



Ranked Choice Voting (RCV) Is Compatible with National Popular Vote

June 14, 2022

QUICK ANSWER:

- Ranked Choice Voting (RCV) allows the voter to rank candidates on their ballot in order of preference—first choice, second choice, and so forth. If one candidate receives an absolute majority of the first-choice votes, the counting process stops, and that candidate wins outright. Otherwise, the candidate supported by the fewest voters is eliminated and that candidate's ballots are redistributed according to the next choice indicated on those ballots. This process of eliminating the lowest candidate and redistributing that candidate's ballots is repeated until one candidate has the support of a majority of the voters expressing a choice.
- RCV is poised to be used in the 2024 presidential election by two states together possessing 0.6% of the nation's population (Maine and Alaska).
- The false claim that Ranked Choice Voting (RCV) is incompatible with National Popular Vote requires getting people to believe that the intent of a state's RCV-for-President law is to give voters a ballot that allows them to rank candidates according to their first, second, etc. preferences—but to then ignore everything on the ballot except the voter's first choice. This interpretation of a state's RCV-for-President law in a manner that ignores RCV's sole purpose, namely letting voters rank the candidates in order of their preference.
- Even if there were any legitimate uncertainty as to how to interpret a state's RCV-for-President law, the issue is **legally moot** in the only state that has ever used RCV in a presidential election (namely Maine) because Maine amended its 2019 RCV-for-President law in 2021 to eliminate any possible ambiguity. Moreover, in the only state that is currently poised to use RCV for President in 2024 (namely Alaska), the issue is **politically moot**, because the Republican presidential nominee is almost

certain to win an absolute majority of the first-choice votes in 2024—thereby making the first-choice count equivalent to the final RCV count.

- Even if some state’s RCV-for-President law in the future is unclear, RCV supporters in the state involved would press election administrators and courts to definitively declare—before Election Day—how votes are going to be counted. Thus, there would be no post-election question—much less a “constitutional crisis ... throwing the nation into turmoil” as predicted by opponents.
- The false claim that Ranked Choice Voting (RCV) is incompatible with the National Popular Vote Compact ignores the history of writing the Compact. In fact, the leading organization advocating RCV (FairVote) was the very first organization to endorse the Compact, and the head of that organization (Rob Richie) supporter of RCV was co-author of the Compact and the book describing the Compact. The National Popular Vote Compact was written to be compatible with RCV from the very beginning.
- The false claim that RCV and National Popular Vote are incompatible is part of an effort to deflect attention from the fact that the current state-by-state winner-take-all method of awarding electoral votes does not
 - guarantee the Presidency to the candidate who gets the most votes nationwide,
 - make every vote equal, and
 - give candidates a reason to campaign in all 50 states.

MORE DETAILED ANSWER:

Background on Ranked-Choice Voting (RCV)

Ranked Choice Voting¹ (RCV) allows the voter to rank candidates on their ballot in order of preference—first choice, second choice, and so forth.

If one candidate receives an absolute majority of the first-choice votes, the counting process stops, and that candidate wins outright. Otherwise, the candidate supported by the fewest voters is eliminated from consideration, and the counting process continues to an additional round. Each ballot favoring the eliminated candidate is redistributed according to the next choice indicated by that voter. This process of eliminating the lowest candidate and redistributing that candidate’s

¹ Ranked Choice Voting is also known as also known as “Instant Runoff Voting,” the “single transferrable vote,” or the “Hare system,” after its inventor, Thomas Hare. The traditional plurality voting system is often called “first past the post” (suggesting a horse race in which the winner is the horse than comes in first place).

ballots is repeated until one candidate has the support of a majority of the voters expressing a choice.

RCV gives voters more choice than the traditional plurality-voting system (often called “first past the post”) used in most elections in the United States. RCV proponents argue that it eliminates the voter’s dilemma of voting for a major-party candidate whom the voter views as the lesser of two evils, instead of a candidate that most closely matches the voter’s views. For example, under RCV, a Libertarian voter might give his first-choice ranking to the Libertarian Party candidate, but then give his second-choice ranking to the Republican candidate. A Green voter might give his first-choice ranking to the Green Party candidate, but then give his second-choice ranking to the Democratic candidate.

