June 23)
Louisiana	Nov. 3*	April 4 (rescheduled to July 11)
Maine	June 9 (rescheduled to July 14)	March 3
Maryland	April 28 (rescheduled to June 2)	April 28 (rescheduled to June 2)
Massachusetts	Sept. 1	March 3
Michigan	Aug. 4	March 10
Minnesota	Aug. 11	March 3
Mississippi	March 10* March 31 runoff (rescheduled to June 23)	March 10
Missouri	Aug. 4	March 10
Montana	June 2	June 2

State	State Primary Date	Presidential Primary Date
Nebraska	May 12	May 12
Nevada	June 9	Feb. 22 (caucus, Democratic only)
New Hampshire	Sept. 8	Feb. 11
New Jersey	June 2* (rescheduled to July 7)	June 2 (rescheduled to July 7)
New Mexico	June 2	June 2
New York	June 23	April 28 (rescheduled to June 23)
North Carolina	March 3 May 12 runoff** (rescheduled to June 23)	March 3
North Dakota	June 9	March 10
Ohio	March 17 (rescheduled to April 28)	March 17 (rescheduled to April 28)
Oklahoma	June 30 August 25 runoff	March 3
Oregon	May 19	May 19
Pennsylvania	April 28 (rescheduled to June 2)	April 28 (rescheduled to June 2)
Rhode Island	Sept. 8	April 28 (rescheduled to June 2)
South Carolina	June 9 June 23 runoff	Feb. 29 (Democratic only)
South Dakota	June 2 Aug. 11 runoff	June 2
Tennessee	Aug. 6	March 3
Texas	March 3 May 26 runoff (rescheduled to July 14)	March 3
Utah	June 30	March 3
Vermont	Aug. 11	March 3
Virginia	June 9* (rescheduled to June 23)	March 3 (Democratic only)
Washington	Aug. 4	March 10
West Virginia	May 12 (rescheduled to June 9)	May 12 (rescheduled to June 9)
Wisconsin	Aug. 11	April 7
Wyoming	Aug. 18	February-March (Republican caucus) April 4 (Democratic caucus; in-person caucus was cancelled, and deadline for mail ballots was extended to April 17.)

*No primary for state legislative seats in 2020.

**In certain circumstances, North Carolina holds a second primary. It did not do so in 2020, but those dates were either April 21 or May 12.

April 7, 2023



Location

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Silver Spring, MD 20910

Contact

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WWW.FAIRVOTEACTION.ORG

Dear Members of the Non-plurality Voting and Runoff Elections Study Commission,

Following my testimony on March 22, 2023, I'm writing to provide more information on the timeline for ranked choice voting (RCV) implementation in Rhode Island.

Other jurisdictions have successfully implemented RCV on a wide variety of timelines, some as quickly as a few months. I believe Rhode Island is particularly well-positioned for a quick and smooth implementation due to several factors.

First, Rhode Island's existing equipment is RCV-compatible. Rhode Island uniformly uses ES&S scanners with DS200, a RCV-compatible tabulator. Unlike other cities or states that may need to consider voting technology upgrades, Rhode Island's machines are already capable of printing and scanning ranked ballots and conducting a ranked choice tabulation.

Second, Rhode Island already has data transmission practices in place that will allow for quick tabulation of statewide results.

Currently, local election administrators transmit election results securely to a central location. Workers in these offices would use the same process for RCV results, simply needing basic training on which data needs to be transmitted. The necessary data is called a "cast vote record," and it is produced by the ES&S DS200 software. This will allow results from all precincts to be tabulated centrally for one statewide result.

To summarize, I believe Rhode Island's existing technology and data transmission practices would make for a seamless transition to RCV, and it could be accomplished successfully in a matter of months, not years. **Rhode Island could safely implement RCV for 2024 presidential primaries as specified in H5649.**

Please reach out if you have any other questions about RCV implementation.

Thank you,

A handwritten signature in black ink that reads "Deb Otis".

Deb Otis
Director of Research and Policy
FairVote Action

**SPECIAL SENATE COMMISSION TO STUDY
NON-PLURALITY VOTING METHODS AND RUNOFF
ELECTIONS FOR GENERAL ASSEMBLY AND GENERAL
OFFICER PRIMARIES**

NOTICE OF MEETING

DATE: Wednesday, April 26, 2023

TIME: 2:00 P.M.

PLACE: Senate Lounge – State House

AGENDA:

- I. Call meeting to order

- II. Gary Sasse, founding Director of the Hassenfeld Institute for Public Leadership at
Bryant University, People’s Primary
Guy Dufault, People’s Primary

State primary election options and runoff elections
 - a. Explanation of various primary election options and run-off elections.
 - b. Experiential lessons from other jurisdictions.
 - c. Impacts on turnout, candidate selection, and voter trust.

- III. Adjournment

No public testimony will be received during this meeting.

The meeting will be televised by Capitol Television, which can be seen on Cox Communications Channels 15 and 61 for high definition, i3Broadband (Formerly Full Channel) on Channel 15 and on Channel 34 on Verizon.

Live streaming is available at <https://www.rilegislature.gov/CapTV/Pages/default.aspx>.

Patricia Breslin
Senate Legal Counsel
401-276-5536
pbreslin@rilegislature.gov

POSTED: WEDNESDAY, APRIL 19, 2023, 2:45 P.M.

April 26, 2023

<https://ritv.devosvideo.com/show?video=3021cfc15848&apg=817504e5>

Gary Sasse, founding Director of the Hassenfeld Institute for Public Leadership at Bryant University, People's Primary

Guy Dufault, People's Primary

State primary election options and runoff elections

<https://www.rilegislature.gov/commissions/NPVC/commdocs/4-26-23%20NPV%20Senate%20Commission%20People's%20Primary%20Presentation.pdf>

<https://www.rilegislature.gov/commissions/NPVC/commdocs/4-26-23%20NPV%20Senate%20Commission%20Peoples%20Primary%20Fact%20sheet.pdf>

OPEN PRIMARIES

Open Primaries Background Information

1) Types of Primary Elections:

There are six general types of primary elections employed in the United States today:

a) Closed primary: Only voters registered with a particular party may vote in that party's primary election. So if you are registered as a Democrat, you can only vote for Democratic candidates. If you're a registered Republican you can only vote for Republican candidates. If you are registered with a minor party, you can only vote in that party's primary-if they hold one. The top vote-getter for each party moves on to the general election. Unaffiliated/independent voters cannot vote in closed primary elections. States with closed primaries include: Connecticut, Delaware, Florida, Idaho, Kentucky, Maryland, Nevada, New Jersey, New Mexico, New York, Maine, Oregon, Pennsylvania

b) Open partisan primary with partisan registration: Unaffiliated/independent voters may choose a major party ballot line in the primary; either Republican or Democrat. Voters who are already affiliated with a political party Republican, Democrat or minor party- can vote only in that party's primary States with a partisan primary and partisan voter registration include: Alaska, Arizona, Colorado, Iowa, Kansas, Massachusetts, New Hampshire, Oklahoma, Rhode Island, South Dakota, Utah, West Virginia, Wyoming.

c) Open partisan primary with nonpartisan registration: Voters are not required to formally affiliate/unaffiliated with a party. Every voter can choose a ballot line-Republican or Democrat- to vote in the primary. States with a partisan open primary and nonpartisan voter registration include: Alabama, Arkansas, Georgia, Hawaii, Illinois, Indiana, Michigan, Minnesota, Mississippi, Missouri Montana, North Carolina, *North Dakota (no voter registration), Ohio, South Carolina, Tennessee, Texas, Vermont, Virginia, Wisconsin

d) Nonpartisan open primary (Top Two or Top Four): In this type of election, there is no Republican primary or Democratic primary. There is one primary, run by the state, with all candidates and all parties (or no party) listed. Every voter can participate and vote for every candidate, regardless of party. The top-two/four vote getters move on to the general election. States with a top two open primary: California, Washington. *Nebraska (state legislative races only). States with a top four primary: Alaska (combines it with RCV in the general election).

e) Runoff primary: This system eliminates the primary election altogether. Instead, all candidates, regardless of party affiliation, run on the same ballot in November. If a candidate

receives more than half of the votes, that candidate is elected. If no candidate wins with a majority, the top two vote-getters face off in a December runoff election. States with a runoff primary: Louisiana

f) Nonpartisan local primary: Many counties and municipalities use nonpartisan primaries such as those for city council, county commissioner, or judges. Candidates are listed without party affiliation and all registered voters can vote. A candidate for a nonpartisan office who is on the primary ballot is selected if he or she wins more than 50% of the vote. If not, there is a runoff election in November between the top two candidates. More than 80 percent of American cities use nonpartisan elections for local office. Of the 30 Largest Cities in America, 23 hold nonpartisan elections inc. Los Angeles, Chicago, Phoenix, San Antonio and Dallas.

2) Experiential lessons:

Nebraska:

The parties in Nebraska have less control over legislators than they do in most states. That lack of party control, for example, means that the Governor of Nebraska must reach out to individual members for support when he wants to advance an agenda. The interest level, demand for change, and time spent discussing an issue is set by the individual members of the legislature without regard for an official party stance. Members are independent trustees empowered to make their own decisions, and work out differences with other members on behalf of their constituents. With no formal party alignments or caucuses, the Nebraska legislature operates under a unique political reality that allows coalitions to form issue by issue, typically based on government philosophy, geographic background, and constituency. Although the legislature consists of thirty-five Republicans, thirteen Democrats, and one independent, only eight members regularly vote the party line. Because committee chairs are elected by the members and not partisan leaders, with minority party members regularly holding leadership posts, the Nebraska legislature is largely a “meritocracy,” where “talent rises to the top.”

Nebraska’s Congressional delegation, elected in a closed, partisan system, all vote as instructed by party leaders 90% of the time. Many of them, who came from the state legislature, openly complain about their inability to “work the floor” and get things done. In fact, they regularly vote the opposite of their state counterparts on the exact same issues even though they are representing the same constituents. Two systems, with two very different outcomes for the citizens of Nebraska and two very different experiences for their elected officials. Contrast it even further with Nebraska’s neighbor to the south, Kansas, which has an almost identical Republican legislative supermajority but which operates in a highly partisan election and governing environment. The party, not the people, sets the Kansas agenda and legislators in Kansas have greenlighted an agenda that has proved catastrophic to the state. State revenues have plummeted, their credit rating has been downgraded and job growth has fallen well behind Nebraska and many of its other neighbors.

For more see:

Nebraskans Encourage Nonpartisan Elections - Senators Coash and Hadley (R) and Morfeld (D) talk about why Top Two open primaries work.
<https://listen.sdpb.org/post/dakota-midday-nebraskans-encourage-non-partisan-elections>

[*Policy over Party in the Nebraska State Capitol*](#), OP Special Report

What's Not The Matter with Nebraska? OZY <https://www.ozy.com/fast-forward/whats-not-the-matter-with-nebraska/66031>

California:

Many politicians in California talk openly about how they appreciate the benefits of a system that allows them to campaign to all voters in their districts, not just members of their own party. Legislators no longer fear being “primaried” if they reach across the aisle to pass legislation, and talk openly about how they appreciate a system that encourages them to act in bipartisan ways.

For more see:

Is Political Civility At The State Capitol Still Possible In The Age Of Trump?
<http://www.caprдио.org/articles/2017/02/02/is-political-civility-at-the-state-capitol-still-possible-in-the-age-of-trump/>

[*Arnold Schwarzenegger and Ro Khanna : CA's Top Two Primary Works*](#)

Several new USC studies show positive impact of top two in California:
[*Top Two & Open Primaries are Associated with More Moderate Legislators*](#)

[*Evaluating California's Top-two Primary & Political Reforms in California*](#)

[*Political Reforms in California are Associated with Less Ideologically Extreme State Legislators*](#)

[*California Top Two Open Primary: A Successful Reform*](#)

Also California Forward conducted an in-depth focus group of California legislators and [*produced a report*](#) which discovered some interesting things. Legislators like the top two system. “It allows us to take more risks.” “It allows Republicans to say yes and Democrats to say no.” “The minority party has a seat at the table and can impact bills.” “Candidates have to reach out to a wider range of voters.” Reducing polarization is not purely a function of ideology - there are other factors involved.

3) [Impact on Turnout, Candidate Selection and Voter Trust:](#)

Turnout: A 50-state analysis of turnout in the 2022 primaries by the Bipartisan Policy Center found that turnout is significantly higher in states with Top Two primaries:

Within the states with Top Two, turnout in individual districts can vary widely from year to year, demonstrating that turnout is affected by multiple factors. In districts with popular incumbents and fewer challengers, turnout dips. In districts where incumbents are retiring and multiple challengers step forward, turnout increases. As a rule, more voters participate in elections that are competitive, and top two primaries are especially effective at generating competition because candidates from different parties compete from the outset, all voters vote, and voters are presented with varied options.

For more see:

2022 Primary Turnout: Trends and Lessons for Boosting Participation, Bipartisan Policy Center
https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2023/03/Primary-Turnout-Report_R03.pdf

Candidate Selection:

There is strong evidence that same party races under top two increase voter desire to learn more about the candidates. See: Sinclair, Betsy; & Wray, Michael. (2015). Googling the Top Two: Information Search in California's Top Two Primary. *California Journal of Politics and Policy*. <http://escholarship.org/uc/item/1fg8b858>

Candidate rhetoric also moderates under top two primaries. See:

[*Polarization and the Top-Two Primary: Moderating Candidate Rhetoric in One-Party Contests*](#)

Voter Trust:

Voters overwhelmingly like the top two. A study conducted by the California Chamber of Commerce in 2017 showed that 73% of Californians support the Top Two open primary system. Other [polls by PPIC show it regularly scoring above 60% support](#). Polling conducted in Nebraska showed that 77% of Nebraskans thought that the Top Two system used for state legislative races provided the best results for ordinary Nebraskans, while just 13% asserted that the partisan system used to elect Congressional representatives provided the best results. There has been no public polling or research in Washington State, in part because the measure enacting it passed with more than 60% support and voters and both political parties have accepted the new system and operate successfully within it. It is seen as a closed question in Washington State. Nobody is pushing to change the current system, and as such voters have not been asked their opinion.

Additional background:

Fact Sheets

- [How top two impacts positively on competition](#)
- [Why military veterans are better served under a nonpartisan primary system](#)
- [How communities of color fare under nonpartisan primaries](#)



A Better Way for Rhode Islanders to Vote

R.I.'s Election System is Broken

- Candidates in R.I. often win with well under 50% of the vote
- Less than 20% of voters participate in September primaries –
 - This means a small fraction of the electorate picks candidates that voters will chose from in November
- In the last 20 years: 45% of General Assembly seats are uncontested in November general elections
- 2018 + 2020: Only 4.5% of General Assembly November general elections were competitive
 - Margin of victory under 5%

Primary Overview


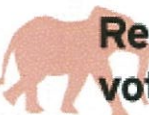

Why Primaries?

- Primaries were proposed by reformers over 100 years ago to limit the power of party bosses in choosing candidates.

Different Kinds of Primaries

- Closed: Only registered members of a party can participate - 15 states
- Open: Any registered voter can vote in any party primary - 19 states
- Hybrid: Including “semi-closed”, like R.I. – 16 states

Different Kinds of Primaries

	 Democratic voter	 Republican voter	 Other
Democratic Closed Primary	✓	✗	✗
Republican Closed Primary	✗	✓	✗
Democratic Semi-open Primary	✓	✗	✓
Republican Semi-open Primary	✗	✓	✓
Open Primary	✓	✓	✓

✓ eligible to vote

✗ ineligible to vote

 Other: unaffiliated, "Independent" in Rhode Island

Change – How People are Voting

New approaches to elections are emerging across the country

- **Designed to increase participation and encourage candidates to seek broad support, i.e., a majority**
- Ranked Choice Voting
- “Top Two” primary
 - California, Washington, Nebraska
- Alaska
 - Top 4 Ranked Choice

Change – How People are Voting

Ranked Choice Voting

53 cities (including New York City), one county, and two states (Maine and Alaska) use some form of ranked choice voting (RCV).

How ranked-choice voting works

There are four or more candidates running for office.



At the ballot box, voters rank the candidates in order of preference.



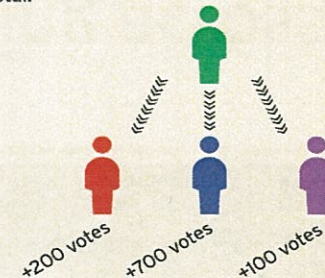
Voters' first choices are counted. If one candidate has a majority of votes, he or she wins. The count is finished. >>>



If no one gets 50% or more of the votes, the last-place candidate, Green, is eliminated.



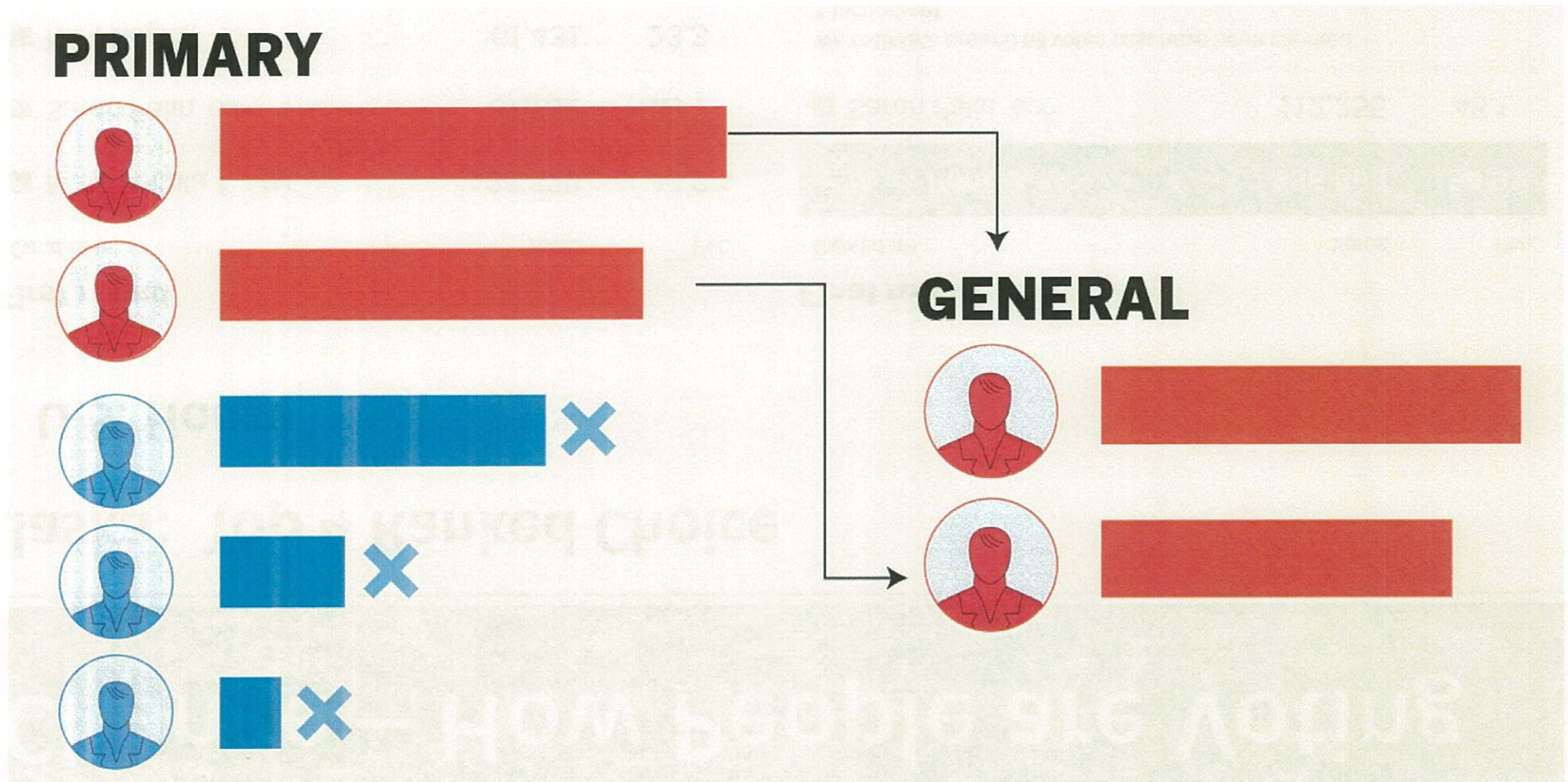
Green's votes are redistributed to his voters' next choices. For instance, if 1,000 voters named Green their first choice, and 200 had Red as their second choice, 700 had Blue, and 100 had Purple those candidates would have those votes added to their total.



The total is tallied. The candidate with the majority of votes wins. If there is still no candidate with a majority, the last two steps are repeated until someone has the majority (50% + 1). In this case, Red is eliminated and her votes are distributed as above.

