Ranked Choice Voting in Maine

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Author Note

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List of Abbreviations

ANI	Action Now Initiative
BQC	Ballot question committee
CD2	Maine 2nd Congressional District
CRCV	The Committee for Ranked Choice Voting (aka "The Committee")
ESS	Election Systems and Software
FAQ	Frequently asked question
FPI	Fiscal Policy Institute
FPP	First past the post (i.e. a plurality election)
IRV	Instant runoff voting (another term used for ranked choice voting)
LD	Legislative document
LWVME	League of Women Voters of Maine
MCCE	Maine Citizens for Clean Elections
MHPC	Maine Heritage Policy Center
MPA	Maine People's Alliance
PAC	Political action committee
Question 1	Maine ballot question 1 in 2018 : the People's Veto referendum
Question 5	Maine ballot question 5 in 2016: establishing ranked choice voting
RCV	Ranked choice voting
SecState	Secretary of State
SJC	Maine's Supreme Judicial Court

Abstract

In 2016, Maine became the first state in the U.S. to adopt ranked choice voting (RCV)[1] for use statewide. Over the next two years there ensued a series of legislative and legal challenges to the voter-enacted law. In June 2018, voters in Maine had the first opportunity to use RCV in primaries for certain statewide and federal offices, while at the same time voting on whether to retain this electoral method for future uses. This paper documents what happened in Maine both leading up to the 2016 ballot initiative that enacted RCV as well as the various developments that followed and are still playing out in the state.

The history of RCV in Maine is examined using the "causal package" model for social change, which posits the interaction of a set of factors that together prepare the ground, trigger a change, and then sustain the change outcome once triggered.[2] In Maine, RCV enactment in 2016 came about through a combination of complementary ground-preparing actions and conditions, combined with the triggering events of the 2010 election and 2014 re-election of Paul LePage as Governor. However, insufficient attention to sustaining factors contributed to the chaotic period of uncertainty during 2017-2018, as well as the incomplete and still unsettled result.

Key to Maine's adoption of RCV was the public perception that this electoral method offered a tangible solution to a salient problem—the "spoiler effect" in relation to the election of highly polarizing political leaders. Ground-preparing factors that worked in favor of RCV included Maine's political history and experience with multiple-candidate races and non-majority winners, the state's independent culture and high levels of civic participation, the

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[1] Ranked choice voting (RCV) is a method that allows voters to rank order their preferred candidates in an election contest. In contrast with the "first past the post" or plurality method most commonly used in U.S. elections, the winner under RCV will have received a majority of votes after all rounds of votes have been counted. In each round, if no candidate has achieved a majority of the votes, then the lowest vote-getter is eliminated and that candidate's votes are redistributed to the next-most-preferred candidate on each of those voters' ballots.

[2] Mayne, J. (2012). *Making causal claims*. Institutional Learning and Change (ILAC) Brief 26. http://betterevaluation.org/sites/default/files/ILAC_Brief26_Making%20causal%20claims_2.pdf.

political pathway provided by Maine's ballot initiative and referendum processes, and significant preparatory work conducted by in-state and national proponent groups supported by a handful of committed funders. Sustaining factors that contributed to retention of RCV in Maine through the 2018 elections included the ongoing determination of RCV proponent groups and the highly competent elections administration and voter education work conducted by Maine's Secretary of State and town clerks, with support from in-state and national nonprofits. Factors that worked against retention of RCV and contributed to the long period of uncertainty included provisions in the state's constitution, the campaign Committee's adversarial approach with the Maine state legislature and Secretary of State's office, the partisan lens that became associated with RCV, a lack of clarity on administrative costs and complexity, and tensions within the proponent coalition.

Summary Timeline

KEY MILESTONES

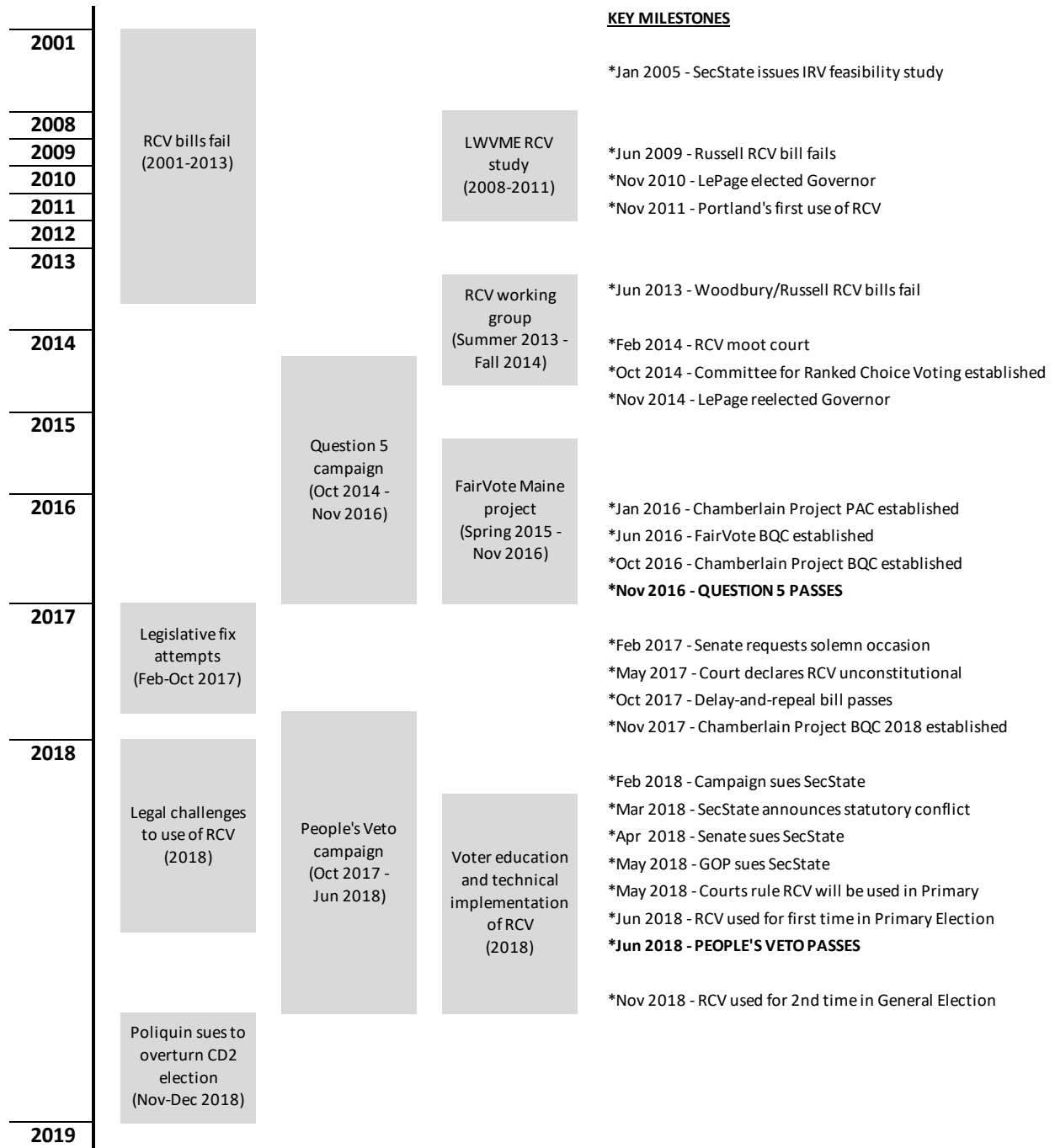| Year				
2001	RCV bills fail (2001-2013)			*Jan 2005 - SecState issues IRV feasibility study
2008		LWVME RCV study (2008-2011)		*Jun 2009 - Russell RCV bill fails
2009				*Nov 2010 - LePage elected Governor
2010				*Nov 2011 - Portland's first use of RCV
2011				
2012				
2013		RCV working group (Summer 2013 - Fall 2014)		*Jun 2013 - Woodbury/Russell RCV bills fail
2014				*Feb 2014 - RCV moot court
				*Oct 2014 - Committee for Ranked Choice Voting established
2015	Question 5 campaign (Oct 2014 - Nov 2016)	FairVote Maine project (Spring 2015 - Nov 2016)		*Nov 2014 - LePage reelected Governor
2016				*Jan 2016 - Chamberlain Project PAC established
				*Jun 2016 - FairVote BQC established
				*Oct 2016 - Chamberlain Project BQC established
				Nov 2016 - QUESTION 5 PASSES
2017	Legislative fix attempts (Feb-Oct 2017)			*Feb 2017 - Senate requests solemn occasion
				*May 2017 - Court declares RCV unconstitutional
				*Oct 2017 - Delay-and-repeal bill passes
				*Nov 2017 - Chamberlain Project BQC 2018 established
2018	Legal challenges to use of RCV (2018)	People's Veto campaign (Oct 2017 - Jun 2018)	Voter education and technical implementation of RCV (2018)	*Feb 2018 - Campaign sues SecState
				*Mar 2018 - SecState announces statutory conflict
				*Apr 2018 - Senate sues SecState
				*May 2018 - GOP sues SecState
				*May 2018 - Courts rule RCV will be used in Primary
				*Jun 2018 - RCV used for first time in Primary Election
				Jun 2018 - PEOPLE'S VETO PASSES
	Poliquin sues to overturn CD2 election (Nov-Dec 2018)			*Nov 2018 - RCV used for 2nd time in General Election
2019				

Figure 1. Timeline of key ranked choice voting events in Maine

Introduction

Ranked choice voting (RCV)[3], also known as "instant runoff voting" (IRV), is used in

city-wide elections in over a dozen U.S. cities—the largest is San Francisco with about half a

million registered voters[4]. In 2018, the state of Maine, with a little over 1 million registered

voters, became the first state in the nation to use RCV statewide. Maine voters passed "An Act to

Establish Ranked Choice Voting" in November 2016 and reaffirmed their support for this

electoral method via a People's Veto referendum in June 2018. But the story of RCV in Maine is

much more than the story of two campaigns. Beginning with many years of incubation dating

back to the early days of the new millennium, the story is full of twists and turns involving all

three branches of state government, groups and individuals both in-state and out-of-state, and

ultimately, the people of Maine. It is a story of several streams converging against a backdrop of

factors unique to the state—including its political history, electoral processes, demography and

geography—as well as national trends, as Americans increasingly hunger for solutions to a

deepening partisan rancor and growing public distrust for the institutions of American

democracy.

Much has been written over the past several years about ranked choice voting—including

how the two campaigns for RCV in Maine unfolded, as well as the promise and perils of this

electoral method in general. This research seeks to capture and summarize in one place the full

history of Maine's experience in becoming the first state in the union to adopt and use ranked

choice voting statewide, and to explore factors and influences in how the story has unfolded in

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[3] Ranked choice voting (RCV) is a method that allows voters to rank order their preferred candidates in an election contest. In contrast with the "first past the post" or plurality method most commonly used in U.S. elections, the winner under RCV will have received a majority of votes after all rounds of votes have been counted. In each round, if no candidate has achieved a majority of the votes, then the lowest vote-getter is eliminated and that candidate's votes are redistributed to the next-most-preferred candidate on each of those voters' ballots.

[4] https://www.fairvote.org/where_is_ranked_choice_voting_used

that state.[5] This report follows a chronological narrative format. In the concluding section, the

various factors that contributed to the outcomes in Maine to date are examined using the "causal

package" model for social change.[6] Additional detail on some of the actors that factored

prominently in the story is included in appendices at the end of this document.

This research was commissioned by the Madison Initiative, a program of the William and

Flora Hewlett Foundation[7]. The Hewlett Foundation's Madison Initiative focuses on

strengthening U.S. democracy and its institutions—especially Congress—in a time of political

polarization.[8] Among various areas of focus, the initiative has developed a portfolio of grants to

organizations working in the area of electoral systems and methods. The intended long-run

outcome from this line of grantmaking is to reduce polarization, give voters more choices, and

better represent the diversity of opinion in the electorate.

Methodology

The purpose of this research is to capture a narrative history of the first statewide

adoption and use of RCV in the United States—exploring and documenting key factors and

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[5] The Chamberlain Project has compiled another assessment of the RCV experience in Maine, written from the point of view of the campaign committee. That assessment, which is not currently available in the public domain, reaches some different conclusions than those presented in this report. While we were not able to interview principals from The Chamberlain Project, we did review their summary document and several emails reflecting their views, and we interviewed several individuals closely associated with the campaign committee.

[6] The causal package model examines how a set of factors work together to bring about and sustain a change outcome.

[7] The William and Flora Hewlett Foundation is a nonpartisan, private charitable foundation that advances ideas and supports institutions to promote a better world. The foundation does not lobby or earmark grant funds for prohibited lobbying activities, as defined in the federal tax laws. The foundation's funding for policy work is limited to permissible forms of support only, such as general operating support grants that grantees can allocate at their discretion and project support grants for nonlobbying activities (e.g., public education and nonpartisan research).

[8] Launched in 2014, the Madison Initiative is nonpartisan and supports nonprofit organizations across the ideological spectrum—academic researchers, advocacy groups, think tanks, and civic leadership organizations—who seek to understand and improve the political system so that elected representatives are better equipped to solve society's greatest problems and in turn, earn public trust and support. The Hewlett Foundation's board has authorized the initiative to make approximately $20 million in grants per year until 2021, for a total commitment of $150 million. The Initiative has provided general operating support grants to two of the section 501(c)(3) organizations referenced in this report, FairVote and Maine Citizens for Clean Elections, and a project grant to FairVote to support board development.

dynamics that have influenced Maine's experience with RCV to date. To accomplish this objective, we collected data through a) an extensive review of media reports, scholarly articles, legislative and legal documents, campaign finance reports, polling data, webpages, and other publicly available materials, and b) interviews with 31 individuals across the spectrum of opinion about RCV, including academics, journalists, campaign principals, nonprofit leaders, elections officials, former legislators, interest group representatives, lobbyists, and institutional funders.[9] While we have sought out a range of perspectives to inform this research, some individuals whose perspectives we would like to have included declined, did not respond, or were otherwise inaccessible to us for various reasons. We acknowledge this limitation.

Throughout this report, milestones from the Maine Secretary of State's <u>Timeline of Ranked-Choice Voting in Maine</u> are highlighted in shaded text boxes as anchor points in the narrative.

<p style="text-align:center;">The State of Maine: A Laboratory for Democracy</p>

Maine is in many ways a small town within a big state. In Maine, the six degrees of separation seem to shrink to two or three. With a population a little over 1.3 million, over three-quarters of whom are registered voters, the state boasts high voter engagement. Maine is a purple state with a strong tradition of electing moderates and independents and an electorate where unenrolled voters surpass registered Democrats and Republicans.[10] There are often three or more candidates on the ballot for statewide offices, and as a result, plurality winners are common, including in nine of the eleven gubernatorial elections from 1974-2014.

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[9] See Appendix A for a complete list of primary sources.
[10] As of November 2018, voter registration in Maine stood at 34.9% unenrolled, 33.1% Democratic, 27.4% Republican, 4.1% Green Independent, and 0.5% Libertarian.

Maine's inexpensive media market and unique lawmaking pathways contribute to the

state frequently being used by both local and national interests as a testing ground to advance

innovative public policy ideas. From same-sex marriage to public financing of candidate

campaigns to same-day voter registration, the state has made robust use of its citizen initiative

and people's veto referendum processes over the years.[11] Processes within the Maine legislative

body also allow for innovative ideas to advance farther than they might in other states. Any bill

can get a floor vote as long as the committee to which it was referred does not issue a unanimous

"ought not to pass" report. As a result, an issue can be raised session after session with the hope

that eventually the right dynamics will allow proponents to get something passed.

Maine is an inexpensive state in which to run a campaign. With only three television

markets, mass market advertising is cheap. The state's geographic size makes it more

challenging to canvass, however. Although about 40 percent of the state's population is

concentrated around the greater Portland area, 98 percent of the state's landmass is rural and

about 60 percent of its population live in these rural areas.

Early Legislative Attempts (2001-2013)

Starting in 2001, legislation to establish RCV in some form at the statewide level was

introduced in every legislative session.[12] Maine's history with plurality-win governors was a

factor behind the interest in RCV that cut across party lines. In 2007, after the plurality re-

election of unpopular Democratic Governor, John Baldacci, an RCV bill was introduced driven

by Republicans. At times these bills even garnered significant numbers of co-sponsors, as did

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[11] To place an initiative on the ballot in Maine, signatures equivalent to ten percent of votes cast in the previous gubernatorial election are required. Once certified, citizen initiatives go first to the legislature, which can either adopt the initiative wholesale or send it on to voters. An initiative passed by voters becomes a law like any other, meaning that the legislature may amend or repeal it. And in fact, the legislature has done so more often than not over the history of Maine's initiative process.

[12] For a summary of the legislative history of RCV in Maine, see http://www.lwvme.org/files/RCV_Legislative_History.pdf

Sen. Dick Woodbury's 2013 bill. And yet, none of the bills advanced very far within the larger

body—other than an early bill passed to study the feasibility of implementing IRV.