In contrast, in the traditional plurality-voting system, a voter who supports a minor-party candidate often aids the major-party candidate whose views are farthest from the voter’s own views. For example, if the 97,488 Floridians who voted for Ralph Nader for President in 2000 had been able to express their second-choice on the ballot, George W. Bush would almost certainly have not carried Florida by a mere 537 votes (and would not have become President).

RCV has been used for decades in municipal elections and is currently used by over 50 cities,² including New York City, which used RCV for the first time in its June 2021 primary.

In November 2016, Maine voters approved an initiative petition that adopted RCV for use in elections for U.S. Senator and U.S. Representative.³ The constitutionality of RCV was contested when it proved decisive in the 2nd congressional election in 2018. A federal district court and a federal appeals court upheld RCV. These federal-court rulings found that RCV is a “one-person, one-vote” system. The court rulings characterized the objections raised against RCV as primarily differences of opinion as to what constitutes a desirable voting system—as opposed to legal arguments as to what is, or is not, constitutional.^{4,5}

In 2019, the Maine legislature passed a law extending RCV to presidential elections, thereby making Maine the first state to use RCV in a presidential election in 2020.

² FairVote.2022. Where is Ranked Choice Voting Used? https://www.fairvote.org/rcv#where_is_ranked_choice_voting_used

³ The initiated statute passed by the voters in 2016 included state offices as well as U.S. Senator and U.S. Representative. However, the Maine Supreme Judicial Court ruled that state offices could not be filled by RCV, because the state constitution states that a plurality (not a majority) was sufficient for election to a state office.

⁴ *Brett Baber v. Matthew Dunlap*. 376 F. Supp. 3d 125 (D. Maine 2018), appeal dismissed, 2018 WL 8583796 (1st Cir. 2018). The opinion of United States District Judge Lance Walker on November 15, is at <https://legislature.maine.gov/doc/2493>

⁵ Pildes, Richard H. and Parsons, G. Michael. 2021. The legality of Ranked-Choice Voting. 109 *California Law Review*. Volume 109. Number 5. October 2021. <https://www.californialawreview.org/print/the-legality-of-ranked-choice-voting/>

Because Joe Biden won an absolute majority of the first-choice votes in 2020, the RCV counting process ended with the first round—that is, the first round of counting was the final round of counting.⁶

In 2020, Alaska voters approved an initiative petition that resulted in RCV being used for state and congressional offices in 2022, and in RCV being used in the presidential general election in November 2024.⁷ In 2021, the Alaska Supreme Court upheld the constitutionality of RCV.⁸

There really is no uncertainty about interpreting RCV-for-President laws

Today, many supporters of electoral reform are supporters of both RCV and National Popular Vote.

Because of this overlap, opponents of RCV, opponents of National Popular Vote, and opponents of both have attempted to divide the electoral reform community by claiming that it is “impossible” for RCV and National Popular Vote to co-exist.

Sean Parnell, the senior legislative director of Save Our States (the leading group that employs lobbyists to oppose adoption of the National Popular Vote Compact) wrote in January 2021:

“Ranked choice voting makes a National Popular Vote **impossible**.”⁹

A policy memo from Save Our States said in 2021:

“The incompatibility of RCV and NPV could prevent a conclusive determination of which candidate has won the presidency, causing a political, legal, and **constitutional crisis and throwing the nation into turmoil**.”¹⁰

The memo asserted:

“The problem is that ... the RCV process can yield two different vote counts—an initial total of all voters’ first choice votes, and

⁶ Under Maine’s RCV-for-President law, RCV is separately applied at the statewide level (for two electoral votes) and at the congressional-district level in both of the state’s two districts. Joe Biden won an absolute majority in both districts as well as statewide.