Change – How People are Voting

Non-Partisan “Top Two” Primary (California)



Change – How People are Voting

Alaska: Top 4 Ranked Choice

■ U.S. House

First round

Candidate	Votes	Pct.
■ Mary Peltola * DEM	128,329	48.8%
■ Sarah Palin GOP	67,732	25.7
■ Nick Begich GOP	61,431	23.3
■ Chris Bye LIB	4,560	1.7
Total Write-Ins OTH	1,096	0.4

We estimate around all votes cast have been counted.

* Incumbent

Final round

Candidate	Votes	Pct.
✓ Mary Peltola * DEM	136,893	54.9%
■ Sarah Palin GOP	112,255	45.1

We estimate around all votes cast have been counted.

* Incumbent

Key Questions

- What is the impact of primary reform on voter turnout and participation?
- Will primary reform generate more contested and competitive primary elections?
- Will primary reform encourage candidates focused on addressing and solving problems?
- Will primary reform enhance voter trust, and does it reflect what voters want?

Summary

- Rhode Island's election system is flawed.
- Many jurisdictions across the country are implementing new ways to improve their elections.
- Recommendation: Rhode Island explore ways to improve participation and competitiveness.

Patricia Breslin

From: gsasse1@cox.net
Sent: Wednesday, May 17, 2023 11:18 AM
To: Patricia Breslin
Cc: jopdycke@openprimaries.org; [REDACTED]
Subject: RE: Question from Senate Non-plurality voting method study commission
Attachments: materials

Pat,

Attached are materials that we referenced on "Top-Two" in California.

Candidates cannot qualify for the November California ballot without participating in the "Top Two" qualifying election.

Please let us know if you need anything else.

Gary

From: Patricia Breslin <pbreslin@rilegislature.gov>
Sent: Monday, May 15, 2023 5:24 PM
To: gsasse1@cox.net
Subject: Question from Senate Non-plurality voting method study commission

Hi Gary,

The next meeting of the Senate study commission is May 31 and it is a public comment session as well as a commission member discussion.

Chair Zurier asked if you can help with the answers to a few questions on the California primary system. They are:

1. Can you provide us copies of the literature you cited that documents the successes of the California "top two" open primary program?
2. Do you know whether a candidate can qualify for the November ballot without participating in the "top two" qualifying election? If so, what are the requirements for that candidate to gain a spot on the ballot?

Thank you for your assistance. Please call if you have any questions.

Best,

Pat



Patricia Breslin, Esq.
Legal Counsel

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Patricia Breslin

From: John Opdycke <jopdycke@openprimaries.org>
Sent: Wednesday, May 17, 2023 10:17 AM
To: Gary Sasse
Subject: materials
Attachments: CA Chamber of Commerce presentation 2.5.2020.pdf

1. https://www.openprimaries.org/wp-content/uploads/2022/06/ROSEINST_QandA_TopTwo_FINAL_060122.pdf
2. <http://schwarzeneggerinstitute.com/schwarzenegger-institute-reports>
3. <https://d3n8a8pro7vhmx.cloudfront.net/openprimaries/pages/418/attachments/original/1440450728/CaliforniaReportFinal8.24small.pdf?1440450728>

jbo

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John Opdycke, President
openprimaries.org



People's Primary

AN OVERVIEW OF RHODE ISLAND'S
PRIMARY ELECTION SYSTEM
AND OPTIONS FOR REFORM

*Prepared
November 29, 2022*



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OVERVIEW

Primary elections rules have a significant impact on whether a society achieves the democratic values of participatory, transparent, competitive and inclusive elections. Electoral procedures can and do influence who seeks office, how issues are framed and ultimately, the quality of governance. In furtherance of these democratic values, and in earnest pursuit of an improved quality of government, we believe that the rules of Rhode Island’s primary system should be revisited. As the Brookings Institution recently said, “Party primaries are now the most consequential elections in American politics.”¹

Since there is no such thing as a “perfect” election system, reforms must be weighed with the understanding that principled trade-offs may be necessary. Although we can speculate about outcomes, it will take scholars and practitioners time to evaluate the precise impacts of any changes that are made.

The goal of this white paper is to describe how Rhode Island’s primary system works and discuss three specific reforms designed to give voters more choices, allow and encourage candidates to speak to all their constituents and incentivize greater participation, transparency and meaningful competition. The options considered are referred to as: 1) top-two nonpartisan primaries; 2) nonpartisan primaries with top-four ranked choice, and; 3) a partisan open primary system.

	 Democratic voter	 Republican voter	 Other
Democratic Closed Primary	✓	✗	✗
Republican Closed Primary	✗	✓	✗
Democratic Semi-open Primary	✓	✗	✓
Republican Semi-open Primary	✗	✓	✓
Open Primary	✓	✓	✓

✓ eligible to vote

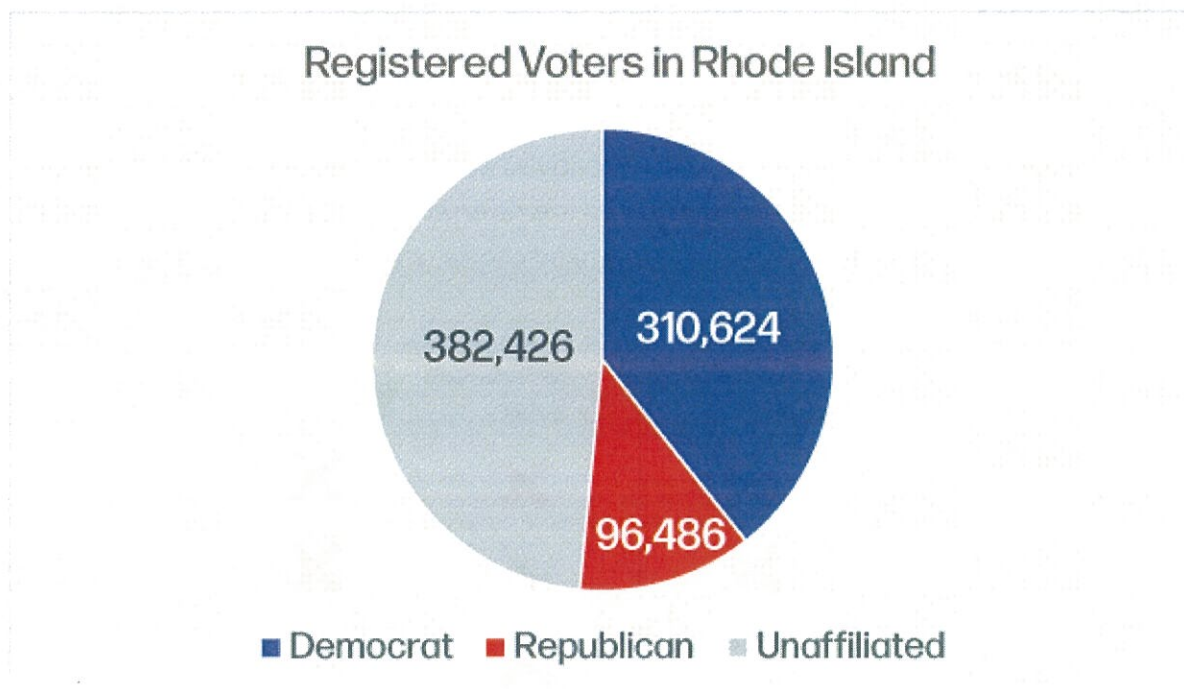
✗ ineligible to vote

 Other: unaffiliated, “Independent” in Rhode Island

RHODE ISLAND'S SEMI-CLOSED PRIMARY

According to the Open Primaries Educational Fund, 15 states have “closed” primaries in which only registered members of a party can participate in that party’s primary. Nineteen states have open primaries where any registered voter can vote in any primary regardless of party affiliation while 16 states, including Rhode Island, fall somewhere in between.²

Rhode Island’s primary system can be characterized as “semi-closed”. This means that voters must be registered party members to vote in either the Democratic or Republican primary, while unaffiliated or independent voters can vote in either party’s primary. Previously unaffiliated primary voters then become registered with the party who’s primary they participated in until they chose to disaffiliate. In 2021, 44% of Rhode Island’s registered voters were not affiliated with either major party.



Registered voters in Rhode Island by affiliation, 2020

Candidates win a Rhode Island primary if they achieve a plurality of the votes cast - a majority of the votes is not required for a candidate to win. This is problematic in any state dominated

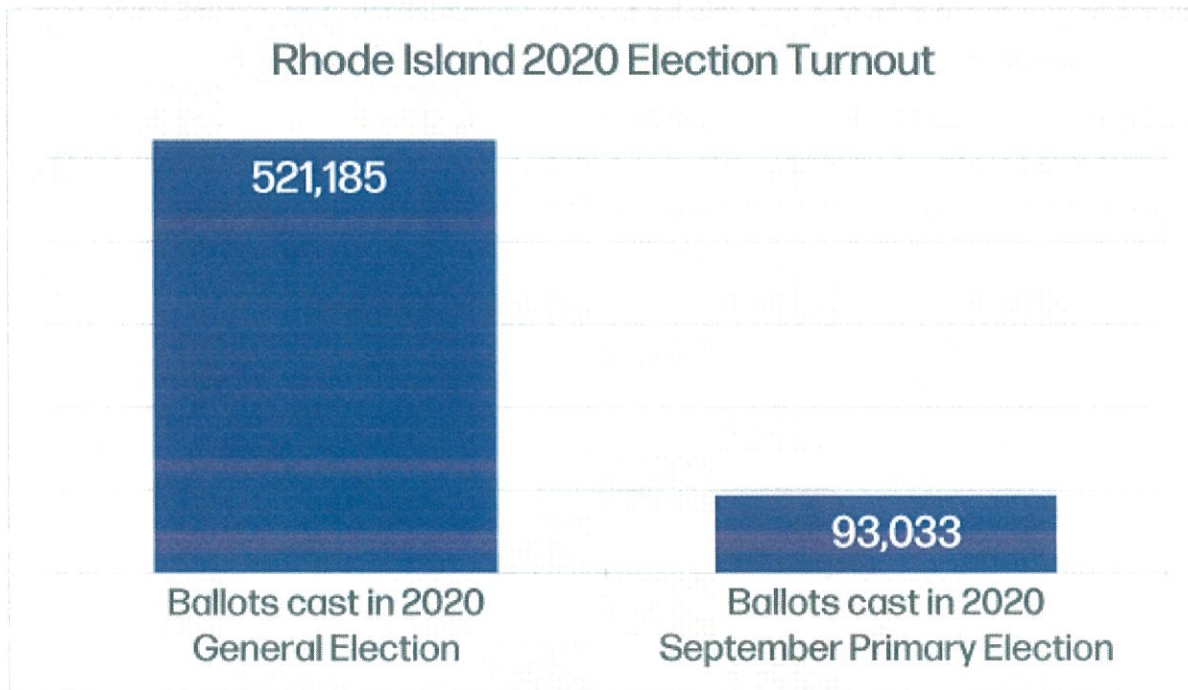


by one party, where a candidate in a multi-field primary can effectively win public office with 35% of the votes, or less, and then not face a competitive opponent in the general election.

SHORTCOMINGS OF RHODE ISLAND'S PRIMARY SYSTEM

For many years, voters, practitioners, pundits and scholars have raised concerns about the current state of primary elections in Rhode Island. These concerns include: the lack of voter participation, limited competition for elected office and the plurality rule.

Although turnout can vary from year to year depending upon factors such as the timing of presidential and statewide primaries or the retirement of an incumbent, participation in the Ocean State primary elections is generally dismal. This is not new nor is it unique to Rhode Island. In 2020, for instance, 521,185 ballots were cast in the statewide general election while only 93,033 voters, or 17.9% of those who participated in the general election, cast a vote in the statewide primary.³



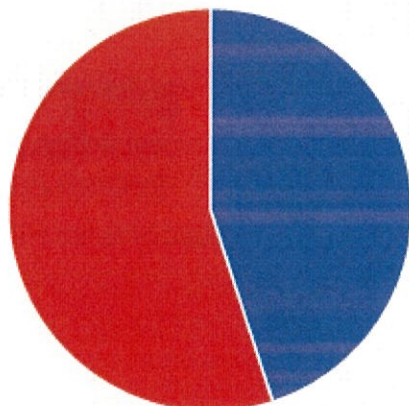
The Bipartisan Policy Center reported that nationally less than 20% of the eligible electorate participated in 2018 primaries nationwide, but “found a small but measurable increase in turnout according to how open a primary is.”⁴

University of Rhode Island political science professors Maureen Moakley and Emily Lynch found participation inequalities in Rhode Island primaries. They noted, “In general, primary voters tend to be more politically interested, hold stronger party ties, and are more connected to their communities.”

Possibly contributing to low turnout is the large portion of registered voters in the state who are registered as unaffiliated – commonly referred to as “independents”. In 2018 Rhode Island was one of only ten states with more “independent” voters than Republicans or Democrats. FiveThirtyEight.com, an online political news site, named Rhode Island as one of the most “elastic” states. They defined an elastic state as one with a higher likelihood of sensitivity to changes in political conditions based on the number of unaffiliated voters. Even though independent voters are eligible to vote in primaries, candidates tend to focus on reaching partisan voters, which tends to reinforce low turnout by independents. This, in turn, reinforces candidates’ decisions to invest few resources into engaging with unaffiliated voters.

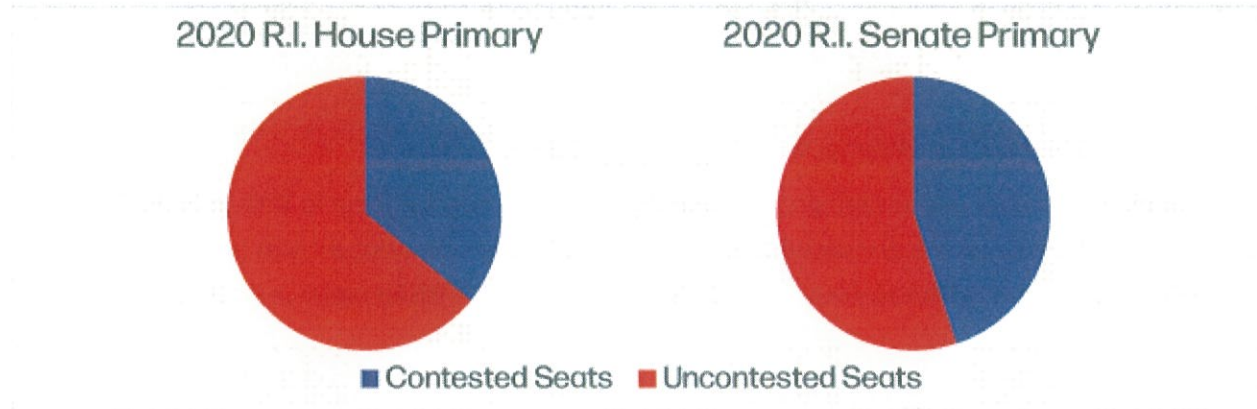
The second concern under Rhode Island’s current system is the lack of competitive elections. Over the past two decades, on average, 45% of the seats in November general elections for the Rhode Island General Assembly have been uncontested.

Rhode Island General Assembly Elections
2000-2022



■ Uncontested Seats

The primaries are even less competitive. In the 2020 Democratic primaries 64% of the House seats and 55% of the Senate seats were uncontested.⁵



Only 4.5% of Rhode Island General Assembly races in the November general elections between 2018 and 2020, inclusive, could be defined as “competitive”, i.e., had a margin of victory under five percent. In almost one-third (31.5%) of the legislative races the gap between the winner and loser ranged from 16 to 30%.⁶

Uncontested seats are not unique to the Ocean State. However, national rankings placed Rhode Island as one of the least competitive states based on the low number of open seats, the low number of incumbents in contested primaries and the low number of seats with competition between candidates from the two major parties. In 2018 Rhode Island was one of the five least competitive states based on the number of registered voters in each party.⁷ Factors that can contribute to uncompetitive primary elections include incumbency advantage, one party domination, party endorsements and state ballot access.

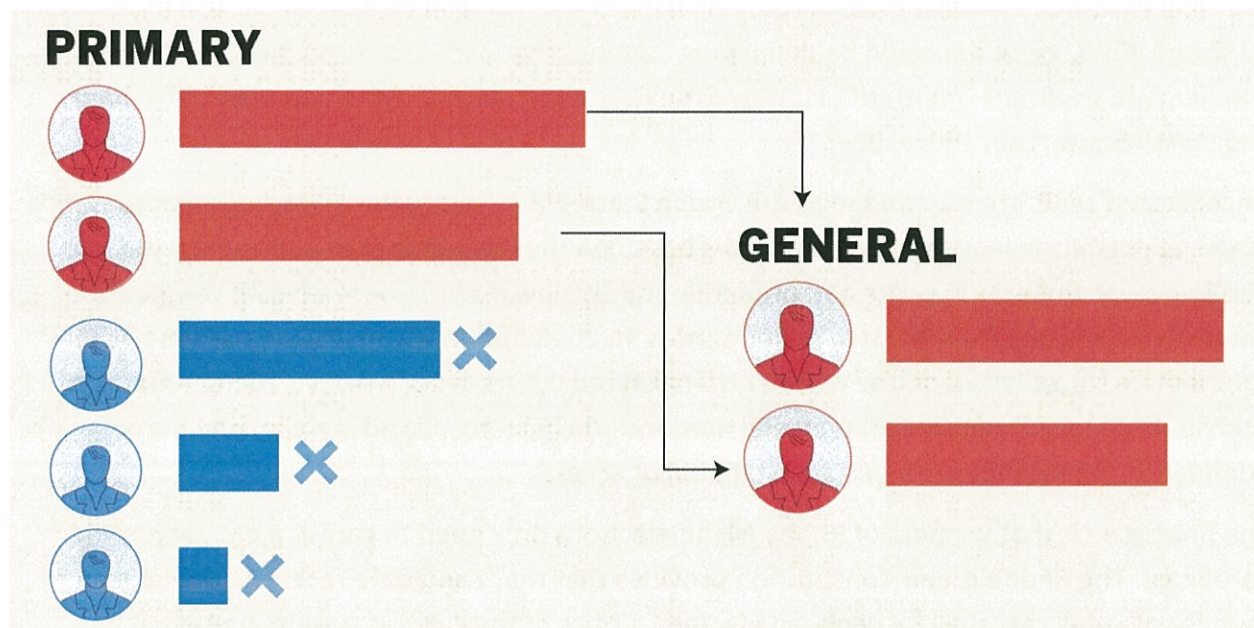
The final issue is that winners of Rhode Island elections only need to garner a plurality of the votes cast. The Rhode Island Constitution provides that the “candidate receiving the largest number of votes cast shall be declared elected.” Critics of the current system argue that a majority vote requirement could lead to the election of office holders with a clearer mandate to build a consensus to solve problems. It is unclear whether ranked choice voting would require a state constitutional amendment. The Rhode Island Constitution says that the candidate receiving the largest number of votes cast shall be declared the elected. Since 1994, there have been three gubernatorial elections where the winner received a plurality of the votes, but fell short of a majority (1994, 2010, and 2014). For example, in 2010 Lincoln Chafee won the

governorship with 36% of the vote. It is also becoming increasingly possible that more General Assembly elections will see senators and representatives elected by a plurality. In a 2021 special state senate election in Providence the winner got about one-third of the votes cast.

PRIMARY REFORM OPTIONS - THE PROS AND CONS

Three viable options to encourage greater participation and competition in Rhode Island's primary election system are discussed below. They are 1) top-two nonpartisan primaries; 2) nonpartisan primaries with top-four ranked choice, and; 3) a partisan open primary system.

TOP TWO PRIMARY SYSTEM



Source: Los Angeles Times

A number of states currently use the top-two nonpartisan election system. This system was enacted in Nebraska in 1936, Washington in 2004 and California in 2010. The top-two nonpartisan primary election system is characterized by a common ballot listing all candidates for each state and federal office regardless of party affiliation. Any registered voter can participate in the primary. The top two vote-getters regardless of party advance to the general

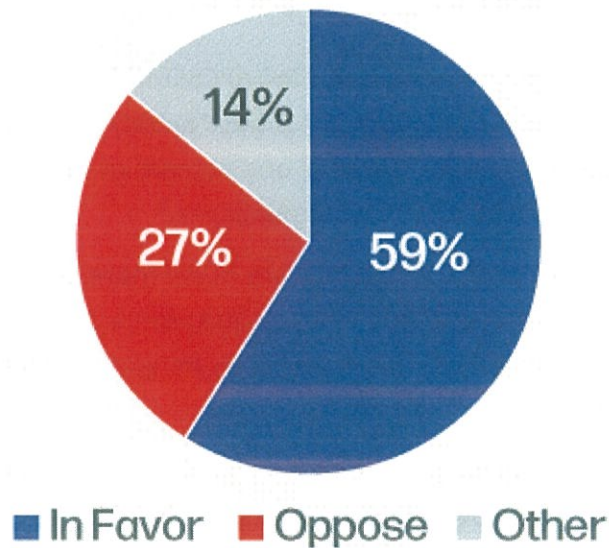


election, commonly held in November. The candidate who receives the majority of votes in the general election is elected.