> *2001: First bill proposed in Maine Legislature related to the establishment of an instant runoff/*
> *ranked-choice voting system, LD 1714. The bill dies in committee.*
>
> *2003: The Joint Standing Committee on Legal and Veterans' Affairs directs the Secretary of State to*
> *conduct a feasibility study of IRV in Maine. The study report is issued January 2005.*
>
> *2005-2013: Additional RCV bills are proposed and rejected by the Legislature.*

In 2003, the 121st Maine legislature directed Secretary of State Dan Gwadosky to conduct

a feasibility study of IRV. The study, issued in early 2005 under the newly appointed Secretary

of State, Matthew (Matt) Dunlap, laid out a number of expected challenges with implementing

this voting system in Maine, including potentially exorbitant costs of $11 million or more for

new electronic voting machines to replace the state's paper-based system. At that time, 77

percent of Maine's 503 municipalities used hand-count paper ballots with the remainder using

one of four types of optical scan equipment. The study also highlighted a variety of expected

administrative challenges. The study did not discuss any issues in relation to the state's

constitution.

Rep. Diane Russell (D) and Sen. Dick Woodbury (I) were two of the legislative

proponents of RCV who would later become key figures in advancing the reform via a 2016

citizen's initiative. In 2009, soon after being elected to the Maine House of Representatives,

Russell introduced a bill to authorize an RCV pilot project. Russell had formerly been a staffer

for the national electoral reform advocacy organization, FairVote. Although the bill went

nowhere, at the same time Russell was assisting Portland's charter commission in establishing

RCV for that city's mayoral elections. Russell served in the Maine House of Representatives

through 2016, during which time she made several additional unsuccessful attempts to advance

RCV bills. Russell also had experience working on ballot initiative campaigns and understood the ins-and-outs of orchestrating a signature-gathering effort. This combination of experience and skill would later make her one of the first people Dick Woodbury reached out to when he decided to chair a citizen initiative campaign in 2014.

Woodbury had served in the Maine legislature for almost a decade. After his 2013 RCV bill once again failed to advance, he determined that the idea of RCV simply hadn't had enough opportunity to "incubate" among his legislative colleagues. Thus, when Ann Luther of the League of Women Voters of Maine approached Woodbury in the summer of 2013 about joining an RCV working group the League was organizing, he eagerly accepted the invitation. In 2011, the League had adopted a position in support of RCV and had increasingly grown frustrated with the lack of traction the issue was getting in the legislature. Woodbury knew and admired the League for the thoughtful, comprehensive, and objective manner in which it studied issues, and felt this would be a positive way to build understanding and support for the idea.

Gathering Momentum (2008-2013)

The many years of legislative attempts around RCV were but one among several developing influences that came together in 2014 to form a river of momentum behind RCV in Maine. In addition to the development of Russell and Woodbury as champions, there was the League of Women Voters' growing interest and work on RCV. And most importantly, there was the 2010 election and 2014 re-election of Maine's controversial Governor, Paul LePage. In addition, voters in Maine's largest city, Portland, had adopted RCV for use in their mayoral elections via a new city charter in 2010, and had successfully navigated its first use in a crowded 15-candidate election in 2011. While the extent to which use of RCV at the municipal level was a necessary prerequisite for adoption of RCV at the state level is uncertain, the fact that many

Mainers now had some awareness of, and experience with, RCV may have helped mitigate the "electoral oddity factor."

The League of Women Voters IRV study

Colleen Tucker, an attorney and board member with the League of Women Voters of Maine (LWVME), attended a meeting in the early 2000's and heard Rob Richie of FairVote talk about IRV. Coming back excited by what she heard, she convinced her fellow board members to recommend that the League undertake a study of this method. By this time, several other state Leagues of Women Voters had conducted studies of alternative voting methods, and so in 2007 the board recommended to the membership a concurrence study of IRV based on that already completed by LWV of Minnesota. In 2011, LWVME completed its study and formally adopted a position supporting IRV/RCV.

> **LWVME's Study Process**
> (Source: http://www.lwvme.org/study.html)
>
> In LWV parlance, a *study* is an intensive and inclusive process conducted by the membership to deeply engage with a public policy issue of interest to the members. Studies can lead to adopted *positions* when there is broad member consensus. During the study phase, members have an opportunity to examine the facts, along with pro and con arguments. They are encouraged to discuss the political realities of action on that issue and to engage members of the broader community in the discussion.
>
> The League may lobby in support or opposition to specific pieces of legislation only when based on these established positions. The League's intensive study process is a cornerstone in its ability to advocate credibly.

LePage and the "spoiler effect"

One can lay a pile of wood and hope for a fire, but without a spark there is no conflagration. So it went with RCV in Maine. The spark was supplied by Paul LePage.

In 2010, Paul LePage was elected Governor of Maine, defeating independent Eliot Cutler 37.6 percent to 35.9 percent in a five-way race. A polarizing figure, LePage was nevertheless re-

elected in 2014 over Democrat Mike Michaud, 48.2 percent to 43.4 percent in a three-way race

in which many saw Eliot Cutler as once again the spoiler, taking 8.4 percent of the vote.

LePage's election and re-election ignited public interest in considering other electoral

approaches that might help ensure a consensus choice would be elected in future.

Formation of the Working Group for RCV

In the summer of 2013, LWVME launched a working group on RCV. In addition to

Woodbury and members of the League, participants included former members of the legislature

and attorneys general, private attorneys, members of municipal associations, and the national

advocacy group, FairVote. The group met approximately biweekly for about a year and a half,

discussing strategies and likely impediments to moving RCV forward in the state. Among its

activities, the group drafted model statutory language, which Woodbury would later draw upon

when he filed his petition for the 2016 RCV citizen's initiative.

A point of debate that kept emerging was the question of what limits the state constitution

placed on the use of RCV in Maine. The League had long been aware of, and had included in its

2008 IRV study materials, the provision in the state's constitution stating that the Governor and

members of the legislature were to be elected via a plurality of the votes. There were differences

of opinion as to whether this provision would render RCV unconstitutional as it applied to those

offices. Finally, at the suggestion of the League's legal advisor, John Brautigam, in March 2013

the League decided to convene a moot court, or simulated court case where both sides of the

constitutional question would be litigated before a panel of judges. Three eminently qualified

individuals were recruited to act as judges: a former Chief Justice of the Maine Supreme Court

and two highly experienced litigators. Brautigam argued the side that RCV was not

constitutional; attorney Tim Shannon (later a 2018 candidate for Maine Attorney General)

<u>argued</u> the side that it was. In the end, the three justices unanimously agreed that RCV would not

be constitutional for use in gubernatorial or legislative general elections in Maine. (Two of the

three judges later changed their minds on the question, however—and one ended up representing

the RCV campaign committee in legal proceedings on the matter in 2017.)

Through the late spring and early summer of 2014, the RCV working group debated the

implications of the moot court exercise. Finally, Woodbury became impatient as he watched with

horror the "strategic voting" dynamic shaping up once again in the 2014 gubernatorial race. He

began discussing the possibility of launching a citizen initiative campaign with political

strategist, Cara Brown McCormick, who was well-known from her work lifting up the cause of

independent candidates. Thinking that the prospect of a LePage reelection aided by yet another

"spoiler" created an irresistible window of opportunity, together they resolved to throw caution

to the wind on the constitutional issue and launch a citizen's initiative campaign for RCV.

Despite the constitutional risk in relation to using RCV for gubernatorial elections, the pair felt

that an RCV initiative that did not include the Governor's race would result in a solution that did

not fit the public's sense of the problem. And so, they determined to push forward with an

initiative to adopt RCV for both federal (U.S. Senate and House) and statewide (Governor and

state legislature) contests and, if necessary, deal with the constitutional question later.

A Citizen's Initiative: Maine Question 5 (2014-2016)

Woodbury launches a ballot question campaign

Woodbury characterized the campaign he expected to chair as a group of "plucky,

grassroots Mainers saving their democracy". Acknowledging he knew nothing of how to qualify

an initiative, Woodbury played largely a public role while partnering with others with whom he

had prior relationships to shape and mobilize the work. One of the people he connected with

early on was Diane Russell, who had insider experience on how to organize a signature drive.

Russell was familiar with the timeline to get a petition approved by the Secretary of State and

into the hands of signature-gatherers. And she knew that if the effort were to be volunteer-

driven—as opposed to the far more expensive route of hiring paid signature-gatherers—it would

be critically important to collect signatures at the polls on election day. When Woodbury called

her early in the summer, she was understandably skeptical that there was sufficient time to

organize such an effort. Nevertheless, she agreed to assist and to rapidly mobilize her network.

For strategy and fundraising expertise, Woodbury relied on McCormick, who was a veteran

political consultant and principal in a number of past and present efforts to break open the two-

party grip on American political processes. McCormick played a key role in encouraging

Woodbury to launch a campaign that fall.

> ***Oct. 2014:*** *Proponents of ranked-choice voting receive approval to circulate a citizens' initiative petition to enact RCV.*

The timeline was indeed extraordinarily tight. Barely a week before election day,

proponents received the approved petition from the Secretary of State's office to begin gathering

signatures. On board to drive the effort was a small-but-mighty group consisting of Woodbury,

McCormick, Russell, and soon-to-be-named campaign manager, Kyle Bailey. The League at this time, along with its close partner and fellow RCV working group member, Maine Citizens for Clean Elections (MCCE), was immersed in the work of qualifying a Clean Elections initiative for

> **Question 5 (November 2016)**
> "Do you want to allow voters to rank their choices in elections for U.S. Senate, Congress, Governor, State Senate, and State Representative, and to have ballots counted at the state level in multiple rounds in which last-place candidates are eliminated until a candidate wins by majority?"

the 2015 ballot and had no capacity to simultaneously lend muscle to another signature drive that fall.

Upon receiving approval for signature-gathering from the Secretary of State, Russell turned her office into a staging location for volunteer recruitment and training. She spent the next week recruiting and scheduling volunteers using spreadsheets from past initiative drives. Eliot Cutler, who was trailing badly in his second run against LePage, sent a request out to his supporters for help. Many of the Cutler supporters were motivated by the future prospect of being able to "vote their hopes instead of their fear," as they felt compelled to do in the November 2014 election in an effort to defeat LePage. The push for election day volunteers spread rapidly through social media and other channels as people began to take ownership for covering their greater area of the state.

On Sunday, November 2, 2014, two days before election day, Woodbury's plan had been to drive north on I-95, stopping at every exit to drop off petitions to volunteers. That day, a massive snowstorm hit, all but shutting down the Maine coastline. Undaunted, the proponent group organized a daisy-chain of volunteers. Their cars stocked with petitions, each volunteer drove to the next town, leaving off what was needed to stock that town and handing off the remainder to the next volunteer driver.

On election day, RCV proponents showed up at the polls en masse and collected over 36,000 signatures (of the 57,000 or so valid signatures needed to qualify the initiative). As predicted, voters perceived a clear problem that affected them (LePage) and the offering of a tangible solution (RCV) and thus readily signed on. As one interviewee noted, "Once people were living their worst nightmare, changing the norm seemed less of a challenge. I think that's happening across the country right now."

The Committee for Ranked Choice Voting

On October 28, 2014—the day that RCV proponents received approval to begin signature-gathering—the Committee for Ranked Choice Voting (CRCV) registered as a political action committee, with Woodbury, McCormick, and Bailey listed as principals. McCormick and Bailey had worked closely together on Eliot Cutler's independent campaign for governor. During the last weeks of that campaign, as it became clear that Cutler would not be successful, Bailey came on board to help the RCV effort.

In addition to the initial sprint to begin signature-gathering on election day, there were several dynamics that made the Question 5 campaign unique. First, ranked choice voting was a wonky issue that barely registered with the public at the time the campaign was launched. The proponent group had learned through early conversations with residents that while people who had heard about RCV overwhelmingly supported it, the vast majority of Mainers had never heard of it. Thus, proponents determined early on that an extensive campaign of voter education would be a necessary ground-preparing step to shape public understanding of the issue—and to begin to inoculate voters against any oppositional efforts later on. As well, the group calculated that their initiative would fare better in a presidential election year (2016) than in an off-year (2015). So, they decided to slow down their signature-gathering work and begin a major voter education push in parallel.

> ***Nov. 18, 2015:*** *The Secretary of State determines that the citizens' initiative petition has enough valid signatures to qualify for the November 2016 ballot.*

The second unique dynamic in the RCV campaign had to do with the dearth of both allies and opponents. Unlike many other public policy issues, there were few natural allies or opponents for making changes to election methods. Political reform and "good government"

organizations like the League of Women Voters were the only groups particularly interested in

the issue. On the other side, opposition emanated primarily from elites within the two major

parties, whose vocal objections came in direct proportion to who perceived RCV as more of a

threat to their political power. No one on the opposition side apparently took the RCV threat

particularly seriously, however, until after the measure passed in 2016.

Finally, whether the ballot measure would be fully constitutional remained an open

question looming over the campaign—and was subsequently weaponized by opponents after the

ballot initiative passed.

The Committee for Ranked Choice Voting (CRCV) was a small, tight group of

professionals who designed strategy, raised funds, and made decisions for the campaign.

McCormick led the effort to bring in big-dollar out-of-state money from reform-minded

individuals and organizations through The Chamberlain Project's political action committee

(PAC) and ballot question committee (BQC). Anchor funding into the PAC and BQC was

provided from Level the Playing Field (Peter Ackerman's 527 committee), and the Action Now

Initiative (John and Laura Arnold's 501(c)(4) nonprofit). Bailey led CRCV's small-dollar

grassroots fundraising effort—which proved more challenging initially. The campaign's

nonpartisan message did not tend to motivate Mainers to take out their checkbooks. However,

the division in fundraising responsibilities allowed the campaign to appear to be more of a

locally-funded effort—of particular importance to Mainers—while still benefiting from deep out-

of-state pockets. (See Appendix C for more data on funders and fundraising related to the ballot

initiative campaign.)

All told, proponents raised over $2 million in support of the 2016 RCV ballot measure

(Question 5), while there was no money raised in opposition. (See Table 1 and Table 2 for

detail.) The lack of organized opposition was not unusual, when put in context with other "good government" initiatives in Maine over the past decade. A Maine Clean Elections initiative (Question 1, Nov 2015) drew about $1.3 million in support and just $34,000 in opposition. An initiative supporting same-day voter registration (Question 1, Nov 2011) raised $544,000 in support and only $6,000 in opposition. Both of these measures passed.[13]

By all accounts, CRCV ran a smart, "stealth" campaign that was based both on learnings from efforts to enact RCV in other places and on an understanding of what works in a state like Maine. The tactics were very much grassroots-based and fit to the state's electoral make-up, which skewed older and rural. While there were media buys, it was not a big component of how the campaign communicated with residents. Rather, CRCV's strategy was to take advantage of the fact that Mainers still read their local newspapers—and the opinion page is the second-most read section of the paper in Maine. So, instead of generating headlines, the goal was to regularly have pro-RCV features "on page six" of the local newspapers—via op-eds and letters to the editor. The campaign developed consistent messaging that would appeal to the generally independent-minded populace using language like "more voice; more choice," "simple, fair, and easy," and "restore civility." RCV was referred to as a "stunningly right idea for our polarized times".

Gaining bipartisan support was one of the challenges faced by the campaign. While the campaign tried to frame the issue as a non-partisan process matter that would help ensure consensus winners, from early on there was partisan-tinged distrust to stave off. On the left, within the Democratic party establishment, there was distrust of the people driving the campaign

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[13] As another data point supporting the notion that "good government" initiatives tend not to draw significant money in opposition, the campaign for California's Top-Two Primary system, enacted via Proposition 14 (June 2010), raised close to $5 million in contributions in support, while six different campaign committees organized in opposition raised just short of $300,000 in total. (Source: Ballotpedia)

for RCV, who were seen as closely associated with independent gubernatorial candidate, Eliot

Cutler. Many Democrats blamed Cutler as the "spoiler" responsible for the election of Governor

LePage. On the right, while some moderates initially professed interest in the concept, the

Republican party came to see RCV as a repudiation of their Governor and an attack on future

Republican candidacies.

To help circumvent the potential formation of an organized opposition, CRCV put

significant effort into recruiting a large, bipartisan base of civic and political leaders at both state

and local levels as endorsers for the initiative. At the early stages of the campaign, before the

issue became highly partisan, there were moderate Republicans willing to sign on as endorsers.

This recruitment work was intentionally conducted below-the-radar. As individuals signed on to

support the cause, they were deployed to help build the list of endorsers through peer-to-peer

conversations. And while many of these endorsers served as little more than names on a

webpage, CRCV believed that getting them to publicly endorse RCV early would mitigate the

risk that they could later be organized in opposition.

A loose coalition of proponent groups

With citizen initiatives, often times there will be an in-state non-profit advocacy group

that has existed for a long time, is committed to the policy issue long-term, and will continue to

exist into the future; and then there will be a campaign structure that will come in for a couple of

years to get the vote accomplished. The campaign committee leads the political work and one or

more nonprofits lead a parallel public education effort. To some extent, that is how the RCV

campaign unfolded in Maine. The Committee for Ranked Choice Voting (CRCV) was the clear

political leader for the initiative campaign. LWVME and MCCE were the nonprofit allies most

committed to RCV in Maine long-term. CRCV hosted conference calls periodically throughout

the 2016 campaign to share developments and plans with supportive groups, and looked to

leverage the specific assets these groups could bring when those fit within—or at least did not

interfere with—CRCV's overall strategy. As long as groups "stayed in their lanes," relationships

among the groups were constructive.

