

Ranked-Choice Voting: Legal Challenges and Considerations for Congress

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Ranked-choice voting (RCV) is an alternative voting system that allows voters to rank multiple candidates on a ballot in order of preference. RCV has been adopted in at least [50 jurisdictions](#) across the United States, including for statewide and federal elections in Maine and Alaska. These election systems, also called preferential voting or instant-runoff voting (IRV), have been uniformly upheld in federal courts as a lawful policy choice within the states' constitutional authority to administer elections. While several state courts have also upheld RCV, the [Maine Supreme Court concluded](#) in an advisory opinion that RCV conflicted with the state's constitutional requirements for certain elections.

This Sidebar provides a brief overview of RCV, examines several federal and state legal challenges, and identifies some potential legislative options for Congress.

Ranked-Choice Voting Overview

In [most of the United States](#), voters participate in a single-choice voting (SCV) system. In an SCV election with a plurality threshold, also called “first-past-the-post,” a voter chooses one candidate, and the candidate with the most votes wins. In an election with a majority-threshold requirement instead of a plurality threshold, if a candidate does not receive a majority of the vote, a runoff election may be held. A runoff is an additional election held in the event that the initial election does not produce a candidate that has met the required threshold to win.

RCV, as opposed to SCV, allows each voter to rank multiple candidates for the same office on a ballot in order of preference rather than making a single choice. After the ballots in an RCV election have been counted, if a candidate is a majority of the electorate's first choice, that candidate is the winner. If no first-choice candidate receives a majority, the candidate with the fewest first-choice ballots is eliminated, and the ballots of the eliminated candidate are counted for their second-choice candidates. This process is repeated, with the candidate receiving the fewest votes eliminated, until a candidate receives a majority of the votes. RCV is also referred to as instant-runoff voting or IRV because the tabulation process described imitates the model of runoff elections, but in the case of RCV, the final results are available almost instantly.

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Proponents of RCV claim that other election systems, such as SCV elections with plurality thresholds, overly benefit candidates with a strong core of support, or a “base,” by allowing those candidates to win with only a plurality of voter support even if they are strongly opposed by the rest of the electorate. Proponents also argue that RCV creates strong incentives for candidates to appeal to voters who may cast them as their second or third choice, thereby encouraging the election of officials by a broader coalition of voters and reducing partisanship. **Opponents of RCV** argue that this system unconstitutionally burdens the right to vote and **decreases turnout** by making voting more complex.

Maine and Alaska are the only two states that currently use RCV for statewide and federal general elections. In the 2020 election cycle, **dozens of jurisdictions** across the country used RCV in federal primaries, state and local primaries and general elections, and military and overseas voting. At least **two states** enacted legislation in 2022 prohibiting the use of RCV.

Legal Challenges

Federal Legal Challenges

Federal courts have consistently upheld RCV as a policy choice to implement primary and general elections that do not violate federal constitutional and statutory requirements. In 2011, the Ninth Circuit considered challenges to San Francisco’s ranked-choice system for city officials, which the city referred to as IRV, in *Dudum v. Arntz*. In San Francisco’s elections, the city restricts the number of rankings on each individual ballot to three. If all the candidates ranked by a voter are eliminated, that voter’s ballot is “exhausted,” meaning that it is not recounted as the tabulation continues. The plaintiffs, several San Francisco voters, alleged that because of this limitation, when more than four candidates run for a particular office, the IRV excludes exhausted voters from full participation. The plaintiffs **analogized** the exhaustion of a ballot to the city preventing qualified voters from casting ballots in a traditional runoff election, which they argued would be unconstitutional. Plaintiffs further asserted that not including the votes of certain voters, i.e., those whose ballots were deemed exhausted, in the later tabulations “is similar to disenfranchisement of those voters, and so unconstitutional.” Plaintiffs argued that San Francisco’s system violated “the First Amendment, the Equal Protection and Due Process clauses of the Fourteenth Amendment, and the Civil Rights Act, 42 U.S.C. § 1983.”

The Ninth Circuit held that the instant runoffs inherent to IRV did not violate constitutional or federal statutory protections for voters. The court rejected the claim that ranking candidates somehow dilutes votes, since the ability to rank preferences sequentially does not affect the ultimate weight accorded any vote cast in an election. In examining alleged burdens on the right to vote, the court held that the practical burden on voters supporting losing candidates in IRV is no different than in SCV. While the court acknowledged that no election system is perfect, it held that if IRV “impose[s] any burdens on voters’ constitutional rights to vote, they are minimal at best” and that the government advanced legitimate interests in IRV, including providing voters an opportunity to express nuanced voting preferences and electing candidates with strong plurality support.