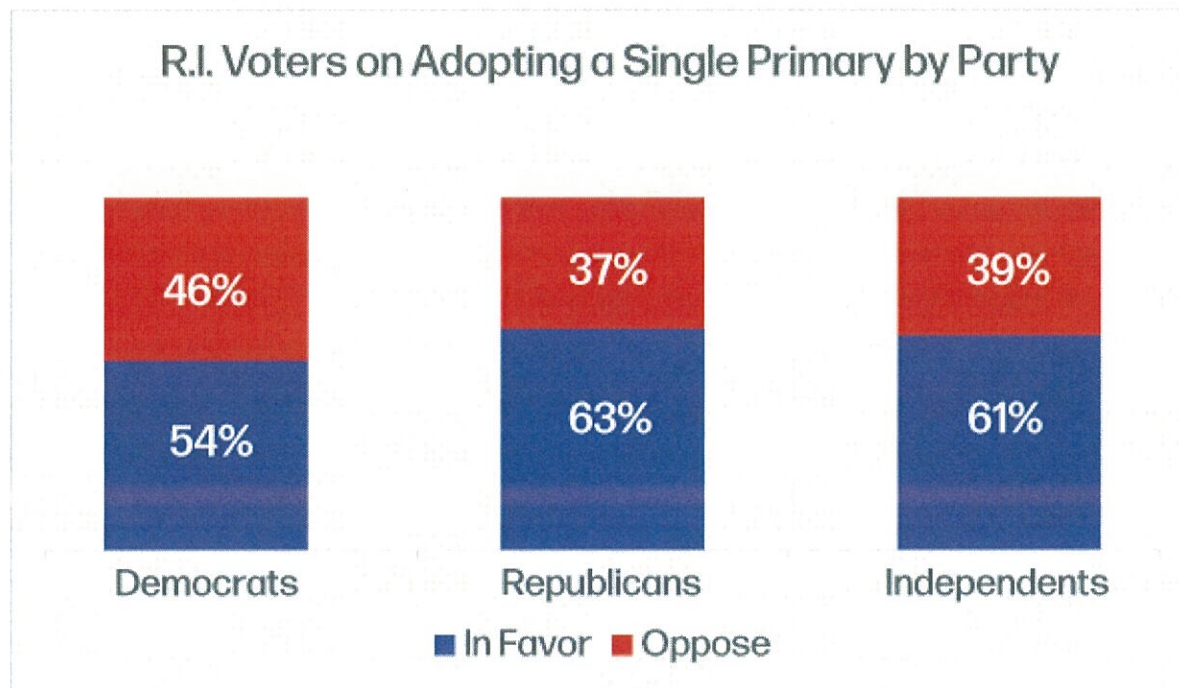
The top-two system is nonpartisan because voters can choose any candidate on the single ballot. It is also nonpartisan because all candidates, regardless of their party, compete against each other. However, it is informationally partisan because candidates' party affiliation is shown on the ballot. The goals of top-two primary are to provide greater freedom of choice for all voters, make primaries user friendly by eliminating partisan procedural hurdles, foster the election of pragmatic leaders, increase the likelihood that that November general elections are competitive and ensure the winners receive a majority of the votes cast.

Surveys suggests that top-two primaries enjoy broad public support in Rhode Island and elsewhere. A public opinion poll conducted for the Hassenfeld Institute for Public Leadership in May 2022 found that 59% of Rhode Island's registered voters favored adopting a single primary, while 27% opposed it.

Rhode Island Voters on Adopting a Single Primary



Fifty-four percent of Democrats, 63% of Republicans, and 61% of Independents favored a single primary plan.



Based on their experience with top-two primaries, 60% of Californians recently described that system as “mostly a good thing”, while 26% thought it was “mostly a bad thing”. However, there were partisan differences in the data. Seventy-one percent of Democrats consider “top-two” to be a good reform as compared to 45% of Republicans.⁸

There may be consequences when primary elections are made more participatory and democratic. For instance, party affiliations may become less relevant, and voters may have less incentives to affiliate with political parties. This in turn may mitigate the hyper partisanship that plagues today’s political system.

Assessing the impact of primary reforms is complex because it does not take place in a vacuum. In California, for instance, voters approved top-two primaries in 2010, but around that same time they also adopted redistricting reforms and new budgeting practices for their state. Cause-effect analysis is not always exact, but the challenges in measuring results should not obscure the outcomes. The Public Policy Institute of California found that approval of the State



Assembly went from 9% in 2010 to 49% in 2020.⁹ In 2016 the *Los Angeles Times* editorialized that “fiscal gridlock was a thing of the past.”¹⁰

We recommend that a top-two nonpartisan primary system be given serious consideration during the 2023 session of the General Assembly. In doing so some of the following questions and issues should be considered:

- 1) Could top-two nonpartisan primaries have a positive impact on voter turnout and participation? Voter motivation is complicated and difficult to assess. Turnout can be impacted by many factors including the existence of high-profile contests like presidential and gubernatorial primaries, the state’s political and economic climate, voting procedures and the existence of competitive races. What should be obvious is that Rhode Island’s semi-closed primary system is not “user friendly” and likely discourages participation. Currently, unaffiliated voters (who are over 40% of registered voters in our state) have to register as a party member in order to vote in a partisan primary. We do not have data to analyze the impact this has on participation, but low participation would likely be less of a concern if Rhode Island adopted either an open primary or some type of nonpartisan primary plan.

There are always trade-offs when undertaking electoral reforms. For instance, another question that should be raised is what impact would a general election with candidates from the same party have on turnout? Would voters without a candidate from their party on the ballot - so-called “orphaned voters” - skip voting in those races? Would creating orphaned voters in same-party general elections be a reasonable cost of removing partisan barriers to participation, and increasing general election competition for usually safe seats?

- 2) Will the Top Two system encourage more pragmatic candidates focused on problem solving to seek elected office? Proponents believe the top two system will entice candidates who are less partisan, less ideologically rigid and more “pragmatic” to run because they will see the format as giving them a better chance to compete. Skeptics counter that this may not occur because it will remain difficult to encourage such candidates to run. Further, parties may discourage these candidates and shape the field through candidate recruitment party endorsements and fund raising. Students of electoral politics have not reached a consensus on the moderating impact, if any, of the top-two election system. This is not surprising because researchers investigating moderation use different types of data and methods.¹² However, the most current scholarship suggests that top-two primaries have had a positive impact in that they have reduced legislative



polarization. “Recent work by political scientist Christian Grose finds that not only are top-two nonpartisan primary systems associated with greater moderation, but also that open partisan primary systems are, as well.”¹¹

It is also worth noting that the only Republican members of Congress who voted to impeach Donald Trump in 2021 and survived their primary in 2022 came from California and Washington, states with a top two nonpartisan primary system.

Even if top-two nonpartisan primaries do not attract more centrist voters they could still influence the behavior of the electorate. Andrew Sinclair, a political scientist at Claremont McKenna College speculated, “Republicans in overwhelmingly Democratic districts could work with independents and centrist Democrats to support moderate Democrats in the primary (and then in general elections).”¹²

- 3) Will the top-two system generate more contested, and competitive, elections? The lack of competitive races has a dampening impact on voter participation, and more importantly, government accountability. In Rhode Island, on average, a majority (53%) of General Assembly seats were uncontested in 2018 and 2020, and another 14% were virtually uncontested with the margin of victory exceeding 30%.¹³

As the *Boston Globe* opined, “The right to vote is fundamental, but when there’s only one candidate to vote for, that right is drained of its substance.”¹⁴ Democracy works best when voters have choices. Rhode Island’s primary election laws appear to be suppressing voters by depriving them of choices in too many races.

Rhode Island’s primary system was premised on the assumption that the state has two competitive political parties. This has not been the case for a while due to demographic and economic changes as well as the national realignment of the two parties. Although there is no certain way to entice more people to seek elected office, the General Assembly should rethink the impact our semi-closed primary has on decision-making by prospective candidates, and by extension, on competition.

TOP-FOUR PRIMARY WITH RANKED CHOICE

How ranked-choice voting works

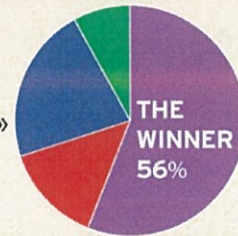
There are four or more candidates running for office.



At the ballot box, voters rank the candidates in order of preference.



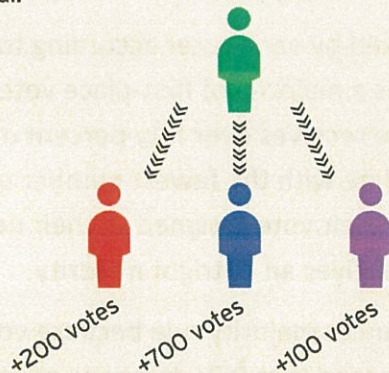
Voters' first choices are counted. If one candidate has a majority of votes, he or she wins. The count is finished. »»»



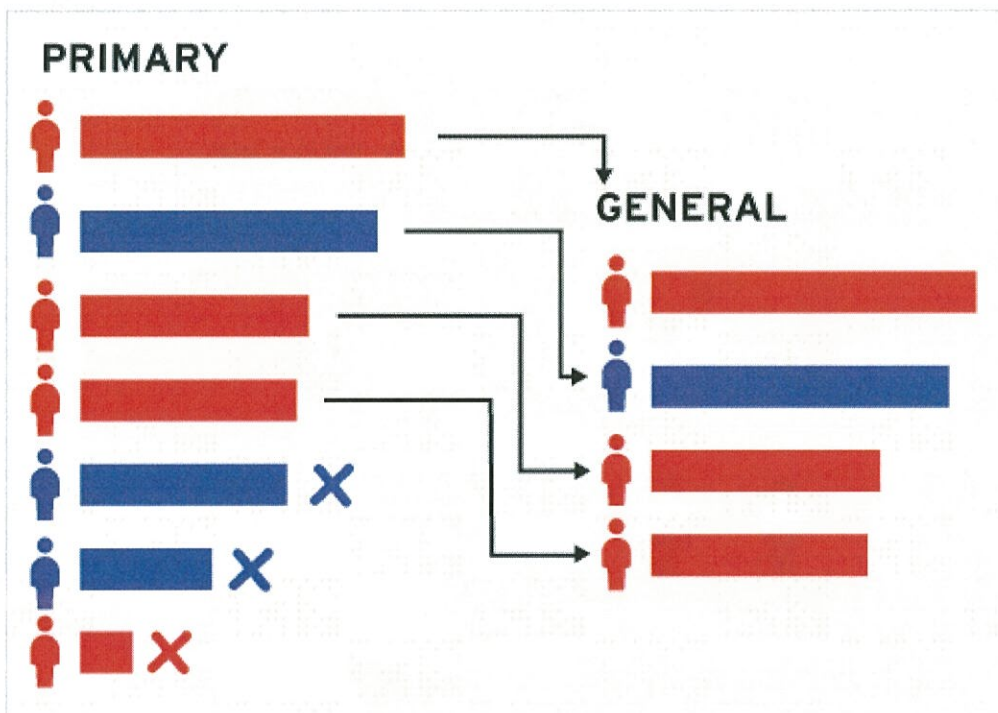
If no one gets 50% or more of the votes, the last-place candidate, Green, is eliminated.



Green's votes are redistributed to his voters' next choices. For instance, if 1,000 voters named Green their first choice, and 200 had Red as their second choice, 700 had Blue, and 100 had Purple those candidates would have those votes added to their total.



The total is tallied. The candidate with the majority of votes wins. If there is still no candidate with a majority, the last two steps are repeated until someone has the majority (50% + 1). In this case, Red is eliminated and her votes are distributed as above.



As of September 2022, 53 cities, one county, and two states (Maine and Alaska) were projected to use ranked choice voting (RCV) in their next elections.¹⁵

An option to consider is Alaska’s top-four rank choice nonpartisan election system. Similar to top-two nonpartisan primary elections in both California and Washington, the Alaska primary ballot in the initial round lists all the candidates seeking an office. It differs from top-two states because the four top vote-getters advance to the general election, with the winner determined by RCV.

In the RCV system candidates are ranked by each voter according to their individual preferences. If an office seeker obtains a majority of first-place votes in the first round he or she is declared the winner. If no candidate receives over fifty percent of the vote, a ranking process commences. In each round the candidate with the fewest number of votes is eliminated. Voters whose first choice is disqualified have their vote assigned to their next highest selection. Ranking continues until a candidate receives an outright majority.

Supporters of RCV believe that it enhances majority rule because vote counting continues until someone has a majority. They also contend that RCV dampens negative campaigning because



candidates that “go negative” may adversely influence the second-choice vote of those whose first choice was being harshly criticized. Advocates also say RCV limits the “spoiler effect”. For example, some Rhode Island pundits speculate that in both the 2010 and 2014 Rhode Island gubernatorial elections the third-party candidates’ votes kept the Republican candidate from winning the Governorship. A similar example is Ralph Nadar “spoiling” Albert Gore’s run for the presidency in 2000 or Jill Stein’s candidacy in 2016.

Proponents say RCV elections provide outcomes more reflective of consensus than partisan primaries where extremist candidates may have an advantage in multi-candidate primaries, particularly in heavily gerrymandered districts. Examples include the success of Trump endorsed candidates in recent GOP primaries in Pennsylvania and Arizona, among other places. Finally, they argue that RCV minimizes “strategic voting” where voters feel the need to vote for the “lesser of two evils” while also promoting diversity of political viewpoints.

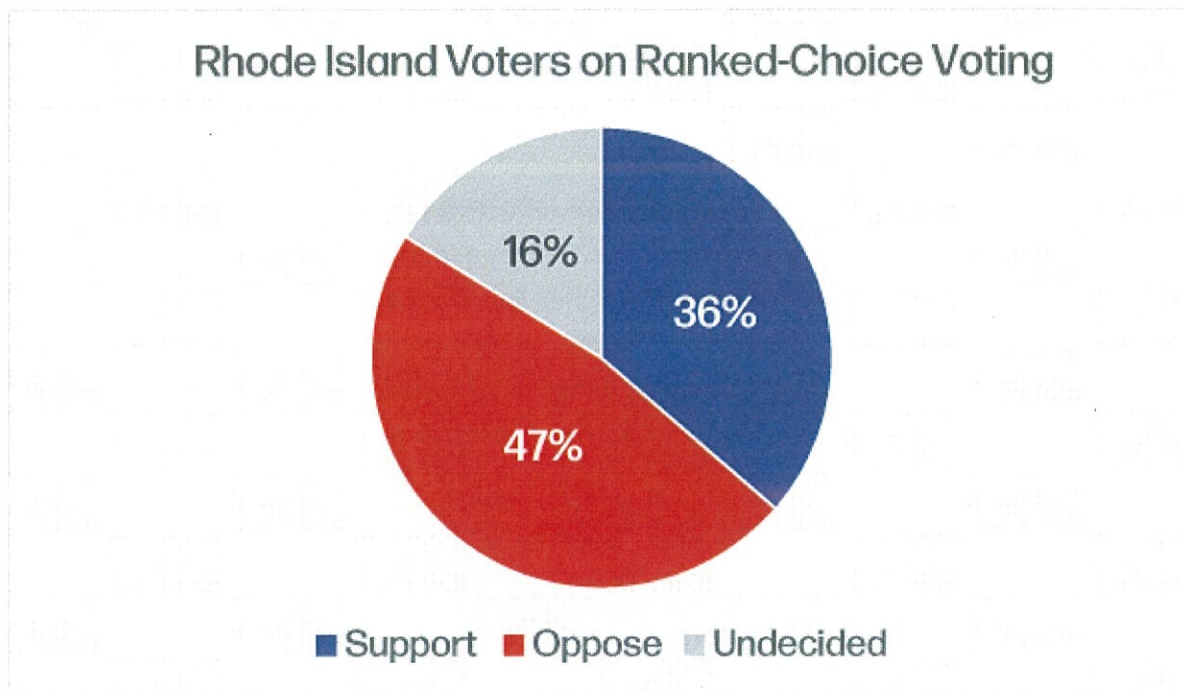
RCV is more complicated than voting for one candidate. The National Conference of State Legislatures summarized the concern as follows; “Because RCV is a divergence from traditional and historic voting methods in the United States there are concerns that the voting populace will not be properly educated about the new system.”¹⁶ This could bring into question potential participation inequities. For instance, even though New York City spent about \$15 million to educate voters about how RCV works there was still a measure of confusion. Nonetheless, a fundamental question that the General Assembly should ask about RCV is this – does it favor or penalize any socio-economic class of voters, particularly as it relates to voter exhaustion.

An exhausted vote happens in RCV when all of a voter’s candidates are eliminated. The exhausted votes, therefore, no longer factor into an election. In the recent Alaska RCV primary, the Alaska Division of Elections instructed voters to “rank as many or as few candidates as you like”¹⁷ Unfortunately, ballots lacking second, third or fourth -place preferences won’t count if those voters first place was disqualified.

There are also concerns expressed about the transparency of RCV. The 2010 mayoral race in Oakland California took ten rounds of tallying to declare a winner. The ultimate winner received less than a quarter of first -place votes with a 1.9% margin of victory.¹⁸




It should be noted that Rhode Islanders generally do not support RCV based on what they currently know. A May 2022 Hassenfeld Institute for Public leadership poll found that 36% of

the state's registered voters supported RCV while 47% said they opposed it and 16% were undecided.



Finally, RCV in Rhode Island may require a constitutional clarification as the state constitution states that "the person or candidates receiving the largest number of votes cast shall be declared the elected."

OPEN PRIMARIES

	 Democratic voter	 Republican voter	 Other
Democratic Closed Primary	✓	✗	✗
Republican Closed Primary	✗	✓	✗
Democratic Semi-open Primary	✓	✗	✓
Republican Semi-open Primary	✗	✓	✓
Open Primary	✓	✓	✓

✓ eligible to vote

✗ ineligible to vote

 Other: unaffiliated, "Independent" in Rhode Island

A minimalist approach to primary election reform in Rhode Island would be to replace the current semi-closed system with an open primary, similar to what was in place in our state prior to 1977. In an open primary voters may select one party's ballot and vote in that party's primary without being affiliated with the party. As the National Conference of State Legislatures explained, "Voters may choose which primary to vote in privately. The choice does not register the voter with the party."¹⁹

An open primary may be more consistent with today's political realities, particularly in Rhode Island, where unaffiliated or independent voters predominate in what is effectively a strong one-party state.



Arguably, the open primary could be seen as a potential way to enhance voter participation in the nominating process. Politically, open primaries could also moderate political choices by allowing centrists in one party an opportunity to vote for a candidate in another party's primary that they find to be more acceptable. Skeptics contend that open primaries weaken political parties, and leaves the nominating process vulnerable to manipulation by permitting partisans to vote for the other party's weaker candidate (as pundits say happened in Rhode Island in 1976).

HOW DO 'TOP TWO' AND 'FINAL FOUR WITH RCV' COMPARE?

There is no perfect election system. The answer to the question of which reform would result in a primary election system that is equitable and incentivizes greater participation and competition is largely in the eyes of the beholder. At this point we do not have an answer to this question.

As a practical matter the systems have more in common than they have differences. The top-two differs only in the number of candidates that advance to the general election and that "ranking" in the second round is unnecessary because in a two candidate race the winner will by definition receive a majority of the votes cast. Nevertheless, both systems are built upon the same principled foundation. They are nonpartisan in terms of candidate participation and competition while retaining partisan competition based on party labels on the ballot. They also lower barriers to the participation of both unaffiliated and partisan voters.

THE WAY FORWARD

Rhode Island's primary system was designed for a political time and competitive reality that no longer exists. The purpose of primary elections is evolving. Primary elections have begun to move away from their partisan purposes and are increasingly functioning as a mechanism for winnowing candidates for the general election.²⁰ Given this reality it is time to reconsider Rhode Island's method of primary elections, and give voters "A People's Primary" designed to select candidates with broad-based support for statewide office and the General Assembly.