The League of Women Voters of Maine (LWVME), along with its close partner, Maine

Citizens for Clean Elections (MCCE), was among the earliest and most engaged in-state groups

supporting RCV. The national organization, FairVote, had also for many years been working to

support and nurture interest in RCV in the state. These organizations would factor prominently in

developments around RCV over the course of the two ballot campaigns. In addition to

LWVME/MCCE and FairVote, a number of other organizations contributed to the proponent

side of the RCV battle over the course of the two campaigns. Among these were:

- the Maine People's Alliance, which supported the RCV initiative, along with

  other progressive issues on the ballot, under its 2016 BQC, and acted as a

  communications conduit to its 32,000-strong progressive membership;

- Voter Choice Massachusetts, which lent volunteers to assist with calls and

  canvassing;

- FairVote Minnesota (unaffiliated with national FairVote), which provided advice

  and support to both LWVME and CRCV at different times; and later,

- Represent.Us, which would become involved later, during the 2018 People's Veto

  campaign, contributing financially and bringing board member and film star

  Jennifer Lawrence on board to film a campaign advertisement.

The League of Women Voters of Maine[14] and Maine Citizens for Clean Elections[15]

The League of Women Voters of Maine had been a supporter of RCV since issuing its study in 2011, and although still harboring misgivings about the constitutionality question, signed on to support the 2016 ballot initiative campaign. As the organization did not have the financial assets to contribute, its primary contribution would be toward educating residents about RCV. LWVME's assets included a respected, nonpartisan brand reputation and a strong culture for volunteer engagement, including a cadre of knowledgeable and articulate leaders who could speak credibly about the issue.

The close relationship between the LWVME and Maine Citizens for Clean Elections (MCCE) dated back to MCCE's formation in 1995 as a campaign finance reform coalition, chaired by LWVME and funded through another progressive organization. When that organization went bankrupt in 2006, LWVME became MCCE's fiscal sponsor. In 2010, MCCE spun off and became its own 501(c)(3) organization. The two organizations had remained closely allied and had many board members in common. In the summer of 2018, the two boards voted to formally combine their operations—an effort that they expect will take a year or more to fully complete.

LWVME President Jill Ward, Advocacy Chair Ann Luther, board member Polly Ward, and MCCE's interim Executive Director and legal advisor to both groups, John Brautigam, provided leadership for the League's work on RCV. Because MCCE had just come off a 2015 citizen initiative campaign, the organization had a big list of followers who were committed to democracy and ready to be deployed to support the RCV work in 2016 and beyond.

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[14] Depending on the activities described, references to "LWVME," may refer to either the 501(c)(4) organization or its 501(c)(3), LWVME Education Fund.
[15] Depending on the activities described, references to "MCCE," may refer to either the 501(c)(3) organization or its 501(c)(4), MCCE Action.

LWVME and MCCE are strategic about the use of their respective brands.[16] In the case of RCV, the League took the lead and was far more involved—particularly in the early going, as a moderate Republican legislator had once told MCCE that if they were seen to be "in with these RCV people," that would cost the group Republican support for clean elections. After completing its study of RCV in 2011, the League had testified in support of RCV bills in the legislature as well as convening the RCV working group after the last RCV bill had failed in 2013.

FairVote[17]

FairVote had been nurturing and supporting in-state interest in RCV in Maine for many years before the streams converged to catalyze a statewide ballot measure campaign. FairVote had provided support for the 2009-2011 effort to institute RCV for mayoral elections in Portland. After Portland adopted this change, Maine became a top FairVote target for advancing statewide use of RCV. FairVote has described its role as "supporting and mobilizing funding for in-state allies of RCV." In Maine, FairVote acted as an expert resource, providing significant amounts of advice and tactical assistance, particularly to LWVME/MCCE, including helping connect them with national funders.

League leaders described FairVote President and CEO Rob Richie's engagement in the state as "persistent, ubiquitous, always-there" and, for the most part, helpful and constructive. While pushing to keep the momentum going on RCV in Maine, Richie deferred to the state-based groups to take the lead and to be the visible face of RCV, preferring to keep his

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[16] Through the remainder of this document, all references to LWVME's work on RCV can be understood as inclusive of MCCE's contributions, and vice-versa. If a distinction between the two is noteworthy and relevant, it will be explicitly called out.

[17] FairVote is a section 501(c)(3) nonprofit. The organization has an associated 501(c)(4), FairVote Action; however, FairVote Action's involvement with RCV in Maine was minimal.

organization's involvement "subterranean". At the same time, bringing RCV to Maine was a

priority for FairVote, as they saw the state as potentially a "camel's nose under the tent" for a

national movement. Richie had gotten to know McCormick in 2012 through FairVote's

engagement with Americans Elect, and had spoken with her about a potential RCV ballot

measure in Maine in the summer of 2014. In collaboration with CRCV, FairVote secured a

significant grant from the Arnold Foundation in 2015 to launch a voter education project,

FairVote Maine. Over time, as that project expanded in size, FairVote found itself heavily

invested in Maine to the point that by the summer of 2016 it was essentially running a significant

component of the campaign operation. The FairVote Maine footprint ultimately was one of

several sources of friction among FairVote, CRCV, and, to a lesser extent, the League.

FairVote supplied significant "connective tissue" to the RCV Maine effort from its

embryonic stage through the enactment and implementation phases. But FairVote's special asset

was deep technical and policy expertise about RCV. The organization and its project, the Ranked

Choice Voting Resource Center (RCVRC), had assisted many other municipal and state efforts

to enact and implement RCV, and so had built up a significant library of resources for

communicating with the public, with elections officials, and with candidates about RCV. Richie

and his lieutenants were walking encyclopedias on the topic, and were frequently called upon to

answer all manner of detailed questions. Culturally, however, down-home Mainers sometimes

found FairVote's level of sophistication and style of communication off-putting—including

some in the state legislature and key agencies.

In addition to working with RCV proponents in Maine, FairVote brought in specialists to

help ensure that Maine's election administration challenges, such as inflexible voting machines

and skeptical elections officials, would not derail progress. FairVote had long been known to

Maine elections officials. FairVote's first interaction with long-time deputy Secretary of State

and Maine elections chief, Julie Flynn, was in the early 2000's when the first RCV bills were

coming up in the legislature. At that time, Flynn was putting forward extraordinarily high RCV

implementation cost estimates. FairVote tried to persuade her that the costs would not be that

high. This set up an oppositional dynamic between the Secretary of State's office and FairVote

from the start—and was part of what led FairVote to set up the Ranked Choice Voting Resource

Center.

The RCV education campaign

Throughout 2015 and 2016, CRCV, LWVME, and FairVote were all active in the work

of educating residents and there was considerable collaboration among the groups. Both

separately and together, the pro-RCV groups hosted local events, gave presentations in schools,

senior centers, and town halls, and offered educational trainings for candidates and campaign

staff. "Beer elections" were one of the innovative education tactics the League and CRCV

cooked up together. In dozens of communities all up and down the state, community members

were invited to "raise your glass and rank your choice" at local brew pubs.

LWVME established RCV education as one of their priorities for 2015-16. However, the

organization lacked staffing to put behind the effort. FairVote, feeling it was important for in-

state groups to be the face of RCV in Maine, helped the League secure funds in 2015 to hire a

talented young political science graduate, Finn Melanson, to organize and lead an ambitious

outreach project. Melanson, a neighbor of McCormick's whom she knew from the 2014 Cutler

campaign, had previously been hired by Bailey to help manage the Question 5 signature-

collection process for CRCV and had continued working as an outreach staffer with FairVote

Maine. Along with League volunteers, Melanson gave over 100 educational presentations on RCV in nursing homes, senior centers, public libraries, and other venues.

LWVME organized a variety of other RCV education projects over this period. One such project was aimed at reaching busy parents who might not otherwise come out to a community event. LWVME board member Polly Ward, a former deputy commissioner of the Maine State Department of Education, came up with the idea of developing a high school unit on RCV—with the presumption that students would bring their new-found understanding of RCV home to their parents. She and others organized a group of volunteer teachers over the summer of 2016 to develop a lesson plan on RCV, which was circulated widely among high school teachers.

In early 2015, FairVote and CRCV collaboratively developed and launched a major RCV education canvassing project—which came to be known as "FairVote Maine." The project was funded largely by the Laura and John Arnold Foundation. Rob Richie had pitched the Arnolds on getting involved with RCV in late 2014, and suggested Maine as the most promising state where their support could make a difference. In early 2015, FairVote received funding to launch the project. FairVote, which is a 501(c)(3) organization, served as recipient for the grant, with Bailey directing and managing the project on the ground.

Initially, Bailey acted as project director for the FairVote Maine project while also splitting his time as campaign manager for CRCV. Many of the staffers hired during 2015 were also splitting their time between RCV education and campaign work, and the two operations were sharing the same office space. In early 2016, Bailey left FairVote Maine and was replaced by Doug Clopp. Clopp was at the time FairVote's national outreach director and had deep ties to Maine, having served as Democracy Project Director for the progressive activist organization, Maine Citizen Leadership Fund (the original fiscal sponsor for MCCE) for several years in the

early 2000's. Upon leaving FairVote Maine, Bailey returned to full-time status with CRCV and a number of the FairVote Maine staffers also moved over to the Committee.

Under Clopp's leadership, the FairVote Maine operation grew considerably—to a peak of over 40 paid staff and canvassers in two field offices with a budget of over $1 million. The plan had been for CRCV to take over the canvassing operation for direct advocacy work in support of the 2016 ballot measure once the Arnold grant ended in summer 2016. However, in May 2016, it became clear to FairVote that CRCV did not have the capacity to take over the now-large operation. FairVote's board, believing that the FairVote Maine asset was crucial to the ballot measure's success in November, made the decision to shift a sizeable sum of $300,000 from unrestricted funds to keep the operation going through the November election.

Opposition to RCV

Given the ultimately close margin of victory for Question 5, some have suggested that had those in opposition gotten organized to stir up confusion with voters or beat the drum about outside money, Question 5 might have failed at the ballot box. However, no organized opposition formed—either against Question 5 in 2016 or against the People's Veto referendum in 2018.

About the only organization outspoken against RCV was the Maine Republican Party. Given Maine's history with generally left-of-center candidates often acting as spoilers, the party viewed RCV as a means for rigging the system to ensure the Republican in any given race would lose. As well, RCV was connected

> "In practice, it's going to lead to a lot of confusion and create a barrier to participation, all for some vague benefit of politicians being nicer to each other."
> - Jason Savage, Executive Director, Maine Republican Party (as reported in Politico, March 2018)

in many conservative minds with a wide range of democratic reforms across the country focused on increasing the vote and bringing in more voices.

There weren't really any natural allies to the Republican Party standing up in opposition to RCV, however. Groups inclined to align with Republicans—such as the Chamber of Commerce or construction industry—"didn't see a dog in the fight" compared with higher priority issues. In addition to RCV, there were four other initiatives on the November 2016 ballot, including a tax surcharge to fund education, a minimum wage increase, and legalization of recreational marijuana. These issues had far more salience for both voters and special interest groups than did RCV, and thus attracted far more attention from groups that might otherwise have organized in opposition to RCV.

The Maine Heritage Policy Center (MHPC), a 501(c)(3) conservative think tank and one of the most important conservative voices in the state, would get involved in opposition to RCV later. During legal proceedings in 2017, MHPC filed an amicus brief on the opponents' side arguing that using RCV in general elections for governor and legislature was blatantly unconstitutional.[18] MHPC's only other involvement with RCV came in the lead up to the first use of RCV in the June 2018 primary, during which the organization fielded questions from residents and presentation requests from right-leaning groups who trusted MHPC to explain how to vote using the new system.

On the Democratic side, there was a range of opinion about RCV. The visible involvement of left-leaning groups like MPA and MCCE, as well as well-known progressives like Diane Russell, helped signal to voters on the left that this was an issue they could get behind.

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[18] As a result of Maine's experience with Question 5, MHPC is now promoting a ballot initiative reform that would require Maine's Supreme Judicial Court or the Attorney General to weigh in on the constitutionality of all initiatives before they are put before voters.

Meantime, the Democratic elite, who one might have imagined could have been wary about changing the rules around elections, didn't seem to take the issue seriously until after Question 5 passed.

CRCV took early action to isolate potential sources of opposition and make it harder for them to organize against the measure. Assembling a list of 1,000 or so individual civic leaders and influentials to target for outreach, CRCV was able to build a multi-partisan coalition of over 500 endorsers for Question 5. While many of these endorsers did not engage with the campaign in a significant way beyond lending their name, others did—through peer-to-peer outreach, press opportunities, and writing op-eds and letters to the editor. And as one supporter put it, "The supportive endorsers may not help you a lot, but the opposing endorsers can kill you."

The strategy to target individuals rather than organizations for endorsements came out of CRCV's early outreach to groups. While many of the individuals with whom CRCV met expressed sympathy for RCV in concept, they were unwilling to put the weight of an organizational endorsement and resources behind it. There were four other progressive issues on the November 2016 ballot, and many of the progressive-leaning organizations were prioritizing among those other issues and thus lacked capacity to take on RCV as well.

Although there was no organized opposition to either the 2016 or the 2018 RCV ballot initiative campaigns, proponents came to feel that it was elections officials—in particular, the Secretary of State's office—that posed the greatest threat to RCV. Charged with protecting the sanctity of the vote, elections officials as a group tend to be risk-averse about changes to election procedures. Similarly, they are inclined to take a cautious stance when communicating with legislators about such changes and their potential implications. Conservative estimates of cost and complexity coming from elections officials can be seized upon as cover by those wanting to

undermine support for RCV without having their opposition appear to be politically-motivated. Indeed, a seeming parade of such estimates and predictions coming from the Secretary of State's office, dating back to the earliest RCV proposals in the legislature, convinced the campaign principals that the Secretary of State's office was colluding with the political elite to undermine RCV in Maine.

The lack of organized opposition did not mean there were no individual voices speaking out against RCV. In addition to Jason Savage, Executive Director of the Maine Republican Party, current and former Republican elected officials and party leaders wrote op-eds and gave press interviews offering up arguments against RCV that included the constitutionality question as well as dire warnings about projected high costs and chaotic implementation. Among the arguments put forward by voices in opposition at various points in time:

- The method will confuse and disenfranchise voters;

- RCV ballots would have to be counted centrally—contrary to the constitutional requirement that ballots are counted locally in Maine. Unless transported by Maine law enforcement personnel, at exorbitant cost, security of the vote would be at risk;

- RCV does not yield a "true majority" winner in all cases, as the denominator changes as votes are exhausted across the rounds of vote-counting;

- Question 5 did not emerge organically or through a thoughtful public process. Rather, it was a change being forced on Mainers by outside entities who recognized the state as an easy target.

RCV ballot measure wins narrow victory

> ***Nov. 8, 2016:*** *Voters approve Question 5. The RCV law applies to elections after Jan. 1, 2018.*

On election day, November 8, 2016, the voters of Maine passed Question 5 by a margin of 52.1 to 47.9 percent. Proponents crowed that the victory represented the second largest vote in the history of citizen's initiatives in the state. After the close of the Question 5 campaign, CRCV prepared to disband. FairVote had anticipated remaining engaged with implementation work in Maine through the FairVote Maine project. However, LWVME and MCCE expected to lead on implementation support and balked at the formation of another in-state, good government 501c(3). In response, FairVote closed up shop on the FairVote Maine project and instead looked to provide implementation support in other ways.[19] It soon became clear to all, however, that although voters had passed it, the issue of whether Maine would move forward with implementing RCV was far from decided.

Grumblings began to emerge and intensify from Republicans in the legislature about the constitutional provision specifying a plurality winner in general elections for Governor and legislators. As Steve Mistler of the Bangor Daily News was later quoted as saying, "Republicans see ranked-choice voting as an existential threat to hardline conservative candidates and their ability to win statewide elections. They have benefited from plurality elections where the Democratic candidate and independent or unenrolled candidates split the vote. With ranked-choice voting that doesn't happen."[20] Anger around the LePage plurality election and reelection had been a clear driving force for the victory of Question 5 at the ballot box. And so, the risk that

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[19] FairVote had considered the idea of retaining FairVote Maine as a 501(c)(3) operation to support implementation after the ballot measure passed. The League, however, did not see the value or need for another democracy group in the state, fearing it would cannibalize a limited pool of funding support. And so, in the fall of 2016, LWVME leaders convinced Rob Richie not to pursue the idea.

[20] https://www.mainepublic.org/post/nov-30-whats-driving-poliquins-ranked-choice-vote-challenge-and-recount-request

RCV might be challenged and ruled unconstitutional for use in gubernatorial general elections

posed a potentially serious public relations issue for proponents. With alarm, the campaign

principals unfolded their tents and began to gear up for what they perceived to be their own

existential threat—in this case, to the future of RCV in Maine.

The Question of Constitutionality (2017)

CRCV had anticipated there could be some challenges faced during the implementation

phase of RCV. However, whether they anticipated and had an effective strategy mapped out to

deal with the speed and intensity with which opposition heated up in the legislature was a matter

of disagreement amongst the proponent coalition members. The Committee's public stance

throughout the campaign had been that the initiative was fully constitutional. Privately, some felt

that if voters enacted RCV then the legislature would fix any constitutional issues—perhaps

tweaking the newly-passed RCV law, but not wholly gutting it.

