

Some Legislative Concerns regarding Ranked-Choice Voting

A. Definitions

- Anonymity:** The principle of elections which states that every cast vote counts equally. It does not matter who the voter is, their cast vote counts equally to any other voter's cast vote.
- Absolute majority:** The election outcome in which one candidate receives more votes than the total votes cast for all other candidates. More than half of all cast votes.
- Simple majority:** The election outcome in which one candidate receives more than half of all votes cast except for abstentions. Between two candidates, there is always a simple majority, unless they tie.
- Plurality:** The election outcome in which one candidate receives more votes than any other candidate, but not necessarily a majority.
- Majority Rule:** Also *Condorcet criterion*. The election rule which requires that whenever a simple majority of voters mark their ballots preferring Candidate A to Candidate B, then Candidate B is not elected. If Majority Rule is not satisfied, then the individual votes for the winning candidate (not having the simple majority) are each shown to have more effect, to count more, than each of the greater number of individual votes cast for the majority candidate who was not elected.
- First-Past-The-Post:** FPTP - The voting system in which candidates of the voters' preferences are marked with a single affirmative vote. The number of votes marked on a ballot does not exceed the number of seats of elected office. The candidates receiving the most votes from all ballots are elected. In the case of single-winner elections, the candidate with the plurality of votes is elected. This is the method most commonly used in the United States and the rest of the world.
- Approval Voting:** The voting system in which candidates of the voter's preference are marked with a single affirmative vote. The number of votes marked on a ballot is not limited by the number of seats elected to the office. In the case of single-winner elections, the candidate with the plurality of votes is elected.
- Ranked-Choice Voting:** RCV - The voting system in which candidates of the voter's preference are marked in numerical order of preference, with the candidate marked with "1" as the voter's first preference and is

ranked at the highest level. The voted ballot is an ordered list and only defines relative preference between candidates, not degree of preference. If Candidate A is ranked higher than Candidate B, the voter intent is a single vote for A in the hypothetical case of a runoff or two-candidate, single-winner election between A and B.

- Single Transferable Vote: STV - The principle of voting systems that allow voters to express at least one other contingency vote to be used if and when the candidate of the voter's primary preference is defeated. This is meant to relieve voters of the burden of tactical voting in which, in order to cast an effective vote, voters anticipate which candidates are most likely to be the leading candidates and to cast their votes among the leading candidates. The voter can still cast their primary vote for the candidate of their sincere preference and a contingency vote for a leading candidate that may be best situated to win over another leading candidate that they don't want to see elected.
When a preferred candidate is defeated, the voter's vote is transferred, with the permission of the voter, to the candidate of their next preference.
- Instant-Runoff Voting: IRV – The RCV voting system that, using the entire collection of ranked ballots, conducts multiple sequential runoff rounds in which one candidate is identified and defeated each round and votes for that defeated candidate are transferred to voters' contingency choices as with STV, thus reducing the set of remaining candidates each round. The sequential rounds are repeated until a single candidate remains, who is elected.
- Hare RCV: The use of Instant-Runoff Voting in which the candidate with the fewest votes, either initial votes or transferred votes, in a round is the candidate who is defeated and eliminated in that round. This is the method commonly used for RCV in the United States, Ireland, and Australia.
- Consistent Majority Candidate: Also *Condorcet winner*. The candidate that, when compared against every other candidate individually, defeats every other individual candidate with a simple majority of voter preferences marked on the entire set of ballots.
- Condorcet RCV: Also *Condorcet-consistent RCV*. The RCV voting system that, using the entire collection of ranked ballots, satisfies Majority Rule when at all possible. That is an election rule that always elects the sole Consistent Majority Candidate whenever such candidate exists.
- Spoiler effect: The outcome of an election, whether hypothetical or demonstrated, in which the presence of a particular candidate who does not win, materially changes who the actual winner is. If

hypothetically removing a loser from an election materially changes who the winner is, that is a spoiled election.

With FPTP, whether an election is spoiled or not can only be speculated, since voters' contingency votes are not recorded on the ballot. With RCV, given cast vote records, it can always be objectively determined whether an election was spoiled or not.

Tactical voting:

The voter behavior or technique in which a voter does not mark their ballot with their sincere preference, but votes insincerely in such a way to promote some other political interest of the voter. The most common voting tactic is "*compromising*" in which the voter votes for an acceptable (but not preferred) candidate in hopes of defeating another candidate considered unacceptable. The Spoiler effect, when it occurs or is perceived to occur, sometimes promotes this voting tactic.