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OPENPRIMARIES

A QUIET REVOLUTION

The Early Successes of California's Top Two Nonpartisan Primary

August 2015

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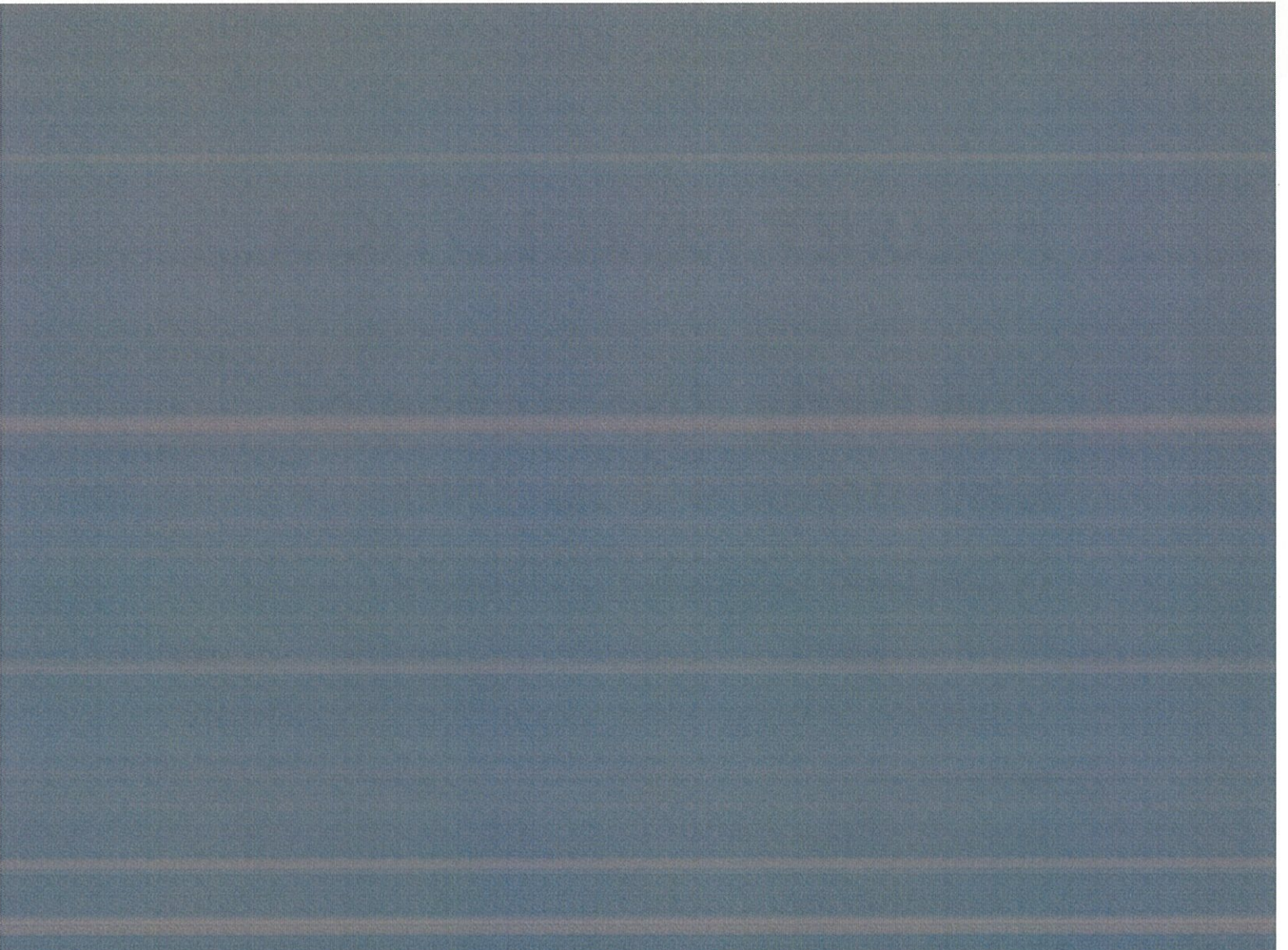
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A QUIET REVOLUTION

**The Early Successes of California's
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by Jason Olson and Omar Ali

August 2015

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Summary

The enactment of the Top Two Nonpartisan Primary in California has had three significant consequences since it went into effect in 2012:

1) **More competitive elections.** California elections are now the most competitive in the nation, with a record number of incumbents defeated under the new system. Additionally, the nonpartisan nature of Top Two has created competition even in districts where one major party holds a significant advantage over the other with the introduction of “same-party” races.

2) **All voters have the right to equal participation.** Under the old partisan system, nearly 80% of California’s legislative and Congressional races were decided in the primary. This discouraged participation from or outright excluded voters not associated with the majority party of their district. Under the new system, all voters now have full access to both the first and final round of the election process. This has forced candidates to appeal beyond their party’s base.

3) **A functional legislature.** California is no longer a national symbol for legislative dysfunction. Members of the legislature, who must now be elected by building diverse coalitions of voters rather than toeing the party line, head to Sacramento incentivized to continue similar outreach while in office.

We believe that the rapid and transformative impact of Top Two in California can serve as a blueprint for others looking to reduce legislative dysfunction and voter disengagement.

“California is no longer a national symbol for legislative dysfunction. Members of the legislature, who must now be elected by building diverse coalitions of voters rather than toeing the party line, head to Sacramento incentivized to continue similar outreach while in office.”

Background

California voters enacted comprehensive campaign finance and disclosure regulations in 1974 after the Watergate scandal.¹ While these regulations provided voters, academics, and journalists with a comprehensive view of the individuals and organizations funding electoral activity in California, they did not prevent or diminish the “partisanization” of the political and legislative environment. To the contrary, by 2009, California’s Legislature was ranked among the most dysfunctional in the nation and voter approval was in the teens.

Still, members of the legislature enjoyed a very high incumbency return rate. Party leaders used a complicated system of gerrymandering and semi-closed partisan primaries to ensure that incumbents were guaranteed re-election and would vote the party line.

Seeking an answer to partisan tensions and gridlock in the 1990s, Californians had enacted a blanket primary measure via ballot in 1996. The blanket primary allowed all voters to participate in any party primary race.² However in 2000, the U.S. Supreme Court rejected the blanket primary design ruling that parties, as private entities, had a right to exclude non-party members from participating in their nominating process.

After the blanket primary was dismantled in 2000, public confidence in the state’s governing institutions plummeted. The impact was negative and far reaching.³ There were protracted budget battles, near government shutdowns, and other crises manufactured for partisan gain. During this time, elections were largely noncompetitive. Only two incumbents in the entire state were defeated in all elections between 2002 and 2010.⁴ The legislature’s public approval rating sunk to a record low of 14% by 2010.⁵

In 2003, California voters revolted. In that year, Governor Gray Davis was recalled. He was replaced by the iconoclastic and nonpartisan Arnold Schwarzenegger.

A broad left/right reform coalition evolved to eliminate the structural partisanship built into the electoral system. This coalition remade California politics by creating a nonpartisan and fully independent redistricting commission and enacting a nonpartisan Top Two primary.⁶

The Top Two Nonpartisan Primary coalition included independent voter associations, business leaders, the AARP, Chamber of Commerce, Common Cause, issue advocacy organizations, philanthropists and reform-minded elected officials—most notably State Controller Steve Westly, Governor Schwarzenegger, Lt. Governor Abel Maldonado, and former Assemblyman Steve Peace. These disparate forces came together to bring a constitutionally sound open primary system back to California. They recruited nationally known constitutional scholars and election law experts, studied the Supreme Court’s decision, and drafted a new open primary initiative to meet the Court’s specific tests. In 2010, despite being opposed by every political party in California, the California Top Two Primaries Act (Proposition 14) passed with 54% of the vote.⁷ The state has used the system to conduct all statewide and congressional elections since 2012.

Understanding California's Political Dysfunction Under the Old Partisan System

Prior to the implementation of Top Two nonpartisan primaries, California was considered one of the most partisan political environments in the nation. Run-away deficits and gridlocked budgets were standard. Lawmakers brave enough to work across party lines found a system rigged against them.

When former Assemblymembers Joe Canciamilla, a Democrat, and Keith Richman, a Republican, established a bipartisan working group to discuss solutions for pressing problems facing the state, they were forced to meet in secret. Members of the group refused to publicly acknowledge their participation in the effort for fear of retribution from party leadership. The working group was ultimately forced to dissolve.⁸

Partisan Dysfunction in the Legislature...

The performance of the legislature was described by analysts and the general public as dysfunctional and extremely partisan:

- A 2005 Government Performance Project of the Pew Charitable Trust graded the California government a “C-minus;” the lowest grade in the nation.⁹
- A 2009 National Journal review of state governments named California among the most dysfunctional state governments.¹⁰
- In 2010, the California State Legislature broke a record for consecutive days without a budget and missed its constitutional budget deadline in 16 of the previous 20 years, largely due to partisans acting as a bloc to take advantage of the state’s two-thirds budget requirement.¹¹
- The 2010 Legislature had a record-low 14% public

approval rating and record-high 72% disapproval rating.¹²

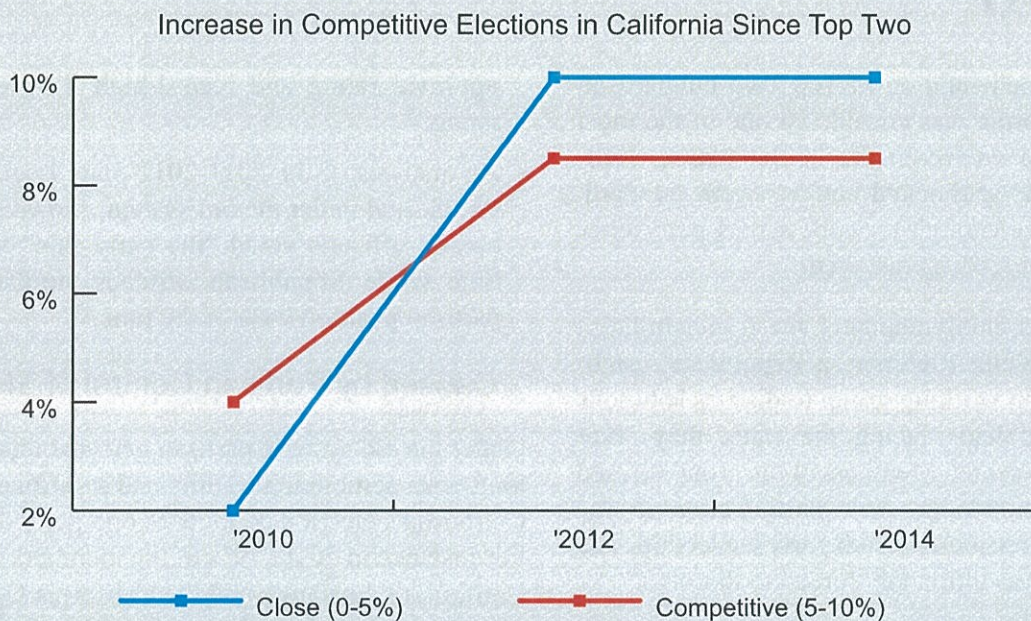
- An analysis of the 2011-2012 State Legislature, the last elected under the old system, showed that Democratic officials voted “the party line” 99% of the time while Republican officials similarly took a partisan position 94% of the time.¹³

...Caused by Partisan Control of Elections

Under the old system, partisan gerrymandering and long-term demographic shifts had solidified most of California’s election districts as one-party districts. For instance in 2010, 79% of the members of the California Legislature and the California Congressional delegation did not face competitive November elections.¹⁴ This meant that once the candidate of the dominant major party in a district won their primary, which under the old system was limited primarily to members of their own party, they did not face a real challenge in the November election.

Essentially, in realpolitik terms, 79% of California elected officials won office without having to communicate with voters outside of their own party. Furthermore, this led to a system that incentivized toeing “the party line” over what was best for all voters. This was a structural flaw—not a personal failing on behalf of individual elected officials.

Competitive Top Two Nonpartisan Elections Break the Partisan Gridlock



Source: Statewide Election Results for 2010, 2012, and 2014, *California Secretary of State*

Since enacting the Top Two primary system, political observers around the country have been impressed with the relative lack of acrimony in California's Legislature compared with both Congress and California's own recent history. As we will discuss later, the state has passed balanced budgets on time in each year since 2012 and has enacted legislation on issues that previously would have triggered partisan intransigence. Such issues include education financing, immigration, and gun control.¹⁵

What changed? In a word, "competition." California's Legislature transformed because a growing number of its members are elected in competitive elections. This may sound like a trivial point. It is not.

Under Top Two California Boasts Most Competitive Elections in America

An annual study by the Lucy Burns Institute of all state legislative elections in the country from 2008 to 2014 shows California as the most competitive for the 2012-2014 period and shows a 25% increase in competition over California's 2010 score (the last year of partisan elections), which ranked the state ninth.¹⁶

Analyzing elections based on the margin of victory also shows a dramatic increase in electoral competitiveness. The number of races deemed "close," with a margin of victory of less than 5%, increased from less than 3% in 2010 to about 10% in both 2012 and 2014. Races deemed "competitive," with a margin of victory between 5% and 10%, more than doubled from 4%

in 2010 to 8.5% in both 2012 and 2014.

Moreover “blowouts,” races with margins of victory of more than 20% and uncontested races, decreased significantly from 79% in 2010 to 56% in 2012 and to 63% in 2014.¹⁷ Similarly, a Public Policy Institute of California study of the 2012 election found a significant increase in competitiveness—especially among Congressional races.¹⁸

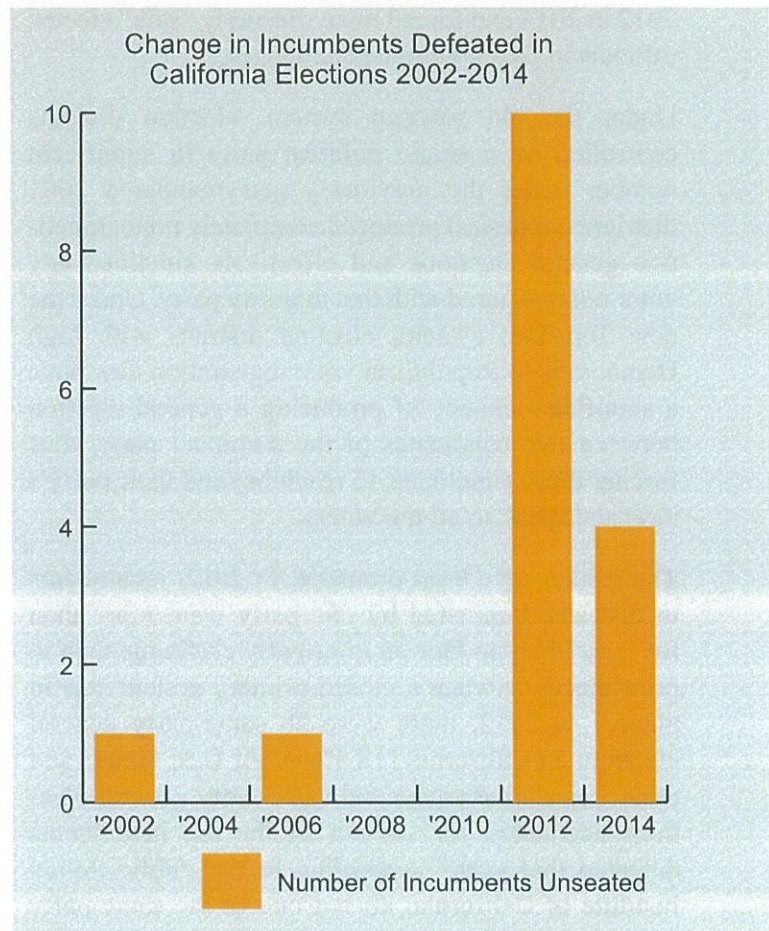
Today, approximately 50% of all races in California are competitive.¹⁹ The legislature is filled with elected officials who have, by virtue of the design of the Top Two system which allows all voters to participate in both the primary and the general election, built broad coalitions in order to win their seats.

Record Number of Incumbents Defeated Under Top Two

The switch from semi-closed, partisan primaries to Top Two nonpartisan primaries has led to a dramatic increase in the number of unseated incumbent elected officials.

Under California’s old partisan system, only two incumbents were defeated in all State Legislative and Congressional elections between 2002 and 2010 (five election cycles). The “unlucky” two included Democratic Congressman Gary Condit, who was caught up in the Chandra Levy murder investigation in 2002 (he was later exonerated), and Republican Congressman Richard Pombo, who was caught up in the 2006 Jack Abramoff bribery scandal. During this period in California, unless they were being investigated for murder or caught in a national bribery scandal, a political incumbent’s chance of re-election was 100%.

The implementation of Top Two saw incumbents defeated in record numbers. In 2012, 10 incumbents lost their re-election bids, including Pete Stark, who was unseated by fellow Democrat Eric Swalwell in a same-party general election. He had never once faced a competitive November re-election during his nearly 40 years in Congress. In 2014, another four incum-



Source: Statewide Election Results for 2002-2014, California Secretary of State

bents were defeated.²⁰ In addition, many long serving incumbents retired ahead of the 2012 elections rather than face the new political landscape.²¹

Top Two “Same Party” Races Bring Competition to Formerly Noncompetitive Districts

Same-party races, a new feature under Top Two, also significantly increased competitiveness by introducing actual contests in districts where one major party holds a significant advantage over the other (e.g., election districts in the largely Democrat-held San Francisco Bay Area). Ironically, while opponents of Top Two often point to same-party races as evidence of a lack of competition under the system, same-party races actually produced 50% of the total incumbent defeats from

2012 to 2014 and forced many formerly “safe” elected officials to face legitimate challenges.

Under the old partisan system, election districts controlled by a single political party (a significant number under the previously gerrymandered 2001 district boundaries) produced completely noncompetitive general elections and effectively sidelined any voter not registered with that majority party. Under the new Top Two system, election districts with high Democratic or Republican voter registration now have a significant chance of producing a general election between two candidates of the dominant party, thus forcing those candidates to reach beyond their party’s base and speak to all the voters.

The results have been dramatic. In 2012, incumbents in districts dominated by one party were more than twice as likely to face an intra-party challenge than in prior elections when a closed primary system was in place.²² In 2012, there were 28 same-party general elections in California (18.3% of all U.S. House and State Legislative races) and same-party general elections accounted for six out of the ten incumbents defeated that year.²³ According to the Public Policy Institute of California, all but one of the same-party general election races occurred in districts that were unlikely to have hosted competitive races in the past.²⁴ In 2014, there were 25 same-party general elections in California (16.3%), and they accounted for one of the four incumbents defeated.²⁵

Opponents of the Top Two nonpartisan primary point to the races illustrated above and the growing number of Democrat-on-Democrat and Republican-on-Republican general elections as evidence that Top Two restricts voter choice. They assert that a general election in which the two candidates are registered members of the same party is, by definition, restrictive. This is false and misleading. In fact, the incumbency rates previously cited show that under the old system, the Democrat vs. Republican general elections in the vast majority of California legislative districts were the very definition of restrictive and noncompetitive. Same-party general elections actual-

ly allow the voters, rather than party insiders, to decide who represents a particular district.

Same-party contests of this kind also demand more from the electorate. The California Journal of Politics and Policy notes that Internet searches about candidates on Google increased 15% in areas with same-party races. The researchers concluded that without the ability to rely solely on party identification, “many California residents subsequently searched online for additional information.”²⁶

“Under the new Top Two system, election districts with high Democratic or Republican voter registration now have a significant chance of producing a general election between two candidates of the dominant party, thus forcing those candidates to reach beyond their party’s base and speak to all the voters.”

Top Two Allows All Voters to Participate Equally

While the old, partisan system was highly restrictive in terms of which voters were able to cast meaningful votes, Top Two has expanded that universe to include all voters. This is especially impactful as the number of independent voters (called “No Party Preference”) continues to overtake both major parties in total share of the electorate.²⁷ Close to 43% of Americans currently self-identify as independent.²⁸

The percentage of California voters that identify as independent has been rising steadily for the last fifteen years. In 2007, independent voters comprised 18% of the California electorate. Today, they represent close to 25%.²⁹ The growth of minority voters identifying as independent has followed a similar course with the fastest growth among Latinos; 17% of Latino voters now identify as independent.³⁰

Under the old system, these voters were second-class citizens. Their tax dollars were used to conduct semi-closed primary elections that they, themselves, could not participate in, or else faced significant hurdles to do so.³¹ In practice, only major-party voters living in a district that their party controlled could have a meaningful vote. Major-party voters “marooned” in districts controlled by the opposite party, as well as third-party voters, almost never had a meaningful opportunity to participate under the old system.

All voters in California are now able to participate meaningfully, whether they opt to join a political party or not. Every voter has access to the primary round where the issues are often shaped and the two front runners are selected. Every voter can select from among all the candidates, not just members of their own party. Voters are afforded general elections which are increasingly competitive. Moreover, the votes of independents and minority party members matter in ways that they did not before because all voters are

able to join the political conversation during the first round.

“All voters in California are now able to participate meaningfully, whether they opt to join a political party or not. Every voter has access to the primary round where the issues are often shaped and the two front runners are selected.”

Case Studies: Competitive Elections and Equal Voter Participation Impact Politics

Two vivid examples of Top Two's dramatic impact are the 2012 election between Democratic incumbent Michael Allen and Democrat Marc Levine, vying for the 10th Assembly District seat in Marin County, and in the 2015 special election between Democrats Steve Glazer and Susan Bonilla for the 7th State Senate District seat in the East Bay region of the San Francisco Bay Area.

