

Christopher Johnson comment p. 1 of 4

**Flynn, Julie**

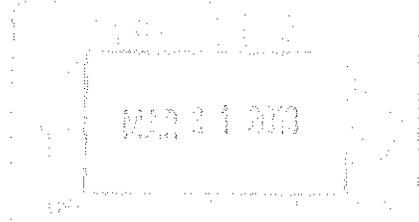
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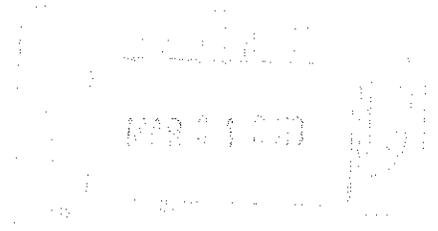
**From:** Christopher Johnson <chris@dirigo.net>  
**Sent:** Saturday, March 31, 2018 3:45 PM  
**To:** Flynn, Julie  
**Subject:** Comment on proposed rules 29-250 Chapter 535  
**Attachments:** Comment on proposed rules 29-250 Chapter 535.pdf

Attached as pdf.  
Please let me know if you need it an another form.

Chris Johnson  
3230 Turner Ridge Road  
Somerville, Maine

549-3358





Comment on proposed rules 29-250 Chapter 535.

I am very concerned that a number of policies implemented in the proposed rules are inconsistent with 21-A M.R.S.A §696 subsection 4 which reads:

**Determination of choice possible.** If a voter marks the voter's ballot in a manner that differs from the instructions at the top of the ballot but in such a manner that it is possible to determine the voter's choice, then the vote for the office or question concerned must be counted.

There is no need to ignore voter intent based solely on whether the voter left a ranking blank, or more than one consecutive ranking blank, if there are subsequent candidate choices indicated in lower rankings.

The simplest policy consistent with statute is this:

In each round, on each unexhausted ballot, the continuing candidate with the highest ranking among continuing candidates chosen on that ballot is counted. All skipped rankings and the number of consecutive skipped rankings are irrelevant. If there is any continuing candidate ranked on a ballot for which the highest ranked choice of that candidate is not part of a ranking invalidated due to an overvote, then the ballot is not exhausted, and shall be counted, and the ballot shall be included in the total votes count when determining whether a threshold for majority is reached. If an overvote occurs at some ranking, then that and all subsequently lower rankings shall be invalid. All higher rankings on that ballot however, shall be processed in each round until exhausted.

I am also concerned that some language in these rules perpetuate the incorrect notions that each round is associated with a ranking, or that not all votes are counted the same in every round. Some changes are necessary to dispel those incorrect understandings, simplify explanations where possible, and increase clarity.

Consequently, the following changes are recommended to the proposed rules:

In Section 2. insert a definition for "First Choice Vote" as follows and adjust the numbering of definitions following in alphabetical order:

4. "First Choice Vote" means the candidate chosen in the highest rank for which a choice is indicated, if not invalidated due to an overvote on that ranking.

In Section 4, paragraph 2.A. The language "transferred and added to the totals" is unnecessary and misleading. That paragraph should be rewritten:

- A. **General procedures.** If no candidate has a majority of first choice votes based on the election returns provided by municipalities under subsection 1 of this section, the RCV count must be conducted under the supervision of the Secretary of State in successive

rounds, as further described in Section 6 of these rules. In each round, the number of votes for each continuing candidate must be counted. Each continuing ballot counts as one vote for its highest-ranked continuing candidate heading into the current round. In other words a ballot's highest-ranked candidate that has not been defeated in a preceding round receives that ballot's vote in the current round. Exhausted ballots are not counted. At the end of each round, if no candidate receives a majority of the votes cast in that round, the last-place candidate is eliminated (defeated), thus is not considered a continuing candidate in subsequent rounds.

In Section 4, paragraph 2.B. The undervotes (skipped or blank votes) should not be a consideration unless as a result there are no continuing candidates ranked. In which case it is an exhausted ballot, and that is the determining factor in excluding it from the count of total votes. The words ', undervotes (i.e., skipped or blank votes)' should be stricken, leaving the paragraph to read:

**B. Threshold for majority.** A majority is considered to be achieved when a candidate receives 1 vote, or a fraction thereof, more than 50% of the total votes for all continuing candidates cast in the specified round, excluding overvotes and exhausted ballots.

In Section 4: Paragraph 2.C.(1) is too open to interpretations of "encountering". Paragraphs 2.C.(2) and (3) unjustifiably violate the intent of 21-A M.R.S.A §696 subsection 4. Paragraph (3) should be stricken and paragraphs renumbered. Paragraph (4) is confusing in it's meaning. Paragraphs 1-4 should be rewritten as follows:

- (1) **Overvote.** An overvote occurs when a voter marks more than one candidate for the same ranking (i.e. In the same ranking column). When all of the candidates selected in higher rankings on a ballot than an overvote ranking are no longer continuing candidates, the ballot is deemed exhausted for that contest, and no subsequent (lower rank) candidate rankings marked on that ballot are counted.
- (2) **Skipped Ranking(s).** A skipped ranking occurs when a voter does not mark (i.e., skips or leaves blank) a ranking but does mark some candidate in a lower ranking. Skipped rankings are ignored and the highest ranking below it in which a continuing candidate is selected is counted in the current round, unless doing so would conflict with the overvote situation rule.
- (3) [deleted]
- (4) **Duplicate ranking for the same candidate.** A duplicate ranking occurs when a voter marks more than one ranking column for the same candidate. No special handling of duplicate ranking is necessary. Following General Procedures within this section, the counting of the highest ranking continuing candidate in a round is not influenced by whether that candidate also has lesser rankings on the ballot.

Christopher Johnson p.4 of 4

That candidate, because of their highest ranking remains the one counted for that ballot in subsequent rounds as long as they remain a continuing candidate. If that candidate is defeated, any lower duplicate rankings for the same candidate will be skipped in subsequent rounds because the candidate is then no longer a continuing candidate.

Thank you for hearing my concerns and considering these recommendations to bring clarity and consistency with statute to our RCV rules.

Christopher Johnson  
Somerville, Maine  
chris@dirigo.net

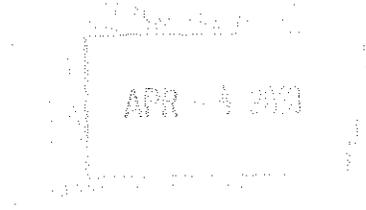
Jeff Smith Comment p. 1 of 2

**Flynn, Julie**

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**From:** Jeff Smith <jeffjapan055@gmail.com>  
**Sent:** Wednesday, April 04, 2018 2:34 PM  
**To:** Flynn, Julie  
**Cc:** matthew.dunlap@secstate.maine.gov  
**Subject:** Ranked-choice voting proposed rules, my public comment due by April 6  
**Attachments:** 250rcv.pdf

Hon Julie Flynn  
Deputy Sec of State  
Bureau of Corporations, Elections and Commissions  
SHS #101  
Augusta, ME, 04333



Included herein is my public comment to the Secretary's proposed emergency rules governing RCV and its use in June 12 primaries and thereafter.

It is my understanding that the Secretary is under state court order to continue to implement the use of Ranked-choice Voting under the applicable law.

For your convenience, I've also attached a copy of the said proposed rules.



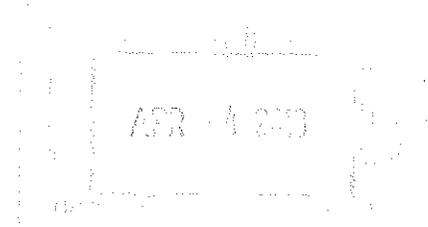
RCV.Public\_Comment.docx

Jeff Smith  
418 Swan Lake Ave  
Swanville 04915  
2/7-338-0558

One could do worse than be a swinger of birches. -- RFrost

Jeff Smith Comment p. 2 of 2

Hon. Matthew Dunlap  
Maine Sec of State  
April 3, 2018



Re: RCV Rules 29-250, Ch 535:

My public comment is limited to Sec. 4 Vote Counting Procedures, Subsection 2 Ranked-choice vote counting.

Without section specificity, it seems that unintended consequences may occur when a voter skips, duplicates, or voids (actually no "voiding" possibility is articulated in these rules, as I read them) any first (1st) choice candidate(s). In one instance, the 2nd choice voted candidate is elevated to first choice status, while in another scenario the 2nd choice is tossed or "exhausted" in rule vernacular.

There is confusion as to when either result, counted or not counted, and whether the voter's ranking (2nd, 3rd, etc) is honored, or relegated to either an upgrade to next highest choice level, or not counted, i.e., "exhausted".

I believe this is both unintended by voter, the law, and spirit of RCV's gender neutral adopted principle, one man-voter, one vote.

I could be more specific if your PDF formatted Rules document allowed "copy/paste", which it unfortunately does not.

I believe, in law and principle, that any voter who legibly marks a ballot for any choice, first or otherwise, that rank choice for any legitimate candidate should be counted under the law, as written.

Thank you,

Jeff Smith  
418 Swan Lake Ave  
Swanville, ME 04915  
207-338-0558

Hilary Ware Comment p. 1 of 1

**Flynn, Julie**

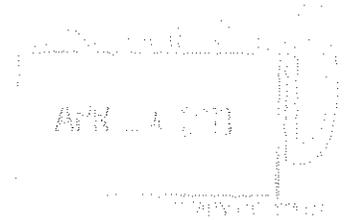
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**From:** Hilary Ware <hwware@gmail.com>  
**Sent:** Wednesday, April 04, 2018 3:56 PM  
**To:** Flynn, Julie  
**Subject:** comment on emergency rule making for implementation of RCV

Thank you for posting this. I am very excited this is finally going forward as voted (twice) by Maine's citizens. The wording seems fine except that voters need to know they do not need to rank their choices unless they choose to. Your use of the word 'opportunity' may cover that scenario.