⁷ Bohrer, Becky. 2021. Judge to hear case challenging ranked-choice election initiative approved by Alaska voters. *Associated Press*. July 9, 2021. <https://www.adn.com/politics/2021/07/09/judge-to-hear-case-challenging-ranked-choice-election-initiative-approved-by-alaska-voters/>

⁸ *Kohlhaas v. State of Alaska*. Order of the Supreme Court of the State of Alaska. January 19, 2022. See also Lee, Jeanette. 2022. Alaska Supreme Court Upholds State’s New Election System. *Sightline*. January 24, 2022. <https://www.sightline.org/2022/01/24/alaska-supreme-court-upholds-states-new-election-system/>

⁹ Parnell, Sean. 2021. Ranked choice voting makes a National Popular Vote impossible. *Go Erie*. January 24, 2021. <https://www.goerie.com/story/opinion/columns/2021/01/24/ranked-choice-voting-makes-national-popular-vote-impossible/4210235001/>

¹⁰ Save Our States policy memo. 2021. “Incompatible: Ranked Choice Voting and National Popular Vote cannot coexist.” April 26, 2021. Page 1.

a final number that has eliminated votes for some candidates and added votes to others.”¹¹ ... [Emphasis added]

“If NPV is in effect, does [an RCV state] report on its Certificate of Ascertainment the initial numbers, or the final numbers after the RCV process has been used? **There is no obviously correct answer.**”¹² [Emphasis added]

Actually, there *is* an “obviously correct answer.”

Save Our States would have people believe that the Maine legislature passed its RCV-for-President law with the intention of giving voters a ballot that lets them rank candidates according to their first, second, etc. preferences—but to then counting only the first-choice votes.

If a state counted only the first-choice rankings, it would negate the sole purpose of an RCV-for-President law, namely allowing voters to express their order of preference among more than one candidate. If only the first-choice rankings are counted, the state would be inviting voters to rank candidates, but then ignoring all the rankings other than their first choice.

No election administrator or court is likely to interpret a state’s RCV-for-President law in a manner that totally ignores the law’s sole purpose, namely letting voters rank the candidates in order of their preference.

The issue is already moot in the only states with RCV-for-President laws

Even if there ever had been any legitimate uncertainty on how to interpret an RCV-for-President law, Save Our States’ claims are already *legally moot* in the only state that has used RCV in a presidential election, namely Maine.

In 2021, Maine Secretary of State Shenna Bellows proposed an amendment to the state’s RCV-for-President law that eliminated any possible question. The Maine legislature passed the proposed amendment, and the Governor signed it.

The Secretary of State’s recommended amendment specifically designated the final RCV tally as the presidential vote count that will appear in Maine’s Certificate of Ascertainment (a legal document that reports the state’s final determination of its presidential vote count).¹³

Moreover, the issue is *politically moot* in the only other state that is poised to use RCV for President in 2024 (namely Alaska). The reason is that the Republican presidential nominee is almost certain to win an absolute majority of the first-choice

¹¹ Save Our States policy memo. 2021. “Incompatible: Ranked Choice Voting and National Popular Vote cannot coexist.” April 26, 2021. Page 2.

¹² Save Our States policy memo. 2021. “Incompatible: Ranked Choice Voting and National Popular Vote cannot coexist.” April 26, 2021. Page 4.

¹³ The relevant section (21-A MRSA §803) of Maine’s recently enacted law is found on page 12 of <http://legislature.maine.gov/legis/bills/getPDF.asp?paper=SP0450&item=3&snum=130>

votes in Alaska—thereby making the count of first-choice votes equivalent to the final RCV tally.¹⁴

RCV supporters in other states that may be considering RCV-for-President laws are now aware that opponents will raise this issue in order to reduce the chance of passing RCV.

Even if there were legitimate ambiguity in RCV-for-President laws, the issue would not create a post-election constitutional crisis

Even if there actually were any legitimate ambiguity on the proper interpretation of an RCV-for-President law, there is no validity to Save Our States’ claim that the ambiguity could result in a “constitutional crisis and throwing the nation into turmoil.”