2012 Assembly District 10: Incumbent Michael Allen (D) vs. Insurgent Marc Levine (D)

Under the old partisan system, incumbent Democrat Michael Allen would have been assured an easy general election victory against an “also-ran” Republican in his majority Democratic district in Marin County. Instead in 2012, under the new Top Two system, Allen found himself facing fellow Democrat Marc Levine in the general election. Levine had finished second in the primary. In addition to speaking to Democrats, Levine reached out to the independents and Republicans in his district; voters who had been ignored for the past decade. Allen conducted a highly partisan general election campaign by labeling Levine “not a real Democrat” for his outreach efforts among non-Democrats. Levine’s broad outreach proved the winning strategy. He was able to win the race by creating a coalition of Democrats, Republicans and independents.³²

2015 Special Election: Steve Glazer (D) vs. Party-Endorsed Susan Bonilla (D)

The special election for State Senate District 7, located in the Democratic Party-dominated San Francisco Bay Area, produced a similar dynamic to the Levine vs. Allen race. The election featured a Top Two showdown between Democrat Steve Glazer and Democrat Susan Bonilla.³³ In the primary campaign, Glazer reached out to independents and Republicans, as well

as Democrats while Bonilla campaigned exclusively to Democratic voters. After Bonilla and Glazer finished in the top two, Glazer increased his outreach to independents and Republicans by appealing as widely as possible. The State Democratic Party endorsed Bonilla. The party and select unions spent millions of dollars attacking Glazer as “not a real Democrat” for conducting a campaign designed to appeal to a diversity of voters. Bonilla ran a traditional campaign designed primarily to appeal to the Democratic Party base, a strategy which would have been more than sufficient to assure her victory under the old system against an “also-ran” Republican challenger. Glazer won the race by 10 points.

Both these examples demonstrate that the Top Two primary system in California is offering candidates more independence from party leaders and more opportunities to build coalitions which not only win elections but better represent, and are more accountable to, the actual make-up of their districts. Neither major party has been immune from such forces; 2012 races for California State Assembly alone saw seven districts with Republican same-party races.³⁴

A Functioning Legislature

The impact of Top Two's competitive elections and voter inclusion on the behavior of the State Legislature was immediate. While legislative performance is extremely difficult to quantify, political observers and legislators themselves have pointed to a number of examples of functional governance replacing partisan dysfunction. In addition to those examples and statements made by key political figures, the legislature's public approval ratings have soared.

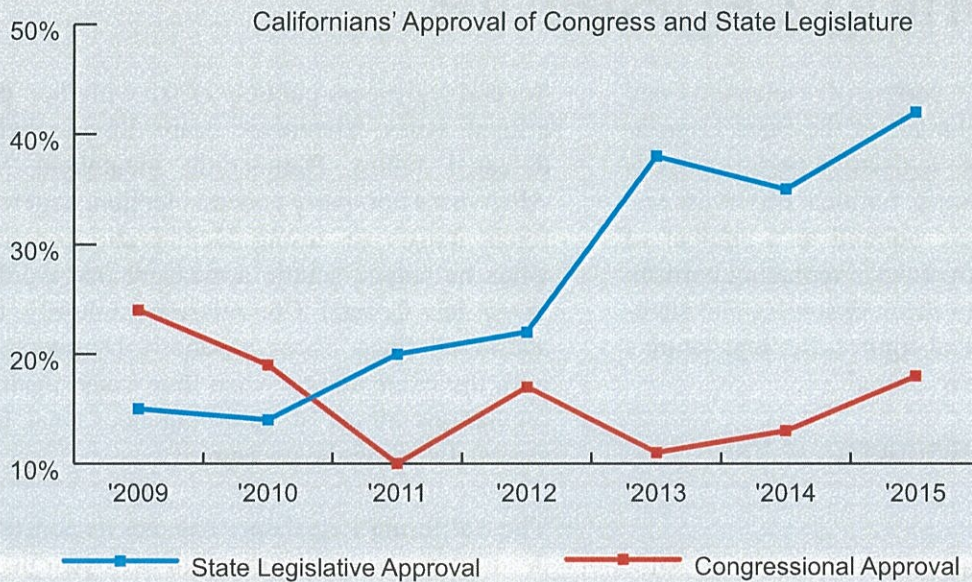
Governance, Not Partisanship, in the Legislature

The Legislature that took office in January 2013, while two-thirds Democratic (California's first two-thirds majority since 1933), was populated by many Democratic legislators who owed no debt to party insiders and special interest groups. Similarly, many Republicans in the chamber were, by virtue of the diverse coalitions they had constructed during their election campaigns, able to challenge their own party leadership and enter into issue-by-issue conversations and coalitions with their Democratic colleagues.

Quantifying the performance of a state legislature is a notoriously difficult task. "Performance" is, by definition, subjective. We can assert that legislators who win office by building broad coalitions do the same once in office. An electoral system that incentivizes candidates to reach beyond the activist base of their own party produces similar behavior once in office.

Without attempting to pass judgment on whether the bills passed by California's new cooperative legislature are beneficial to the state (which is an ideological question), we can cite accomplishments noted by political observers and politicians as evidence of a new environment in the legislature. Some of these include:

- Several legislators publicly broke with their party on critical votes. Democrat Marc Levine, who had defeated fellow Democratic incumbent Michael Allen in a same-party general election, angered environmentalists (a strong Democratic constituency) when he helped scuttle a measure that would have given the Coastal Commission authority to levy additional fines. Three Assembly Democrats broke with the labor unions when they voted against new regulations aimed at curtailing additional big box stores, defeating the measure.³⁵
- The California Legislature has met its constitutional deadline for budget approval in each year under Top Two. While some might assert that is due to the lowering of the number of votes required to pass a budget, it should be noted that many government functions can be "hijacked" by partisans for partisan gain (for instance judicial and cabinet post approvals currently held up by Republicans in Congress), and that Top Two has removed both the incentive to do so as well as the power of the party leadership to command it because legislators must now answer to all voters.³⁶
- Republican State Senator Anthony Cannella put it bluntly when he stood with Democrats to co-sponsor legislation allowing undocumented immigrants to obtain drivers licenses. He remarked that the redistricting and nonpartisan election changes were freeing lawmakers from obedience to their party bases and allowing them to engage more broadly on specific issues. "It's given more courage to my Republican colleagues," he said. "They were afraid of getting primaried. Now, it's not just their base they have to appeal to."³⁷



Source: Field Research Corporation, The Field Poll #2498 and #2500, February 21-25, 2015.

Legislature's Public Approval Ratings Rebound

California's new legislative environment, which is less partisan-controlled and more cooperative, has led to a dramatic increase in public approval ratings for its state legislature. Public approval has risen to its highest levels since 2001. So, while Congressional approval ratings among Californians remain low at 18% approval and 73% disapproval (virtually unchanged since 2010), 42% of Californians now approve of their state legislature (up from 14% in 2010) and 44% now disapprove (down from 72% in 2010).³⁸

Current and Former Legislators See Top Two Change

In addition to Senator Canella, other members of the Legislature, both past and present, have commented upon the culture change in Sacramento.

- Assemblywoman Autumn Burke of the California Legislative Black Caucus, which has expanded its membership from eight to twelve under the Top Two primary system recently stated, "as challenging as

the open primary system has been for many of us, it's kept us in touch with our constituents."³⁹

- Democratic Assembly Speaker Toni Atkins told one reporter that the combination of Top Two and term limits has created "wholehearted change in how the legislature is structured and comes together."⁴⁰
- Legendary Democratic politician Willie Brown, the former Assembly Speaker and the 41st Mayor of San Francisco, declared Top Two a game-changer for the state. "Like it or not," notes Brown, "the Glazer-Bonilla battle is likely to be the template for future elections statewide. The top-two primary system has taken elections out of the hands of party insiders and allowed competing Democrats and Republicans to strike out on their own to attract crossover voters."⁴¹

Conclusion

Since Top Two's implementation in the 2012 election cycle, California's elections have (1) become the most competitive in the nation, (2) expanded the power of meaningful voting to all citizens, and (3) transformed the state's once hostile partisan climate into one focused on functional governance. California's Top Two experience offers a path forward to transform America's partisan paralysis into a system focused on functional governance that benefits the people, not the political parties.

The increase in electoral competitiveness in California has been significant. Independent studies cite California's elections as the most competitive in the nation. Incumbents have been defeated in record numbers after decades of near-invulnerability. Same-party races, despite being cited by opponents of Top Two as a sign of lack of competition, have empowered voters, especially those in election districts dominated by one party, compelling candidates to appeal to all voters. Moreover under Top Two, not only has California's Legislative Black Caucus grown, but Latino voters, a growing number of whom are registered independents, now have full access to the electoral system.⁴²

For those seeking a way forward from the partisanship and polarization that has enveloped Congress, state legislatures and the country as a whole, the early success of Top Two in California can serve as a national model. In a number of ways such structural political reform efforts are part of the nation's long struggles, from the Populists, Women's Suffragists, and Civil Rights activists of the nineteenth and twentieth centuries to expand democracy in the nation.⁴³

The empowerment of all voters, particularly independents, to participate equally in the process has had profound effects on the state's political culture. In several case studies, candidates in same party races who pursued strategies to engage all voters won significant victories over party endorsed candidates who conducted partisan campaigns. Voters, independents and members of parties alike, now have full

access to the first round of elections and the opportunity to cast ballots in genuinely competitive contests in November.

The direct impact of increased electoral competitiveness and equal participation among all voters has changed the environment in the State Legislature. A number of examples have been cited by politicians and political observers as signs of governance winning out over partisanship: passage of on-time budgets, legislators breaking with their parties on key votes, and bipartisan measures to solve formerly intractable problems. In addition to the many current and former legislators commenting positively on the new environment, the Legislature's public approval ratings have significantly rebounded from their rock-bottom lows under the old partisan system to the highest level since 2001.

In conclusion, it can be confidently asserted that the old system sent elected representatives to Sacramento and Washington with no incentive to cooperate with representatives from the opposing major party. The new system, by contrast, rewards candidates who build diverse coalitions during their election campaigns and who arrive in Sacramento and Washington with a mandate from their constituents to do more than toe the party line.

For Americans fed up with the partisan paralysis of their government, the Top Two Nonpartisan Primary offers real hope for the future. The early success of Top Two in California, what the San Francisco Chronicle has described as a "quiet revolution," serves as an important model nationally to engage partisanship and government dysfunction. However, given the degree of partisan control of government and the political parties' hostility toward relinquishing their power to voters, it will require a concerted long-term effort to win this reform across the nation. The benefits of that labor, however, are promising.⁴⁴



Jason D. Olson is the Director of IndependentVoice.Org. He was a leader in the passage of California’s Proposition 14 in 2010 and the redistricting reform efforts of 2008 and 2010 in the state. A graduate of the University of California at Santa Barbara, he is an independent political analyst and activist who has appeared on CNN, Fox News, C-SPAN, and California radio stations.



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⁵ “Californians and their government”, *Public Policy Institute of California*, March, 2010.

⁶ Closed primaries are part of several ways in which competition has been limited by party control of the electoral process through legal measures. For a detailed history and analysis of the structural barriers placed on voters, see Mickey Edwards, *The Parties Versus the People* (New Haven, CT: Yale University Press, 2012), Jacqueline S. Salit, *Independents Rising: Outsider Movements, Third Parties, and the Struggle for a Post-Partisan America* (New York: Palgrave Macmillan, 2012), and Omar H. Ali, *In the Balance of Power: Independent Black Politics and Third-Party Movements in the United States* (Athens: Ohio University Press, 2008).

⁷ Statewide Election Results for 2002-2014, *California Secretary of State*.

⁸ Daniel Weintrub, “Working across the Aisle: Stories from the California State House,” *Saint Mary's Magazine*, June 30, 2011.

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¹⁰ Louis Jacobson, “The Six Most Dysfunctional State Governments,” *National Journal*, July 13, 2009. <http://www.nationaljournal.com/njonline/the-six-most-dysfunctional-state-governments-20090713>

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¹⁹ Statewide Election Results for 2002-2014, *California Secretary of State*.

²⁰ Statewide Election Results for 2002-2014, *California Secretary of State*.

²¹ Michael B Marois, “California Nonpartisan Districting Ousts Life Incumbents,” *Bloomberg*, March 19, 2013.

²² “Test-driving California's Election Reforms,” *Public Policy Institute of California*, September 2012.

²³ Statewide Election Results for 2002-2014, *California Secretary of State*.

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²⁵ Statewide Election Results for 2002-2014, *California Secretary of State*.

²⁶ Sinclair, Betsy; & Wray, Michael. (2015). "Googling the Top Two: Information Search in California's Top Two Primary." *California Journal of Politics and Policy*. <http://escholarship.org/uc/item/1fg8b858>

²⁷ In 2010, the last year under which the old partisan primary system in California was in place, of the state's approximately 17 million registered voters, around 44% were registered Democrat, 31% Republican, 20% independent (previously termed "Decline to State"), and 5% third party voters. "Report of Registration—October 18, 2010," *California Secretary of State*. <http://www.sos.ca.gov/elections/report-registration/15day-gen-10/>

²⁸ Jeffrey M. Jones, "In U.S., New Record 43% Are Political Independents," *Gallup*, January 7, 2015.

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³⁹ Hannah Glover, "Black Caucus Grows Stronger under Calif.'s Nonpartisan Primary System," *Independent Voter Network*, April 28, 2015.

⁴⁰ Jeremy B. White, "California campaign spending boosts business-friendly Democrats," *Sacramento Bee*, November 23, 2014.

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OPENPRIMARIES

Open Primaries is a movement of diverse Americans who believe in a simple, yet radical idea: no American should be required to join a political party to exercise his or her right to vote.

The mission of Open Primaries is to advocate for open and nonpartisan primary systems, counter efforts to impose closed primaries, educate voters, train and support spokespeople, and participate in the building of local, state and national open primaries coalitions.

For more information about
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**SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY
VOTING METHODS AND RUNOFF ELECTIONS FOR GENERAL
ASSEMBLY AND GENERAL OFFICER PRIMARIES**

NOTICE OF MEETING

DATE: Wednesday, May 10, 2023

TIME: 2:00 P.M.

PLACE: Senate Lounge – State House

AGENDA:

- I. Call meeting to order

- II. Sara Gideon, former Speaker of the Maine House of Representatives

Maine's exploration of and actions taken on alternative voting methods
 - a. Landscape of Maine elections and voting
 - b. Legislative, referendums and judicial action in the implementation of ranked choice voting
 - c. Review of ranked choice voting in action in state, federal and municipal elections
 - d. Analysis of ranked choice voting in action between 2018 and 2022

- III. Adjournment

No public testimony will be received during this meeting.

The meeting will be televised by Capitol Television, which can be seen on Cox Communications Channels 15 and 61 for high definition, i3Broadband (Formerly Full Channel) on Channel 15 and on Channel 34 on Verizon.

Live streaming is available at <https://www.rilegislature.gov/CapTV/Pages/default.aspx>.

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401-222-6655
shayes@rilegislature.gov

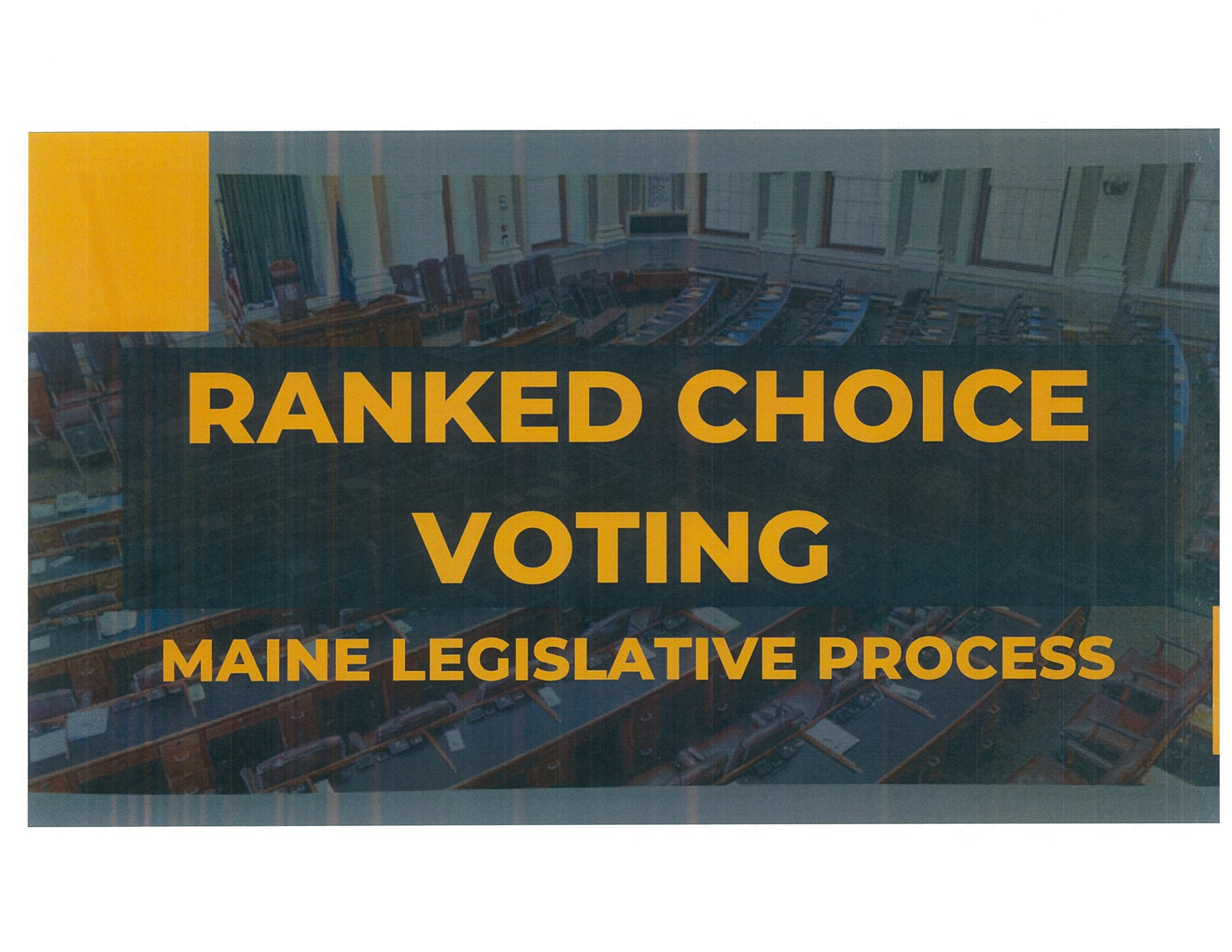
POSTED: FRIDAY, MAY 5, 2023, 11:00 A.M.

May 10, 2023

<https://ritv.devosvideo.com/show?video=ec3543fb1c68&apg=817504e5>

Sara Gideon, former Speaker of the Maine House of Representatives, Maine's exploration of and actions taken on alternative voting methods

<https://www.rilegislature.gov/commissions/NPVC/commdocs/5-10-23%20Non-plurality%20voting%20Methods%20Study%20Com'n-%20Maine-RANKED%20CHOICE%20VOTING%20PRESENTATION%20-%20SG-2.pdf>



RANKED CHOICE VOTING

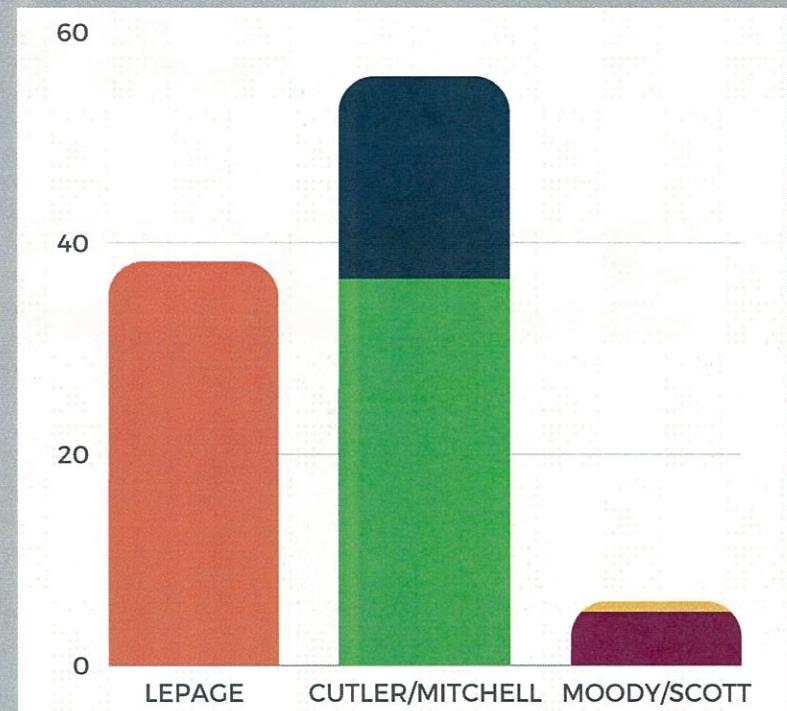
MAINE LEGISLATIVE PROCESS

A BRIEF HISTORY

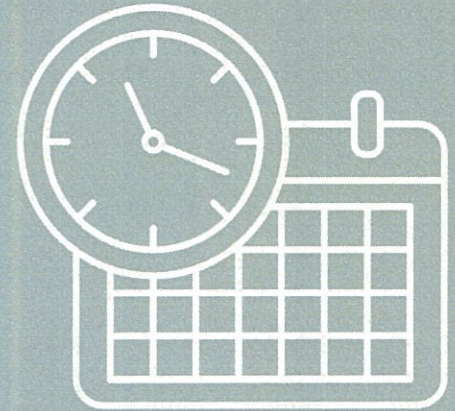
High Voter Participation

- 2022 - 75% in general election
- 2020 - 78% in general election
- 2018 - 65% in general election
- 2016 - 72% in general election

2010 Results



TIMELINE



2012

RCV introduced in the Legislature

2014

Governor LePage re-elected in another 3-way race

2016

RCV passes as a referendum

2018

RCV implemented for the first time on the June Primary ballot

2016 BALLOT QUESTION

“AN ACT TO ESTABLISH RANKED-CHOICE VOTING”

Do you want to allow voters to rank their choices of candidates in elections for U.S. Senate, Congress, Governor, State Senate, and State Representative, and to have ballots counted at the state level in multiple rounds in which last-place candidates are eliminated until a candidate wins by majority?”