In hindsight, there should have been no surprise that the constitutional risk would not go

quietly into the night. Among the campaign messages, RCV had been pitched as a vehicle for

independents, the equivalent of waving a red cape in front of party elites. The constitutional

question offered a convenient vehicle for opposition. Constitutional issues were raised publicly

long before Question 5 passed, including by the state's elections chief, Julie Flynn, in legislative

committee hearings in 2013, by Dunlap in meetings with proponents in 2014, and again in March

2016, when Attorney General Janet Mills, in response to a Senate request to weigh in, cited

"significant constitutional concerns".[21]

Pressure for action to slow or stop the implementation of RCV quickly ramped up in the

legislature. Although Senate Republicans were the primary face of the opposition, behind the

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[21] https://www.pressherald.com/2016/03/05/maine-attorney-general-says-ranked-choice-voting-may-require-amending-constitution/

scenes many Democrats were skeptical as well. The threat RCV poses to the two-party duopoly

was a motivating factor for some; but others opposed moving forward for institutionalist

reasons—concern over the constitutional uncertainty and what havoc that might bring down the

road or concerns about the cost and complexity of implementing the new law.

The state constitution of Maine

The plurality provision in Maine's state constitution was by far the biggest threat to the

new RCV law. This provision, however, applied only to general elections for Governor, state

Representatives, and state Senators; it did not apply to

federal offices nor to primary elections, neither of

which are governed by the state constitution. Other

> The Governor is elected "by plurality of all of the votes returned."
> - Maine Constitution, article V, pt. 1, section 3

constitutional questions had been raised at various times and lingered in the air as well. Among

these was the requirement that municipalities, and not the state capital of Augusta, "sort, count,

and declare" votes—which would appear to be violated by a need to hold a central count in

ranked choice contests. There was also a constitutional requirement for Maine state police to

handle the transport of ballots in case of a recount. It was unclear whether and how this might

apply to RCV contests.

Differences fracture the proponent coalition

For the most part, the pro-RCV advocacy groups had worked in a complementary fashion

throughout the Question 5 campaign. Under the surface, however, tensions had been bubbling for

some time. As the real threat of a repeal to the new RCV law became apparent, and with legal

and technical uncertainties swirling, tensions among the proponent groups broke open.

Some of the tensions stemmed from CRCV's "small and stealthy" approach to campaign

strategy and structure. From CRCV's perspective, they were responsible for raising the funds for

the campaign and thus should have exclusive ownership for driving campaign strategy. While

they had welcomed the engagement of other groups throughout the Question 5 campaign,

frustrations emerged when pro-RCV allies sought to influence or critique strategy. The fact that

other groups who supported RCV had multiple priorities—and oftentimes RCV was not at the

top of the list—became a growing source of frustration for CRCV, whose principals shared a

single-minded focus on getting RCV passed. At the same time, the allied groups seemed

confused and a bit put-off that they were not being invited to participate as full partners, as they

had as members of some of the other issue-based coalitions in which they had participated in the

past.

Another source of tension was rooted in the essential difference in perspective and

incentives between a campaign operation, which exists to tally a specific point-in-time win,

versus a civic or issue-based advocacy group, which exists to steward one or more issues in one

or more locales over time. As a campaign organization, CRCV's choices were often driven by

short-term and transactional concerns, while longer-term and relational concerns drove choices

made by the nonprofits. As a result, both CRCV and the nonprofits at various times took actions

that, while seeming perfectly reasonable in the context of their own agendas, felt inept, counter-

productive, or even duplicitous to others in the pro-RCV coalition.[22]

Differences in how the groups addressed the constitutionality question was one of the

early points of friction between CRCV and LWVME. From the start, LWVME sensed that the

fact and outcome of the moot court exercise was going to be a messaging challenge for the

campaign. CRCV chose to minimize the issue, adopting the sweeping interpretation that there

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[22] For example, soon after the election, LWVME/MCCE reached out to Secretary of State Dunlap in hopes of beginning a helpful partnership on implementation of RCV. CRCV principals reacted strongly, as they viewed the Secretary of State's office as an RCV detractor and thus wanted to closely control the strategy for dealing with Dunlap's office.

was no real issue as "a plurality is a majority," and asserting that legal scholars agreed. The

League, however, saw this as "playing fast and loose with what is true and what is not true," and

at odds with the League's reputation for objectivity and precision. This difference had aired itself

back in January 2016, when Deputy Secretary of State Julie Flynn, in consultation with the

Maine Attorney General's office, publicly raised the concern that Question 5, if passed, could be

challenged and found unconstitutional in regards to the plurality provision. Foreshadowing the

developing cracks in the proponent coalition, there was daylight between the public responses

from CRCV and the League. CRCV asserted that the ballot measure did not violate Maine's

Constitution because a majority is also a plurality. Although acknowledging that the

constitutional question was an "unresolved issue" for some, Kyle Bailey said at the time, "The

first conversation is, do we want to use ranked-choice voting, and if so, let's make that decision

first before amending the constitution."[23] LWVME, in its traditionally cautious and precise

manner, issued a more nuanced statement acknowledging "there is no consensus answer" to the

constitutional question, although nevertheless urging support for Question 5.

Statement from the League of Women Voters of Maine (January 21, 2016)
(Source: http://lwvme.org/20160121.html)

"We understand that there is an open question of whether Ranked Choice Voting would be constitutional in Maine. There is no consensus answer to that question. In 2011, after three years of careful study, the League of Women Voters of Maine endorsed Ranked Choice Voting because it puts more power in the hands of voters, ensures those elected to office have the broadest support, promotes civility in campaigns, and may serve to reduce voter cynicism and increase voter participation. These are values we support and believe would improve our election system.

If the people of Maine want Ranked Choice Voting for the many civic benefits that it would confer -- and the League of Women Voters is in this camp -- the surest means to that end would be to pass Ranked Choice Voting at the polls in 2016. Should there be a review by the courts that results in an adverse court opinion, we would support a constitutional amendment to allow Ranked Choice Voting to be implemented in time for the 2018 election."

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[23] https://www.pressherald.com/2016/01/20/maine-election-official-lawmakers-question-legality-of-ranked-choice-voting-proposal/?rel=related

Perhaps unsurprisingly, the campaign Committee, whose very reason for being was to see a particular ballot measure enacted, adopted a bunker mentality at the end of 2016, perceiving the mission ahead as all-out war with the legislature and Secretary of State's office to preserve and defend "their law". The allied groups, however, each had a broader array of concerns to balance. In the case of national groups like FairVote, there were other battlefields in other states, as well as the need to replenish diminished funds after the significant and unplanned expenditure to keep FairVote Maine afloat through the November 2016 election. In the case of in-state groups like LWVME, the battle for RCV was part of a much bigger and longer-term war to protect and expand democratic participation in government in Maine. There were other pro-democracy agenda items and, even more importantly, long-term relationships that would need to be preserved. These 501c(3) groups had expected to take over the work of implementation and long-term defense of the law after the election, and CRCV's decision to remain in the driver's seat served as another vexation in the relationship.

Ultimately, an accumulation of irritants, both new and long-simmering, broke down trust at the end of 2016 to the point that CRCV made the decision to stop active collaboration with the nonprofits as the campaign moved from the ballot box to legislative and judicial chambers. The Committee determined that they, alone, would march into battle against what they saw as forces within the legislature and administration hell-bent to repeal the new law. While for a time there were weekly calls led by CRCV's lobbyist, these were at the insistence of CRCV's largest funder and seen by the other groups as more for-show than substantive. The other proponent groups were largely left to act independently, with little to no real sharing of strategy and plans[24]. But, as

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[24] The notable exception was the collaborative work of attorneys representing the proponent groups during the spring 2017 lawsuits around RCV.

the effort to bring RCV to Maine morphed from a ballot box campaign into a legislative and

legal battle, it was not as clear to the rest of the coalition that CRCV was the right vehicle to lead

the effort to defend and implement the new law.

From CRCV's perspective, this next phase was a continuation of the battle, which had

apparently not yet been won, and would take the same dogged determination and battlefield

mentality they had employed to win the ballot measure campaign. Others in the coalition saw the

next phase as one requiring a different mix of experience, technical knowledge, and relationships

within the legislature and with elections officials, as well as an approach that looked more like

steward leadership than like all-out conflict. Some who were interviewed for this research felt

that the League's assets, in particular, were under-appreciated and under-utilized. Ann Luther,

the League's long-time advocacy chair, was known and had good standing with both Democrats

and Republicans on the key committee with jurisdiction over RCV. She and other League leaders

had a strong reputation within the legislature for providing solid information, always backing up

their assertions with facts and analysis, and acting in an unfailingly respectful and polite manner

with the members. The Committee for Ranked Choice Voting, in contrast, took an adversarial

and combative tone with the legislative committee and its leadership. According to some with

knowledge of the goings-on in the legislature at the time, this approach likely gained them

enemies and further inflamed those already inclined to oppose RCV.

The 2017-2018 period, when the RCV law needed simultaneously to be defended and to

be implemented, presented a familiar challenge for LWVME. Leagues of Women Voters around

the country are very familiar with the challenge of navigating between their education and

advocacy roles. Following the passage of Question 5, the League put most of its emphasis on its

RCV education role and on assisting elections officials—all the while working hard to maintain

the League's reputation and good relationships so that it could continue to aid in this work in both the near and longer-terms. At the same time, in its advocacy capacity, the League participated in legislative testimony and legal proceedings to protect the new law. And when the time came later in 2017, LWVME once again signed on as an endorser for the People's Veto campaign. Ironically, LWVME's attempts to "thread the needle" between advocacy and supporting implementation on RCV may have hurt their standing both with CRCV and with the Secretary of State. CRCV interpreted the League's cautious approach as a sign of inconsistent commitment and unwillingness to step up to the challenge when the going was toughest. The Secretary of State perceived LWVME and MCCE as allied with the campaign and therefore warranting arms-length treatment.

Tensions between CRCV and FairVote similarly began early—at least as early as the FairVote Maine project in 2015-16. When Doug Clopp replaced Kyle Bailey as director for the FairVote Maine project, it was the culmination of months of internal tensions rooted in how the project had originally been structured. FairVote Maine had been established as a project of FairVote through a grant from the Arnold Foundation in the spring of 2015. A set of metrics and goals had been committed as part of the grant. In the fall of 2015, Clopp had been directed by FairVote's board to make Maine his national RCV priority. Feeling pressure but lack of control for the FairVote Maine project, Clopp became concerned about whether Bailey could successfully lead the project to deliver on its grant metrics while splitting his time with campaign committee work. A strategy meeting that winter failed to increase Clopp's comfort level in the arrangement.

When Bailey left his FairVote Maine post in February 2016, a number of FairVote Maine staff and consultants also transitioned to work full-time with CRCV, leaving a significant

staffing deficit along with morale issues within FairVote Maine. Bad feelings from this experience were further exacerbated when, in May 2016, it became clear that CRCV would not take over the FairVote Maine operation. With other ballot campaigns circling, ready to poach FairVote Maine staffers should word get out that the project might be concluding, the FairVote national organization made the difficult decision to redirect $300,000 of unrestricted funds to fund the operation's lobbying activity through the fall, via the FairVote BQC. The by-now-large FairVote Maine canvassing project turned to direct advocacy in the months before the election, acting as the primary field operation in parallel with the campaign's media work. Tensions from this whole experience remained a significant undercurrent between CRCV and FairVote.

Tensions between the organizations came to a boiling point in early 2017. Rob Richie, who had decreased his direct involvement in Maine after being asked by the League not to create a FairVote Maine 501(c)(3) for the post-passage implementation phase, started to hear rumblings from his in-state allies indicating that things were going poorly with the legislature and CRCV did not seem to have a strategy to deal with this. Feeling that a lynchpin project was at risk of going belly-up, he personally reengaged. Second-guessing of strategy and tactics abounded between the proponent groups through the legal and legislative fights of 2017-2018, to the point that the Action Now Initiative, a major funder of CRCV, felt the need to intervene.[25] In a meeting in May 2017, the parties were told to go to their corners, with CRCV given lead jurisdiction over work with the legislature and executive branch until the defense of the RCV law was concluded. FairVote was to reengage for the implementation phase of RCV only after the legal and legislative challenges were settled.

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[25] John and Laura Arnold, who are the founders of the 501(c)(4) advocacy organization, the Action Now Initiative, are also founders of the 501(c)(3) John and Laura Arnold Foundation. The Arnold Foundation is a major funder of FairVote.

A solemn occasion and advisory opinion

> *Feb. 2, 2017: The Maine Senate requests the opinion of the Maine Supreme Judicial Court on the constitutionality of RCV for general elections for State Legislature and Governor.*

After Question 5 passed, legislators began to grapple more seriously with what that meant. Some who had been warm or at least open to RCV in concept now became wary or backed away as questions swirled about the constitutional risk, implementation process, and how this system might affect the political power dynamic. Concerns were expressed about the integrity of Maine's elections processes—and fears that the state would end up with "a crazy quilt system" with a mix of RCV and non-RCV contests on the same ballot. Further inflaming those inclined to be opposed (including at least one legislator who had previously been on CRCV's list of endorsers) was the sense that CRCV had not been totally forthcoming and transparent about the constitutional issue. Finally, leaders in the Republican-controlled Senate decided to push for the constitutional question to be resolved in court.

Maine has a process called a "solemn occasion" in which the legislature may ask the Maine Supreme Judicial Court (SJC) for an advisory opinion on a major issue that is before the body[26]. Although rarely used, the "plurality" versus "majority" question had raised so many concerns among legislators that in February 2017, by a vote of 24 to 10, the Republican-controlled Maine State Senate asked the court to weigh in.

> *Apr. 13, 2017: The Maine Supreme Judicial Court hears oral argument on the constitutional questions and whether there is a "solemn occasion" permitting the Justices to answer the questions.*

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[26] There is no definition of what constitutes a "solemn occasion" in Maine's Constitution. However, over the years the courts have developed a set of guideposts, and these were used to determine that the RCV question did present a legitimate solemn occasion warranting an advisory opinion by the SJC.

CRCV, FairVote, and LWVME were among those who filed amicus briefs arguing for constitutionality, with their respective attorneys collaborating (for the most part) on which arguments to put forward. Maine Heritage Policy Center was among those filing briefs arguing against constitutionality. Oral arguments were held, and on May 23, the SJC issued a unanimous advisory opinion finding a "solemn occasion" and concluding that the RCV law's provisions on general elections for state legislators and the Governor did indeed violate the state Constitution. In their non-binding opinion, the court advised that the legislature could remedy the situation by either: 1) advancing a state constitutional amendment or 2) repealing the afflicting portion of the law.

May 23, 2017: The Justices of the Maine Supreme Judicial Court issue a unanimous advisory opinion, finding a solemn occasion and concluding that the parts of the ranked-choice voting law that apply to general elections for State Legislature and Governor are unconstitutional.

Legislative remedies fail

The SJC's advisory opinion left the legislature in a quandary. While legislators, Democrats in particular, were loath to publicly appear to be undermining the new law, the possibility of a constitutional crisis if the law were allowed to stand and the result of an election challenged in court, seemed very real. And so, with barely a year before the new law's required first use in the June 2018 primary, activity on both sides of the issue ramped up. The legislature at this point was closely divided along partisan lines. Bills to pass a constitutional amendment to "fix" RCV were shot down in the Republican-controlled Senate, while bills to delay or repeal RCV were shot down in the Democratic-controlled House. Finally, the legislature adjourned in July 2017 without a fix or a plan to address the constitutional concern.

Jun. 2017: Based on the SJC opinion, the Legislature considers either a full repeal of the ranked-choice voting law or initiating the Constitutional amendment process. Both efforts fail.

By this time, Republican legislators were united in opposition to RCV. They saw the issue as a repudiation of their Governor and needed little to no pressure from party leadership to oppose any effort to advance RCV implementation. While some claimed openness to the concept of majority elections (if the constitutional issue was addressed), they opined that a traditional two-stage runoff process was preferable to an instant-runoff, which they described as a device for engendering mistrust and disenfranchising voters. RCV opponents were also advancing the argument that the method would be confusing for voters—particularly older ones. The solemn occasion opinion gave them additional fodder. How much more confusing would it be if, on the same ballot, some elections were conducted with RCV and some without? In addition to the voter-confusion argument, concerns about implementation and cost were resurrected, and that a hurried implementation might be prone to error.

Democratic leadership in the legislature had a more complex playing field to navigate than did Republican leaders. The party had adopted a "we will uphold the will of the people" mantra to defend other left-leaning initiatives that had passed on the November 2016 ballot. Party leadership knew it would undercut higher priority wins, such as the education tax surcharge, if Democrats were seen as inconsistent on the RCV initiative. And unlike Republicans in the legislature, Democratic members were less homogeneous in their views of RCV. Generally speaking, the members fell into three camps:

1. Urban Southern Maine Democrats, who were more familiar with RCV through its use in Portland and strongly favored the method as a good electoral reform;

2. Rural Maine Democrats, many of whom had been elected with some Republican support and for whom some of the arguments about constitutionality and voter confusion resonated; and

3. A middle group of Democrats who had concerns about what RCV might mean for

   their party but who wanted to be respectful of the will of the people.