In the real world, RCV supporters in the state involved would press election administrators to definitively declare—before Election Day—how votes were going to be counted. Failing to receive adequate assurances, RCV supporters in the state would seek a declaratory judgment from a court before Election Day. Thus, as a practical matter, there would be no post-election question as to the procedure.

Save Our States continues to complain even after the alleged ambiguity was resolved

In 2021, when the Maine Secretary of State offered an amendment to Maine’s 2019 RCV-for-President law to eliminate the arguable ambiguity, Sean Parnell, the senior legislative director of Save Our States opposed the clarifying amendment.

In testifying before the Maine Committee on Veterans and Legal Affairs on May 11, 2021, Sean Parnell, the senior legislative director of Save Our States, pointed out that Ross Perot finished second in Maine in 1992 by virtue of having a 316-vote lead over incumbent Republican President George H.W. Bush, who came in third.¹⁵ Similarly, Perot finished second in Utah in 1992 by getting more votes than Clinton. These two instances in 1992 were the only time in over 50 years that the nominee of one or the other of the two major parties failed to come in first and second place in every state.¹⁶

Parnell testified:

“Under Ranked Choice Voting, if a third party or an independent candidate were to finish ahead of either the Democratic or

¹⁴ The Republican presidential nominee has won an absolute majority in Alaska in all but one election in the last 50 years. In 1992, when Ross Perot received 28% of the popular vote in Alaska, the Republican presidential nominee (President George H.W. Bush) still swept Alaska with 40%, while Bill Clinton received 30% and other candidates received 2%.

¹⁵ In Maine in 1992, George H.W. Bush received 206,504 votes and came in third place; Ross Perot received 206,820 votes and came in second place; and Bill Clinton received 263,420 votes and came in first place.

¹⁶ Segregationist Governor George Wallace of Alabama carried five states in 1968.

Republican candidate, ... **the votes for that Democratic or Republican candidate gets completely erased** and will not be reported.

“In 1992, for example, Ross Perot finished ahead of George Bush in Maine. George Bush would have had subtracted, or never appeared in the national vote totals about 207,000 votes. The amendment that your Secretary of State has offered does not address this problem.”¹⁷ [Emphasis added]

At a debate conducted by the Broad and Liberty group in Philadelphia, Sean Parnell said:

“If you’re just using the final votes, then if a candidate—a Democrat or Republican—ever finishes in third place in a state with ranked choice voting, ... then **what you wind up doing is literally zeroing out votes**. If you ever have a Republican candidate or Democratic candidate finishing third place in a state with ranked choice voting, then you are literally going to watch **hundreds or thousands, maybe even millions of votes, be completely erased**.”¹⁸ [Emphasis added]

Given that Save Our States vigorously defends the current state-by-state winner-take-all method of awarding electoral votes, their concern about votes being transferred away from the two major-party presidential candidates is little more than crocodile tears. Indeed, the current winner-take-all system regularly erases the votes of *every* voter in *every* state who did not vote for the candidate who received the most popular votes in the state.

In any case, it is not the job of the State of Maine or the voters of Maine to protect the two major-party presidential nominees from the consequences of their own failure to earn enough votes to come in first or second place.

Moreover, there is a key difference in the nature of the erasures. If RCV and National Popular Vote had been in effect in 1992 when Bush came in third in Maine, every voter in Maine would have had their vote counted for a candidate **for whom that voter actually voted**. In contrast, the current winner-take-all system routinely transfers the voter’s vote to a candidate for whom the voter did **not** vote.