State of Maine Sample Ballot
Democratic and Republican Primary Election, June 12, 2018

Instructions to Voters

To vote, fill in the oval like this ●

To rank your candidate choices, fill in the oval:

- In the 1st column for your 1st choice candidate.
- In the 2nd column for your 2nd choice candidate, and so on.

Continue until you have ranked as many or as few candidates as you like.

Fill in no more than one oval for each candidate or column.

To rank a write-in candidate, write the person's name in the write-in space and fill in the oval for the ranking of your choice.

Governor	1st Choice	2nd Choice	3rd Choice	4th Choice	5th Choice
Cote, Adam Roland Sanford	○	○	○	○	○
Dion, Donna J. Biddeford	○	○	○	○	○
Dion, Mark N. Portland	○	○	○	○	○
Eves, Mark W. North Berwick	○	○	○	○	○
Mills, Janet T. Farmington	○	○	○	○	○
Russell, Diane Marie Portland	○	○	○	○	○
Sweet, Elizabeth A. Hallowell	○	○	○	○	○
Write-in	○	○	○	○	○

Governor	1st Choice	2nd Choice
Fredette, Kenneth Wade Newport	○	○

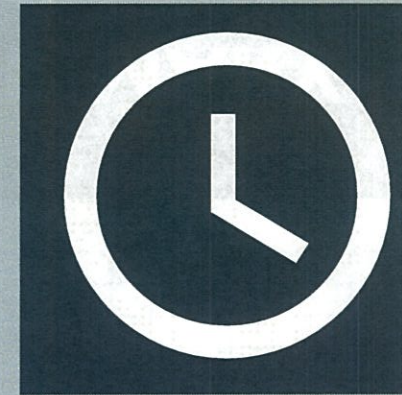
2017



**SOLEMN
OCCASION
FROM THE MAINE
SUPREME COURT
REQUESTED**



**CONSTITUTIONAL
AMENDMENT
REQUIRING 2/3rds
SUPPORT
INTRODUCED**



**SPECIAL
LEGISLATIVE
SESSION
RESULTS IN
DELAY OF
IMPLEMENTATION**

2018 SECOND CONGRESSIONAL DISTRICT RACE



Bruce Poliquin
ROUND 1 - 46.33%



**FINAL ROUND -
49.4%**



Jared Golden
ROUND 1 - 45.58%



**FINAL ROUND -
50.6%**



Tiffany Bond
ROUND 1 - 5.71%



Will Hoar
ROUND 1 - 2.37%





Paul R. LePage
@Governor_LePage



I've signed off on the CD2 election result as it's no longer in federal court. Ranked Choice Voting didn't result in a true majority as promised—simply a plurality measured differently. It didn't keep big money out of politics & didn't result in a more civil election [#nepolitics](#)



ADDITIONAL IMPACTS

PORTLAND CHARTER COMMISSION ELECTION



Steve DiMillo

**ROUND 1 - 21%
1,873 1st Place Votes**

**FINAL ROUND -
2276 1st place
votes**



Patricia Washburn

**ROUND 1 - 4%
347 1st Place Votes**

**FINAL ROUND -
3478 1st place
votes**



ADDITIONAL IMPACTS



ONGOING LITIGATION AND UPDATES TO THE LAW

- PRESIDENTIAL PRIMARIES AND ELECTIONS
- ATTEMPTS AT CONSTITUTIONAL AMENDMENTS
- REGULAR LEGISLATIVE EFFORTS TO REPEAL



CLOSING AND QUESTIONS

Ranked-choice voting does not apply to the general election races for governor or the state legislature

Watch later Share

General Election:

~~Governor~~

~~State legislators~~

MORE VIDEOS

0:09 / 4:24

CC YouTube

The image shows a YouTube video player with a green background. On the left is a photograph of the Maine State Capitol building. On the right, a cartoon character of a man in a suit and glasses holds a document. The text 'General Election:' is followed by 'Governor' and 'State legislators', both of which are crossed out with large red 'X' marks. The video player interface includes a title bar at the top, a progress bar at the bottom, and various control icons.

**SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY
VOTING METHODS AND RUNOFF ELECTIONS FOR GENERAL
ASSEMBLY AND GENERAL OFFICER PRIMARIES**

NOTICE OF MEETING

DATE: Wednesday, May 31, 2023
TIME: 2:00 P.M.
PLACE: Senate Lounge – State House

AGENDA:

- I. Call meeting to order
- II. Commission Member discussion
- III. Public comment
- IV. Adjournment

This meeting is open to the public.

The meeting will be televised by Capitol Television, which can be seen on Cox Communications Channels 15 and 61 for high definition, i3Broadband (Formerly Full Channel) on Channel 15 and on Channel 34 on Verizon.

Live streaming is available at <https://www.rilegislature.gov/CapTV/Pages/default.aspx>.

PUBLIC TESTIMONY PROCEDURAL INFORMATION WRITTEN TESTIMONY

- Written testimony is strongly encouraged and may be submitted to pbreslin@rilegislature.gov.
- Indicate your name and organization when applicable.
- **DEADLINE:** Written testimony should be submitted no later than three (3) hours prior to the posted meeting time. Every effort will be made to share written testimony submitted before the deadline with commission members prior to the hearing. Testimony received after deadline will be posted to the website as soon as possible.
- For faster processing, it is recommended that testimony is submitted as a PDF file.
- Written testimony submitted to any commission of the Rhode Island Senate is considered public and will be posted to and will be accessible on the General Assembly website. After posting to the General Assembly website, submitted documents may be accessible at <https://www.rilegislature.gov/commissions/NPVC/SitePages/members.aspx>.

VERBAL TESTIMONY Individuals may testify in person.

If you have any questions please contact pbreslin@rilegislature.gov or 401-276-5556.

May 31, 2023

Commission member discussion and Public comment.

<https://ritv.devosvideo.com/show?video=6e8cbcd49e77&apg=817504e5>

May 22, 2023

The Hon. Senator Samuel D. Zurier
Chair, Non-Plurality Voting Commission
82 Smith St.
Providence, RI 02903

RE: Discussion and Comments for Non-Plurality Voting Commission

Dear Chairman Zurier and Members of the Commission:

Regrettably I am unable to attend the May 31 meeting of the Special Senate Commission to Study Non-Plurality Voting Methods and Runoff Elections for General Assembly and General Officer Primaries, as I am traveling out of the country this week. Because I will be unable to participate in the scheduled discussion, I wanted to provide my comments regarding the Commission's work thus far, in the event it may aid the drafting of the body's findings and final report in the months ahead.

Objectives and Solutions

One particular area of note is the discussion offered in some of the testimony the Commission has received regarding the propensity of non-traditional voting methods to affect voter turnout, in the various jurisdictions where such methods have been enacted around the nation. As an elections administrator, low voter turnout is always a concern, and we strive to ensure voters have easy access to the ballot so that they may participate in our elections process with minimal effort. However, we have noted that low-turnout elections most often occur when there are either no opposition candidates, or when those candidates on the ballot have failed to engage or inspire the voters. I am curious if there is any additional data the Commission may acquire that correlates increased turnout to utilizing non-traditional voting methods, to help inform our recommendations.

In particular, I am interested if such data is capable of discerning elections that may have had low turnout simply due to lack of interest in the candidates, or lack of competition, as opposed to those with hotly contested races and issues. If the main objective of considering deploying new voting methods in Rhode Island is to increase turnout, I am looking for data that demonstrates such an increase has a causal and clearly correlated relation to the change in voting methods. In other words, if the state, and election officials, are to go through the expense and administrative lift of switching some election processes to ranked choice or runoff voting, I believe it is important that such an effort be justified as being capable of solving the expressed problem it is seeking to solve: increasing voter engagement and turnout.

If the effect is measurably negligible, then the question that should be asked is whether it is truly worth the effort in replacing one voting system with another, if it demonstrably does not solve that voter engagement problem or substantially increase turnout. I believe that is an important question the Commission should consider in its final report, because different voting methods may very well have the potential to solve different problems, in dissimilar ways. For instance, questions of candidate competition, majority support, and turnout all have different underlying causal factors, and deploying a non-traditional voting method to solve some or all of those problems can have varying or even unintended results. Some voting methods seem more apt at potentially remedying some of those problems, but could exacerbate voter confidence if poorly deployed. Other methods may simply trade one set of problems for another, effectively resolving one issue – majority support, in the case of runoff voting – while creating other problems for elections administration, or restricting the field of eligible candidates (such as a scenario where two candidates possessing similar viewpoints appear on the general election ballot, following a primary runoff, essentially trading a “competition” issue for a “viewpoint choice” issue).

Because of these concerns, I would offer that establishing a clear objective to the Commission's recommendations is critically important for determining the proposed solution, if any, the Commission proposes in its final report. Being able to succinctly answer which problem is the objective to solve – low turnout, candidate competition, majority support, etc. – is integral to determining the most effective solution to apply.

Constitutionality

Another question I have that has not yet been well-defined in testimony the Commission has received is the legal effect of the Rhode Island Constitution's "plurality" elections provision on efforts to enact non-plurality voting methods. I have anecdotally heard different arguments as to the effect of that provision on party primaries, and am curious if there is any case law that has settled the matter in the past. In effect, party primaries are state law-mandated functions of general elections, and they are conducted under the same rules and manner as general elections. For instance, the constitutional provision of the 30-day voter registration deadline has been applied, uniformly, to both party primaries and general elections. As such, my question is whether the plurality provision likewise applies uniformly? In other words, is a primary election, designed to determine ballot eligibility for a general election, considered "part" of the general election process, accordingly making the plurality provision applicable to it?

If that is the case, then a recommendation of the Commission should be for the General Assembly to propose a ballot question to modify this section of the state constitution, prior to the enacting of any legislation establishing non-plurality voting, to avoid potential court challenges that would disrupt the elections process. Perhaps the General Assembly can pose a question to the Rhode Island Supreme Court, to issue an advisory opinion specific to the relationship of the plurality provision to primaries? Article X, Section 3 grants either house of the General Assembly that power to request such an advisory opinion, and doing so in this matter may provide a great deal of clarity and permanence in drafting future legislation, or eschew the need for a constitutional amendment entirely. In any event, a thorough legal review and analysis of this question, either via the state supreme court or otherwise, is warranted to avoid any potential litigation or elections administration complications, particularly in light of the costly and negative experience Maine had, as explained in detail by former Maine Speaker of the House Sara Gideon in her testimony before the Commission on May 10.

Timeline, Implementation, Legislation, and Elections Administration Logistics

Additionally, at the May 10 meeting it was mentioned that it would be helpful to acquire some additional information for the Commission to review directly from the state and local election officials who have had to implement ranked choice voting or similar non-plurality voting methods. While the testimony received to date from various advocates and policy makers has been extremely helpful and informative, I do have lingering questions about what challenges local election officials, themselves, have had in implementing such major changes to the voting system, and what best practices have been developed in doing so that Rhode Island could potentially adopt.

For states like Maine, or Alaska, or individual county and city election offices like New York, San Francisco, or Cambridge, there have been various challenges, some of which were explained to us in testimony from the NCSL. However, I am most interested in hearing directly from the local and state election officials on the ground who have experienced those challenges, and perhaps found some creative ways to overcome and mitigate them that have not yet been shared. If Rhode Island were to implement such a voting system in the future, I believe documenting that information could be particularly helpful to the Department of State Elections Division, state Board of Elections, and the 39 local boards of canvassers and municipal canvassing authority staff, who are collectively charged with the conduct of elections and implementation of election policy decisions as enacted by the General Assembly.

Speaker Gideon, in her testimony, also pointed out that implementing a system like Maine's ranked choice voting could be highly problematic in a jurisdiction like Rhode Island, which notably has among the very latest primary elections in the nation. While most states that previously conducted September primaries have since moved them to the spring or summer months, after Congress passed the MOVE Act, Rhode Island is among the last states remaining that has failed to do so, which already makes it particularly challenging for election administration due to the need to retrieve, retest, and turnaround voting equipment prior to the start of early voting, and prepare, proof, print, and certify ballots. As it is, Rhode Island only meets federal requirements to send out overseas and military mail ballots by a few days at most – a time period already put in jeopardy in the event of any statewide primary issues or recounts. Speaker Gideon mentioned, specifically, that Rhode Island could be put into serious legal jeopardy, in violation of federal law, if overseas ballots are not able to be sent out in accordance with the MOVE Act. Ranked choice voting, in various circumstances, has proven to sometimes cause delays in certifying election results, particularly when there are multiple rounds of voting or the need for recounts.

Legislation proposed this session by Secretary of State Amore, specifically S-0733, could substantially mitigate this problem, by moving the primary to the month of August. Doing so would also resolve a number of other logistical challenges and election administration problems. Due to its potential impact to the viability of enacting ranked choice voting for General Assembly and general officer primaries in Rhode Island, my suggestion to the Commission is to formally support the proposal in its findings and final report to the Senate. Notably, this does not appear to be a concern, however, in terms of “top-two” or other types of runoff voting, in which a finite number of candidates advance to the General Election, as the tabulation of that type of voting does not, at a glance, appear to differ from the processes currently utilized nor does it apparently have the potential to cause additional certification delays.

It may or may not be beyond the scope of this Commission, however, if among the stated goals or efforts to trial non-plurality voting methods is, expressly, to increase voter turnout, there is also legislation pending before the General Assembly this session that could help in that regard. Of particular assistance is S-0115, introduced by Commission member Sen. Leonidas Raptakis, which would allow unaffiliated primary voters to remain unaffiliated when voting in primary elections, without the need to fill out cumbersome disaffiliation paperwork. We have noticed a significant percentage of provisional ballots in party primaries are from voters who insist they are registered in one party, but in actuality failed (or forgot) to disaffiliate after the previous election. Local election officials likewise receive hundreds of phone calls, within the 30-day disaffiliation deadline period, from voters wishing to disaffiliate so they may have a choice in which party primary to vote in, but have contacted us too late to do so. This bill, alone, which has already passed the House of Representatives unanimously, could help moderately increase turnout in party primaries by mitigating these issues.

One other note on implementation timeline is that, per various elements of testimony the Commission received, it was clear that in the jurisdictions that have decided to alter their voting methods, sufficient time was necessary to provide to election officials to educate voters, adjust voting systems, and otherwise prepare for any logistical, procedural, or operational changes needed. If ranked choice voting, or even simple runoff voting, were to be trialed or enacted in Rhode Island, I strongly suggest that the Commission recommends adequate time be incorporated into legislation doing so to ensure the process is enacted as smoothly as possible.

Nothing could hurt voter confidence more than a poor roll-out, or rushed implementation, of such a significant change to the voting process, and in recent years, election administrators have been significantly burdened by important – but nonetheless time-consuming – major changes to the state's election laws, ranging from increased use of mail ballots, to early voting, to automatic voter registration. One possible suggestion for conducting a trial of non-plurality voting methods in Rhode Island could be to do so for the 2028 Presidential Preference Primary, thus giving local and state election officials a full

cycle to develop rules and regulations, educate voters, and adequately prepare. Some of the testimony received seemed to suggest that such a primary, which by default often has a large number of candidates, could be an ideal testing ground for voters in the state to familiarize themselves with non-plurality voting.

Conclusions

As an elections administrator, I have always viewed my role as an agent of policy enforcement, and not as a policy maker. That said, I believe it is important for local and state election officials who have direct experience in running our elections to communicate candidly with our lawmakers about our needs, areas that need improvement or modernization, and how new proposed changes to state election law would practically affect our operations and ability to help voters. So, the reality is election officials often do have an impact on influencing policy making decisions, if begrudgingly so. To that end, I have enjoyed my participation on the Commission and look forward to the continuing work of drafting and finalizing its report back to the Senate this fall. However, I do not feel it is my direct role to advise or advocate for a specific course of action, but merely to illustrate how various proposals would affect our ability to effectively and efficiently serve the voters. As such, I have no direct recommendations to offer the Commission here, aside from the more general commentary and suggestions that I have provided above.

I believe it speaks very highly of the Senate that this Commission has been formed and undergone its charged work with the direct participation of four election officials – a majority of the body – representing the state Board of Elections, Secretary of State’s office, and two from municipalities, representing both a city and town. It has been an honor to be appointed by the Senate President to one of those four seats, and I look forward to the remaining work of the Commission, and am willing to make myself available in whatever capacity the legislature needs to inform its decision-making regarding our election laws.

Thank you, Chairman Zurier, for your stalwart commitment to improving our elections process and for conducting the work of this Commission in such a transparent and accessible manner. Again, I regret not being able to attend this discussion in person, and I hope my comments enclosed are helpful to the Commission’s continuing work.

Very truly yours,



Nicholas J. Lima
Registrar / Director of Elections
City of Cranston – Canvassing Authority

8/17/23: Received from Board of Elections, Miguel Nunez, Deputy Director

1. Impact on Polling Places

- Implementing ranked choice voting may lead to a longer and more complex ballot.
- Currently largest ballot used in RI is 8 ½ inches by 17 inches
- The 4 communities with Bilingual ballots generally always have a 2 card ballot, with the local questions almost always having only local questions.
- Occasionally, a 3 card ballot has been necessary in these communities, again with the local questions on the 3rd card.
- Polling places in these communities with 3 cards are generally more congested due to voters requiring more time to complete the ballot in the booth and the machine requiring more time to physically process 3 cards.
- With Ranked Choice Voting, there would likely be 2 direct impacts.
 - Due to more votes or ranks needing to be cast per office, it is likely voters will spend more time in each voting booth. This will necessitate the need for more voting booths, which will limit polling places to facilities that can accommodate the additional equipment. More voting booths would also need to be purchased as currently we are required to send a minimum of **1 booth per 175 voters** and we have approximately **5,000** in inventory. For example, a polling place with 10 voting booths would require a minimum of **980 sq ft** to accommodate all of the booths, equipment, and tables while also maintaining voter privacy. Increasing the number of booths to 14 raises that minimum requirement size to **1,600 square feet**, which would require a substantially larger room, which many current polling places may not have available.
 - The design of the ranked choice ballot would likely lead to more 3 - card ballots in bilingual communities, and perhaps even 4 card ballots in some circumstances. English-only ballot communities would likely see more 2 card ballots. This would require the Board of Elections to allocate more machines to each voting location. Generally speaking in 1 card communities, we typically allocate **1 machine per 1,700** registered voters assigned to a precinct, and in 2 card communities we allocate **1 machines per registered 1,000 voters**. In a 3 card community, we may allocate **1 machine per registered 700 voters**. If a location were to have 4 cards, we would likely need top assign an additional machine to those locations. The Board of Elections currently has 590 voting machines in it's inventory, and it is likely

additional machines would need to be purchased to accommodate the longer ballot.

2. Impact on Election Night Reporting

- The Board of Elections has made investments over the years to consistently provide the public with unofficial results as quickly as possible on Election Night.
- This includes investments the secure electronic transmission of unofficial results from polling places to the purchase of high speed mail ballot opening, sorting, and tabulation equipment.
- Over the past 2 decades the Board of Elections has been able to provide results to the public in a timely fashion via our website on Election Night, even during the pandemic when mail ballot volumes reached 5 times the number seen in previous presidential primaries and elections.
- Ranked choice voting would delay the timely reporting of results as each physical USB drive from all 461 locations would need to be transported to the Board of Elections and uploaded into a software program to determine the results of each round of ranking. This process could take 1-2 days to accomplish, during which time the winner of the contest would not be determined.
- Rounds may also take additional time to conduct due to the collection of mail ballots placed in drop boxes and the return of military and overseas ballots which may arrive up to 7 days after the poll close.