Ranked choice voting by now had the support of a variety of progressive and good

government organizations within the state. So, while there were plenty of Democrats who

privately were not fans of ranked choice voting, Democratic lawmakers feared taking a public

position contrary to party leadership and the progressive alliance that had developed around the

issue.

CRCV was particularly concerned with keeping Democrats in the legislature aligned in

support of RCV. They hired Kate Knox, the attorney for the Maine Democratic Party and a well-

respected progressive lobbyist, to help shape their legislative strategy and act as their lobbyist—a

move that some felt may have further complicated prospects for gaining support with

Republicans.

Rep. Owen Casas was one of the genuinely conflicted group of legislators caught in the

middle of the RCV argument that spring/summer of 2017. Casas, an independent on the key

committee responsible for elections-related matters, took a lead role in trying to find a path

forward that would garner support from both parties. Casas liked RCV in concept, but had

concerns about back-end implementation. Recognizing that Maine would be setting a precedent

that would be held up by either supporters or detractors in other states, he did not want to see the

first use of RCV in a high-profile statewide election become mired in bureaucratic complexity or

turn into a constitutional crisis. As confusion reigned in the legislature, Casas became frustrated

with what he saw as the inability of RCV proponents to supply basic information supporting

their claim that implementation would be relatively simple and inexpensive. He wanted to

neutralize the "voter confusion" talking point used by opponents, but found himself ill-equipped

to answer the questions that swirled around the committee, allowing fear, uncertainty and doubt to fester in the minds of potential persuadables.

CRCV wanted to push for a constitutional amendment to secure the RCV win for all ten affected contests: the primary and general elections for U.S. Senate, U.S. House, state Senate, state Representative, and Governor. Casas felt this was a pipe dream if proponents could not answer legitimate and basic questions about how RCV would work. Finally, the Ranked Choice Voting Resource Center, a project of FairVote nationally, prepared information and sent Gary Bartlett, the former head of elections in North Carolina, to meet with party leadership and testify before the key legislative committee. But in the end, there was little hope that any kind of solution could pass in the 128th legislature, as the issue had become so partisan and the body so fractious that nothing could pass both the Republican-controlled Senate and Democratic-controlled House. And certainly, nothing could muster two-thirds support of the body, which would have been required to start the constitutional amendment process or withstand a likely gubernatorial veto.

The legislature postpones implementation

As spring turned to summer in 2017, the looming prospect of a November 2018 gubernatorial race contested in the courts proved a mighty incentive for a compromise to finally emerge in the legislature. Ultimately, the presiding officers and a few key people sat down and brokered a deal, which they would push through with little debate in a one-day special session of the legislature that had been called ostensibly to deal with marijuana legislation. The compromise, LD 1646 (Ackley-I)—nicknamed "delay-and-repeal" by RCV proponents—was voted and approved on October 23, 2017. The legislation placed a complete stay on RCV

implementation and set a deadline of 2021 for a constitutional amendment addressing the

plurality provision to be put before voters and ratified.

> ***Oct. 23, 2017***: *During a special session, the Legislature passes "An Act to Implement Ranked-choice Voting in 2021," which indefinitely postpones implementation of ranked-choice voting unless voters ratify an amendment to the Maine Constitution before December 2021.*

Both CRCV and LWVME/MCCE supported the compromise as originally written by

Ackley. The original compromise allowed for the seven RCV contests not under Maine

Constitutional jurisdiction to proceed, while the other three (general elections for Governor, state

Senate, and state Representative) were stayed until a constitutional amendment could be passed.

But after public testimony, the bill was amended by Republican leadership to put a complete stay

on all RCV contests—and added the "poison pill" provision that RCV would be repealed entirely

if no constitutional amendment had been passed by the end of 2021.

Behind the scenes, the "compromise" legislation gave the not-inconsiderable number of

Democrats who didn't like RCV a way to have their cake and eat it, too. The legislation put in

place a process whereby legislators could appear to be supporting a constitutional amendment

making all of the Question 5 uses of RCV legal, while in fact killing RCV entirely in the likely

event that proponents were not successful in passing such an amendment.

The period of time between when Question 5 passed in November 2016 and when the

legislature passed the "poison pill" compromise in October 2017 would later become a chief

source of hand-wringing and second-guessing among the RCV proponent groups. The

Committee would assert that their aggressive approach with the legislature and Secretary of State

was necessary, and that they prevailed in the courts and ultimately won with the People's Veto.

However, others on the proponent side have suggested that the People's Veto might have been

avoided altogether by working more constructively with legislators on a compromise that would

have achieved the same thing—and perhaps even shifted the fate of RCV for gubernatorial

elections—without leaving scorched earth behind. As well, the fight in the legislature around

RCV came during a period when the legislature seemed systematically to be repealing,

amending, or stalling implementation on a range of issues on which the people of Maine had

voted. Each of these ballot initiatives had its own set of defenders working to influence the

legislature, and some have suggested that RCV proponents might have missed a strategic

opportunity to coordinate amongst these proponent groups on a public relations strategy that

would complement and strengthen their inside-the-chamber strategy. By tying their issues

together into a broader "respect the will of the voters" message campaign, it has been suggested

that proponents might have brought public pressure to bear on the legislature—particularly on

Democratic leadership—before it became necessary to fight a People's Veto campaign.

The People's Veto: Maine Question 1 (2018)

Maine has a provision wherein the voters can undo a legislative act via a "People's Veto"

referendum. Launching a People's Veto referendum requires submitting a petition to the

Secretary of State and then collecting the requisite number of signatures[27] within a 90-day period

following the end of the legislative session in which the law was passed.

The proponent group behind the Question 5 campaign (Woodbury, Russell, McCormick,

and Bailey) were incensed when the "delay and repeal" legislation passed. And so, almost

immediately, and despite their own misgivings that it could be pulled off, they announced a

People's Veto campaign. The group determined that it was possible to put forward a partial

veto—and that doing so could help them deal with the public relations challenge associated with

the constitutionality issue. The only constitutional problem with the law passed by voters via

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[27] The requisite number of signatures to qualify a People's Veto referendum in Maine is equivalent to ten percent of the votes for Governor in the last gubernatorial election. At the time, this was about 61,000 signatures.

Question 5 was for the general election for Governor and legislature. The other provisions of the law were not in question. Thus, proponents crafted the People's Veto language to reinstate only those races where there was *no* constitutional question. This partial veto circumvented the potential argument that the People's Veto would leave Mainers with an unconstitutional law.

The application for a People's Veto petition was filed with the Secretary of State on October 27. Dunlap officially had 10 business days, or until November 10, to approve proponents' application and issue the petition. However, election day was November 7 and proponents knew they would need to collect signatures on election day if they had any hope of qualifying the referendum within the 90-day window before the repeal legislation would go into effect. So, the group immediately released a public statement to the media, which they believed would bring public pressure to bear on Dunlap to provide petitions in time for election day signature-gathering.

> *Nov. 6, 2017: The Secretary of State approved the Peoples' Veto petitions for circulation.*

At 4:30 p.m. on November 6—the afternoon before election day—the Committee received word that the Secretary of State had approved the petition, allowing signature-gathering to begin. With the petition approved, the Committee sprang into action to get it printed and distributed to volunteers around the state. McCormick, who did not trust the legislature, had a month previously directed Committee staff to begin organizing volunteers for an anticipated People's Veto signature-gathering effort. As with the Question 5 campaign, the signature-collection process was highly volunteer-driven, much more so than other ballot measure campaigns in Maine that have relied heavily on paid canvassers.

The Committee had made advance arrangements to send the petition electronically to copy shops in a number of locations. Proponents then deployed dozens of volunteers in a late-

night operation to distribute these to signature-gatherers across the state. By the next day, 400 volunteer signature-gatherers were stationed at the polls with petitions in hand.

About 40,000 signatures were collected on election day, as the people of Maine sent a clear message to the legislature that "the people will be heard". Reactions from those signing the petition ranged from "Wait. Didn't we already vote on this?!" to "I don't support RCV, but I'm so tired of all the referenda getting overturned that I'm going to vote for it anyway."

Collecting the remaining signatures after election day turned especially challenging, as Maine was plunged into a polar vortex with two weeks of temperatures so frigid the Committee was loath to send out even paid signature-gathers. Determined and undaunted, volunteers stood out in the cold and snow, and the Committee successfully collected 80,000 signatures in 88 days, submitting them to the Secretary of State's office in the first week of February.

Feb. 2, 2018: Proponents of the People's Veto submit their signed petitions to the Elections Division for a determination of validity – a process that takes up to 30 days.

The Secretary of State took the full 30 days he was allotted by law to certify that there were sufficient valid signatures and the referendum had qualified for the ballot. Upon qualifying for the ballot, this effected an immediate stay on the legislature's repeal law—meaning that RCV would be used for the June 2018 primary and at the same time the people would be voting whether to retain RCV for future uses.

Mar. 5, 2018: The Elections Division determines that the People's Veto has enough valid signatures to move forward to a statewide vote on June 12, 2018. Thus, the primary elections for U.S. Senate, Governor, U.S. Congress, and State Legislature will be decided by a system of ranked-choice voting on June 12.

The People's Veto (Question 1) campaign that followed had been designed around lessons learned from the Question 5 campaign. The dynamics that had precipitated the People's

Veto, however, provided proponents the opportunity to make the campaign less about the merits

of RCV and more about harnessing public outrage over the legislature's attempts to overturn the

will of the people. And once again, there was no organized opposition or money on the opposing

side. Through messaging research, the campaign landed on a message frame of "more voice,

more choice, more power" which resonated across the political spectrum. This time, proponents

waged a more public campaign, making greater use of traditional media—mail and television—

than they had in the first campaign. And they added star power, using connections through

Represent.Us to secure actress Jennifer Lawrence's contribution of a "Yes on 1" television ad in

the final stages of the campaign.

As it turned out, over the first half of 2018, the Committee would be engaged on three

fronts simultaneously: leading a ballot measure campaign to pass the People's Veto referendum,

conducting a voter education project on using RCV in the June 2018 primary, and acting as a

party to multiple lawsuits to ensure that RCV would, in fact, be used in the June primary. The

first of these lawsuits the proponents themselves filed against the Secretary of State—before the

People's Veto had even been certified for the June ballot.

Implementing Ranked Choice Voting (2017-2018)

The Secretary of State under pressure from all sides

An atmosphere of confusion reigned in the spring of 2018 regarding whether RCV would

be used for the June primary. Proponents had qualified a People's Veto to appear on the June

ballot—meaning that the law passed by voters via Question 5 would govern the June primary

election. However, no one—neither supporters nor detractors nor elections officials—was

reconciled or clear about what this would look like and what it would take to pull it off. The

result was a tug-of-war in which lawsuits flew back and forth over the spring of 2018—with

Secretary of State Dunlap in the crosshairs. Elections officials, candidates, and voters alike did not have final clarity about how the June elections would be conducted until after the back-and-forth lawsuits were finally all settled just weeks before election day.

RCV proponents had spent the previous year worrying that forces in Augusta were trying to undermine RCV. Having submitted their signatures for a People's Veto referendum, they were placing pressure on Dunlap's office to fully and expeditiously move forward with implementing for the June primary. They had been mistrustful of Dunlap's intentions from the start, fueled by the varied and high implementation cost estimates coming from his office and Dunlap's reluctance to accept proponents' offers of input and assistance during early discussions around the filing of Question 5. A series of public utterances from Dunlap and instances of what they saw as foot-dragging over the prior year now had them convinced that the Secretary of State—perhaps colluding with legislative skeptics—was trying to undermine RCV and delay its implementation. And so, on February 16, alongside eight candidates running in the upcoming primary, they sued Dunlap to force him to move forward with RCV implementation for June.

CRCV's lawsuit angered Dunlap, who perceived it as a personal invective. The legal challenge further soured relationships between his office and the Committee and disinclined Dunlap to yield to proponents' pressures to expedite implementation. For his part, Dunlap faulted the legislature in not giving him clarity about what exactly his office was to implement, nor the authority to write rules, nor the funds his office would require.

Although CRCV openly challenged the Secretary of State's motives and integrity, Matt Dunlap was otherwise widely viewed as a faithful civil servant as well as a savvy former politician. With a deep-rooted sense of place and history, he professed protecting the institution of voting with which his office is charged as his first and foremost motivation. Dunlap knew that

he would be setting precedent with how this novel way of voting rolled out, and he did not want

to risk undermining voter confidence nor jeopardize the integrity of the system. From Dunlap's

perspective, the legislation passed via Question 5 had been incomplete—logistical provisions had

not been specified and there was no provision for rule-making authority nor a budget for

implementation. And then when the court issued its "solemn occasion" advisory opinion in May

2017 against the constitutionality of RCV for some contests, there seemed to be plenty of reasons

not to move full-steam-ahead toward implementation.

The solemn occasion opinion was particularly alarming to Dunlap. He could envision the

implications of a lawsuit post-election raising questions about who is the legitimate Governor of

Maine. When asked by a reporter what would happen if the legislature did not address the

constitutionality question, Dunlap—who had a not-always-helpful reputation for being

quotable—enraged RCV supporters by saying it was "the equivalent of leaving a loaded revolver

on a swing set."[28]

Dunlap assumed the legislature would rectify these issues, providing more clarity about

what his office should be planning for. In a hearing, while awaiting direction from the legislature

regarding implementing RCV, Dunlap candidly stated that he had expected the legislature to put

a stay on RCV until rules could be promulgated, as had happened with the recreational marijuana

law. But coming out of the 2016 election, the Maine legislature was closely divided and

fractious, and could not seem to get together on a path forward.

> ***Mar. 28, 2018***: *Legislative staff raises questions about whether conflicting language in the election statutes would affect the use of ranked-choice voting in the June 12 primary.*

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[28] https://www.ellsworthamerican.com/maine-news/political-news/ranked-choice-voting-better-way-chaos/

Meanwhile, the Republican-controlled state Senate was pressuring Dunlap to wait for legislative authorization before moving forward with implementation preparations. Late in March, Dunlap announced that the Assistant Attorney General had alerted him of conflicting statutory language that could prohibit use of RCV in the primary. Seizing on this as momentum, Senate Republicans sued to stop the Secretary of State from spending money to implement RCV, arguing that he had not been authorized by the legislature.

> *Apr. 2, 2018*: *The Senate authorizes the Senate President to hire legal counsel to challenge the use of ranked-choice voting in the June 12 primary.*

In Maine, the Secretary of State is elected by the legislature and thus "serves at the pleasure of the legislature" (and therefore its majority party). Some have suggested that Dunlap, a Democrat, may have given in to political pressure from the party that had elected him to the office—citing as evidence his apparent flip-flop on the same day between saying he wouldn't move forward with RCV implementation unless told to do so by the legislature or the courts, to saying that he *would* move forward with implementation unless instructed otherwise. By this time, Democratic leadership in the House, it was noted, was particularly committed to getting RCV implemented for the June primary.

> *Apr. 3, 2018*: *Justice Michaela Murphy grants the Committee for Ranked-Choice Voting's temporary restraining order, requiring Secretary Dunlap's office to continue implementing ranked-choice voting for the June 12 primary.*

> *Apr. 3, 2018*: *Following Justice Murphy's ruling, the Senate files a lawsuit against the Secretary of State in Kennebec County Superior Court seeking a declaratory judgment to stop the implementation of RCV.*

After the court ruled in favor of proponents' lawsuit, a separation-of-powers-cum-partisan-pressures battle broke out between the Republican Senate and the Secretary of State. Senators expected Dunlap to propose rules for the legislature's review and approval and to seek

and gain authorization and an appropriation before spending money on implementation. The Senate sued Dunlap to keep him from implementing without legislative authorization, but lost in court. Dunlap then came to the Appropriations Committee with a funding request. But because the request came so late in the legislative session, it would have required a two-thirds majority vote to advance as an emergency measure in time to provide for the June primary. The minority party had enough members to prevent this—and did so in an apparently gleeful manner that allowed them "to hold RCV supporters over a barrel."

> *Apr. 5, 2018: A proposed joint order directing the Joint Standing Committee on Veterans and Legal Affairs to report out a bill that would specifically authorize implementation and funding language for RCV to address the Senate concerns. The bill fails.*

> *Apr. 9, 2018: Justice Murphy grants a request by the Committee for Ranked-Choice Voting to become a party in the Senate's lawsuit.*

> *Apr. 11, 2018: The Superior Court reported the Senate's case to the Maine Law Court, with seven questions of law to be addressed based on a record agreed to by the parties.*

> *Apr. 17, 2018: The Law Court finds that ranked-choice voting is in effect for the June 12, 2018 primary election. The Secretary of State acknowledges the ruling and reaffirms his intention to move ahead with ranked-choice voting implementation.*

The Maine Republican Party got in on the lawsuit game as well, suing, unsuccessfully, to stop the state from imposing RCV as the method to be used in their primary to select their party's general election candidates. By late May 2018, just weeks before the June election, all of these suits had been ruled or settled in favor of using RCV in the June primary elections.

Election administration: rules, procedures, and technology

The last of the RCV-related court cases was finally concluded in May 2018—leaving elections officials with about a month to complete preparations for the first statewide use of RCV. To be sure, work on a host of areas had already commenced. But with so much uncertainty

hanging over the June primary throughout the first half of 2018, it was perhaps not surprising

that there remained much to be done up until the last minute.