Hilary Ware, Norway

Sent from [Mail](#) for Windows 10



# Andrew Freese comment p.1 of 1

**Flynn, Julie**

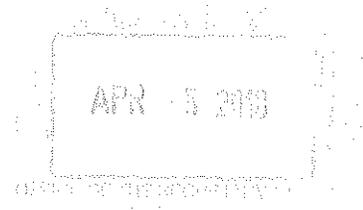
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**From:** Andrew Freese <andrew\_freese23@yahoo.com>  
**Sent:** Thursday, April 05, 2018 3:59 PM  
**To:** Flynn, Julie  
**Subject:** Chapter 535

CHAPTER 535 is obviously absurdly complicated and too costly to implement . Of course. transferring ballots to a central counting place is a no-no. We need decentralization counting of paper ballots where no electronic machines can be tampered with and no other malfesance can occur.

The whole RCV is a scam and a fraud weakening-diluting my vote for the candidate of my choice! I must be allowed to vote for just one candidate. Anything else is corrupting my vote and may be subject to a lawsuit. I don't think that citizens understood the ramifications of the RCV referendum. Thank you.

Andrew J. Freese  
250 Washington St.  
Brewer, Maine 04412  
[andrew\\_freese23@yahoo.com](mailto:andrew_freese23@yahoo.com)



George Gilbert Comment p. 1 of 9  
RCV Resource Ctr.

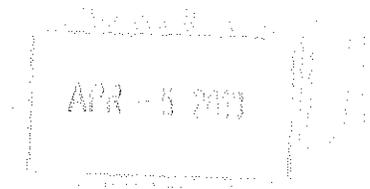
**Flynn, Julie**

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**From:** George Gilbert <george.gilbert@rankedchoicevoting.org>  
**Sent:** Thursday, April 05, 2018 6:20 PM  
**To:** Flynn, Julie  
**Subject:** Comments on Proposed Rule Number 2018-P038  
**Attachments:** RCVRC\_Maine Rulemaking Comments Cover Letter.pdf; Comments on Proposed RCV Rules\_Maine\_250rcv\_RCVRC.pdf

Julie, attached are a cover letter and comments on Maine's proposed RCV implementation rules. We appreciate the opportunity to provide our comments and suggestions on these rules and hope these thoughts will be of assistance to you and to the State of Maine in meeting this challenging new mandate.

George Gilbert  
RCV Resource Center  
[george.gilbert@rankedchoicevoting.org](mailto:george.gilbert@rankedchoicevoting.org)  
336-906-0047



George Gilbert Comment p. 2 of 9  
RCV Resource Ctr



To: Julie L. Flynn  
101 State House Station  
Augusta, ME 04333-0101  
Phone: 207-624-7736  
Fax: 207-287-5428  
Email: julie.flynn@maine.gov

From: George Gilbert, Deputy Director, Ranked Choice Voting Resource Center

RE: *Proposed Rule Number 2018-P038*

Attached are the Ranked Choice Voting Resource Center's comments on the recently proposed rules regarding implementation of ranked choice voting for the June 12, 2018 Primary in the State of Maine.

The Consulting Team of the Ranked Choice Voting Resource Center is not advocacy focused. With extensive elections experience and working together overseeing statewide, municipal, and district RCV elections, our team has focused on expanding the resources and information available regarding the administration of and education about this voting method. We submit these comments in light of our experience and that of other jurisdictions where ranked choice voting has been implemented.

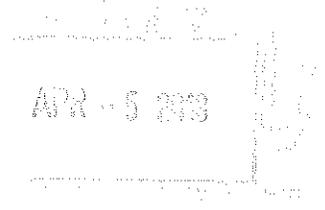
We recognize that among the most important factors in determining a jurisdiction's administrative decisions are its familiarity with the process being implemented, its traditions, and its infrastructure for supporting the implementation. Most jurisdictions, when implementing new processes and procedures, do so in a cautious manner which often leads to delays and criticism from outside onlookers. With this understanding, we offer our comments and suggestions for your consideration in the hopes that they will help you use the experience of others in implementing this new challenge in the State of Maine.

Thank you for this opportunity to comment on your proposed RCV implementation rules.

George Gilbert  
Deputy Director  
Ranked Choice Voting Resource Center  
336-906-0047

[george.gilbert@rankedchoicevoting.org](mailto:george.gilbert@rankedchoicevoting.org)





29-250 DEPARTMENT OF THE SECRETARY OF STATE  
BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS  
DIVISION OF ELECTIONS

Chapter 535: RULES GOVERNING THE ADMINISTRATION OF ELECTIONS  
DETERMINED BY RANKED-CHOICE VOTING

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**SUMMARY:** This rule sets forth the procedures for the administration of elections determined by ranked-choice voting, including collection, security and handling of ballots and memory devices between the municipal offices and the central counting facility; aggregating and counting the cast vote records; administering the rounds of ranked-choice counting to achieve a majority result; and reporting the results.

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**SECTION 1. Applicability of Ranked-choice Voting,**

Elections for an office defined in 21-A M.R.S.A. §I, sub-§27-C will be determined by the ranked-choice voting process described in these rules when there are three or more candidates who have qualified to be listed on the ballot for that office or when there is a combination of at least two candidates who have qualified to be listed on the ballot for that office plus at least one declared write-in candidate.

**SECTION 2. Definitions,**

1. "Continuing ballot", as defined in 21-A M.R.S.A. § 723-A, sub-§ I, paragraph B, means a ballot that is not an exhausted ballot.
2. "Continuing candidate," as defined in 21-A M.R.S.A. § 723-A, sub-§ I, paragraph C, means a candidate who has not been defeated.
3. "Election results reporting program" means the software program that is compatible with the current tabulation system used by the state and is capable of processing and aggregating the results and cast vote records created by scanning the ballots.
4. "Ranking," as defined in 21-A M.R.S.A. § 723-A, sub-§ I, paragraph I, means the number or the numeric position assigned on a ballot by a voter to a candidate to express the voter's preference for that candidate. Ranking number one is the highest ranking, ranking number two is the next-highest ranking and so on.
5. "RCV count" means the ranked-choice counting process defined in these rules.
6. "RCV counting facility" means a facility in the Augusta area selected by the Secretary of State and the room or rooms in that facility in which one or more RCV counts will take place.
7. "RCV counting utility" means a specialty software program or utility that incorporates the ranked-choice vote counting requirements defined in Section 4, subsection 2 of these rules, and electronically completes the rounds of the RCV count.

8. "Skipped ranking," as defined in 21-A M.R.S.A. § 723-A, sub-§ I, paragraph K, means a circumstance in which a voter has left a ranking blank and ranks a candidate at a subsequent ranking.

9. "UOCAVA election officials" means the officials who centrally process and count the absentee ballots received by the Secretary of State from Maine uniformed service and overseas voters pursuant to Chapter 525, Rules for Administering the Central Issuance and Processing of UOCA VA Absentee Ballots.

### SECTION 3. Ballot Design.

**1. Authority of Secretary of State.** The Secretary of State has the sole authority to determine the design of ballots containing ranked-choice voting contests, including whether to place ranked-choice contests and non-ranked-choice contests on the same or separate ballot pages. This determination will be made after the candidate filing deadline has passed, when the number of contests subject to ranked-choice voting and the number of candidates who have qualified for those contests is known. Ranked-choice contests will be grouped together and presented either on a separate ballot page from the non-ranked-choice contests, or on one side of a combined ranked-choice and non-ranked-choice ballot page. Ballot heading information and specific instructions will be presented above or next to the first contest of each type (i.e., ranked-choice contest, non-ranked-choice contest or referendum contest). Each ballot page or grouping of contests will adhere to the ballot order and layout requirements, as near as practicable, of 21-A M.R.S.A. §601, §604-A, §723-A. The final design will be based on the space and design limitations of the ballot design software, while following the best practices for ballot design to the greatest extent possible.

**2. Ranked-choice layout.** The ballot will be designed in a manner that allows voters to rank as many candidates as they wish, up to and including all listed candidates and one declared write-in candidate, in order of choice. If there is no declared write-in candidate who has qualified in accordance with 21-A M.R.S.A. §722-A for a ranked-choice voting contest, then the Secretary of State may eliminate the write-in space for the contest so that the voter will have the ability to rank only the candidates listed on the ballot.

### SECTION 4. Vote Counting Procedures.

**1. Municipal vote counting and reporting.** After the polls close on election day, election officials in each municipality will tally the ballots either by hand-count or by using an approved tabulation system as authorized by the Secretary of State and will record the first choice votes cast for all ranked-choice voting contests in the same manner as for contests determined by plurality pursuant to 21-A M.R.S.A. §695. Each municipality will prepare an election return and will submit an attested copy of the election return to the Secretary of State within 3 business days after election day as provided in 21-A M.R.S.A. §§711 and 712.

#### 2, Ranked-choice vote counting,

- A. **General procedures.** If no candidate has a majority of first choice votes based on the election returns provided by municipalities under subsection 1 of this section, the RCV count must be conducted under the supervision of the Secretary of State in successive rounds, as further described in Section 6 of these rules. In

each round, the number of votes for each continuing candidate must be counted. Each continuing ballot counts as one vote for its highest-ranked continuing candidate for that round. Exhausted ballots are not counted for any continuing candidate. At the end of each round, if no candidate receives a majority of the votes cast in that round, the last-place candidate is eliminated, and the next-highest-ranked continuing candidate on the defeated candidate's ballots is transferred and added to the totals for the continuing candidate for the next round.