While as an Election Administrator it's not my role to recommend a change to the system of voting in our state, I am in the position to provide insight into how such a change could potentially impact the conduct of elections from a cost and logistical viewpoint. In my opinion the impact of ranked choice voting on elections could potentially require the purchase of additional equipment and a longer timeframe to determine the election winners.

Current Voting System in RI

- Issues
 - Allows for candidates who do not receive at least 50% of the vote to win a primary/election

Ranked Choice Voting (RCV) system

*Information below is based on studies conducted by the National Conference on State Legislatures (NSCL)

- Implementation
 - RI's current voting machines can handle RCV
 - Vote tabulation software and ballot design software will need to be updated
 - Consultants/outside groups should be used to implement RCV
- Issues
 - Voter/Candidate education
 - Extensive voter/candidate education must be conducted to ensure voters and candidates understand how to vote the ballot and how election results are processed
 - According to "Self-Reported Understanding of Ranked Choice Voting" that analyzed voters' understanding of RCV, nonwhite voters reported lower levels of comprehension than white voters
 - Poll worker training
 - Extensive poll worker training to ensure poll workers understand how RCV works
 - Implementation costs
 - Updated vote tabulation software
 - Updated ballot design software
 - Voter education/outreach costs
 - Cost of labor dedicated to implementing RCV
 - Average cost to switching to RCV elections is \$154,759
 - Consultant/outside group costs
 - If only some contests use RCV, we may incur a significant increase in ballot costs if we have to make separate ballots
 - Risk-limiting audits
 - We must ensure the ability to audit (risk-limiting) our elections if RCV is used
 - RLAs have not been widely done in RCV elections
 - Existing software and technology can conduct an RLA in a RCV contest if the contest yields one winner but not in a RCV contest with multiple winners (city/town council/school committee)
 - Ballot design
 - Due to our truncated election cycle and short time between our primary and general election, increases in ballot design time may cause the state to violate

the Military and Overseas Voter Empowerment (MOVE) Act which requires our office to send mail ballots to military/overseas voters at least 45 days before a primary/election

- RCV will also create issues coding and testing voting equipment due to our truncated election cycle
- Will RCV affect our ability to meet our bilingual ballot requirements?
- Results reporting
 - Most RCV jurisdictions report delays in election results
- Voter turnout
 - For the little research that exists regarding RCV and turnout, the results are mixed
- Polarization
 - Preliminary research suggests only moderate impacts on reducing polarization

Top 2 Voting system

- Implementation
 - Top 2 will result in more candidates on the primary ballot
 - Top 2 will result in less candidates on the primary ballot
 - Would make primaries more appealing to vote in
- Issues
 - Voter/Candidate education
 - Extensive voter and candidate education must be conducted so voters and candidates understand how to vote the ballot and how election results are processed
 - Poll worker training
 - Extensive poll worker training to ensure poll workers understand how Top 2 works
 - Primary ballots will be longer and possibly multiple pages, which will increase costs
 - Used in some elections in three states (CA, NE, WA)
 - Variations are used in Alaska and Louisiana
 - More difficult for third- and minor-party candidates to make it to the general election
 - Will decrease the odds voters will have a choice between candidates from different political parties in the general election
 - Does the write-in option appear on the primary ballot or the general election ballot?

Final Four Hybrid Voting system

- Implementation
 - Final four will result in more candidates on the primary ballot
 - Final four will result in less candidates on the general election ballot
- Issues
 - Same issues listed under the Ranked Choice Voting section

Absolute Majority and runoff elections

- Implementation

- Will require an additional election to administer
- Runoff elections will be conducted similar to primaries/general elections
- Issues
 - Runoff elections are costly
 - Turnout in runoff elections tend to be lower
 - Georgia and Louisiana conduct general election runoffs
 - 10 states conduct primary runoffs

Approval Voting, Single transferable voting (STV)

- Implementation
 - Vote tabulation software and ballot design software will need to be updated
 - Consultants/outside groups should be used to implement STV
- Issues
 - Same issues listed under the Ranked Choice Voting section
 - Used in local elections in Fargo, ND and St. Louis, MO
 - Only used in contests where there are multiple winners

Patricia Breslin

From: David Kellogg <dave@kelloggassociates.com>
Sent: Sunday, May 14, 2023 8:42 AM
To: Patricia Breslin
Subject: Rank choice voting

Patricia,

I am a strong supporter of rank-choice voting, similar to the Maine system. The benefits seem to be substantial, and the downside/risks seem very manageable.

David W. Kellogg
Kellogg Associates, LLC
162 Meeting St.
Providence, RI 02906
(401) 270-1080
dave@kelloggassociates.com
www.kelloggassociates.com



Patricia Breslin

From: Greg Gerritt <gerritt@mindspring.com>
Sent: Monday, May 15, 2023 11:25 AM
To: Patricia Breslin
Subject: ranked choice voting

Members of the commission,

I have been studying ranked choice voting for 35 years. The Green Party has used it for elections for almost all of that time, and clearly it works. Several states, a number of cities, and some countries also use it. It shows quite clearly what the people want. I highly recommend that RI adopt it for elections.

Greg Gerritt
37 6th St Providence RI 02906

Patricia Breslin

To: HOWARD SCHULMAN
Subject: RE: comment from Howard Schulman on non-plurality voting commission

From: HOWARD SCHULMAN <hschul6778@aol.com>
Sent: Sunday, May 14, 2023 10:21 AM
To: Patricia Breslin <pbreslin@rilegislature.gov>
Subject: re: comment from Howard Schulman on non-plurality voting commission

Hi Ms Breslin,

I am submitting a public comment for the Non-Plurality Voting Commission chaired by Senator Sam Zurier.

I enthusiastically support and appreciate the work of the Commission. I agree, non-plurality voting will select politicians who more closely reflect the will of their constituents, and with an eventual majority vote, a better defined mandate to represent. Also, non-plurality voting will result in less contentious elections.

However, I am concerned about a method of ranked choice voting that gives first priority to re-distribute the votes of the last place candidate and then working up, as opposed to starting with candidates ranked fourth or fifth and working down, for example. There's just something that feels wrong about giving priority to the least popular first-vote getter.

Sara Gideon's presentation was great, but it would also be interesting to hear first-hand (likely on Zoom) from a politician from Alaska--the experience of getting a new voting system enacted and how it has worked and the conditions that lead to the change.

Thank you,
Howard Schulman
Providence, RI

Patricia Breslin

From: Jordan Frank <jordanfrank@me.com>
Sent: Tuesday, May 16, 2023 3:57 PM
To: Patricia Breslin
Subject: Voting System - Comment

Hi Patricia — Sam's newsletter said to email public comment to you.

- Jordan Frank, Resident, Providence, RI

Summary:

The role of a Democratic governing system is for the government to serve as the voice of the people. Our voting system has shown that it is vulnerable in ways that we could easily elect a person that is not the preference of the people.

** This is a recommendation for **

- If there are more than 4 candidates: Non partisan primary with rank choice voting (not requiring that you rank every candidate).
- If there are 4 or less candidates, go straight to General election without a primary.
- A general election with up to 4 candidates from the Rank Choice primary

This method would allow up to the best 4 candidates, regardless of party, to advance to the general election. At the level of 4 candidates, there is some resiliency in the candidate pool (in case one has to drop out due to health, scandal, or some other reason) and 4 is a reasonable number of people for voters to study and make an informed choice.

NOTE: I favor 4, but changing 4 to 3 candidates makes good sense too.

Full Story:

The people have voice through the officials whom they vote to represent their voice.

But what if the voting system is broken? What if it even leaves doubt about being broken?

In the year 2000, When Bush beat Gore by about 540 votes in Florida, what would have happened if Ralph Nader's 97,421 votes were redistributed? Or the votes from the 4th and 5th candidate, both who got more than 540 votes? A lot of ink in the media was wasted on this question.

Rank choice voting would have definitively solved that riddle.

Closer to home in Rhode Island, look at our most recent Democratic Gubernatorial primary.

Out of a total ~ 113,598 votes in the Democratic primary, McKee had a slim majority.

McKee 37,288 — 3.4% of the state's 1.09M people.
Foulkes 33,931
Gorbea 29,811
Brown 9,021
Munoz 3,547

If we could wave a wand and reallocate Munoz and Brown's votes to the top 3, Gorbea and Foulkes could have outperformed McKee easily. If we then took out Gorbea, we could have had a totally different outcome. But we will never know. With RCV, we would know.

Looking to the most recent general election. McKee got to advance to the general, where a Democrat win was highly likely, with only 3.4% of the state's 1.09 Million strong population voting for him in the primary. In a heavily Democratic state, McKee basically won the general election before it started, with only 3.4% of the population definitely behind him.

3.4% is not the voice of the people. If, by stroke of luck, the choice coincides with the preference of the people, we will never know.

Meanwhile, consider the Republican primary. Kalus won with 17,188 votes. That is less than all of McKee, Foulkes, and Gorbea.

Kalus 17,188
Riccitelli 3,351

Total ~20,539

So, with very low support, an unpopular Kalus got to go into the General with McKee, as did a few independent candidates.

Foulkes and Gorbea both got almost twice the votes that Kalus received in the primary. Why didn't they get to advance?

The solution for this is Non-Partisan Primaries and Rank Choice Voting.

In the Non-Partisan Primary, everyone gets to rank all or up to a certain number of candidates. The top two, three, or possibly four get to advance to the General Election.

In our last Gubernatorial election, we could have seen two or three Democratic party candidates in the General. We wouldn't have needed to be distracted by a Republican, green, moderate or other candidate which wasn't popular enough to deserve being in the general election round.

Besides this system of Non-Partisan Primaries and Rank Choice Voting providing a more honest result, it is also vital to understand that it lets everyone have a voice.

Specifically, and in the last election, It would let the Republican, Green, Moderate or Libertarian leaning voters have a voice about which of the the Democratic party candidates best meet their values and needs. Voters would no longer have to choose between party and preference. They would get their voice back.

The combination of these two methods, Non-Partisan Primaries and RCV, is the recipe for Democracy - it is the necessary means to the most basic end of building a government that represents the voice of the people.

Some issues worth mentioning:

Q. How do you handle a non-partisan primary where there are a lot of candidates (say, more than 5)?

One issue is that in a 10 person race, whether any given voter come up with a logical ranking of more than a few of the 10.

Another issue is concern that socio-economic disadvantaged people tend to rank less candidates than people that are not.

The solution is to allow each voter to only rank up to a limit of up to 3 or 5 candidates. The voter effectively abstains from voting on the additional candidates over the maximum they can rank.

Note that every additional un-ranked candidate is just treated equally - the voter is not affecting the result for those candidates.

Q. The constitution requires pluralistic voting. How can we start the transition?

The legislature can change the primary voting methods. Moving to a Non-Partisan primary resulting in a 2 candidate general election will ensure a majority on the pluralistic voting method required by the constitution.

Meanwhile, an effort to the change the constitution could eventually allow the voting method to allow a non-pluralistic approach that demonstrates a majority preference for one candidate.

Q. What is the ideal number of candidates in a general election?

The role of the primary should be to screen out candidates that really have no chance to survive a general election.

From there, it doesn't really matter if there are 2 or up to 5 candidates in the general election.

California reduces to 2 (maybe for constitutional rather than logical reasons). Alaska reduces to 4 candidates.

Reduction to two candidates is not ideal. What if one candidate becomes sick? What if some negative blemish is found on their record? A resilient process calls for at least 3, maybe 4 candidates in a general election.

Patricia Breslin

From: Bill Mott <bmott@theoceanproject.org>
Sent: Sunday, May 14, 2023 5:32 PM
To: Patricia Breslin
Subject: Enacting a non-plurality voting system in RI

Dear Ms. Breslin and Senate Commission members,

Regarding the Senate Commission's consideration of non-plurality voting systems, I wanted to express my interest in making improvements to Rhode Island's current voting system and urge you to move forward on adopting ranked choice voting, as has been done in Maine and Alaska, as well as in a wide range of cities to great effect.

I'm particularly interested in the State adopting this type of voting system because it gives each of us more say in who ultimately gets elected. In addition, and increasingly important these days, this type of voting system can result in less negative campaigning.

There is increasing interest across the country in this type of voting system. I urge Rhode Island to become an early adopter and help create more momentum! These types of changes are needed more than ever in American society, with increasing polarization among the electorate and stubbornly low voting rates, overall. This type of voting system can help bring back more civility to the election process and encourage higher voting rates.

Thank you for your consideration.

Sincerely,
Bill Mott

357 Cole Ave
Providence, RI 02906

Patricia Breslin

From: Celeste Landry <chlandry@earthlink.net>
Sent: Tuesday, May 30, 2023 12:12 PM
To: Patricia Breslin
Cc: ben.williams@ncsl.org
Subject: Colorado Sec of State comments - Non-Plurality Voting Systems Commission

Dear Patricia Breslin,

Thank you for the opportunity to provide comments to the Non-Plurality Voting Systems Commission. My brother John Landry lives in Providence and put me in contact with his state senator Sam Zurier and his state rep Rebecca Kislak. I have studied voting systems for over a decade. John told me about the Non-Plurality Voting Systems Commission.

I thought that RI might appreciate seeing what the Colorado Sec of State's office has to say about different voting methods. Here are the slides from a Dec 15, 2020 presentation by Dwight Shellman. <https://www.sos.state.co.us/pubs/elections/VotingSystems/committees/altVotingMethod/December2020/20201215SOSAlternativeVotingStakeholderGroup.pdf> The commission may be particularly interested in slides 13-19 which discuss implementation of Approval Voting and Ranked Voting.

You can see all the materials for the Colorado SoS Alternative Voting Method Stakeholder Group meetings at <https://www.sos.state.co.us/pubs/elections/VotingSystems/alternativeVotingGroup.html> (Disclosure: I was one of the presenters at the Feb 6, 2021 meeting.)

I have blind copied my brother and Mark Bohnhorst who lives in Minnesota and has been following MN's plans to study alternative voting methods. I'm also copying Ben Williams of NCSL who presented to the RI commission on March 22, 2023.

Thank you!
Celeste Landry
303 440 4395 landline

Patricia Breslin

From: Mark Bohnhorst <markb913@hotmail.com>
Sent: Tuesday, May 30, 2023 1:21 PM
To: Patricia Breslin
Subject: Special Senate Commission to Study Non-Plurality Voting Methods and Runoff Elections for General Assembly and General Office Primaries: Parallel Minnesota Study; Additional Information on Approval Voting
Attachments: 2023 testimony HF 2486.pdf

Dear Patricia Breslin,

Thank you for the opportunity to provide comments to the Non-Plurality Voting Systems Commission. I learned about the Commission from Cleste Landry, who has been studying alternative voting systems since 2012 and presented public comments in 2020 in the Colorado Secretary of State's stakeholders groups' assessment of alternative voting systems. Ms. Landry is blind copied.

It may be of interest to the Commission that Minnesota is embarking on a similar process. This session bills were introduced to establish a task force, to be appointed by several officials, to make recommendations and propose legislation for implementation of ranked choice voting in state and federal elections. The final bill, HF 1830

https://www.revisor.mn.gov/bills/text.php?number=HF1830&version=4&session=ls93&session_year=2023&session_number=0

dropped the task force format and directed the Secretary of State to conduct a voting study. The study will consider, but is not limited to, ranked choice voting.

I thought the Commission might benefit from information relating to approval voting that has been overlooked in the discussion of alternative voting systems. As set out in my written testimony to the House Elections Policy and Finance Committee (attached), a limited form of approval voting was discussed favorably at the Constitutional Convention and was incorporated into the original Electoral College.

That system works exactly the same as ranked choice voting for dealing with the "spoiler" effect in elections that feature two predominant parties. As the information from the Colorado stakeholders' meetings indicates, an approval voting system could be implemented easily and at virtually no cost.

Very truly yours,

Mark Bohnhorst

March 15, 2023

To: Rep. Mike Freiberg, Chair, House Elections, Finance and Policy
Rep. Paul Torkelson, Ranking Member
Rep. Cedric Frazier, Chief Author (HF 2486)
Speaker Melissa Hortman, co-author
Rep. Frank Hornstein, co-author
Cc: Leader Jamie Long, District 61B

From: Mark Bohnhorst, District 61B

Re: HF 2486, Frazier, Hortman, Hornstein and others (Protect and Defend Democracy Act, comprehensive ranked choice voting bill)

Statement of support for an amendment authorizing the task force to consider approval voting for presidential elections and consider recommending implementation of approval voting for the 2024 presidential election.

I am writing as an independent researcher/author.¹ I strongly support HF 2486, which will authorize use of ranked choice voting (RCV) in local elections and will lay the groundwork to assure that for state-wide elections the full range of voter preferences will be accurately reflected.

My particular interest, and point of concern, is presidential elections. I have been studying and writing about presidential elections for over six years. Fundamental reform, which would institute or allow for a national popular vote for president, is years in the future. For the near term, implementation of majoritarian voting for presidential electors in each state—particularly in actual or potential battleground states—is the single most important, achievable reform of the electoral college. Edward B. Foley, Presidential Elections and Majority Rule (2020). I believe is vitally important that this reform be implemented as soon as possible.

My concern is with the lengthy delay in implementation of RCV for presidential elections under HF 2486. The legislature, through the task force, should consider a sound alternative (approval voting) that may allow use of an equally effective majoritarian voting method for president much sooner.

¹ I am a retired public sector attorney (16 years, So. Minn. Regional Legal Services; 24 years, U. of Minnesota Office of the General Counsel). I am lead author of two recent law review articles having to do with presidential elections and coauthor (with St. Olaf History Professor Michael W. Fitzgerald) of an article, under peer review at a history journal, about racial violence and the electoral college during Reconstruction. Addendum 3 is a list of select publications and presentations.

HR 2486 contemplates use of RCV in presidential elections; however, it calls for a delay of at least four years. Under the bill as introduced, Ranked Choice Voting would not apply to presidential elections until 2028. Under the companion bill in the Senate (SF 2270) there is no date certain for implementation. The delay appears to be occasioned by the relative complexity of RCV and a perceived need to educate the public and train officials state-wide before RCV is implemented state-wide.

Minnesota

In contrast, approval voting is extraordinarily simple and requires almost no changes. On the ballot, merely change "vote for one" to "vote for one or more." Add two words, six letters. Sum up all the votes, and the candidate with the most votes wins.

Key Points:

1. Approval voting and RCV are equally effective for addressing spoiler candidates and assuring majority winners (when there is one).
2. Approval voting is easier than RCV for voters to understand, and implementation for the 2024 election might be feasible.
3. Approval voting for president is grounded in constitutional history. It was discussed favorably at the Constitutional Convention as a way to allow voters to vote both for a non-viable local candidate and for a viable candidate of nation-wide reputation. Limited approval voting was actually implemented in the first four presidential elections.

By design, approval voting and RCV are equally effective for addressing spoiler candidates and assuring majority winners in presidential elections.

Minnesota's embrace of Ranked Choice Voting (RCV) has been grounded in part on an excellent 2004 study by the League of Women Voters Minnesota of alternative voting methods.² Prominent methods discussed included RCV and approval voting. The study concluded that no voting system is perfect, and it analyzed strengths and weaknesses of each.³ Yet, the 2004 study did not consider how alternative voting systems—either RCV or approval voting—work in presidential elections. Before the legislature adopts a new method for presidential elections, it should consider both of these leading alternatives. The task force created under HF 2486 should study both.

In presidential elections, to prevent so-called spoilers from determining the outcome of elections (Ralph Nader in 2000, possibly Ross Perot in 1992, the goal of George Wallace in 1968), it is of utmost importance to measure the full range of support for the two major contestants in each state. By design, RCV and approval

²LWV MN 2004 Study.

<https://drive.google.com/file/d/1lVMbF1jDVZ0qiB7EuqoEMBrEV1sOrqsw/view>

³ Since the LWV MN study, RCV has been implemented in a number of jurisdictions. Recently, approval voting has been adopted in Fargo and St. Louis.

voting work equally well in assuring that all the votes for each of the major contenders are counted. Under RCV, the major contenders generally are the last two candidates standing, and all votes for them are counted at the end. Under approval voting, all the votes for all the candidates are counted at the beginning.

Approval voting may be easier than RCV for voters to understand. For this reason, implementation of approval voting for the 2024 presidential election might be feasible, even if implementation of RCV by 2024 is not.

HF 2486 calls for the task force to report on two important subjects: (i) educational needs for public awareness and training; and (ii) the status of election equipment and recommendations for upgrades. Art. 1, Sec. 1, Sub. 5(3) & (4) (as introduced). As between the two, the 2004 LWV study (p. 12) suggests that the education component is the more important. The study reported that almost all current and former election officials interviewed agreed that, "The task of educating voters about a fundamental change in voting method appeared difficult but not impossible. . ." One official said this function was "absolutely critical." In contrast, software or equipment upgrades "would not be a problem" and "would not necessarily be a significant cost burden" (p. 13). Elections software can be programmed to count the votes regardless of election system.