Because of how elections are administered in Maine, most of the work would fall to the

Secretary of State's office. For local officials in the 500 or so municipal jurisdictions where

elections actually take place in Maine, the introduction of RCV presented few implementation

challenges of any significance—other than the principal task of explaining how RCV works to

voters. And here, the town clerks relied on materials and trainings supplied by the Secretary of

State's office. It appears, at least anecdotally, that both cost and disruption related to RCV

implementation locally were thus fairly low.[29]

As chief elections officer in the state of Maine, Dunlap was fully committed to ensuring

that Maine elections would be implemented with utmost integrity under whatever system was the

law of the land—and he viewed the implementation and first use of RCV as "an existential

exercise" for his office. He was committed to building transparency into the process to ensure

there would be no doubt about the legitimacy of the election. But he was challenged by the fact

that there was no incremental money made available to him to support the implementation.

Back in the summer of 2017, the Secretary of State had claimed he lacked guidance and

authority to work out the rules and procedures for RCV implementation. Not having done that

work, Dunlap subsequently found himself without a thorough evaluation of resource

requirements to support an appropriation request in the spring of 2018. While rule-making

authority for the Secretary of State's office was addressed in the October 2017 delay-and-repeal

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[29] A comprehensive research project is currently underway to glean insight from town clerks about the implementation of RCV in Maine. The project is led by Joseph Anthony and David Kimball of the University of Missouri in St. Louis, in partnership with Amy Fried and Robert Glover of the University of Maine. This historical assessment did not attempt to duplicate that effort, and so we spoke directly with only one town clerk as well as with Secretary of State Dunlap and with the Maine Municipal Association. We expect findings from the town clerks research to serve as a companion to this report, providing greater insight about the implementation.

legislation, there had been no additional budget appropriated to support implementation. Thus, Dunlap had to get creative to fund the incremental work. He postponed contracts, shifted money around, and used available discretionary funds to implement the first uses of RCV in 2018 on the cheap.

The implementation work that needed to be done included establishing rules and procedures for RCV contests, designing the ballots, acquiring and/or updating elections equipment, arranging the logistics for transporting and conducting central vote counts, elections worker training, and, of course, voter education. In addition to establishing official rules for things like what counts as a valid vote in an RCV contest, there were a host of procedures to be defined: how would ballots and thumb drives be collected from the municipalities, compiled, tabulated, verified, and, if necessary, audited? How would security and chain of custody be handled in relation to the transportation of cast vote records? What would happen in the case of a recount? There were also the intricacies of ballot design, particularly when there would be a mix of RCV and non-RCV contests in November. Assistant Director of Elections, Heidi Peckham, would ultimately win a Manager of the Year award for leading much of this painstaking work.

The cost and complexity of upgrading Maine's elections equipment to handle RCV elections was a source of wildly different estimates at various points in time over the years. As of June 2017, over half of the state's election jurisdictions, representing roughly 90 percent of voters, were using DS200s optical scan voting machines manufactured by Election Systems and Software (ESS). The remaining jurisdictions, all of which had fewer than 1,000 voters, hand counted their ballots. The relative uniformity of election equipment in Maine turned out to be a stroke of good luck, as ESS was able to write an RCV tabulation algorithm for the state's use for not very much money. To handle the ballots from hand-counting jurisdictions, the state leased a

high-speed tabulator and arranged for the ballots to be transported to Augusta to be scanned and added to the counts.

One of the logistical challenges that RCV skeptics had seized upon was the constitutional requirement for Maine state police to handle transportation of ballots in the case of a central recount. But if state police were used to transport ballots for central counting of RCV contests, the overtime cost alone would have far exceeded what Dunlap had to work with. Then someone in property management suggested putting out a bid to the bonded couriers instead. A courier service was secured and came in at about a quarter of what it would have cost to use the state police.

Throughout implementation preparations, pro-RCV advocates were regularly contacting the Secretary of State's office offering input, feedback, support, and generally checking in to ensure things were moving along expeditiously. Civil society groups such as LWVME had remained on good terms with Dunlap's office and provided extensive input on rulemaking, recount protocols, and the like, while also conducting outreach to dozens of local election officials. Dunlap expressed his appreciation for the input; but finally, as time became shorter and shorter and with pressures mounting on his staff, Dunlap took it upon himself to run interference with the proponent groups so that Elections Division personnel could get their jobs done without additional interruption.

Voter education

Preparing voters to use RCV in a state as large and rural as Maine would have been a challenge under any circumstances. But the chaotic situation in the spring of 2018, mere months away from the June election, added significantly to that challenge. So much was happening in March and April of that year: lawsuits were flying back and forth, state funding for

implementation was up in the air, candidates in affected races weren't entirely clear on what

system they should be campaigning under. And against this backdrop, groups doing education on

RCV were challenged with trying to convince the public about how *simple* the process would

be—while also explaining that RCV would be used in the primary but not the general for some

of the same races.

In the spring and summer of 2018, there were multiple groups doing RCV education, but

mostly in an uncoordinated fashion. The Secretary of State and town clerks were working

together in their official governmental capacity, but there were also nonpartisan RCV education

projects being led by the nonprofits. In particular, both LWVME and the Committee, through

The Chamberlain Project Foundation, had major projects in the field. As the groups had stopped

collaborating in 2017, there was no active effort to coordinate strategy, share plans, or optimize

the use of resources applied to RCV education during this time. Nevertheless, the various RCV

education efforts appear to have worked in parallel successfully, as few problems or issues

related to voter confusion were reported for either the June or November elections.

The Secretary of State and local elections officials, recognizing how important voter

confidence in the new system would be to perceptions of its overall integrity, did all they could

with limited resources to prepare the public to use this method. Denied any supplemental funding

for a broad public education effort, Dunlap's office instead set up an RCV resource webpage

with explanatory information, sample ballots, and FAQs. Using software purchased a couple of

years prior, the communications team put together an animated video of Dunlap himself

explaining how RCV works. The well-received video was posted on the RCV resource page and

broadly shared. Dunlap also hosted public forums at libraries in some of the major population

centers around the state and his office issued press releases and provided media availability on a

regular basis.

A major priority was to equip the 500 or so town clerks and associated local elections

personnel who would interface with voters directly. Based on interviews with Dunlap and

Lewiston Town Clerk, Kathy Montejo, it appears that clerks were proactive in coordinating their

own voter education about RCV over the couple of months before both the June and November

elections. Elections officials were aware that other groups, including LWVME and the

Committee for Ranked Choice Voting, were also doing RCV education. And the League, at least,

proactively sent out RCV educational material to all of the clerks. But government officials were

wary about sharing potentially inaccurate or inconsistent information with voters. And given the

sensitivity of also having an RCV referendum on the ballot, the Secretary of State's office was

counseling local elections officials not to use information from RCV advocates. The clerks thus

relied primarily on the Secretary of State's office for their information and voter education

materials.

In the municipalities, the period of April through June was buzzing with voter education

and poll worker training activities. In Lewiston, Montejo took advantage of a May special

election to distribute voter education materials. Her office gave informational presentations at

city council meetings and distributed materials through senior centers and other local venues.

They had an interactive poster made up with a sample ballot that explained RCV by ranking ice

cream flavors. The same kinds of voter education activities were rolled out again in September

and October on an even larger scale, as there would be a larger contingent of voters that would

turn out for the general election—and only members of the two major parties would have had the

opportunity to use RCV in the June election.

Meanwhile, in 2017, FairVote had provided some money for LWVME to develop an

RCV education and implementation plan. Among others, Jeanne Massey of FairVote Minnesota

was one of the advisors to the project. Out of this planning work came a wide-ranging RCV

education project called Maine Uses Ranked Choice Voting, announced by LWVME in early

March 2018. The press release at the time described the project's goals: to "collaborate with

civic groups, schools, social organizations, and service clubs to help ensure that members and

stakeholders have the voting information they need to participate fully and effectively in the

primary; […] work with election administrators to ensure that the election meets or exceeds the

highest standards of accuracy, transparency, and security; […and] work with candidates and

others involved in campaigns to make sure that they have the information needed to develop

effective strategies for running campaigns using RCV and for playing their role in educating

voters." John Brautigam created the plan and coordinated the project for the League.

Part of the project involved outreach to local elections officials to offer assistance with

RCV education and implementation best practices, ensure they had the information they needed,

and help them get their questions answered. To lead this part of the project, MCCE hired Jon

Monroe, who had formerly worked in the Secretary of State's office. Monroe was a technical

elections specialist and had positive relationships with the town clerks. From March through

June 2018, Monroe connected with over 70 local clerks and elections officials.

The direct RCV education component of the project featured a variety of elements,

including op-eds and letters to the editor, outreach through libraries and community events,

presentations to social/civic clubs, high schools, retirement communities, universities, and other

venues around the state, conducting paid and earned media, and experimenting with ways to

reach hard-to-reach audiences such as through a music-at-the-polls project. In addition, the

League had long produced a broadly-distributed and well-respected voter guide, into which was inserted a special section explaining how RCV works. To reassure the public that ranking their choices would not be a difficult process, the group produced a humorous public service announcement featuring local celebrities, which they promoted heavily via social media and distributed through a modest media buy, largely targeted to rural Northern Maine.

Throughout, FairVote continued to offer assistance and advice to LWVME as called upon. The two organizations also collaborated on a pre-election public opinion poll using RCV methodology as a means to familiarize the public with the method. The poll, funded by FairVote, was published in the Bangor Daily News.

The Committee for Ranked Choice Voting also undertook an RCV education project, funded by The Chamberlain Project Foundation. Jeanne Massey offered her considerable expertise to this project as well. The other nonprofits did not become aware that the Committee was also doing RCV education work until about the time LWVME's project "Maine Uses Ranked Choice Voting" launched. Similar to what the other groups were doing, the Chamberlain RCV education project included everything from letters to the editor to television ads to direct mail and in-person presentations to civic groups. Some of the former FairVote Maine staff members came on board to work on the Committee's project in 2018.

Costs

Cost estimates for the implementation of RCV in Maine varied widely over the years during which the issue was under consideration, as depicted by the partial list in Table 4. The Secretary of State's 2005 "Report on the Feasibility of Instant Runoff Voting" included potential costs upward of $11 million. At the time Question 5 was placed on the ballot, the cost estimate had been pegged at about $1.5 million. By the time legislative committee briefings on Question 5

implementation were being held in the spring of 2018, the Secretary of State's estimates had

fallen to barely over $100,000. Among other things, the $1.5 million estimate had included costs

to print a second ballot for the June primary, to lease tabulators for the small towns, and to pay

the state police for ballot transport—expenses that turned out not to be needed. The varying cost

estimates were weaponized at times by both sides of the RCV debate. Dunlap, however, asserted

that the estimates changed frequently because the assumptions given his office about exactly

what would be implemented—when, for which contests, under what conditions—were

continually changing.

After conducting the June primary without any additional funds to support RCV

implementation, Dunlap went to the legislature in August 2018 with a $335,000 emergency

budget request for the November election. $226,000 of this was for an additional ballot page to

accommodate a late-added bond measure. The legislature passed Dunlap's requested

appropriation, but the Governor vetoed it and there were not enough votes in the legislature to

overturn the veto. Getting creative once again, Dunlap borrowed from the next year's budget to

pay for the election—a move that cost the state late charges and interest.

Ultimately, Dunlap's office implemented the primary election for just over $100,000[30].

This included the cost of software/hardware upgrades, lease of a high-speed ballot tabulator, and

the cost of a professional courier service to transport ballots and tabulator memory devices from

municipalities across the state to a centralized RCV counting facility in Augusta. November

general election RCV costs totaled an additional $340,000, including $268,000 to print a separate

ballot page. The total cost to the state to implement RCV in 2018 was thus about $440,000.

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[30] See "Maine Costs for Ranked-choice Voting in 2018", prepared by the Office of the Secretary of State, January 2019 (https://www.maine.gov/sos/cec/elec/upcoming/pdf/rcv.costs.2018.pdf)

The June 2018 Primary: Using RCV while voting on RCV

> *Jun. 12, 2018: Voters approve the People's Veto referendum question. Thus, ranked-choice voting will continue to be used in primary elections and will be used for the offices of U.S. Senate and U.S. Congress in the November 6 general election.*

The People's Veto passed on election day in June 2018 by a margin of 53.9 percent to 46.1 percent, meaning that RCV would be used again in the November general election—although not for the Governor's race or state legislative contests. As evidence of the people's support for RCV, proponents pointed out that the margin of victory was double that of the original RCV ballot measure in 2016.

Some have raised questions about the extent to which the highly complicated wording of the ballot question might have played a part in the election outcome: did all voters understand what their "yes" or "no" vote meant? Proponents accused the Secretary of State of deliberately writing confusing language. Others maintained that the language was guided by statute and rule—including the requirement that all referenda be written such that a "yes" vote is affirmative in favor of the subject of the initiative—and would

> **Question 1 (June 2018)**
> "Do you want to reject the parts of a new law that would delay the use of ranked-choice voting in the election of candidates for any state or federal office until 2022, and then retain the method only if the constitution is amended by December 1, 2021, to allow ranked-choice voting for candidates in state elections?"

have gone through multiple legal reviews. Further, if some voters were confused, their confusion would likely not have skewed in just one direction and therefore would not have been significant enough to affect the outcome of the vote.

By all accounts—and as defined by key indicators of accuracy, timeliness, transparency, and efficiency—the June primary election using RCV went smoothly. The central counting location was open to the public, and Dunlap's office provided photos and daily updates on

progress with the vote tabulation every day via social media and press interviews, allowing the public to view and gain confidence in the process. In addition, Dunlap had all the cast vote records made available online so that anyone with an Excel spreadsheet could replicate the tabulation.

> **Jun. 12, 2018**: *Two of the four races subject to RCV have no majority winner on Election Night and go into rounds.*

Of the four races that had three or more candidates and were subject to RCV, two went to multiple rounds of counting as no candidate emerged with a majority after the first count: the Democratic primary for Congressional District 2 (four candidates; two rounds) and the Democratic primary for Governor (seven candidates; four rounds). Ballots and cast vote records for these contests were thus transported to Augusta for the subsequent rounds of vote-counting.

The Secretary of State's elections staff consisted of ten people—half of whom, supplemented by half a dozen or so government employees from other departments, participated in the RCV tabulation process. The remaining elections staff worked on certification of the entire June election, supporting local clerks in submitting their results. Maine does not have official election night reporting. Cities and towns have three business days to submit their results to the Secretary of State, who then has another 20 days to certify and announce the official results. As clerks typically require a day to count and get their materials in order, couriers were dispatched to begin picking up election materials from the clerks to transport them to the central tabulation facility in Augusta on Thursday, June 14, two days after election day. On Friday, uploading of ballots and memory devices for the RCV tabulations began. Due to the lack of overtime funds and appropriate security, there was a break in the work over the weekend. Tabulation was finally completed on Wednesday, June 20—8 days after the election.

The process was not perfect; but the imperfections were few and minor. The couple of

hiccups that occurred during the administration of the ranked choice contests in both June and

November were in each case identified and resolved quickly and transparently and did not affect

any reported results. For example, when it was discovered through a routine check of the vote

counts that two spreadsheets of manually uploaded cast vote records did not initially integrate

into the tabulation, the Secretary of State's office quickly reached out to the elections equipment

vendor who wrote a software fix that resolved the problem. Dunlap's office publicly

acknowledged the issue and the revised official vote tally was announced two days later.

For the town clerks, running an RCV election turned out to be little different from

running a non-RCV election. As with FPP ("first past the post" or plurality election), clerks

counted and reported only first-choice votes. Only if the Secretary of State determined from

these first-choice tallies that a majority winner would not emerge from this first round, then

couriers would be dispatched to collect cast vote records from all of the municipalities and

transport them to Augusta. There, a central count of each subsequent round would take place

until a majority winner was declared.

At polling places around the state, the process seemed to go smoothly. There were a few

scattered reports of increased numbers of "spoiled ballots", but the Secretary of State did not

report this as a widespread issue[31]. Local elections officials found that the biggest concern

expressed by voters was to be reassured that their vote would count—regardless how many or

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[31] According to Julie Flynn in a February 2019 interview with David Kimball of University of Missouri, Secretary of State Dunlap is preparing a report on the number of spoiled ballots in RCV elections in Maine. However, there will not be a baseline against which to compare with prior elections.

few candidates they chose to rank. Voting data indicated that turnout was strong, including a

surprisingly high number of unenrolled voters who came out to vote on the RCV referendum[32].

Meantime, a funny thing happened on the way to election day: the dynamics of contests

subject to the new RCV system began to evolve almost immediately. While neither a universal

phenomenon nor sentiment, some noted and were surprised to see less mudslinging among

candidates and more public backlash against incidents of incivility or negative advertising. Some

candidates noted an increase in attendance at candidate forums, as even those residents who had

already made up their minds about their first-choice preference would show up to evaluate their

second-, third-, and fourth-choice options. This gave lesser-known candidates more opportunities

for exposure and the possibility of picking up supporters.

Democratic and independent candidates largely embraced the new system—and, with the

notable exception of some of the front-runners, there seemed to be fewer open attacks on other

candidates. Two of the Democratic candidates for Governor formed an alliance in which they

each asked their supporters to rank the other candidate as their second choice. Republican

candidates, on the other hand, remained vociferously opposed to the new system—to the point of

encouraging residents to vote for just their top preference and not to rank any other candidates.