Precinct Summability:

The property of a voting system having the ability to independently determine the outcome of an election based solely on tallies published at each polling location on the evening of an election after polls close. The tallies from every polling place can be summed to determine the outcome of the election for the entire district of the elected office. Precinct Summability enables decentralization of the tabulation of the vote. If it is necessary that individual ballot data be opaquely transported from all of the polling places to a central tabulation location to count votes and identify the winner of an election, that is not Precinct Summable and lacks in process transparency. For a particular election method, if the number of summable tallies is so large as to be considered unfeasible to publish at the polling location, that method is not Precinct Summable.

Table 1

Number of tallies (precinct subtotals)
necessary to publish at each polling place

Number of candidates on ballot	First-Past-The-Post	Hare RCV	Condorcet RCV
2	2	2	2
3	3	9	6
4	4	40	12
5	5	205	20
6	6	1236	30

B. Concerns

Ranked-Choice Voting is still relatively new in *widespread* use in the United States and, as a nation, we are still learning about anomalies in outcomes and problems in procedure. Sometimes problems cited are regarding voter confusion and voter education and there are advocates that present these concerns.

The concerns expressed here are not those, but are operational. They fall into two themes:

1. **Loss of an important part of process transparency.**

The Hare RCV method removes the ability to print out meaningful numbers at the polling place because the method requires centralization of the vote tally rather than local decentralized tabulation that we make use of now. We should be able to tell who wins an election from the information posted at the polling places. We are moving from decentralized vote tabulation to centralized vote counting and, in doing so, we're losing an important part of process transparency in elections for public office. And this loss of process transparency is unnecessary, even for RCV.

Precinct Summability (decentralized tabulation and the ability to add results from each polling precinct) is an integral part of the process transparency we need to keep elections honest. Imagine that the city council of any town (or the state legislature) mandates that, at the end of election day, **no** paper tapes of voting tallies shall be printed and posted for public inspection at any polling place? Mandating that the voting data from each polling place be secretly and opaquely transported to the seat of government, where only there we can learn of the election outcome? No one, not media nor any competing campaigns, can independently check up on the numbers?

Simply transitioning from First-Past-The-Post (FPTP) to Hare RCV (a.k.a. "Instant-Runoff Voting") effectively does that and this loss of Precinct Summability is actually not necessary for Ranked-Choice Voting, but only for Hare RCV. However, Hare RCV is the only RCV returning to Vermont unless the legislature acts to change that.

In the state of Maine, they have recently had statewide RCV primary elections, and in such, the Secretary of State had to transport more than 130,000 ballots (or the corresponding ballot data) from every corner of the state to Augusta. Tabulation did not begin until 3 days after the election and wasn't finished until 8 days after the election. No one could tell who won until the fourth day after the election. This is documented https://www.youtube.com/watch?v=ZrRV_a0VYuY by the Maine Secretary of State.

In 2020, Maine Sen. Susan Collins was reelected with 51% of first-choice votes, so the instant runoff tabulation was not required and did not occur, but if she had gotten only 49.9%, then the Secretary of State of Maine would have had to haul over 800,000 ballots (or equivalent ballot data) from every corner of the state to Augusta to tabulate.

What if RCV goes statewide someday? Is that what we want? Do we want to be forced to haul nearly 300,000 ballots (or ballot data) opaquely to Montpelier and learn of the outcome of the election several days later? When all of this is unnecessary? Can't we learn from the difficulties other states (or the city of New York) are having?

2. The infamous Burlington 2009 IRV failure.

In 2000, 48.4% of American voters marked their ballots that Al Gore was preferred over George W. Bush while 47.9% marked their ballots to the contrary. Yet George W. Bush was elected to office.

In 2016, 48.2% of American voters marked their ballots that Hillary Clinton was preferred over Donald Trump while 46.1% marked their ballots to the contrary. Yet Donald Trump was elected to office.

In 2009, 45.2% of Burlington voters marked their ballots that Andy Montroll was preferred over Bob Kiss while 38.7% marked their ballots to the contrary. Yet Bob Kiss was elected to office.

And recently in August 2022, 46.3% of Alaskan voters marked their ballots that Nick Begich was preferred over Mary Peltola while 42.0% marked their ballots to the contrary. Yet Mary Peltola was elected to office.