- B. **Threshold for majority.** A majority is considered to be achieved when a candidate receives 1 vote more than 50% of the total votes for all continuing candidates cast in the specified round, excluding overvotes, undervotes (i.e., skipped or blank votes) and exhausted ballots.
- C. **Handling of certain ballot rankings.** As provided in 21-A M.R.S.A §723-A, sub-§1, and these rules, the following ballot ranking situations will be counted as follows:
- (1) **Overvote.** An overvote occurs when a voter marks more than one candidate for the same ranking (i.e., in the same ranking column). Upon the first instance of encountering an overvote during the RCV count the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.
  - (2) **Single skipped ranking.** A single skipped ranking occurs when a voter does not mark (i.e., skips or leaves blank) a ranking but marks the subsequent ranking for a candidate. The single skipped ranking is ignored, and the subsequent ranking is counted in the current round, as long as that ranking is for a continuing candidate. For example, if the voter did not mark any candidate for the first ranking, but marked a continuing candidate for the second ranking, then the second ranked choice is counted in the first round of the RCV count.
  - (3) **Two consecutive skipped rankings.** When a voter does not mark (i.e., skips or leaves blank) two or more consecutive rankings, then the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.
  - (4) **Duplicate ranking for the same candidate.** A duplicate ranking occurs when a voter marks more than one ranking column for the same candidate. If a voter marks a duplicate ranking for one candidate and ranks no other candidates, then the ballot will be counted for the highest ranking of that candidate. If the candidate with the duplicate ranking is eliminated, the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted. If a voter marks a duplicate ranking for one candidate but also ranks other candidates, if the candidate with the duplicate ranking is eliminated, then the next continuing candidate who is ranked will be counted in the next round.

**Commented [GG1]:** Sec. 5. 21-A MRSA §723-A(2) B. If there are more than 2 continuing candidates, the last-place candidate is defeated and a new round begins.

This appears to require that the candidate elimination process continue until only two candidates remain. The proposed rule implies this continuation only "if no candidate receives a majority of the votes cast in that round." Should this read, "if more than two continuing candidates remain,"?

- (5) **No ranking for a continuing candidate.** In any round, if a voter has not ranked any continuing candidate, the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.
- (6) **Ties.** A tie between candidates for the most votes in the final round must be decided by lot and the candidate chosen by lot is defeated. A tie between last-place candidates in any other round must be decided by lot and the candidate chosen by lot is defeated, except that tied candidates who are mathematically impossible to be elected as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph G, may be eliminated by batch elimination, as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph A. The result of the tie resolution must be recorded and relied upon in the event of a recount.
- (7) **Batch elimination.** Batch elimination means the simultaneous defeat of multiple candidates for whom it is mathematically impossible to be elected, as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph G.

#### SECTION 5, Preparation for Ranked-choice counting.

**1. Central location for ranked-choice count.** The Secretary of State will select a suitable facility in the Augusta area, in which to securely store the election materials and conduct the RCV count. The space used for storage of ballots and memory devices that contain cast vote records must be secured against access by unauthorized personnel and all access must be logged. The Secretary of State is responsible for security of the storage and counting space.

**2. Retrieval of election materials.** Once the Secretary of State determines that an RCV count is needed for one or more ranked-choice contests, the Secretary of State will notify the Department of Public Safety (DPS) and the affected municipalities that election materials will be retrieved. DPS is responsible for coordinating and supervising the retrieval of the ballots and/or memory devices, as applicable, from the affected municipalities; transportation of these materials to the RCV counting facility; and ensuring the security of these materials while in DPS custody. The Secretary of State will provide transmittal forms to document the chain of custody from the municipality to DPS personnel. Secretary of State personnel at the RCV counting facility will accept and log the materials upon receipt from DPS. Municipalities that used the digital scan tabulators to tabulate their ballots will provide the DPS with all memory devices containing results and cast vote records for the election. The Secretary of State will provide transmittal packaging and tamper-evident seals to be used for memory device transmittal. If any ballots were not scanned by a tabulator, the municipality must seal these ballots in a separate tamper-proof container from the fully scanned and counted ballots, and must provide the container of unscanned ballots to DPS along with the memory devices. Municipalities that hand-counted their absentee and election day ballots must provide DPS with all tamper-proof containers used to seal the hand-counted ballots cast in the election.

**3. Ranked-choice counting personnel.** The following personnel may participate in the ranked-choice counting process.

**Commented [GG2]:** If the ballots are not transmitted at the same time, a recount would require the DPS to make a return trip to any digital scan jurisdiction to retrieve the ballots. Might consider retrieving all ballots and memory devices initially, recognizing that you may have good reasons for not doing so.

Should consider creating hash codes for the files on these memory devices. This would enable the state to replicate these codes before processing the data in Augusta and verifying that the data file integrity has been preserved. It would involve a little extra training for local officials but hashing software is readily available at no cost and relatively easy to use. We recognize that the level of computer competence may vary greatly among local jurisdictions and this may not be judged feasible.

- A. **Supervisor of ranked-choice voting count.** The ranked-choice counting rounds will be conducted under the supervision of the Secretary of State, or his or her designee, who is called the RCV Supervisor. The RCV Supervisor will direct and oversee the conduct of the RCV count according to all applicable laws, rules and procedures.
- B. **Ranked-choice voting assistants.** The Secretary of State or RCV Supervisor will designate the necessary number of Department staff to act as RCV Assistants. If additional personnel are needed, the Secretary of State may designate municipal election officials or UOCAVA election officials to act as RCV Assistants.
- C. **Security personnel.** The Secretary of State may use law enforcement personnel from the Department's Office of Investigations to receive the election materials from the DPS personnel and secure the materials at the RCV counting facility.
- D. **Vendor support staff.** The Secretary of State may authorize support staff from the voting system vendor to be present during the ranked-choice voting count to assist ranked-choice counting personnel with using the software and hardware necessary to complete the count.
- E. **Additional staff.** The Secretary of State and the Department's legal counsel may assist with the RCV count as needed.

4. **Notice of public proceeding.** The RCV count is a public proceeding, and members of the media and the general public may attend, to the extent the space allows. The Secretary of State will provide notice to the public regarding the RCV count for each contest, including information about scheduling. Depending on the number of municipalities in the district for the particular contest that is subject to an RCV count, the RCV count will not be scheduled to begin until the memory devices and ballots from the majority of municipalities in the district have been delivered to the RCV counting facility, so that the RCV count can proceed in an orderly and efficient manner. A municipality's memory devices or hand-count ballots will not be processed until the Secretary of State has received the municipality's election return, which includes the first-place choices for all ranked-choice and non-ranked-choice contests, and the total ballots cast for the municipality.

#### SECTION 6. Process for Ranked-choice counting.

1. **Security of the ranked-choice counting area.** There will be a guardrail enclosure set up to separate the ranked-choice counting area from the public viewing area at the RCV counting facility. Only the ranked-choice counting personnel designated in Section 5 of this rule will be allowed inside the guardrail enclosure. All persons allowed inside the guardrail must sign in each day, on a form provided by the Secretary of State. Candidates, media and members of the general public must remain outside the guardrail area. Only limited conversation will be permitted in the RCV counting facility. Cell phones must be silenced during the count and may be used within the guardrail area only by the ranked-choice counting personnel as needed to conduct the process. Any person who causes a disruption of the RCV count may be removed from the room, at the discretion of the RCV Supervisor.

Commented [GG3]: Allowing the RCV tabulation to begin when a majority of the local jurisdictions within the contest jurisdiction have been delivered is a good feature that will help speed up the tabulation process and enhance its transparency.

It is not clear, however, what is meant by "the RCV count will not be scheduled to begin until the memory devices and ballots from the majority of municipalities in the district have been delivered..." The final provision of this proposed rule appears to postpone the RCV count until all district results have been delivered. This seems to need clarification.

Obviously, results reports that did not include all of a district's votes would be incomplete and subject to change at the next report. This is customary in election reporting in most jurisdictions, but we are not familiar with Maine's tradition in this regard. Our experience does tend to support the position that election results watchers would rather see results that change than no results at all.

**2. Inspection of Materials.** Prior to opening tamper-proof containers of ballots that were hand-counted on election night, or sealed packages containing memory devices for ballots that were machine tabulated on election night, the ranked-choice counting personnel will inspect each container or package to document whether it was properly sealed. As each container or package is opened and ballots or memory devices are removed and processed, personnel will complete a tracking log. After processing is complete, the materials will be resealed in the containers or delivery packages and secured until after any recount period has passed. Ballots will be returned to the municipality of origin, while memory devices will be delivered to the Elections Division for coding the next election.

**3. Processing of ballots and memory devices.** The following activities may be conducted simultaneously or consecutively, depending on the number of ranked-choice counting personnel available.