In the end, Dunlap was credited with conducting what was by all accounts a thoroughly

successful election at a fraction of the original cost estimate. Maine's first use of RCV in a

statewide election produced no controversy or consternation regarding either the process or the

electoral outcomes. While the process would again run smoothly in the November election, the

electoral outcome in one of the general election races using RCV stirred up considerable

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[32] There were 48,000 or so more ballots cast in the People's Veto referendum contest than the combined number cast in the Democratic and Republican gubernatorial primary contests.

controversy and provided a useful test for how the public would react when the process was
challenged.

The November 2018 General Election

Having successfully executed the first statewide election using RCV, elections officials
and RCV advocates faced their next challenge: to prepare for the November election, in which
RCV would be applied to the three contests for federal office: one U.S. Senate and two U.S.
House races. Maine is a closed-primary state and has a large number of residents who are
unenrolled with a party. Thus, only registered Democrats and Republicans who voted in the
primary would have had a prior experience using RCV. And even among those registered with
one of the major parties, primaries typically bring out only the most engaged voters. So, a much
broader education effort would be required, including getting in front of the likely voter
confusion about why RCV would not be used in the gubernatorial general election contest.

Dunlap, having been denied an additional appropriation for the November election,
shifted and borrowed his way into managing the costs—in this case, primarily the cost to print an
additional ballot page. The town clerks once again ramped up their local voter education efforts,
as did the RCV advocates. Based on the June primary experience, Dunlap determined to do more
in-person training with the town clerks to ensure they understood what to submit and how to
package it to eliminate glitches in the central tabulation.

As was the case in the June primary, the process ran smoothly with only minor issues and
minimal voter confusion. Some voters did express surprise and frustration that they could not
rank the candidates for Governor. A canvasser for the Maine People's Alliance told Steve
Mistler of Maine Public Radio that he was "encountering center-left voters who plan to vote for

(independent candidate) Hayes first and (Democrat) Mills second—except they can't."[33]

However, once in the polling booth, few seemed to have difficulty with the process of marking

their ballots in RCV contests in the November election, as illustrated by final vote summaries

from the Secretary of State's office (see Table 3).

FairVote funded a November exit poll, in collaboration with Colby College political

scientists and the Bangor Daily News, to gather voter feedback about RCV.[34] Among the

findings: a majority wanted to expand the use of RCV to other statewide races, and nearly three-

quarters found ranking their choices very or somewhat easy. Predictably, the results were heavily

skewed along partisan lines.

Anecdotally, once again, candidates seemed to be starting to adjust to the dynamics of

RCV versus FPP election rules. In the hotly contested FPP race for governor, the Maine

Republican Party put out an ad that was blatantly intended to split the center-left vote between

Hayes and Mills to benefit the Republican in the race. Meanwhile, in the RCV race for U.S.

Senate, the Democrat released an ad reminding residents that, under RCV, they could vote for

the Democrat first and incumbent independent Angus King second without fear they would be

casting a spoiler vote.[35]

> ***Nov. 6, 2018****: One of the three races subject to RCV (U.S. Congressional District 2) has no majority winner on election night and moves into rounds.*

On election night, the races were decided in two of the three RCV contests. But in the

largely rural 2nd Congressional District (CD2) race, none of the four candidates received a

majority of the first-choice votes, meaning the race would be decided in Augusta through the

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[33] https://www.mainepublic.org/post/mainers-head-polls-still-confused-over-ranked-choice-voting
[34] https://www.fairvote.org/maine_voters_want_to_keep_rcv
[35] Ibid.

RCV tabulation by rounds. In pre-election polling, the incumbent Republican, Bruce Poliquin, and the Democratic challenger, state Rep. Jared Golden, appeared to be in a statistical dead heat. During the campaign, Golden had embraced RCV while Poliquin had encouraged his supporters to rank no other candidates besides himself. Preliminary exit polling on election night suggested that if the race went to rounds, second- and third-choice rankings from supporters of the independent candidates would likely favor Golden over Poliquin—setting up the possibility that for the first time in 100 years, an incumbent might lose in CD2.

The November 2018 mid-term elections were a highly nationalized affair in favor of Democrats. The Democratic landslide nationally was viewed as a repudiation of President Trump, in a manner similar to how the November 2016 passage of RCV was viewed as a repudiation of Governor LePage in Maine. Certain races in Maine in which independent candidates might have been expected to do well under RCV appear instead to have been swept up in the nationwide blue wave. For example, in a surprise to some, pro-business former-Democrat-turned-independent state representative Marty Grohman failed to make much of an impact in the 1st Congressional District general election, garnering just 8.7 percent of the vote, compared with 58.8 and 32.5 percent for the Democrat and Republican candidates respectively. However, Grohman had secured an informal endorsement from Governor LePage, likely not helping his chances in a district considered safely Democratic.

RCV Result Challenged in Court: Maine Congressional District 2

After the first round of votes were counted in the CD2 race, Poliquin was leading with 46.33 percent of the first-choice votes to 45.58 percent for Golden. Knowing that polling had suggested that the vast majority of first-choice votes for independent candidates would likely break for Golden in subsequent rounds, Poliquin wasted no time challenging the CD2 election.

> *Nov 13, 2018: Poliquin, the Republican incumbent in the CD2 race, files a federal lawsuit challenging the constitutionality of ranked-choice voting, along with a request to stop the tabulation of ranked-choice votes in his race. Poliquin asks that he be declared winner or another election ordered.*

Over the next two months, Poliquin made several unsuccessful attempts to thwart the count and challenge the results, including a federal court challenge, on weak U.S. Constitutional grounds, demanding that the RCV count be stopped (this was denied) and that he either be declared the winner or a new election called (also denied). After all the rounds were counted and the election was declared in favor of Golden by a margin of 50.62 percent to 49.38 percent of the final round vote total, and while his lawsuit was still pending, Poliquin demanded a recount.

> *Nov. 15, 2018: The court denies Poliquin's request for immediate relief and declines to stop the tabulation. The initial tabulation results are announced later that same day.*

> *Nov. 26, 2018: The final ranked-choice tabulation showing Democratic challenger Golden as the winner of the CD2 race is submitted to the Governor. Poliquin requests a hand recount.*

This was yet more new territory for the Secretary of State's office, as they had never encountered the situation of running a recount of a ranked choice election. Rules for how the recount would be handled arrived to the tabulation center from the Assistant Attorney General and were distributed to campaign attorneys just moments before the recount was to begin.

> *Dec. 6, 2018: The CD2 recount begins.*

> *Dec. 13, 2018: The court rejects Poliquin's arguments in a 30-page ruling.*

By late December, however, with little chance of succeeding on appeal and with the cost of the recount mounting rapidly, Poliquin finally requested that the recount be terminated, and soon after abandoned his challenge to the election result.

> *Dec. 14, 2018: Poliquin terminates the recount process.*

> **Dec. 18, 2018**: *Poliquin appeals to the First Circuit Court of Appeals and requests emergency injunction to stop state officials from certifying the election results.*

> **Dec. 24, 2018**: *Poliquin announces that he is withdrawing his appeal. The case is dismissed on Dec. 28, 2018.*

In signing the election certificate for Congressman-elect Golden, Governor LePage—disputatious to the very end—signed only his initials and wrote in the margin "stolen election."

The Future of Ranked Choice Voting in Maine

As of the end of 2018, ranked choice voting is the law of the land in Maine in general and primary elections for U.S. Senate and U.S. House of Representatives contests, as well as in primary contests for Governor, state Senators, and state Representatives. The Question 5 provisions establishing RCV in general election contests for Governor and state legislature were repealed by the October 2017 "compromise" legislation.

Going forward, most of those interviewed for this research think it more likely the use of RCV will be retained and possibly expand in Maine rather than contract. They believe that public comfort and acceptance of this method will grow with experience—and that the current purple-turning-blue political tilt of the state makes repeal of RCV unlikely in the foreseeable future.

Supporters of RCV would like to see its use expanded—although they envision different paths toward that goal. As the future of the Governor's race was a key catalyst for the 2016 RCV ballot measure, some RCV supporters see that as a high-priority unmet goal still to be accomplished. Others would like to see the state gain experience with RCV over a few election cycles first, in the

> "All of this dust and noise and smoke from the last couple of years has not ended up dampening the movement here."
>
> - Maine RCV advocate

hopes that voter confidence with the method will grow and the partisan-tinge will diminish—

particularly if Republicans in the state are able to register some wins in RCV contests.

Activity around RCV remains robust in the state. In the 129th legislature, bills have been

introduced on both sides of the issue. Among these are bills to expand the use of RCV to

Presidential primaries and general elections, as well as to change the general election

requirement for gubernatorial elections to a majority vote rather than a plurality.

Attempts in the works to advance a constitutional amendment to allow for the use of

RCV for general elections to statewide offices would need to pass each chamber by a two-thirds

majority and then go before voters. In Maine, once a bill has been reported out of committee, it

can be brought up on the floor at any time without advance calendaring. Given the significant

Democratic tilt of the current legislature, some have suggested a possible, if not probable,

scenario in which Democratic leaders take advantage of a day when there are just enough

absences to bring a constitutional amendment bill to the floor and get a two-thirds vote to send it

to voters.

Meantime, RCV is still very much a partisan-charged subject in Maine. One interviewee

described the past two years as a "three strikes" experience that has left a sour feeling about

RCV for many Mainers who opposed the issue:

- Strike one: from the beginning, Question 5 was framed as a way to ensure that a Paul LePage
  would never again be elected in Maine;

- Strike two: the confusing wording of the Question 1 People's Veto referendum; and

- Strike three: the outcome of the CD2 general election contest in which incumbent Bruce
  Poliquin (R) lost to Jared Golden (D) after receiving more first-choice votes in the first
  round.

The November 2018 exit poll conducted by the Bangor Daily News, FairVote, and Colby College found a significant partisan divide in voter opinion about RCV. While around 80 percent of Democrats favored expanding the use of RCV in Maine, around 70 percent of Republicans wanted to get rid of RCV altogether. Evidence suggests, however, that this partisan divide on RCV may be more strongly attached to the label rather than what the method actually accomplishes. When these same voters were asked about "majority rule," the partisan divide largely fell away, as over 70 percent of all respondents said that winning a gubernatorial election with a majority was somewhat or very important.[36]

While 2018 offered a few anecdotal signs of how RCV might ultimately affect campaigns and elections in Maine, it very much remains to be seen the extent to which RCV lives up to the rhetorical promises made by proponents. RCV opponents refute the claim that RCV provides more voice and more influence for those sick of the two-party duopoly, citing the not-insignificant percentage of ballots of those who voted for an independent candidate as their first choice in the CD2 race, but that were exhausted before the race was called. RCV supporters, however, believe that as voters gain experience with the system, more will take full advantage of it to register their preferences among all of the candidates.

In regards to the claim that RCV will diminish the influence of money in politics, skeptics point to the historically large amount of money spent in the CD2 race under RCV as a repudiation of that argument. Supporters of RCV, however, suggest that the CD2 race would have attracted a lot of money regardless what electoral system was being used, given the backdrop of the 2018 midterms as a national referendum on Trump.

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[36] https://www.fairvote.org/exit_survey_in_maine_golden_likely_to_win_2nd_congressional_district

In regards to the effect RCV will have on campaign dynamics, many suggest that candidates and parties will figure out how to use the system to their advantage as they gain experience with it—and that this may or may not prove a positive development for the cause of civility and broader responsiveness to the public. At the end of the day, however, RCV supporters suggest that trying to guess and game out what voters will or won't do will prove a risky game for candidates, and a game that they will quickly realize all sides can play.

Ultimately, what unfolds from this pioneering experience with RCV in Maine over the years to come will certainly be the subject of much attention and research about the extent and conditions under which this electoral system actually affects the quality of representation and whose voice is heard.

Conclusion

As 2018 ended, Maine had become the first state in the U.S. to enact, defend, use, and experience the initial effects of ranked choice voting in statewide contests. But the future of RCV in the state was not yet certain. The path traveled has been significantly shaped by unique aspects of the place and time in which this RCV story has played out. But it is also a universal story of what it takes to achieve and sustain social change, including democratic reforms.

The Hewlett Foundation's Madison Initiative has found the concept of a "causal package" to be a useful way to think about how a broad array of causes and conditions can come together in a complementary way to bring about a social change—particularly one that is rooted in a highly complex system such as politics.[37] The core premise of a causal package is that

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[37] Center for Evaluation Innovation (2016). The Madison Initiative Developmental Evaluation Report. https://hewlett.org/wp-content/uploads/2019/01/Madison-Initiative-Developmental-Evaluation-Report-2016-08.pdf

multiple causal factors must work together in order to produce a change, and that three types of

such factors are needed:[38]

- *Ground preparing*: Conditions often accumulated over time that must be in place for

  a change to be possible;

- *Triggering*: An event, crisis, or shift in incentives that set the chain of causes-and-

  effects in motion;

- *Sustaining*: The conditions or events that support change along the way.[39]

Using a house fire as an example: a gas leak is a ground-preparing factor, a lit match is a

trigger, and a wood frame and wind are sustaining factors that keep the fire going. None of these

factors will cause a fire on its own, but together they create the package of causal factors that can

bring a fire into being and keep it going.

In Maine, RCV enactment in 2016 came about through a combination of complementary

ground-preparing conditions and actions, combined with the trigger supplied by the election and

re-election of Paul LePage as Governor. However, insufficient attention to sustaining factors

contributed to the chaotic period of uncertainty during 2017-2018, as well as the still-unsettled

result. Reforms that disrupt power dynamics, incentive structures, or long-established patterns of

behavior often require many years or even generations of defense and socialization after initial

enactment. RCV as a method for voting and means for obtaining elected office is this kind of

reform. Thus, it was necessary for proponents of RCV to anticipate and prepare for the long-term

work of retaining and implementing the law after enactment. The fracturing in the proponent

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[38] Mayne, J. (2012). *Making causal claims*. Institutional Learning and Change (ILAC) Brief 26.
http://betterevaluation.org/sites/default/files/ILAC_Brief26_Making%20causal%20claims_2.pdf

[39] Stern, E., Stame, N., Mayne, J. Forss, K., Davies, R. and Befani, B. (2012). Broadening the range of designs and methods for impact evaluations. DFID Working Paper, 38. London, UK: Department for International Development. https://assets.publishing.service.gov.uk/media/57a08a6740f0b6497400059e/DFIDWorkingPaper38.pdf

coalition was disruptive to that work, as the groups had differing views on what tactics to pursue
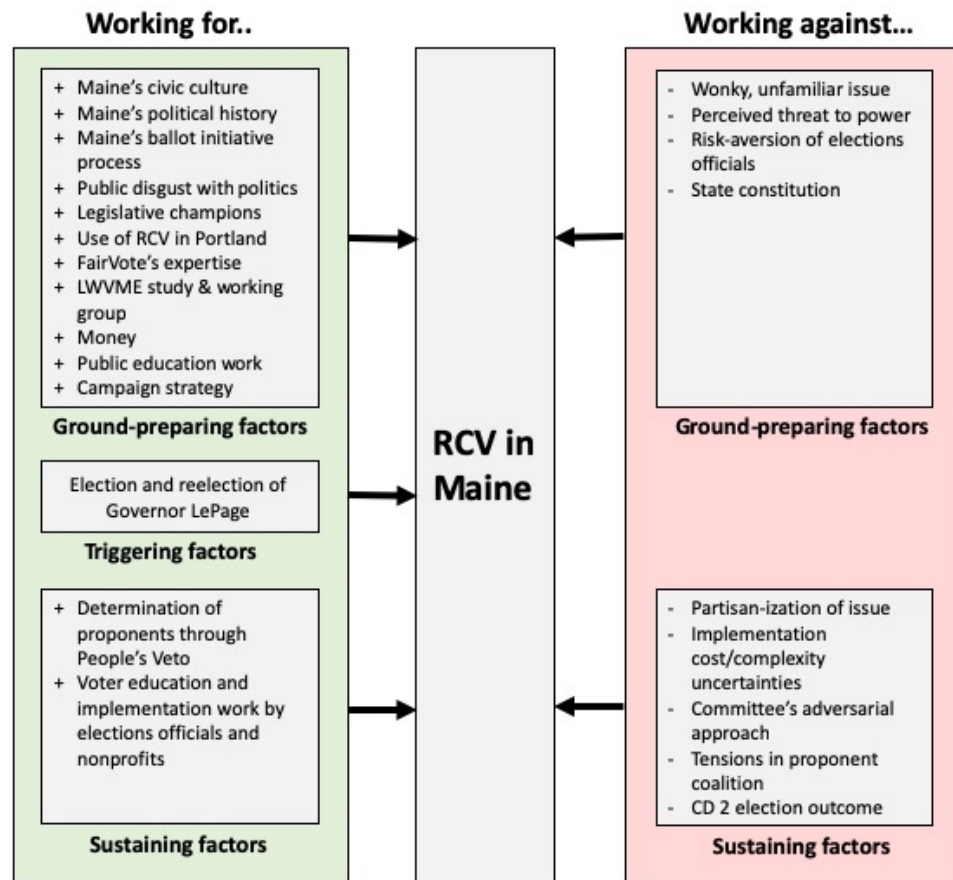
and what relationships would be needed.