In 2018, the United States District Court for the District of Maine considered a challenge brought by an incumbent candidate for Maine’s 2nd congressional district against the use of RCV in *Baber v. Dunlap*. The court considered several constitutional challenges brought by the candidate, including whether RCV exceeded the state’s constitutional authority to administer elections, whether RCV violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment, and whether RCV violated the First Amendment’s right to freedom of expression by giving some voters disproportionate expression. Rejecting all of the constitutional claims, as well as a claim that RCV violated the Voting Rights Act, the court ruled for the state election officials. In rejecting the claim that RCV violated the voters’ right to equal protection under the law, **the court summarized** that “‘one person, one vote’ does not stand in

opposition to ranked balloting, so long as all electors are treated equally at the ballot.” In a footnote, the district court recognized that the Ninth Circuit in *Dudum* as well as state courts have held that ranked ballots do not dilute unranked ballots because unranked ballots that support a leading candidate continue to have equal weight in the subsequent rounds of balloting.

Since *Baber*, the United States District Court for the District of Maine similarly rejected equal protection challenges and related claims in *Hagopian v. Dunlap*, this time upholding Maine’s adoption of RCV for the 2020 U.S. Senate election. In *Maine Republican Party v. Dunlap*, decided the same year as *Baber*, the district court rejected a challenge to a party using RCV in its primary election, finding that RCV did not violate the First Amendment’s right to freedom of association.

State Legal Challenges

RCV systems have been upheld by several state Supreme Courts, including [Alaska](#), [Massachusetts](#), and [Minnesota](#). In Maine, however, while the courts have upheld RCV in [other contexts](#), the state Supreme Court issued an [advisory opinion](#) in 2017 that the elections of certain state officials using RCV violated a plurality-threshold requirement in the Maine constitution.

The [Maine constitution](#) includes threshold requirements that persons elected to be state representatives and governor shall be elected by a “plurality of all” votes returned and those elected to be state senators “by a plurality of the votes in each senatorial district.” After Maine voters adopted RCV for electing the governor and state legislatures, lawmakers submitted a request to the Maine Supreme Court to advise whether RCV conflicted with the state constitution because it did not recognize that a person who obtains a plurality of the votes prevailed in the general elections.

The [court first explained](#) that an advisory opinion, while it “represent[ed] the advice of the individual Justices,” was “not binding on the Justices individually or together in any subsequent case” and had “no precedential value or conclusive effect.” The court, however, determined that the RCV law violated Maine’s constitution by preventing a candidate who had obtained a plurality from automatically being named the winner. For example, the [court illustrated](#) that if, after one round of counting, a candidate obtained a plurality of the votes but not a majority, that candidate would be declared the winner according to the Maine constitution. The court found that, according to the RCV law, that same candidate would not be declared the winner until obtaining a majority of the votes.

After the Maine Supreme Court issued its advisory opinion, [attempts to amend](#) the law to bring it into compliance with the opinion were rejected by popular referendum. As a result, general elections in Maine for state legislature and governor do not use RCV. In contrast, primary elections, which are governed by statute and not subject to the constitutionally mandated threshold requirement, and elections for federal offices in Maine use RCV. Maine recently used this system during the [2020 election cycle](#), including the presidential election.

Plurality-threshold requirements such as Maine’s, or similar requirements that candidates be elected with the “highest” or “greatest” number of votes, appear in [many state constitutions](#). Some [scholars have argued](#) that threshold requirements in state constitutions should not imperil states from adopting RCV because their constitutions’ history, context, and policy purpose demonstrate that they are not intended to bar RCV.

Considerations for Congress

[Article 1, Section 4](#), of the U.S. Constitution states, “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of [choosing] Senators.” While the states have primary responsibility for administering elections, the federal

government maintains [significant authority](#) over federal elections. Furthermore, Congress does not have general regulatory authority over state and local elections, but it may still exercise its power over such entities in several contexts. For example, Congress has the authority to prevent unconstitutional voter disenfranchisement in a state or local election. Relying on its Spending Clause authority, Congress may also condition the [receipt of federal funds](#) for state or local elections on compliance with federal requirements.

As RCV has been increasingly adopted in jurisdictions around the country, Congress may, in exercising its constitutional authority, consider legislation regarding its implementation for future elections. In the 117th Congress, there are several proposals to support state and local efforts to implement RCV. For example, the [Voter Choice Act](#) (H.R. 5500/S. 2939) would direct the Election Assistance Commission (EAC) to provide technical assistance and award grants to state and local governments that are transitioning or considering transitioning from SCV to RCV systems. Other examples are the [For the People Act of 2021](#) (H.R. 1), which would direct the Government Accountability Office to study RCV, and the [Protecting Our Democracy Act](#) (H.R. 5314), which would direct the EAC to provide technical assistance and funding for jurisdictions considering or transitioning to an RCV system. Lastly, the [Fair Representation Act](#) (H.R. 3863) introduced in the 117th Congress would mandate RCV for all federal House and Senate elections, among other reforms. This legislation would require all states, including U.S. territories and the District of Columbia, to use RCV for all primary and general elections for Congress.

Author Information

Jimmy Balser
Legislative Attorney

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