- A. **Hand-counted ballots.** Tamper-proof containers of ballots that were hand-counted on election night will be unsealed and scanned through a tabulating device in order to obtain electronic results and cast vote records. RCV Assistants will be assigned to unseal the tamper-proof containers of hand-counted ballots, remove the ballots related to the ranked-choice contest(s) to be counted, and prepare them for scanning. This will be done on a municipality-by-municipality basis, and an RCV assistant will record the date and time when each municipality's ballots were scanned. Once the ballots have been scanned, the ballots will be resealed in the tamper-proof containers from that municipality and stored until after any recount period has passed. On a periodic basis, the memory devices from the hand-count ballot scanning will be uploaded into the election results reporting program.
- B. **Machine-tabulated ballots.** Packages containing memory devices from municipalities whose ballots were machine-tabulated on election night will be unsealed and the contents uploaded into the election results reporting program. RCV Assistants will be assigned to perform this task. This will be done on a municipality-by-municipality basis, and an RCV assistant will record the date and time when the memory devices for each municipality were uploaded. Once all memory devices for a municipality have been uploaded into the election results reporting program, the memory devices will be resealed in the delivery packages from that municipality and stored until after any recount period has passed.
- C. **Hardware and software.** The Secretary of State will use hardware and software compatible with the current tabulating system for performing the RCV count. Precinct tabulators or high-speed tabulators used for scanning the hand-counted ballots will be non-networked devices and will not be connected to the internet or employ any wireless technology. The computers used for the election results reporting program will be a self-contained, single-purpose, hard-wired network and will not be connected to the internet or employ any wireless technology. The Secretary of State will procure a software utility or algorithm that incorporates the ranked-choice vote counting requirements as described in Section 4, subsection 2 of these rules. The RCV counting utility will utilize the

**Commented [GG4]:** The RCV Resource Center has developed an RCV counting utility, the Universal RCV Tabulator, that has already been tested and verified using the Maine RCV tabulation rules.

This tabulator was also tested using the 2013 and 2017 Minneapolis cast vote records for the mayoral contests and produced, in seconds, the precise results, round by round that was tabulated originally by the Minneapolis election officials.

Our Universal RCV Tabulator is available free to any user and we would be happy to work with the State of Maine to fully test and prepare this RCV tabulation utility for use in the June 2018 primary election.

Alternatively, if the state chooses some other tabulation utility with which to conduct its RCV tabulation, we would encourage you to also conduct the tabulation using the Universal RCV Tabulator, again, free of charge, to confirm the accuracy of your tabulation.

We would also encourage you to consider making public copies of the cast vote record files available so any interested party could verify the accuracy of the state's tabulation. I know you are very aware of the growing demands for greater transparency and accountability in election administration. This practice, of publishing CVRs, has been very well received by election security and integrity experts and advocates wherever it has been effected.

cast vote records and apply the ranked-choice vote counting requirements to complete the rounds of the RCV count and reach a majority winner.

- D. Quality control reports.** As each municipality's results are uploaded into the election results reporting program, the RCV Supervisor or an RCV Assistant will generate a report of the total ballots cast to compare with the total ballots cast figure reported by the municipality based on the election night count. This comparison will be used to verify that all results from election night for each municipality have been uploaded or all hand-count ballots have been scanned and results uploaded.

- 1. Ranked-choice vote reporting.** After all the results from each ranked-choice voting election are uploaded and verified in the election results reporting program, the RCV Supervisor will initiate the RCV counting utility. Reports will be generated to document the round-by-round results as well as the final majority winner. The Secretary of State will report the statewide ranked-choice result to the Governor and will publish the results on the Department's public website, as soon as possible after completing the RCV count.

**Commented [GG5]:** This seems at odds with the statement in Section 5(4) that, "Depending on the number of municipalities in the district for the particular contest that is subject to an RCV count, the RCV count will not be scheduled to begin until the memory devices and ballots from the majority of municipalities in the district have been delivered to the RCV counting facility...."

The earlier statement implies that the counting process will begin after "a majority" of the district's municipalities have delivered their election materials to the state.

The current statement implies that such counting will not begin until all ballots for a contest have been received.

The concern is that the delivery process will likely take several days to a week to complete. In the meantime, the public and candidates would receive no updated results information. In my experience as an election administrator for 25 years, release of even incomplete election results information as early as possible in the process goes far to mitigate against criticism and rumors of misconduct. The same has been determined to be true in San Francisco where they publicly release RCV tabulation periodically as it comes in. Such a process is no different than making public the election count precinct by precinct and summed as it is reported to the central reporting system. This is a common practice and there are no features of RCV that would dictate treating the reporting of its results any differently.

**Flynn, Julie**

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**From:** Ann Luther <ann.m.luther@gmail.com>  
**Sent:** Friday, April 06, 2018 11:49 AM  
**To:** Dunlap, Matthew; Flynn, Julie  
**Cc:** jblawinme; Deb McDonough; Jon Monroe  
**Subject:** Comments on the RCV Rules  
**Attachments:** SOS ltr on RCV 2018-04-06 Final.pdf; Comments on Proposed Rules for RCV Final.pdf

Hi, Julie and Matt.

Attached are a cover letter and comments on the proposed rules for implementing ranked choice voting in the June primary in Maine.

Thanks again for the opportunity to provide input. Let us know if you have any questions.

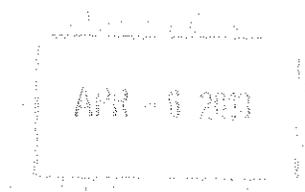
Best,

Ann





April 6, 2018



Honorable Matthew Dunlap  
Secretary of State  
[Matthew.Dunlap@maine.gov](mailto:Matthew.Dunlap@maine.gov)

Julie Flynn  
Deputy Secretary of State  
[Julie.Flynn@maine.gov](mailto:Julie.Flynn@maine.gov)

148 State House Station  
Augusta, Maine 04333-0148

Dear Matt and Julie:

Thank you for the opportunity to comment on the emergency rules for the ranked choice voting election this June. The publication of these rules is a crucial milestone on the road to making ranked choice voting a reality in Maine. We found the rules to be timely and constructive. Although the Secretary of State could have issued these emergency rules without public comment, the League salutes you for working to create an opportunity for public comment. We realize that you have gone beyond the requirements of the law to encourage public input into this process.

Our comments cover a range in level of detail and critical importance, but our highest priority concerns relate to timeliness and transparency. Specifically, we recommend the following:

- The Secretary of State should establish a default presumption that the ballots and memory sticks will be retrieved as soon as possible after Election Day, possibly beginning on the Wednesday after the election. For this election, we would have to see a majority winner in ALL the major contests to obviate the need for this step. Let's not wait.
- The Secretary of State should not wait to initiate processing of the ballots and memory devices until the majority of towns have returned their materials. We believe this is too high standard, and that it will delay processing even when as many as 97% of the actual ballots are ready and waiting to be processed.
- The Secretary of State should not wait to initiate the RCV Counting Utility until all towns have provided their memory sticks or ballots to the central facility. While there is value in waiting for a complete set of ballots before running this computation, there is a countervailing value in ensuring that the public (and the candidates) have information on the election even if that information is unofficial and not complete. After a few days, we believe the balance tips in favor of providing more information and that it is not necessary or good policy to wait a long period of time for a few straggler ballots that won't affect the outcome. Therefore we urge you to start processing the cast vote record and announcing partial results as soon as possible after Election Day. Ideally, this would be Friday or Monday after Election Day, and the Office would continue to release updated runs each subsequent day until the CVR is complete.
- Finally, once the RCV count is complete and final results have been announced, we urge you to publish a digital copy of the complete cast vote record for each contest. This allows campaigns and interested citizens to check the round-by-round results using public-domain counting utilities, and it is essential to candidates contemplating a recount request.

We are continuing to examine recount procedures and protocols and look forward to a discussion of those issues when the time is right.

We continue to believe that the best outcomes for Maine during a period of significant change will be achieved through open and respectful discussion with public officials and other stakeholders.

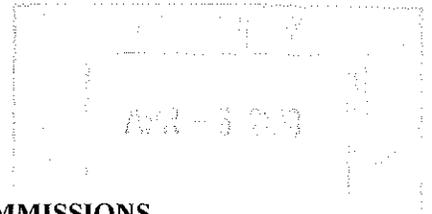
Throughout this transition, we hope that you will regard the League and our project, Maine Uses Ranked Choice Voting, as a source of insight and support.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ann".

Ann Luther  
League of Women Voters of Maine  
PO Box 863  
Augusta, ME 04332-0863

[Ann.M.Luther@gmail.com](mailto:Ann.M.Luther@gmail.com)



29-250 DEPARTMENT OF THE SECRETARY OF STATE  
BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS  
DIVISION OF ELECTIONS

**Chapter 535: RULES GOVERNING THE ADMINISTRATION OF ELECTIONS DETERMINED BY  
RANKED-CHOICE VOTING**

**SUMMARY:** This rule sets forth the procedures for the administration of elections determined by ranked-choice voting, including collection, security and handling of ballots and memory devices between the municipal offices and the central counting facility; aggregating and counting the cast vote records; administering the rounds of ranked-choice counting to achieve a majority result; and reporting the results.

**Recommendation**

1. "... ranked-choice counting to achieve a winning candidate majority result; and reporting the results."

**Rationale**

The statute specifies that RCV counting rounds continue until only two candidates remain, at which point one of the two is defeated, and one is the winning candidate. Both because it's specified in statute and because it's better for winning candidates to be able to demonstrate the extent of their mandate, we recommend running the counting utility to the final round where all candidates have been defeated but one. The counting utility will make this easy to do. Other RCV jurisdictions are adopting this practice. See further discussion below.