¹⁷ Testimony of Sean Parnell. Maine Committee on Veterans and Legal Affairs. May 11, 2021

¹⁸ Broad and Liberty Debate. 2021. Ditching the electoral college for the national popular vote—The conservative angle. November 29, 2021. Timestamp 7:19 <https://www.youtube.com/watch?v=eH4SvE7u5FI&t=945s>

Even if there were ambiguity in RCV-for-President laws, relatively few votes would be involved

Save Our States has made hyperbolic claims that the arguable ambiguity would involve “hundreds of thousands” or “millions” of votes.¹⁹

First, it is important to note that one candidate won an absolute majority of the state’s popular vote in an average of 45 states in the six presidential elections between 2000 and 2020. In particular, one candidate won an absolute majority

- in all but 5 states in 2020²⁰
- in all but 12 states in 2016²¹
- in 100% of the states in 2012
- in all but 4 states in 2008²²
- in all but 3 states in 2004²³
- in all but 9 states in 2000.²⁴

That is, even if all 50 states used RCV for President, the first-round count of RCV votes would be equivalent to the final-round count in an average of 45 states, because the RCV counting process stops as soon as one candidate wins an absolute majority.

Second, it is important to recognize how few votes are likely to be redistributed if the RCV counting process goes beyond the first round.

Only four minor-party presidential candidates received more than 1% of the national popular vote during the six presidential elections between 2000 and 2020, namely

- 1% for Jo Jorgensen in 2020,
- 1% for Jill Stein in 2016,
- 3% for Gary Johnson in 2016, and
- 3% for Ralph Nader in 2000.²⁵

The number of votes involved in the arguable ambiguity is *not* the total number of votes received by minor-party presidential candidates, but the (smaller) number of votes that would be redistributed when the minor-party candidate is eliminated.

We can get a rough idea of the magnitude of the difference between the first-choice tally and the final-round RCV tally by looking at Alaska’s vote count in

¹⁹ Broad and Liberty Debate. 2021. Ditching the electoral college for the national popular vote—The conservative angle. November 29, 2021. Timestamp 7:19 <https://www.youtube.com/watch?v=eH4SvE7u5FI&t=945s>

²⁰ Arizona, Georgia, North Carolina, Pennsylvania, and Wisconsin.

²¹ Arizona, Colorado, Florida, Maine, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Pennsylvania, Virginia, and Wisconsin.

²² Indiana, Missouri, Montana, and North Carolina.

²³ Iowa, New Mexico, and Wisconsin.

²⁴ Florida, Iowa, Maine, Nevada, New Hampshire, New Mexico, Ohio, Oregon, and Wisconsin.

²⁵ In 2012, Libertarian nominee Gary Johnson came close to receiving 1% of the national popular vote.

2016—a year when minor-party candidates (notably Libertarian Gary Johnson and Green Party candidate Jill Stein) received an unusually high percentage of the vote.

Of the 318,608 votes cast in Alaska in 2016, Libertarian Party nominee Gary Johnson received 18,725 and Green Party nominee Jill Stein received 5,735.

Many minor-party supporters are not willing to cast a second-choice vote for any major-party candidate. However, suppose we make generous assumption that 100% of the Johnson voters made a second-choice and that Trump received 100% of these second choices, and that 100% of the Stein voters made a second-choice and that Clinton received 100% of these second choices. Under these exceedingly generous assumptions, Trump’s runaway 46,033-vote margin over Hillary Clinton in Alaska would have been expanded by 12,990 votes (that is, 18,725 minus 5,735).²⁶

All of these numbers need to be viewed in the context of the fact that the two states that are poised to use RCV in the 2024 presidential election together represent 0.6% of the U.S. population and that 158,224,999 people voted in the 2020 presidential election.

The National Popular Vote Compact was drafted with RCV in mind

The false claim that Ranked Choice Voting (RCV) is incompatible with the National Popular Vote Compact ignores the fact that the National Popular Vote Compact was specifically written with RCV in mind.

Although RCV was not used at the state level by any state at the time when the National Popular Vote Compact was written, the leading supporters of RCV worked closely with the National Popular Vote organization on the drafting of the Compact to ensure that the Compact would be compatible with RCV.

Specifically Rob Richie, President of [FairVote](#), the leading advocacy group for RCV, was a co-author of the Compact, and a co-author of the 2006 book describing the Compact, *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*. FairVote was the first organization to endorse the National Popular Vote Compact. In 2006, Rob Richie spoke at NPV’s first press conference announcing the Compact.