On the critical factor of voter education, it appears from the LWV study that approval voting has a decided edge. The LWV study (p. 14) summarized approval voting as follows:

"Approval Voting System (Voters select as many candidates as they wish candidate with most votes wins)
--Is easy for voters to understand."

Approval voting's most prominent feature is ease of understanding.

Since approval voting is simple in concept, and since it uses the same ballot as ordinary plurality voting, on the face of it, there would not appear to be any reason to delay implementation for presidential elections. The task force should consider and report on this possibility.

Approval voting has an eminent constitutional pedigree—it was the Founders' own "alternative voting system" for presidential elections.

Approval voting was discussed favorably at the Constitutional Convention. On July 25, 1787, James Madison and two other leading members of the Constitutional Convention⁴ discussed using approval voting in a national popular vote for

⁴ The three (including Gouverneur Morris and Hugh Williamson) were on the committee that produced the first draft of the electoral college. (Madison is said to have written it).

president. These same Framers later incorporated limited approval voting into the electoral college. It bears repeating: approval voting in presidential elections was part of the Constitution's original design. (The first four presidential elections used limited approval voting: one elector, two votes.) For presidential elections in particular, it was important to the Founders that the election system be designed to choose a consensus figure—elected under the principle of majority rule—who could govern a diverse nation.

Over the years, in presidential elections, both major parties have been adversely affected by third party candidacies. Either major party might be affected in the 2024 presidential election in Minnesota. It is sincerely hoped members of all parties as well as independents may embrace the principle of majority rule in the election of presidential electors and support the proposal that the task force consider approval voting, for implementation in 2024.

Respectfully submitted,

Mark Bohnhorst
Minneapolis
District 61B

Addendum No. 1:

Suggested amendments to HF 2486, as introduced, specifying task force duties regarding presidential elections

line 3.21: Insert new subsections (2).

Renumber former subsection (2) as subsection (3) and revise.

All as follows:

(2) recommendations regarding the voting method to be used for election of presidential electors, including ranked choice voting and approval voting, and recommendations on standards and rules to implement the recommended method for voting for presidential electors; and, if the recommended voting method is approval voting, a recommendation in the February 15, 2024 report regarding the feasibility of implementing that method for the 2024 presidential election;

~~(2)~~ (3) draft legislation to implement statewide ranked choice voting, and to implement the method for election of presidential electors recommended under subsection (3);

Lines 3.22 - 3.28, renumber subsections (3) - (5) as subsections (4) - (6).

Madison and Morris were on the committee that wrote the final draft of the Constitution. (Madison said Morris wrote most of it.) Addendum No. 2 sets out the July 25 discussion.

Addendum No. 2:

Discussion in the Constitutional Convention Regarding use of Approval Voting in a Popular Election of the President:

Hugh Williamson of North Carolina “was sensible that strong objections lay agst. an election of the Executive by the [National] Legislature, and that it opened a door for foreign influence. The principal objection agst. an election by the people seemed to be, the disadvantage under which it would place the smaller States.” He [Hugh Williamson] suggested as a cure for this difficulty that each voter should vote for three candidates. One of these, he observed, would be probably of his own state, the other two of some other states, and as probably of a small state as a large one. Gouverneur Morris “liked the idea, suggesting as an amendment that each man should vote for two persons one of whom at least should not be of his own state.” . . .

James Madison now weighed in, saying that something valuable might be made of Williamson’s suggestion with Morris’ amendment. A person from a small state would likely vote for from his state, as his first choice, and a more generally known person from another state as his second. Aggregating the votes from all the states would probably result in “the second best man” being the “first in fact.”⁵

⁵ Alan E. Johnson, The Electoral College: Failures of Original Intent and a Proposed Constitutional Amendment for Direct Popular Vote (Pittsburgh, Philosophia: 2018) 193-194 (emphasis supplied)(from a useful, detailed chronology of the debates in the Constitutional Convention regarding the presidency, at 161-232); Max Farrand, ed., The Records of the Federal Convention of 1787, vol. 2, 113-114, on-line, Library of Congress, “A Century of Lawmaking for a New Nation,” <https://memory.loc.gov/cgi-bin/ampage>.

Addendum No. 3:

Select Publications and Presentations: Presidential Election Reform

Work in progress: "Last Federalist Standing: Rufus King and the Right of the People to Elect their President"

Work in planning: The Minnesota Constitution of 1858 and its relevance (or lack of relevance) to presidential elections

Michael W. Fitzgerald and Mark Bohnhorst, "Golden Opportunity Lost: The Electoral College, Racial Terror and Reconstruction," manuscript on file with authors, under submission to a journal of history (2023)

February 2, 2023: Mark Bohnhorst, Michael W. Fitzgerald and Aviam Soifer, "Gaping Gaps in the Independent State Legislature Doctrine History," 49 Mitchell Hamline Law Review 257 (2023)

<https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1314&context=mhlr>

January 24, 2023: "What Should we do About the Electoral College?" Tuesdays with a scholar series, Ramsey County Library/University of Minnesota Osher Lifelong Learning Institute,

<https://my.nicheacademy.com/rcladult/course/57835/lesson/165761>

Sept. 22, 2022: Mitchell Hamline Law Review Election Law Forum

https://www.youtube.com/watch?v=sNDUCimvZbA&ab_channel=Mitchell-HamlineLawReview (featuring Alexander Keyssar, Jesse Wegman, John Koza), co-organizer and presenter

August 18, 2022: Minneapolis Star Tribune, Counterpoint: The Electoral Count Act's poison pill. <https://www.startribune.com/counterpoint-the-electoral-count-acts-poison-pill/600198867> Language within an earlier draft of the Act implied a legislature might have the power to take away the right of the people to vote for president.

July 2022: Mark Bohnhorst, Reed Hundt, Kate E. Morrow and Aviam Soifer, "Presidential Election Reform: A Current National Imperative," 46 Lewis & Clark Law Review 437 (2022), <https://law.lclark.edu/live/files/33589-2625-bohnerst-hundt-morrow-soifer>

December 19, 2021: Mark Bohnhorst and Aviam Soifer, "Look to the 14th Amendment to check GOP efforts to subvert popular vote," The Hill.

May 2021: Mark Bohnhorst, Reed Hundt, Kate E. Morrow and Aviam Soifer, "Presidential Election Reform: A National Imperative," <https://www.aals.org/wp-content/uploads/2021/06/Presidential-Election-Reform-.pdf>, invited paper, Mid-year Meeting of the American Association of Law Schools, Conference on Rebuilding Democracy and the Rule of Law

October 20, 2020: Mark Bohnhorst, "Links to Resources on Race and the Electoral College," <https://www.makeeveryvotecount.com/research-whitepapers-library/2020/10/20/links-to-resources-on-race-and-the-electoral-college>

August 13, 2020: Making Every Vote Count, "Summary and Video Index of 'Presidential Election Reform: 2020 and Beyond' August 13, 2020 Conference," (first session, "Race and the Electoral College" with Alexander Keyssar and Jesse Wegman, also featuring Walter Mondale, Steve Simon and John Koza), co-organizer and presenter, <https://www.makeeveryvotecount.com/research-whitepapers-library/2020/8/13/summary-and-video-index-of-presidential-election-reform-2020-and-beyond-august-13-2020-conference>

August 13, 2020: Mark Bohnhorst, "Race and the Electoral College: Brief Chronology," <https://www.makeeveryvotecount.com/research-whitepapers-library/2020/8/13/race-and-the-electoral-college-brief-chronology>

April 17, 2019: Minneapolis Star Tribune, Counterpoint: Star Tribune columnist gets history and today's political scene wrong on Electoral College: <https://www.startribune.com/counterpoint-star-tribune-columnist-gets-history-and-today-s-political-scene-wrong-on-electoral-college/508723972/> Should we keep a tool of racial injustice that devalues the votes of millions? Or have a system that feels like democracy?

Patricia Breslin

From: Philip Hall <phhallaboo@yahoo.com>
Sent: Monday, May 29, 2023 5:26 PM
To: Patricia Breslin
Subject: Voting Systems Commission

Dear Ms. Breslin--

Thank you for the work you are doing with examining our current voting system, in which a person who receives the plurality of the vote wins, even if the will of the voters is clearly for a different type of candidate. I hope that the commission will recommend (and the Senate will approve) the state switching to ranked choice voting, with instant run-off as a second option. Especially as election fields become more crowded, our current system — which only really works if there are only two candidates — no longer works.

Thank you,

Philip H. Hall

Dear Mr. Chairman and Honorable Members of the Commission:

My name is Michael Garman. I am a lifelong resident of Newport's Second Ward and a strong supporter of ranked choice voting (RCV).

Gen Z Americans like me are by far the most diverse age group in our country's history. Almost half of Americans born after 1996 are people of color, and over a fifth of us are LGBTQ+.

Women, gender minorities, and people of color are dramatically underrepresented in our politics. Rhode Island has only ever been represented by one woman in Congress and never by a person of color. I'll leave the bulk of the discussion about that to people whom it directly affects – it's not my place to speak about that as a white man – but I do want to point out that this underrepresentation is becoming more and more of an issue as our country diversifies.

Something about which I can speak is queer representation. I'm bisexual, which makes me part of the 20.8% of Gen Z who identifies as LGBTQ+. Our community needs fair representation to ensure that our voices are heard in critical conversations, especially in this dangerous era in which our rights are threatened.

One other area of representation worth discussing is geographical representation, especially in local elections. In cities and towns across our state, the same few competitive wards or neighborhoods get all the attention, year in and year out, while the rest of town is overlooked. It's a similar phenomenon to what happens in presidential elections, where states like Georgia and Pennsylvania are the center of attention but Rhode Island is completely ignored.

How does RCV help? There are two key factors: eliminating the spoiler effect and promoting consensus-building. In plurality elections, members of marginalized groups are often discouraged from running against each other, for fear of cutting into each other's support and taking each other down. With ranked choice voting, that's not an issue – if one person can't win, their supporters' votes are reallocated, not wasted. Similarly, by requiring candidates to get a majority to win, it incentivizes coalition building and taking the interests of all their constituents

into account. Even if a candidate isn't directly part of a community, they can still represent it by advocating for its needs. When there's an electoral incentive to do so, it's much more likely to happen.

Why is representation so important? People are much less likely to vote when they don't feel represented. I've talked to hundreds of young voters – Democrats like me, Republicans, third-party supporters, and Independents – in recent months, and I can tell how passionate people my age are about political issues. Without electoral reforms like ranked choice voting to treat them like the stakeholders they are in our governing institutions, though, they'll be much less likely to turn out. Young people from across the political spectrum want the fair representation they deserve, and RCV needs to be in place for that to be possible. The same is true for every other underrepresented group.

I'd also like to say a few words about the advantages of RCV over top-two primaries, which I know the Commission is also considering. Although a top-two primary system would represent an improvement over plurality elections, it would be much less significant an upgrade than RCV would be.

For one, top-two primaries fail to ensure that the ultimate winner is the candidate preferred by the most voters. Take the example of next year's U.S. Senate primary in California, which will likely feature a crowded field of candidates vying to replace the retiring Senator Dianne Feinstein. Three high-profile Democrats – Reps. Barbara Lee, Katie Porter, and Adam Schiff – have already declared their candidacy, and there will probably be at least one Republican (likely attorney Eric Early) in the field as well. It's very plausible that the runoff will be between one of the three Democrats – whoever receives the most support from the divided majority-party base – and Early, representing a tiny but united minority.

For the sake of argument, imagine that the primary results are as follows: Schiff (D) 29%, Early (R) 26%, Lee (D) 25%, Porter (D) 20%. Such an outcome is highly plausible based on polling of the race thus far. In this case, it's quite possible that the Democratic-dominated electorate overwhelmingly prefers Lee to Schiff – that is, that Lee is the second choice of most Porter

supporters – but the Golden State’s top-two primary makes it impossible to account for that reality. With RCV, though, those preferences would be accounted for instantaneously.

Another danger posed by top-two primaries is the risk of a lockout, in which a party wins the majority of the primary vote but is left without a candidate in the general election. In 2016, Democrats won 51.6% of the vote in the top-two primary for the office of Washington State Treasurer. Despite this fact, Republicans controlled both slots in the runoff, because the GOP ran two candidates and the Democrats three. The votes split as follows: Davidson (R) 25.1%, Waite (R) 23.3%, Lias (D) 20.4%, Comerford (D) 18.0%, Fiskens (D) 13.2%. Dissatisfied, nearly 600,000 voters who turned out in the general election abstained from the race, which was won by Davidson. Of course, citizens do not always prefer candidates from one party to the other, but it is remarkably unfair to entirely exclude the party whose candidates the majority of primary voters supported from the general election.

This could easily happen in Rhode Island. While, of course, the CD1 election will not be conducted under any new electoral system, imagine how it might play out with a top-two primary. It’s certainly not inconceivable that two enterprising Republican candidates could enter the field and emerge, each with a tiny fraction of the vote, taking advantage of a Democratic field split 17 ways at last count.

Since our goal is to pursue reforms to eliminate the spoiler effect, why would we ever support a policy that amplifies it? Instead, we should follow the Alaska model, implementing nonpartisan blanket primaries from which the top four (or five) candidates advance to a ranked choice general election. In this system, voters are guaranteed sufficient options to avoid a lockout and choices at different points on the political spectrum. For instance, a top-five primary might advance a progressive Democrat, a moderate Democrat, a Never Trump Republican, a MAGA Republican, and an independent. Voters would then use RCV to determine the winner.

Rhode Island voters deserve freedom, choice and representation. In order to promote these values and undermine the toxic forces of polarization and bitter division that plague our state and country, we need Ranked Choice Voting.

Thank you very much for your time and consideration. Please feel free to contact me at michaeljgarman10@gmail.com or (401) 644-4108 with any questions you might have.

Michael J. Garman

michaeljgarman10@gmail.com | (401) 644-4108

22 Burnside Avenue, Newport

Testimony from: Tony Jones
In SUPPORT of establishing Ranked-Choice Voting in Rhode Island

May 31st, 2023

Non-Plurality Voting Commission

Chair Senator Samuel D. Zurier, and members of the committee:

Thank you for considering my testimony today and for your hard work and dedication to serving on the Non-Plurality Voting Commission.

Thanks to Capitol Television video on demand, I have been able to keep up to date with each of the meetings and I am very excited about potential reforms, as well as to see what the commission will report in the fall.

I come to you today not only as a concerned citizen, but also as a past candidate for public office, and specifically, as a supporter of ranked-choice voting.

There is substantial value in voters having input into who represents them, even if the eventual winner isn't their first choice and ranked-choice voting empowers voters by allowing their preferences to be more closely aligned with electoral outcomes.

As the commission has seen, in a ranked-choice voting election, voters express their preferences by rank-ordering the candidates. Voters answer more than just "who is your favorite candidate?" Rather, they answer "how do you feel about each candidate relative to the others?" The difference between these questions may seem subtle, but the result is substantially more power for voters.

If voters are comfortable with more than one candidate, they can say so. If they prefer a lesser-known candidate, they can show support without worrying about the spoiler effect. And because

the ranked-choice voting vote-tallying system will continue until one candidate reaches majority support, voters have more opportunities to contribute to that victory.

Ranked-choice voting can also create better incentives for elected officials. In order to win a contested ranked-choice voting election, candidates cannot rely just on the passionate support of a narrow slice of the electorate. Rather, the structure of a ranked-choice voting election can often require winning candidates to earn first-, second- or even third-place votes from a broad coalition of voters. As a result, candidates are incentivized to run on a platform that is broadly appealing, including to voters who prefer another candidate first. Once in office, elected representatives are rewarded for remaining in touch with their entire constituency and not just their political base.

Ultimately, ranked-choice voting can encourage a more accountable government and a healthier election culture.

Thank you again for your time,

Tony Jones

Narragansett, RI

**SPECIAL SENATE COMMISSION TO STUDY NON-PLURALITY
VOTING METHODS AND RUNOFF ELECTIONS FOR GENERAL
ASSEMBLY AND GENERAL OFFICER PRIMARIES**

NOTICE OF MEETING

DATE: Monday, October 30, 2023

TIME: 2:00 P.M.

PLACE: Senate Lounge – State House

AGENDA:

- I. Call meeting to order

- II. Member discussion regarding findings and recommendations

- III. Adjournment

No public testimony will be received during this meeting.

The meeting will be televised by Capitol Television, which can be seen on Cox Communications Channels 15 and 61 for high definition, i3Broadband (Formerly Full Channel) on Channel 15 and on Channel 34 on Verizon.

Live streaming is available at <https://www.rilegislature.gov/CapTV/Pages/default.aspx>.

Patricia Breslin
Senate Legal Counsel
401-276-5536
pbreslin@rilegislature.gov

October 30, 2023

Commission member discussion.

<https://ritv.devosvideo.com/show?video=5aa2aa380aea&apg=817504e5>



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November 16, 2023

Dear Chairman Zurier and members of the Non-Plurality Voting Methods Study Commission,

I'm writing to notify you that I felt my testimony was mis-represented in the first draft of the commission's report on voting methods. I testified to the commission on March 22, 2023 and submitted a follow-up letter with additional information on April 7, 2023, but I feel my comments were taken out of context in the commission's draft report.

I'm sure it was not the intention, but my testimony has been misrepresented and I want to clear up any confusion.

My presentation to the committee was primarily a review of evidence about how ranked choice voting works in practice in the places that already use it. I discussed evidence supporting six positive claims about the impacts of ranked choice voting and I acknowledged a lack of evidence in two other areas. The commission's draft report skews my position by barely mentioning the six positive claims and over-emphasizing the two areas where evidence is lacking. The report claims that existing studies "do not provide evidence to support any of the other claims of RCV advocates" when in fact ample evidence exists in the scholarly literature.

I candidly spoke with this committee about areas where other jurisdictions have experienced challenges, in addition to sharing data on the benefits of ranked choice voting, trusting that this commission would do its own review of the evidence and treat my testimony in an even-handed way.

The current draft over-emphasizes the less positive aspects of my testimony, making me feel like my comments and my position have been taken out of context. The current draft report gives the impression that I am skeptical about the effects of ranked choice voting when in fact the opposite is true. I believe in the positive impacts of ranked choice voting in practice and I supported my claims with evidence. While I believe my full testimony conveyed my position accurately, the draft report seems to portray the opposite.

I also listened to Sara Gideon's testimony to the committee and I believe she too has been similarly mis-represented. She supports RCV, saying, "Overall this has been really positive for democracy and people feeling like their vote counts" but there is no reflection of that position in the draft report, only a discussion of challenges that she shared.

In addition to mis-representing the positions of those who testified, I also found the draft report to be lacking in two other areas.

- First, the report did not adequately explore existing research on how ranked choice voting works in practice.
- Second, there are factual inaccuracies and misrepresentations of facts. For example, the report claims that in Maine's 2018 RCV election for Congress, "that election result took several months to be declared." In fact, the winner was declared on November 15, 2018. The report also makes misleading claims about another election in Maine by highlighting a candidate who won a charter commission election in Portland ME with 4% of first-choice support. The report neglects to mention that the candidate was one of four winners in a multi-winner race (similar to town council and school committee elections in Rhode Island), a crucial piece of information when understanding why a winner had a low vote percentage.

For these reasons, I think the report would benefit from a more thorough examination of existing research on ranked choice voting and a more even-handed treatment of testimony provided.

As an addendum to this letter, I am submitting an annotated version of the commission's draft report with some suggested edits. In particular, I've highlighted areas where the report could correct misconceptions and cite relevant evidence.

Thank you again for the opportunity to speak with this committee. I am available for any additional questions or follow-ups as needed.

Sincerely,

Deb Otis
Director of Research and Policy, FairVote Action

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 20202 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.

**SPECIAL SENATE COMMISSION TO STUDY
NON-PLURALITY VOTING METHODS AND RUNOFF
ELECTIONS FOR GENERAL ASSEMBLY AND GENERAL
OFFICER PRIMARIES**

NOTICE OF MEETING

DATE: Tuesday, December 19, 2023

TIME: 2:00 P.M.

PLACE: Senate Lounge – State House

AGENDA:

- I. Call meeting to order

- II. Final Report

- III. Adjournment

No public testimony will be received during this meeting.

The meeting will be televised by Capitol Television, which can be seen on Cox Communications Channels 15 and 61 for high definition, i3Broadband (Formerly Full Channel) on Channel 15 and on Channel 34 on Verizon.

Live streaming is available at <https://www.rilegislature.gov/CapTV/Pages/default.aspx>.

Patricia Breslin
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POSTED: WEDNESDAY, DECEMBER 13, 2023, 11:55 A.M.

December 19, 2023

<https://ritv.devosvideo.com/show-videos?g=817504e5&p=2f92e37a&deep=true&page=1&filter=vod>