**SECTION L Applicability of Ranked-choice Voting.**

Elections for an office defined in 21-A M.R.S.A. §1, sub-§27-C will be determined by the ranked-choice voting process described in these rules when there are three or more candidates who have qualified to be listed on the ballot for that office or when there is a combination of at least two candidates who have qualified to be listed on the ballot for that office plus at least one declared write-in candidate,

## **SECTION 2. Definitions.**

1. "Continuing ballot", as defined in 21-A M.R.S.A. § 723-A, sub-§ 1, paragraph B, means a ballot that is not an exhausted ballot,
2. "Continuing candidate," as defined in 21-A M.R.S.A. § 723-A, sub-§ 1, paragraph C, means a candidate who has not been defeated.
3. "Election results reporting program" means the software program that is compatible with the current tabulation system used by the state and is capable of processing and aggregating the results and cast vote records created by scanning the ballots.
4. "Ranking," as defined in 21-A M.R.S.A. § 723-A, sub-§ 1, paragraph I, means the number or the numeric position assigned on a ballot by a voter to a candidate to express the voter's preference for that candidate. Ranking number one is the highest ranking, ranking number two is the next-highest ranking and so on.
5. "RCV count" means the ranked-choice counting process defined in these rules.
6. "RCV counting facility" means a facility in the Augusta area selected by the Secretary of State and the room or rooms in that facility in which one or more RCV counts will take place.
7. "RCV counting utility" means a specialty software program or utility that incorporates the ranked-choice vote counting requirements defined in Section 4, subsection 2 of these rules, and electronically completes the rounds of the RCV count.
8. "Skipped ranking," as defined in 21-A M.R.S.A. § 723-A, sub-§ I, paragraph K, means a circumstance in which a voter has left a ranking blank and ranks a candidate at a subsequent ranking.
9. "UOCAVA election officials" means the officials who centrally process and count the absentee ballots received by the Secretary of State from Maine uniformed service and overseas voters pursuant to Chapter 525, Rules for Administering the Central Issuance and Processing of UOCAVA Absentee Ballots.

## **Recommendation**

1. Incorporate the statutory definitions from 723-A into the rules for completeness, consistency, and ease of understanding.
2. Add a new definition for "winning candidate."  
"Winning candidate" means that candidate who is the continuing candidate after all other candidates have been defeated.

## **Rationale**

Already covered.

### **SECTION 3. Ballot Design.**

**1. Authority of Secretary of State.** The Secretary of State has the sole authority to determine the design of ballots containing ranked-choice voting contests, including whether to place ranked-choice contests and non-ranked-choice contests on the same or separate ballot pages.

This determination will be made after the candidate filing deadline has passed, when the number of contests subject to ranked-choice voting and the number of candidates who have qualified for those contests is known. Ranked-choice contests will be grouped together and presented either on a separate ballot page from the non-ranked-choice contests, or on one side of a combined ranked-choice and non-ranked-choice ballot page. Ballot heading information and specific instructions will be presented above or next to the first contest of each type (i.e., ranked-choice contest, non-ranked-choice contest or referendum contest). Each ballot page or grouping of contests will adhere to the ballot order and layout requirements, as near as practicable, of 21-A M.R.S.A. §601, §604-A, §723-A. The final design will be based on the space and design limitations of the ballot design software, while following the best practices for ballot design to the greatest extent possible.

**2. Ranked-choice layout.** The ballot will be designed in a manner that allows voters to rank as many candidates as they wish, up to and including all listed candidates and one declared write-in candidate, in order of choice. If there is no declared write-in candidate who has qualified in accordance with 21-A M.R.S.A. §722-A for a ranked-choice voting contest, then the Secretary of State may eliminate the write-in space for the contest so that the voter will have the ability to rank only the candidates listed on the ballot.

### **Recommendation**

We hope that best practice can be accommodated in the ballot design to the greatest extent possible, with one column for a list of candidates in alphabetic order and enough ranking columns to the right so that each candidate can be ranked, with each ranking in its own separate column on the ballot, we recommend no change. We understand that best practice is to put the numbers in the ovals in the ranking columns, not just showing them as column headings.

#### SECTION 4. Vote Counting Procedures.

**1. Municipal vote counting and reporting.** After the polls close on election day, election officials in each municipality will tally the ballots either by hand-count or by using an approved tabulation system as authorized by the Secretary of State and will record the first choice votes cast for all ranked-choice voting contests in the same manner as for contests determined by plurality pursuant to 21-A M.R.S.A. §695. Each municipality will prepare an election return and will submit an attested copy of the election return to the Secretary of State within 3 business days after election day as provided in 21-A M.R.S.A. §§711 and 712.

#### **2. Ranked-choice vote counting.**

A. **General procedures.** If no candidate has a majority of first choice votes based on the election returns provided by municipalities under subsection 1 of this section, the RCV count must be conducted under the supervision of the Secretary of State in successive rounds, as further described in Section 6 of these rules. In each round, the number of votes for each continuing candidate must be counted. Each continuing ballot counts as one vote for its highest-ranked continuing candidate for that round. Exhausted ballots are not counted for any continuing candidate. At the end of each round, if no candidate receives a majority of the votes cast in that round, the last-place candidate is eliminated, and the next- highest-ranked continuing candidate on the defeated candidate's ballots is transferred and added to the totals for the continuing candidate for the next round.

#### **Recommendation**

1. "If no candidate has the a first choice vote on more than 50% of the a majority of first choice votes ballots that were cast for the contest based on the election returns provided by municipalities under subsection 1 of this section, the RCV count must be conducted under the supervision of the Secretary of State in successive rounds, as further described in Section 6 of these rules."
2. "At the end of each round, if there are more than 2 continuing candidates, the last place candidate is defeated, no candidate receives a majority of the votes cast in that round, the last place candidate is eliminated, and the vote for the next- highest-ranked continuing candidate on the defeated candidate's ballots is transferred and added to the totals for the continuing candidate for the next round. Batch elimination may defeat multiple candidates in a single round. If there are 2 or fewer continuing candidates, the candidate with the most votes in the final round is the winning candidate."

#### **Rationale**

"Majority" is not a defined term, except in the paragraph below, where the definition is problematical.

The statute specifies that RCV counting rounds continue until only two candidates remain, at which point one of the two is defeated, and one is the winning candidate. Both because it's specified in statute and because it's

better for winning candidates to be able to demonstrate the extent of their mandate, we recommend running the counting utility to the final round where all candidates have been defeated but one. The counting utility will make this easy to do. Other RCV jurisdictions are adopting this practice. See further discussion below.

Finally, the statute talks about "defeating" candidates, while the rules talk about "eliminating" candidates. Beginning here and continuing below, we recommend using the statutory term where appropriate.

**B, Threshold for majority.** A majority is considered to be achieved when a candidate receives 1 vote more than 50% of the total votes for all continuing candidates cast in the specified round, excluding overvotes, undervotes (i.e., skipped or blank votes) and exhausted ballots.

#### **Recommendation**

Eliminate this paragraph.

#### **Rationale**

Substitute what's here for a definition of "winning candidate" as outlined above and throughout. The definition proposed here has an arithmetic problem. To appreciate why this definition of a majority threshold is defective, consider the small case of just five continuing votes. Fifty percent of five votes is two and a half votes. This definition would require a candidate get at least three and half votes to have a majority -- that is, four votes, instead of three. (If this paragraph stays, note that "undervote" is not a defined term in statute or in Section 2.)

**C. Handling of certain ballot rankings.** As provided in 21-A M.R.S.A §723-A, sub-§1, and these rules, the following ballot ranking situations will be counted as follows:

#### **Recommendation**

We recommend that the tabulator scanners be programmed to recognize these ballot conditions and return the ballot to the voter to be corrected before the ballot is cast.

- (1) **Overvote.** An overvote occurs when a voter marks more than one candidate for the same ranking (i.e., in the same ranking column). Upon the first instance of encountering an overvote during the RCV count the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.

## Recommendation

Suggest rewording paragraph (1) as follows:

- (1) **Overvote.** An overvote occurs when a voter marks more than one candidate for the same ranking (i.e., in the same ranking column). An overvote invalidates the overvoted rankings and all subsequent rankings marked for that contest on that ballot. Candidates ranked higher than the overvote are counted as long as they are continuing candidates. ~~Upon the first instance of encountering an overvote during the RCV count, the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.~~

## Rationale

The original language: "Upon the first instance of encountering an overvote during the RCV count the ballot is deemed exhausted for that contest ...." is confusing. it implies that the first instance of an overvote on one ballot could have consequences for the entire RCV count.

- (2) **Single skipped ranking.** A single skipped ranking occurs when a voter does not mark (i.e., skips or leaves blank) a ranking but marks the subsequent ranking for a candidate. The single skipped ranking is ignored, and the subsequent ranking is counted in the current round, as long as that ranking is for a continuing candidate. For example, if the voter did not mark any candidate for the first ranking, but marked a continuing candidate for the second ranking, then the second ranked choice is counted in the first round of the RCV count.
- (3) **Two consecutive skipped rankings.** When a voter does not mark (i.e., skips or leaves blank) two or more consecutive rankings, then the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.
- (4) **Duplicate ranking for the same candidate.** A duplicate ranking occurs when a voter marks more than one ranking column for the same candidate. If a voter marks a duplicate ranking for one candidate and ranks no other candidates, then the ballot will be counted for the highest ranking of that candidate. If the candidate with the duplicate ranking is eliminated, the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted. If a voter marks a duplicate ranking for one candidate but also ranks other candidates, if the candidate with the duplicate ranking is eliminated, then the next continuing candidate who is ranked will be counted in the next round.