Similarly to the presidential elections in 2000 and 2016, in 2009 when RCV was last used in Burlington and in Vermont¹, solely because of process, not because of the majority of voters, a candidate (Bob Kiss) was elected to office when more voters marked their ballots preferring another *specific* candidate (Andy Montroll). One of these four historic failures of democracy occurred in our state and in our largest city. Following the 2009 election there was great and acrimonious controversy. The elected mayor was perceived to have diminished legitimacy.

Because the majority candidate was not elected, this method failed to protect against the *spoiler effect*. Whenever this failure occurs with IRV, it's the loser in the IRV final round who becomes the spoiler candidate. It turns out that Kurt Wright was the spoiler in 2009; a loser whose presence in the race actually changed who the winner is. (If Kurt had not run and voters voted their same preferences with the remaining candidates, then Andy would have met Bob in the IRV final round and would have defeated him with a 6.5% margin.) Unlike the gubernatorial election of 2014 or the Burlington mayoral election of 2021, this knowledge of the spoiler effect in the 2009 IRV election is certain, not speculative. That is because, unlike 2014 or 2021, the IRV election of 2009 has the record of every single ranked ballot and we need not speculate about who voters' contingency votes (second-choice) were in 2009.

In addition, we found out that 1510 voters (more than 1/6th of the electorate) actually *caused* the election of the candidate they least desired simply by voting for their favorite candidate (ranking their favorite as #1). They were promised that, if their first-choice candidate was defeated, their vote would go to their second-choice, but that promise was not kept for these 1510 voters in Burlington 2009. All this is directly contrary to the stated purpose of Ranked-Choice Voting and all of this is simply proven fact supported by the public record.

Normally Hare RCV elects the Consistent Majority Candidate that the ballot data shows. In fact, FairVote has analyzed 440 RCV elections in the United States and in 439 of the 440 elections, the Hare method elected the same undefeated candidate that majority rule would. The only known exception is 2009 Burlington Vermont² when 4064 voters marked their ballots preferring Andy Montroll over Bob Kiss while 3476 voters marked their ballots preferring Kiss over Montroll, yet Kiss was elected.

¹ RCV has returned to Burlington Vermont in 2022

² Another exception occurred in Alaska, August 2022

What is at stake.

Despite FairVote and VPIRG touting that Ranked-Choice Voting as “well tested”, the history shows that as long as the Hare RCV method elects the Consistent Majority Candidate (or *Condorcet winner*), people generally accept the election outcome. But when Hare RCV does not elect the Consistent Majority Candidate, the election is considered failed in every respect. Burlington 2009 demonstrates this perfectly as RCV was repealed the following year. (And, in Alaska, a similar repeal movement has begun.) A wide majority of the city did not see Bob Kiss as representing the majority of the city. The 3476 voters preferring Kiss over Montroll had effectively cast votes that each counted *more* than those of the 4064 voters preferring Montroll to Kiss. We were not protected from the Spoiler effect and a large portion (17%) of the city were punished simply for voting their hopes (by marking their sincere favorite candidate as #1) rather than voting their fears.

While this happened only twice (that we know of in the United States), it can happen again. Occasionally we read about surgeons accidentally amputating the wrong limb because of a procedural mixup. When this happens, do we hear hospital officials defending their procedures saying “These procedures have served us well for decades and hundreds of surgeries, so we see no need to review or change our procedure at all.”?

No. Even with a single catastrophic mistake, that is enough to motivate review and make changes in procedure to insure that such an unnecessary failure will not happen again. Now is precisely the time for our state to recognize this failure, that occurred in Burlington in 2009 (and also in Alaska in August 2022), of Hare RCV to deliver on its promise.

And now is precisely the time for our state to learn from the difficulties other states and large cities have had implementing RCV and centralizing the vote tabulation. And now is the time to defend the process transparency in elections which is afforded with Precinct Summability. Our current voting method (FPTP) affords us Precinct Summability and Hare RCV will deprive us of this redundant means to independently double-check the election tallies and outcome.

The State of Vermont is in a unique position to correct this technical flaw in Hare RCV now that Ranked-Choice Voting is on the cusp of returning to the state. In doing so, Vermont can again make history, *good* history, history befitting a discerning and progressive “*brave little state*” by recognizing and understanding the problem and, rather than ignoring or denying it, acting to correct the problem with model legislation.