The Compact anticipated the possibility that states would probably adopt innovative voting systems, such as RCV, in the future. Accordingly, the Compact left it to the states as to how their presidential vote would be tabulated.

Specifically, the Compact makes each state’s determination of its presidential vote count “conclusive” on the states belonging to the Compact if it is finalized in an “official statement” in a timely manner. The fifth clause of Article III of the NPV Compact states:

²⁶ We assume Castle’s 3,866 voters, Fuente’s 1,240 voters, and the 9,201 write-in voters divide equally in their preference for the two major-party nominees—that is, these 14,307 votes do not affect the spread between the two major-party nominees.

“The chief election official of each member state shall **treat as conclusive** an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state’s final determination conclusive as to the counting of electoral votes by Congress.” [Emphasis added]

In most cases, the “official statement” is, in practice, the state’s Certificate of Ascertainment.²⁷

Thus, in its amendment to its RCV-for-President law in 2021, the State of Maine unambiguously specified how RCV votes for President will be reported in Maine’s Certificate of Ascertainment by providing in §803:

“The certificate shall must state ... the number of votes each candidate for President received statewide and for each congressional district in the **final round of tabulation** under section 723-A.”²⁸ [Emphasis added]

Note that there is nothing new or novel about the National Popular Vote Compact’s deference to each state’s presidential vote count. The Compact’s wording simply mirrors long-standing federal law (3 USC §5) making each state’s final determination of its canvass of its presidential vote count “conclusive” when Congress counts the electoral votes on January 6.

Moreover, the National Popular Vote Compact’s deference to each state’s choice is consistent with the U.S. Constitution’s deference to the states:

“Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors.”²⁹

²⁷ The role of the seven Certificates of Ascertainment is specified by 3 U.S. Code §6, which states, “It shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of the electors in such State by the final ascertainment, under and in pursuance of the laws of such State providing for such ascertainment, to communicate by registered mail under the seal of the State to the Archivist of the United States a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast; and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by section 7 of this title to meet, six duplicate-originals of the same certificate under the seal of the State; and if there shall have been any final determination in a State in the manner provided for by law of a controversy or contest concerning the appointment of all or any of the electors of such State, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate under the seal of the State to the Archivist of the United States a certificate of such determination in form and manner as the same shall have been made; and the certificate or certificates so received by the Archivist of the United States shall be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection; and the Archivist of the United States at the first meeting of Congress thereafter shall transmit to the two Houses of Congress copies in full of each and every such certificate so received at the National Archives and Records Administration.”

²⁸ The relevant section (21-A MRSA §803) of Maine’s recently enacted law is found on page 12 of <http://legislature.maine.gov/legis/bills/getPDF.asp?paper=SP0450&item=3&snum=130>

²⁹ U.S. Constitution. Article II, section 1, clause 2.

As the U.S. Supreme Court wrote in *McPherson v. Blacker*:

“In short, the appointment and mode of appointment of electors belong **exclusively** to the states under the constitution of the United States.”³⁰ [Emphasis added]

Save Our States inaccurately states that each state belonging to the National Popular Vote Compact can decide, on its own, how to count votes from RCV states.

Despite the fact that the National Popular Vote Compact specifically directs the top election official of each member state to treat each state’s timely determination of its presidential vote count as “conclusive,” Trent England asserted in the *Save Our States Blog*:

“The NPV compact simply grants power to the top election official in each state to determine the national popular vote winner for that state. In other words, officials in various states would **just decide, on their own and with no legal guidance**, which numbers to use from Maine or any other states using RCV or similar election systems.”³¹ [Emphasis added]

³⁰ *McPherson v. Blacker*. 146 U.S. 1 at 35. 1892.

³¹ England, Trent. 2021. Failed Attempt to reconcile NPV, RCV in Maine. *Save Our States Blog*. May 14, 2021. Accessed June 21, 2021. <https://saveourstates.com/blog/a-failed-attempt-to-reconcile-npv-rcv-in-maine>