## Recommendation

Reword this section as follows:

- (4) **Duplicate ranking for the same candidate.** A duplicate ranking occurs when a voter marks more than one ranking column for the same candidate.
  - (i) If a voter marks a duplicate ranking for one candidate and ranks no other candidates, then the ballot will be counted for the highest ranking of that candidate. If the candidate with the duplicate ranking is ~~defeated~~eliminated, the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.
  - (ii) If a voter marks a duplicate ranking for one candidate but also ranks other candidates, if the candidate with the duplicate ranking is ~~defeated~~eliminated, then the next continuing candidate who is ranked will be counted in the next round.
- (5) **No ranking for a continuing candidate.** In any round, if a voter has not ranked any continuing candidate, the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.
- (6) **Ties.** A tie between candidates for the most votes in the final round must be decided by lot and the candidate chosen by lot is defeated. A tie between last-place candidates in any other round must be decided by lot and the candidate chosen by lot is defeated, except that tied candidates who are mathematically impossible to be elected as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph G, may be ~~defeated~~eliminated by batch elimination, as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph A. The result of the tie resolution must be recorded and relied upon in the event of a recount.
- (7) **Batch elimination.** Batch elimination means the simultaneous defeat of multiple candidates for whom it is mathematically impossible to be elected, as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph G.

**SECTION 5, Preparation for Ranked-choice counting.**

**1. Central location for ranked-choice count.** The Secretary of State will select a suitable facility in the Augusta area, in which to securely store the election materials and conduct the RCV count. The space used for storage of ballots and memory devices that contain cast vote records must be secured against access by unauthorized personnel and all access must be logged. The Secretary of State is responsible for security of the storage and counting space.

**2. Retrieval of election materials.** Once the Secretary of State determines that an RCV count is needed for one or more ranked-choice contests, the Secretary of State will notify the Department of Public Safety (DPS) and the affected municipalities that election materials will be retrieved. DPS is responsible for coordinating and supervising the retrieval of the ballots and/or memory devices, as applicable, from the affected municipalities; transportation of these materials to the RCV counting facility; and ensuring the security of these materials while in DPS custody. The Secretary of State will provide transmittal forms to document the chain of custody from the municipality to DPS personnel. Secretary of State personnel at the RCV counting facility will accept and log the materials upon receipt from DPS. Municipalities that used the digital scan tabulators to tabulate their ballots will provide the DPS with all memory devices containing results and cast vote records for the election. The Secretary of State will provide transmittal packaging and tamper-evident seals to be used for memory device transmittal. If any ballots were not scanned by a tabulator, the municipality must seal these ballots in a separate tamperproof container from the fully scanned and counted ballots, and must provide the container of unscanned ballots to DPS along with the memory devices. Municipalities that hand-counted their absentee and election day ballots must provide DPS with all tamper-proof containers used to seal the hand-counted ballots cast in the election.

**Recommendation**

Reword this section as follows:

**Retrieval of election materials.** ~~Once the Secretary of State determines that an RCV count is needed for one or more ranked-choice contests, t~~The Secretary of State will notify the Department of Public Safety (DPS) in advance of Election Day that retrieval will commence statewide on the Wednesday after the election. Depending on unofficial results available overnight after the election, and the list of affected municipalities may be reduced, that election materials will be retrieved. ~~SOS will direct DPS to coordinate and supervise is responsible for coordinating and supervising the retrieval of the ballots and/or memory devices, as applicable, from the affected municipalities; transportation of these materials to the RCV counting facility; and ensuring the security of these materials while in DPS custody.~~

### Rationale

Elapsed time from Election Day to the time when preliminary results are available to the public is one of the most critical elements affecting public perception of the success of ranked choice voting. The “plan to retrieve” should be the default, not requiring a specific determination by the Secretary of State. In the June primary, retrieval on some scale will be required unless there is a majority winner in EVERY ranked choice contest. We suggest reframing this rule so that the plan goes into effect automatically unless affirmatively canceled by the SOS. DPS should be prepared to begin retrieval the day after the election.

### Recommendation

In a perfect world, we would like to see the scanner towns retain a duplicate memory stick containing the results and the cast vote records for the election: one sent to the RCV counting facility; one stored with the paper ballots.

### Rationale

The rule states that

“Municipalities that used the digital scan tabulators to tabulate their ballots will provide the DPS with all memory devices containing results and cast vote records for the election.” [Emphasis added.]

We are wondering if provision has been or could be made for the scanner towns to retain duplicate memory sticks. Will results be written on the stick that carried the programming? Do they write over the programming? Do procedures require the town’s to keep a redundant stick, or are they using the DS200 itself as the redundant memory. If they are doing the latter, there could be an issue for towns that intend to count municipal elections after counting the state elections. Would this erase the results and cast vote records in the memory of the DS200?

**3. Ranked-choice counting personnel.** The following personnel may participate in the ranked-choice counting process.

A. Supervisor of ranked-choice voting count. The ranked-choice counting rounds will be conducted under the supervision of the Secretary of State, or his or her designee, who is called the RCV Supervisor. The RCV Supervisor will direct and oversee the conduct of the RCV count according to all applicable laws, rules and procedures.

B. Ranked-choice voting assistants. The Secretary of State or RCV Supervisor will designate the necessary number of Department staff to act as RCV Assistants. If additional personnel are needed, the Secretary of State may designate municipal election officials or UOCAVA election officials to act as RCV Assistants.

C. Security personnel. The Secretary of State may use law enforcement personnel from

the Department's Office of Investigations to receive the election materials from the DPS personnel and secure the materials at the RCV counting facility.

D. Vendor support staff. The Secretary of State may authorize support staff from the voting system vendor to be present during the ranked-choice voting count to assist ranked-choice counting personnel with using the software and hardware necessary to complete the count,

E. Additional staff. The Secretary of State and the Department's legal counsel may assist with the RCV count as needed,

**4. Notice of public proceeding.** The RCV count is a public proceeding, and members of the media and the general public may attend, to the extent the space allows, The Secretary of State will provide notice to the public regarding the RCV count for each contest, including information about scheduling. Depending on the number of municipalities in the district for the particular contest that is subject to an RCV count, the RCV count will not be scheduled to begin until the memory devices and ballots from the majority of municipalities in the district have been delivered to the RCV counting facility, so that the RCV count can proceed in an orderly and efficient manner. A municipality's memory devices or hand-count ballots will not be processed until the Secretary of State has received the municipality's election return, which includes the first-place choices for all ranked-choice and non-ranked-choice contests, and the total ballots cast for the municipality,

#### Recommendation

Reword this section as follows:

**Notice of public proceeding.** The RCV count is a public proceeding, and members of the media and the general public may attend, to the extent the space allows. The RCV count will begin no later than the Monday after the election. The Secretary of State will provide notice to the public regarding the RCV count for each contest, including information about scheduling of the contests, on the Wednesday after the election. ~~Depending on the number of municipalities in the district for the particular contest that is subject to an RCV count, the RCV count will not be scheduled to begin until the memory devices and ballots from the majority of municipalities in the district have been delivered to the RCV counting facility, so that the RCV count can proceed in an orderly and efficient manner.~~ A municipality's memory devices or hand-count ballots will not be processed until the Secretary of State has received the municipality's election return, which includes the first-place choices for all ranked-choice and non-ranked-choice contests, and the total ballots cast for the municipality,

#### Rationale

Waiting for a majority of municipalities to report before even scheduling the RCV count is an extremely high threshold to meet before starting. Since a large number of municipalities comprise only a small percentage of the total ballots, we may find ourselves held up a long time for no more than 2 or 3% of the ballots. If this part of the rule is retained, we strongly suggest using an estimated percentage of ballots as

the trigger, instead of what is presented here.

However, the sequential organization of this plan, we believe, creates unnecessary delay in providing information to the public about the outcome of the election.

This is needlessly protracted. Experience from other jurisdictions provides clear evidence that, while there is a public interest benefit to providing an authoritative official result, that benefit has a trade-off against waiting too long to provide something. We seek a rule here that allows for an orderly and efficient process, while at the same time, providing the public with a sense of forward progress. We suggest beginning the RCV count on the Friday or Monday after Election Day without reference to how many towns or what percentage of ballots have been retrieved.

**SECTION 6. Process for Ranked-choice counting.**

**1. Security of the ranked-choice counting area.** There will be a guardrail enclosure set up to separate the ranked-choice counting area from the public viewing area at the RCV counting facility. Only the ranked-choice counting personnel designated in Section 5 of this rule will be allowed inside the guardrail enclosure. All persons allowed inside the guardrail must sign in each day, on a form provided by the Secretary of State. Candidates, media and members of the general public must remain outside the guardrail area. Only limited conversation will be permitted in the RCV counting facility. Cell phones must be silenced during the count and may be used within the guardrail area only by the ranked-choice counting personnel as needed to conduct the process. Any person who causes a disruption of the RCV count may be removed from the room, at the discretion of the RCV Supervisor.

**2. Inspection of Materials.** Prior to opening tamper-proof containers of ballots that were hand-counted on election night, or sealed packages containing memory devices for ballots that were machine tabulated on election night, the ranked-choice counting personnel will inspect each container or package to document whether it was properly sealed. As each container or package is opened and ballots or memory devices are removed and processed, personnel will complete a tracking log. After processing is complete, the materials will be resealed in the containers or delivery packages and stored until after any recount period has passed. Ballots will be returned to the municipality of origin, while memory devices will be delivered to the Elections Division for coding the next election.

**3. Processing of ballots and memory devices.** The following activities may be conducted simultaneously or consecutively, depending on the number of ranked-choice counting personnel available.

- A. **Hand-counted ballots.** Tamper-proof containers of ballots that were hand-counted on election night will be unsealed and scanned through a tabulating device in order to obtain electronic results and cast vote records. RCV Assistants will be assigned to unseal the tamper-proof containers of hand-counted ballots, remove the ballots related to the ranked-choice contest(s) to be counted, and prepare them for scanning. This will be done on a municipality-by-municipality basis, and an RCV assistant will record the date and time when each municipality's ballots were scanned. Once the ballots have been scanned, the ballots will be resealed in the tamper-proof containers from that municipality and stored until after any recount period has passed. On a periodic basis, the memory devices from the hand-count ballot scanning will be uploaded into the election results reporting program,
- B. **Machine-tabulated ballots.** Packages containing memory devices from municipalities whose ballots were machine-tabulated on election night will be unsealed and the contents uploaded into the election results reporting program. RCV Assistants will be assigned to perform this task. This will be done on a municipality-by-municipality basis, and an RCV assistant will record the date and time when the memory devices for each municipality were uploaded. Once all memory devices for a municipality have been uploaded into the election results reporting program, the memory devices will be resealed in the delivery packages from that municipality and stored until after any recount period has passed.

### Recommendation

An additional rule should specify the method for tabulating results obtained from ballots that, for whatever reason, could not be included in the machine tabulation and/or count using the voter-marked original ballot.

### Rationale

We are wondering about the proposed handling for those few loose ballots from machine-count towns that could not be scanned by the municipality. These ballots will be transported to the central location for the RCV count.

- C. **Hardware and software.** The Secretary of State will use hardware and software compatible with the current tabulating system for performing the RCV count. Precinct tabulators or high-speed tabulators used for scanning the hand-counted ballots will be non-networked devices and will not be connected to the internet or employ any wireless technology. The computers used for the election results reporting program will be a self-contained, single-purpose, hard-wired network and will not be connected to the internet or employ any wireless technology. The Secretary of State will procure a software utility or algorithm that incorporates the ranked-choice vote counting requirements as described in Section 4, subsection 2 of these rules. The RCV counting utility will utilize the cast vote records and apply the ranked choice counting requirements to complete the rounds of the RCV count and reach a majority winner.

### Recommendation

1. .... the cast vote records and apply the ranked choice counting requirements to complete the rounds of the RCV count and reach a winning candidate ~~result~~ majority winner.

### Rationale

As previously stated.

**D. Quality control reports.** As each municipality's results are uploaded into the election results reporting program, the RCV Supervisor or an RCV Assistant will generate a report of the total ballots cast to compare with the total ballots cast figure reported by the municipality based on the election night count. This comparison will be used to verify that all results from election night for each municipality have been uploaded or all hand-count ballots have been scanned and results uploaded.

### Recommendation

Quality control reports should be made public at the end of each day during the RCV count and should be posted online at the Secretary of State's web site. The report would show:

- the number of towns that have returned attested copies and their ballot total
- the number of towns that have returned memory sticks or ballots
- the towns and ballots that have been loaded per contest
- the towns and ballots that are outstanding

4. **Ranked-choice vote reporting.** After all the results from each ranked-choice voting election are uploaded and verified in the election results reporting program, the RCV Supervisor will initiate the RCV counting utility. Reports will be generated to document the round-by-round results as well as the final majority winner. The Secretary of State will report the statewide ranked-choice result to the Governor and will publish the results on the Department's public website, as soon as possible after completing the RCV count.

### Recommendation

Reword this section as follows:

1. As soon as approximately half of the ballots for any contest have been ~~After all the results from each ranked-choice voting election are uploaded and verified in the election results reporting program, but no later than Monday after Election Day,~~ the RCV Supervisor will initiate the RCV counting utility. Preliminary R ~~Reports~~ reports will be generated daily to document the round-by-round results based on partial returns. After all the results from each ranked choice voting election are uploaded and verified, the RCV Supervisor will run the counting utility one last time, generating and publishing round-by-round results as well as the winning candidate results in the final round ~~final majority winner.~~ The Secretary of State will report the statewide ranked-choice result to the Governor and will publish the results on the Department's public website, as soon as possible after completing the RCV count.
2. Add: At the same time that final results are posted on the Department's public website, the aggregated cast vote record by contest will also be posted as an accessible digital file on the Department's public website

### Rationale

Best practice and experience from other jurisdictions tell us that waiting until results are complete and official before running the counting utility undermines voter confidence and trust in the process. The elapsed time between Election Day and providing some results is one of the critical factors to maintaining voter engagement and trust in the process.

Especially since it will not be time-consuming to run the counting utility and post the round-by-round results based on partial data, we strongly recommend that this practice be adopted. Beginning this practice on Friday after Election Day would be ideal, but perhaps aspirational for this first outing.

Furthermore, we believe that providing a digital file of the complete cast vote record for each contest once the results are official is a crucial element of transparency. It allows campaigns and interested citizens to check the round-by-round results using public-domain counting utilities, and it is essential to candidates contemplating a recount request.

We are aware that some have argued that release of the cast vote record is forbidden by law because the ballots are not public records, and we would concur if the cast vote record were a physical photographic or facsimile image of the paper ballot. However, that is not the case: it is digitized data, not recognizable to the voter or anyone else.

**Flynn, Julie**

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**From:** Ralph Chapman <chapmanhd133@gmail.com>  
**Sent:** Friday, April 06, 2018 11:52 AM  
**To:** Flynn, Julie  
**Cc:** Ralph Chapman  
**Subject:** Comments on RCV proposed rules  
**Attachments:** Chapman comments on RCV rules to Secy of State.pdf

Julie Flynn,

Please see my attached (3 pg pdf) letter with comments on the proposed ranked choice voting rules.

Thank you.

Ralph Chapman



## HOUSE OF REPRESENTATIVES

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Ralph Chapman

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April 6, 2018

Julie L. Flynn  
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**Reference: Chapter 535: RULES GOVERNING THE ADMINISTRATION OF ELECTIONS DETERMINED BY RANKED-CHOICE VOTING**

I welcome and appreciate the opportunity to comment on the above referenced proposed rules related to Ranked Choice Voting (RCV) and further offer my continuing help and support for this or related future efforts. Thank you for considering my comments below.

1. Section 1: Though unlikely, consider the case of one qualified candidate and two declared write-in candidates. This addition could be easily communicated by “any combination of three or more qualified candidates and declared write-in candidates”.
2. Section 4 - 2 - A: It is not necessary nor desirable to perform the RCV counting in a central location (except for recounts) and to do so is undesirable for three reasons. First, it is very expensive (space rental, ballot transport personnel costs, and transport costs). Second, it creates an additional unavoidable time delay in determining the election outcome (due to transport times). Third, it exposes the election system to a higher level of risk related to election system fraud (more opportunities for illegal ballot tampering and fewer people in the proximity of a concentration of ballots as contrasted with ballots kept at distributed local locations in which illegal tampering would affect only a few ballots unless there were very unlikely widespread, multi-person conspiracies).
3. Section 4 - 2 - C (2): There is some ambiguity in the wording of this section. Though I am certain that election officials know exactly what it means, the use of the phrase “continuing candidate” in the example presented makes uncertain whether the example voter’s second choice is counted with other voters’ first choices or only with the redistributed votes after the first elimination. This is actually a general communication difficulty as it also affects the way the local ballot clerks count the ballots. I suggest explaining how a single skipped ranking in the first rank will be handled in the local count as

well as how to handle single skipped rankings (in any ranking) for the RCV count.

4. Section 4 - 2 - C (6) & (7): Implicit in the explanations for mathematically impossible results, is that there is no need to determine the winner of a tie if so doing can have no effect on the outcome. This same principle applies to the determination of whether or not a recount may be needed for a close outcome within any round. Therefore sections (6) & (7) need no correction or addition, but it may be useful to introduce the more general concept here which will be employed in future rules regarding RCV recounts, namely that intermediate ties or close outcomes do not trigger any tie-breaking or recount processes unless the final election outcome would be affected.
5. Section 6 - 4: The initiation of the RCV "counting utility", as written, occurs only after all data from all municipalities involved are uploaded into the "election results reporting program". This may be highly undesirable from the standpoint of timely election results reporting. In the past, without RCV, election results were available informally, at least, prior to counting all ballots (such as from late-reporting isolated communities) since the total number of uncounted ballots would not be able to affect the final result. (I am not referring to the press' use of exit interviews and modeling to predict the outcomes midway through voting returns collection.) Similarly, in RCV counted elections, there are "mathematically impossible" affects on the outcome without all ballots counted. Apparent winners can be identified before all ballots are counted without compromising certified winner determination. To allow for timely identification of apparent winners, the rules should allow for preliminary RCV counting. After any preliminary RCV countings, it can then be known what level of determination or indetermination exists relative to the need for counting the last straggler ballots.
6. Overall: I appreciate the dedication, competence, determination, and work that has produced the proposed rules. I also appreciate the difficulties associated with constraints involving time, money, equipment, and knowledge acquisition that are involved with the legislated policies by both citizens and the Legislature. Aside from the minor comments above (# 1, 3, 4, & 5), my primary concern is the scheme of centralized ballot collection (comment # 2). Although alternative methods could easily have been put into place since the original citizen legislation became law, it may now be too late to do so. But it is still not too late for the November (or later) elections. Therefore it should be communicated now, if the department's proposed scheme is used, that the timeliness of results in future RCV elections will be significantly improved and the costs significantly reduced. I believe that there is still time to use an alternative scheme immediately thereby allowing us to reap the benefits of doing so. I present a brief outline for alternative schemes.

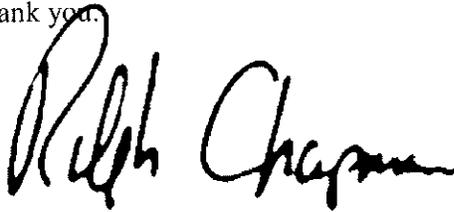
In the past, ballots were tabulated at the local level with summary information transmitted to the Secretary of State's office by phone, fax, or email in order to provide apparent winner information often on election night or the following day. For RCV elections, the same is true except that instead of the summary information primarily containing sums of votes cast for candidates, the summary information has to primarily contain sums of candidate permutations cast. The sorting of ballots into the possible permutations is trivial for 1, 2, or 3 candidates but gets progressively more difficult with higher numbers of candidates. Although it can be done by hand (inspection of each ballot by a ballot clerk), error rates may be unacceptably high and the time to complete the task may be long. The simplest machine-aided system is to scan the ballots using either currently available ballot scanners or generic commercial optical scanning equipment. Identification of which permutation is represented by each ballot is obtainable by simple commercial optical recognition software. There

are two possibilities for transmitting the information from the local level to the state level without transmitting the ballots themselves: either the scanned images of the ballots are transmitted and the Secretary of State's office (SOS) uses the optical recognition software to generate the summary information OR the local ballot clerks use the optical recognition software and transmit the summary information. Then the SOS uses the RCV counting software as proposed in these rules. To summarize I present a column of steps showing the location within those steps of transmittal from the local level to the state level.

	ballot marking	
undesirable		proposed transmittal of ballots by these rules
	ballot scanning	
desirable		possible alternative #1: transmittal of ballot images
	determination of permutation	
	summary of permutations	
desirable		possible alternative #2: transmittal of permutation summary
	statewide sum of permutations	
	algorithmic determination of outcome	

I remain available to provide additional help as may be desired.

Thank you.



**Flynn, Julie**

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**From:** Rob Richie <rr@fairvote.org>  
**Sent:** Friday, April 06, 2018 5:03 PM  
**To:** Dunlap, Matthew; Flynn, Julie  
**Subject:** Comments on emergency rulemaking for ranked choice voting  
**Attachments:** Maine\_Elections\_Memo\_April6\_2018.pdf

Greetings,

We are pleased to submit the attached letter and wish you well in your review of these rules.

Best regards,  
Rob

--

~~~~~  
Rob Richie  
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[FairVote Facebook](#) [FairVote Twitter](#) [My Twitter](#)

*Thank you for considering a donation. Enjoy our video on ranked choice voting!  
(Note: Our Combined Federal Campaign number is 10132.)*



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www.fairvote.org

April 6, 2018

To: Honorable Matthew Dunlap. Secretary of State. Matthew.Dunlap@maine.gov  
Julie Flynn. Deputy Secretary of State. Julie.Flynn@maine.gov

From: Rob Richie, Executive Director, FairVote

Re: Proposed Rule Number 2018-P038

I wanted to thank you for providing the public with an opportunity to comment on your proposed emergency rules for the use of ranked choice voting in Maine's primary elections in June. As executive director of FairVote, a nonpartisan electoral reform organization that has been a national hub for research and advocacy for ranked choice voting for more than two decades, I wanted to applaud this practice that should be a model for all jurisdictions implementing changes to their election administration processes.

I expect you will receive valuable information from closer observers of Maine's electoral process. Rather than exhaustively your proposed rules, I wanted to focus on two matters that we believe will increase voter confidence in your administration of the elections and alleviate pressure on election officials. I will focus on the experiences four cities in the Bay Area of California have had in running hundreds of ranked choice voting (RCV elections since November 2004: San Francisco and Oakland, Berkeley and San Leandro in Alameda County.

**Publicly release initial RCV tallies as soon as feasible:** Although their number of provisional and mail-in ballots result in tallies of first choices taking more than week to complete, San Francisco, Oakland, Berkeley and San Leandro have all moved from initially reporting RCV tallies three days after the election to first reporting them on election night. A report recommended this change in 2011, and then-registrar of Alameda County David MacDonald recommended this change in 2012.

**Report RCV tallies by running the count down to two candidates:** San Francisco made this change by XXX, and Alameda County is expected to adopt this practice in 2018.

Here is additional background on these points on the following pages.

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FairVote Board of Directors: Krist Novoselic (Chair) ◦ John B. Anderson (Chair Emeritus)  
Cynthia Terrell ◦ William Redpath ◦ Paul Jacob ◦ Hendrik Hertzberg  
Joe Swimmer ◦ Brenda Choresi Carter ◦ Tim Hayes ◦ Alice Underwood  
Susannah Wellford ◦ David Wilner ◦ Charlotte Hill ◦ Donald Marron ◦ Mark de la Iglesia

Publicly release initial RCV tallies as soon as feasible:

David Macdonald was IT director in Alameda Count before in 2007 becoming registrar of voters, where he oversaw the first uses of ranked choice voting in three cities in 2010 Berkeley, Oakland and San Leandro. He continued in that position when those cities held another round of RCV elections in 2012.

This week I sent a query to David MacDonald about why Alameda County in 2012 changed from reporting its first ranked choice voting tallies on election night rather than waiting until three days after the election, as it had done in 2012. He sent me the following note

"When I decided to switch to running the RCV algorithm on election night I just got the ok from the city clerks. I don't think we produced an official document. There was consensus that it was the right thing to do. I think with the number of candidates and the potential for close races in Maine they would be well served to run the algorithm on election night, even if it's a small number of the total ballots cast. I would be happy that meet with them and talk about the Alameda County experience. They'd deflect a lot of criticism by running the RCV algorithm on election night. "

While I realize it is unrealistic in Maine to report the first RCV tallies on election night, David's broader point is an important one. It is consistent with the June 17, 2011 report of the San Francisco Voting Systems Task Force (VSTF) entitled "Recommendations on Voting Systems for Voting Systems for the City and County of San Francisco:  
[https://osvtac.github.io/recommendations/files/VSTF\\_Report.pdf](https://osvtac.github.io/recommendations/files/VSTF_Report.pdf)

Starting on page 42 is the following, verbatim. I have bolded certain key parts of it.

\* \* \* \* \*

#### 2.4.3.2 Reporting Preliminary Early Election Results

Once votes are cast and captured in the election system as data, they are gathered into the central database to determine the election outcome. For RCV races, the software and algorithms for tabulating the election result are more complex than for elections where the outcome is determined by simply summing the votes of the choices on the ballot. This may contribute to a perception of some voters that they do not understand how RCV works. On the other hand, computerization of the election process has made it easier to frequently produce preliminary election results, and San Francisco DOE has set a very high standard for its frequency of publishing preliminary election results.

The DOE's schedule of results reporting for the 2 November 2010 election was the following:

- Election Night: Preliminary results for early return, pre-processed vote-by-mail ballots and precinct-counted ballots. The first preliminary results are reported approximately 45

minutes after the close of polls, and updates are reported approximately every half-hour to an hour until midnight. For RCV contests, only first-choice totals are reported.

- Subsequent Days: Every day in which new votes are processed, the Department will release updated results until all ballots have been counted and the results are certified.
- Preliminary Ranked-Choice Results: Release of preliminary results represent how ranked-choice voting plays out on only the votes counted to date. The first of these preliminary RCV results are released on the Friday after Election Day.

**Release of results with this frequency is a good practice for transparency. However, transparency is reduced by not reporting the preliminary results with the full RCV algorithm applied, involving eliminations and transfers and the detail cast vote records on election night or with every daily update.** It should be noted that in San Francisco's first RCV election in November 5 2004, the DOE had planned to produce a "preliminary and initial RCV Algorithm report the day after the election at 4:00 p.m. as well as up to three times a week until results were final."

However, during the first attempt to apply "the RCV algorithm, ES&S [the voting system vendor] realized the system was not tabulating all of the processed ballots and could not produce complete preliminary RCV results. "ES&S attributed the issue to a software limitation which was removed and by that Friday, ES&S isolated and removed this particular limitation on the Software." DOE has continued to adhere to this practice of producing the first result with the full RCV algorithm on the Friday after the election with the Sequoia voting system.

**As seen in November 2010 RCV contests, second and third choices have a significant effect on the outcome of an RCV contest. Not producing results with the full algorithm applied could contribute to a perception on the part of the public that they do not understand RCV. Timely disclosure of preliminary results with the full RCV algorithm applied will improve transparency and give the public a better understanding of the ultimate election result. It is also important for public monitoring of elections. Full reporting of RCV results avoids reliance on potentially misleading vote totals based only on first choices.**

Finally, a substantial area of findings and recommendations in this report is in Election Records and Post-Election Audit Procedures (see Section 2.1). Early release of election results with a fully run RCV algorithm is complementary to improved audit procedures.

Finding 2: The Department of Elections has a good practice of frequently releasing preliminary vote counts, but it does not apply RCV algorithms at each release. And this may contribute to a perception of lack of understanding and/or transparency in the RCV election process.

\* \* \* \* \*

San Francisco began this practice in its mayoral election in November 2011, with first tallies reported within an hour of polls closing, and has continued it ever since.

Report RCV tallies by running the count down to two candidates:

San Francisco by the time of the 2015 elections adopted a policy to always report every RCV election as going down to the final two candidates. This helps clarify a candidate's mandate. It also is consistent with Maine's law governing ranked choice voting

If you have any questions, please do not hesitate to contact me at (301) 270-4616 or [rr@fairvote.org](mailto:rr@fairvote.org). We wish you well in the coming weeks heading into Maine's first statewide election with ranked choice voting.