Working for..

Working against...

Ground-preparing factors

- \+ Maine's civic culture
- \+ Maine's political history
- \+ Maine's ballot initiative process
- \+ Public disgust with politics
- \+ Legislative champions
- \+ Use of RCV in Portland
- \+ FairVote's expertise
- \+ LWVME study & working group
- \+ Money
- \+ Public education work
- \+ Campaign strategy

Ground-preparing factors

- \- Wonky, unfamiliar issue
- \- Perceived threat to power
- \- Risk-aversion of elections officials
- \- State constitution

RCV in Maine

Triggering factors

Election and reelection of Governor LePage

Sustaining factors

- \+ Determination of proponents through People's Veto
- \+ Voter education and implementation work by elections officials and nonprofits

Sustaining factors

- \- Partisan-ization of issue
- \- Implementation cost/complexity uncertainties
- \- Committee's adversarial approach
- \- Tensions in proponent coalition
- \- CD 2 election outcome

Figure 2. Key influences in advancement of RCV in Maine, described as a causal package

Among the conditions that prepared the ground for RCV to take root in Maine: the timing

of the RCV ballot initiative campaign came against the backdrop of a growing national sense that

long-standing democratic processes and institutions were failing the American people. Maine's

independent-minded electorate and history of embracing participation made the state a fertile

ground for electoral reform. And the means to advance a reform were there: Maine has both a

ballot initiative and a People's Veto referendum process, it is an inexpensive place to run a

campaign, and there were motivated individuals, groups, and funders—both in-state and from

outside—ready to coalesce around this particular reform.

The proponent group, once triggered by LePage's election and re-election, brought to bear a formidable combination of grassroots organization, technical expertise, dogged determination, and outside money to win the 2016 ballot initiative campaign. They targeted the right election cycle, which featured several other progressive-leaning ballot measures that drew away potential opposition, and which was far enough in the future to allow time for a sustained campaign of RCV education and outreach. And while ultimately it was likely that anti-LePage sentiment factored most heavily in the Question 5 win in 2016, and voter outrage over legislative disregard for the will of the people that drove the People's Veto win in 2018, the extensive RCV education campaigns advanced by the various proponent groups and Maine elections officials likely did much to inoculate against potential voter confusion and backlash during the first uses of RCV in 2018.

For those opposed to RCV, the crowded field of initiatives on the November 2016 ballot effectively reduced their numbers, muted their voices, and kept them from mounting any kind of organized opposition. Those who did speak out publicly against RCV failed to persuade voters in sufficient numbers. While the constitutional argument was perhaps the most threatening for RCV proponents, neither the cost/confusion argument nor the vague claims that the method was somehow "unfair" seemed to land with sufficient weight to make a difference. As well, certain arguments that have been advanced by opponents elsewhere—such as the equity argument that RCV might lower turnout and disenfranchise voters of color—would not resonate, and thus were not used, with opponents' largely white, right-leaning target audience. For Republicans in Maine, perhaps the most persuasive opposition argument was the partisan one, as RCV had early been associated with the anyone-but-LePage movement, which alienated some Republicans from the get-go.

The set of factors that contributed to winning the RCV campaign at the ballot box were not sufficient, however, to turn the win into sustainable long-term electoral change in the state. Anytime the rules of the game are threatened, those whose power derived from the existing rules—and particularly those who perceive they have more to lose—will likely fight to hang on to the status quo. The fight may be out in the open, as it was with the Republican Party in Maine, or it may be under cover of night or behind any available smoke screen, as it was with some Democratic leaders in the state.

Proponents seemed not to anticipate the depth of post-election opposition nor have a strategy to defend their win going into 2017. And by the time legislative opposition ramped up, the pro-RCV coalition had already fractured and so did not work together to determine which of their collective assets would be most advantageous to deploy in which situations. The principals who led the ballot measure campaign also led the legislative and legal defense—and in the end, they retained only a partial victory. In hindsight, it is hard to know whether a different approach in working with the legislature might have produced a different result—or at least secured the same result with less time, expense, and chaos for the state.

While it is hard to argue that the campaign structure did not ultimately "work" for proponents, there was significant scorched-earth left behind among the groups in the pro-RCV coalition and between some of the advocates and the administration and legislature, which may have lingering negative consequences. As well, the experience left a very bad taste in the mouths of all involved. Was that necessary? Or could that have been mitigated with structural adjustments such as an early and clear-eyed assessment of what would be needed both to win a campaign and to sustain and implement the change for the long-term, who brings what strengths and assets to the work, and more explicit agreements about roles, accountabilities, and how the

coalition will function and make decisions over the various phases? Some in the proponent coalition wondered whether funders could have done more in this regard to mitigate, mediate, or forestall the conflict that grew up around the coalition.

In the implementation and initial uses of RCV, dire predictions of administrative chaos, multi-million-dollar price tags, and wide-scale voter confusion did not come to pass. Elections officials in the state, led by Secretary of State Dunlap and with an assist from the nonprofits, overcame every obstacle and achieved a smooth implementation for the people of Maine.

The 2nd Congressional district (CD2) in Maine provided a first real test for RCV in a statewide election. And the state acquitted itself well when, without wide-scale voter outcry or backlash, the leader after first-choice ballots were counted in the November 2018 CD2 election (Poliquin) was *not* the candidate declared winner (Golden) with a majority of the votes after the final round of RCV counts was completed. However, depending which side of the RCV debate one comes down on, the CD2 result could be used to advance the argument of either RCV supporters or detractors. Supporters could claim that RCV performed exactly as advertised, allowing those who favored an unenrolled candidate to vote their preference without becoming a spoiler vote. Opponents could try to argue, as LePage did, that RCV proved a method to "steal" an election from a Republican candidate.

Of other predicted effects, some came away feeling they had been promised that RCV would make Maine's elections more civil, and yet the CD2 race was as contentious and negative as any campaign the state had seen. Others, however, point out that the race was highly contested nationally with the huge amount of money pouring in from out of state being spent by political operatives without any experience with the dynamics of an RCV election. They note that one of the two major party candidates (Golden) appears to have made a concerted effort to reach out to

the supporters of the two independent candidates, while the other major party candidate (Poliquin) pretty much ignored them; and the candidate who paid attention to winning second-place votes was the candidate who won the election.

It is too early to know what the effects of RCV on campaigns and election outcomes will ultimately be in Maine. Initial anecdotal evidence suggests the effects may prove more positive—in terms of increased participation, civil campaigning, and consensus winners—than negative, but only time and experience will tell. Meantime, Maine's experience has ramped up interest among advocates to expand the adoption of RCV nationally. There are a number of different groups developing national strategies and working to build up funder and coalition support, including the group that led the initiative campaign in Maine (The Chamberlain Project) as well as FairVote, Represent.Us, Voter Choice Massachusetts, and Harvard Law Professor Lawrence Lessig's nonprofit, Equal Citizens. Ranked choice voting is currently under consideration in several states for use in Presidential caucuses and primaries.

In considering the outlook for RCV nationally, it took an apparently Herculean effort for RCV proponents to get a first statewide win—albeit ultimately a partial win—in a state that was absolutely ripe, with the right conditions, an available political pathway, and the right catalyst. How much harder might it be for proponents to advance RCV in other states that do not have as favorable a set of conditions?

Appendix A. Primary Sources

The following individuals were interviewed for this research.

Joseph Anthony	Ph.D. candidate in political science, University of Missouri
Kyle Bailey	Campaign Manager, Committee for Ranked Choice Voting
Kelly Born	Program Officer, the William and Flora Hewlett Foundation
John Brautigam	Senior Advisor and Counsel, Maine Citizens for Clean Elections and the League of Women Voters of Maine
Owen Casas	Former Maine State Representative (independent)
Andre Cushing	Former Maine State Senator (Republican)
Greg Dennis	Policy Director, Voter Choice MA
Larry Diamond	Senior Fellow, the Hoover Institution at Stanford University
Lee Drutman	Senior Fellow, New America
Kate Dufour	Legislative Advocate, Maine Municipal Association
Matthew Dunlap	Maine Secretary of State
Amy Fried	Professor of Political Science, University of Maine
Adam Friedman	Executive Director, Voter Choice MA
Avi Green	Executive Director, Social Scholars Network
Roger Katz	Former Maine State Senator (Republican)
David Kimball	Professor of Political Science, University of Missouri
Vivien Labaton	Chief of Staff for Jonathan Soros
Brian Langley	Former Maine State Senator (Republican)
Ann Luther	Board member and Advocacy Chair, League of Women Voters of Maine
Sam Mar	CEO, Action Now Initiative
Benn Marine	Former Field Director, FairVote Maine project
Kathy Montejo	Town Clerk, City of Lewiston, Maine

Jacob Posik	Communications Director, Maine Heritage Policy Center
Rob Richie	President, FairVote
Diane Russell	Former Maine State Representative (Democrat)
David Sammarco	Former Operations, Fundraising, and Field Strategist, Committee for Ranked Choice Voting and the FairVote Maine project
Mike Saxl	Managing Principal, Maine Street Solutions Former Maine State Representative (Democrat)
Michael Shepherd	Political reporter, Bangor Daily News
Mike Tipping	Communications Director, Maine People's Alliance
Jill Ward	President, League of Women Voters of Maine
Polly Ward	Board member, League of Women Voters of Maine
Dick Woodbury	Campaign chair, Committee for Ranked Choice Voting Former Maine State Senator (independent)

Appendix B. Principal Actors in the Campaign for RCV in Maine

The Committee for Ranked Choice Voting (CRCV)

The Committee for Ranked Choice Voting registered as a PAC on October 28, 2014. Listed as its principals were Dick Woodbury (chair), Cara Brown McCormick (treasurer), and Kyle Bailey. Over time, CRCV brought on several additional full- and part-time staff, but the principal decision-makers throughout remained these three.

Dick Woodbury served in the Maine House from 2002-2008 and in the Maine Senate from 2010-2014. Woodbury, a "gentlemanly" independent, had come to believe that the two-party duopoly was not serving the people, and that the political system in Maine was stacked against independents and third parties. He saw RCV as a means for opening up the system to different perspectives, to bring policy back into the center of political discourse, and to bring more civility to the process of campaigning and governing. In 2013, he sponsored the failed legislative attempt in the Senate to pass RCV in Maine that, along with Diane Russell's failed attempt on the House side, partly served as a trigger for the launch of the RCV working group with the League of Women Voters of Maine that summer.

Cara Brown McCormick, a veteran political consultant and partner at Smart Campaigns, came to the Committee for Ranked Choice Voting with 25 years of experience as a campaign operative working for both Democrats and independents. She has ties to several efforts to break down barriers for independent candidates, including billionaire activist Peter Ackerman's 527 committee, Level the Playing Field, and its predecessor, Americans Elect, for which Eliot Cutler was a board member. McCormick is CEO of Level the Playing Field, The Chamberlain Project, and The Chamberlain Project Foundation.

Kyle Bailey was hired in November 2014 as the campaign manager for the Committee for Ranked Choice Voting. He came to the campaign with a decade of experience with progressive advocacy campaigns. Bailey was a veteran of the Marriage Equality movement, having served as Maine's in-state finance director for the 2014 ballot initiative campaign. He had considerable experience in grassroots fundraising as well as campaign management. Bailey had also served as Finance Director for Eliot Cutler's 2014 independent gubernatorial campaign.

Diane Russell

Diane Russell—a proud, progressive rabble-rouser from Portland—is considered by some to be the "mother of ranked choice voting" in Maine. Russell's interest in RCV came about following an early experience in which she felt compelled to vote strategically to defeat a hated candidate, rather than voting for the candidate she preferred. She saw RCV (or IRV, as it was then more commonly called) as a system that would allow people to "vote their hopes instead of their absolute fears." Russell had served a brief term as IRV America Director at FairVote in 2007. During this time, she had assisted with some of the early legislative attempts to advance IRV bills, and had met with Secretary of State Dunlap and his deputy, Julie Flynn. Russell also played an important role in the adoption of RCV in Sarasota, Florida during that time—the first time RCV was passed by voters through the initiative process. After returning to Maine, Russell ran for and won election to the Maine House of Representatives in 2008. She made an unsuccessful run for the Democratic nomination for Governor in 2018, in the first statewide election using RCV. At the same time, Russell was actively involved in supporting the June 2018 People's Veto campaign for RCV.

The Chamberlain Project

The Chamberlain Project is a political reform organization established and chaired by

activist Peter Ackerman to advance RCV in Maine. Ackerman and Cara McCormick are,

respectively, chair and executive director of both The Chamberlain Project PAC and The

Chamberlain Project Foundation (morevoice.org), a companion 501(c)(3) incorporated in

January 2017 to conduct public education

and research in support of the first uses of

RCV in Maine. Chamberlain, through both

The Chamberlain Project PAC and The

Chamberlain Project BQC[40], was the

principal vehicle for major donor

fundraising in support of both the

Question 5 (2016) and Question 1 (2018)

campaigns for RCV in Maine. The

> **Peter Ackerman**
>
> Peter Ackerman is a billionaire former Wall Street investment banker who has been involved in multiple efforts to steer politics back toward the under-represented center. After taking a principal role with Unity '08, he subsequently founded and was the primary funder behind the Americans Elect movement in 2010-2012. Currently, his is founder and principal funder for a successor movement, Level the Playing Field. Ackerman has ties to Eliot Cutler and Cara McCormick through their work together with Americans Elect.

Chamberlain Project's anchor funding was provided by Laura and John Arnold's Action Now

Initiative and Ackerman's 527 committee, Level the Playing Field. In addition to these two

principal funders, ten to twenty percent of the contributions Chamberlain secured for the two

Maine RCV campaigns came from individual reformers.

The Chamberlain Project PAC and BQC together raised nearly $1 million in total for the

Question 5 campaign in 2016—about half of which was contributed by the Action Now

Initiative. The Chamberlain Project BQC 2018 was the primary fundraising vehicle for the

Question 1 People's Veto referendum campaign, raising over $1 million in the six months

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[40] http://maineexaminer.com/shadowy-group-funding-maine-ranked-choice-effort-has-zero-maine-donors/

leading up to the June 2018 election—most of that from the Action Now Initiative and Level the Playing Field.[41]

Action Now Initiative (ANI)

Action Now Initiative is a 501(c)(4) advocacy organization started by Laura and John Arnold as a political action complement to their 501(c)(3), the Laura and John Arnold Foundation. ANI was an initial anchor funder for the RCV Maine campaign through The Chamberlain Project. Over time, ANI was the single largest contributor to the multi-year RCV campaign in Maine. According to the Maine Ethics Commission's records, ANI contributed about a half million dollars to each of the two RCV Maine campaigns through The Chamberlain Project PAC and The Chamberlain Project BQC.

The Laura and John Arnold Foundation has been a major funder of FairVote for many years, awarding well over $4 million in general operating support and project-based grants since 2015 to support FairVote's research and educational efforts on ranked choice voting. In 2015-16, the Arnold Foundation provided over $1 million to support the FairVote Maine project.[42]

The League of Women Voters of Maine (LWVME)

The League of Women Voters is a nonpartisan political organization that has worked since 1920 to improve government and engage communities in the decisions that impact their lives. The League operates at national, state, and local levels through more than 800 state and local Leagues. The League of Women Voters of Maine (LWVME) works to encourage informed and active participation in government, to increase understanding of public policy issues, and to influence public policy through education and advocacy in the state of Maine. The organization

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[41] Public campaign finance records as well as "Will Ranked Choice Voting Be Adopted Nationally to Replace First Past the Post Voting?", Ackerman, P. and McCormick, C., 2019.
[42] https://www.arnoldventures.org/grants?q=FairVote

conducts advocacy on an array of public policy issues as a 501(c)(4) and also is heavily involved

in voter education and outreach via its 501(c)(3), the LWVME Education Fund. In addition to

the state League, there are two official

local Leagues based in the Portland and

Brunswick areas and informally organized

groups in the Mid-Coast region, in

Bangor, and in DownEast Maine

(Hancock and Washington counties). All

told, there are approximately 500 League

members statewide, many of them having

newly joined after the 2016 election.

Ann Luther
Ann Luther was an institution within the Maine League of Women Voters. She had long served as chair of the state League's advocacy committee and was highly respected both within the League and in the capital. Luther joined her local League upon her retirement in 1998, within three years became a board member with the state League, and two years later was elected state League president. She served as both a board member and as treasurer for both the League of Women Voters of Maine and Maine Citizens for Clean Elections.

To the extent that LWVME had brand recognition with the people of Maine, the

organization was viewed as a studious, non-partisan group of "well-intentioned little old ladies

who are very serious about elections."[43] Within the capital, the League was seen as well-

mannered, even-handed, and evidence-based, earning them respect from both sides of the aisle—

although those on the right would note that the League's agenda lined up more with the

Democrats. LWVME had frequent interactions with the Secretary of State and his Elections

Division, both to support voter engagement and to advocate "good government" positions in

regards to elections processes. Secretary of State Dunlap saw them as helpful in the former

capacity, but sometimes an irritant in the latter.

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[43] In accordance with confidentiality agreements made with some of the individuals interviewed for this research, direct quotes included in this report are in most cases not accompanied by an attribution.

Maine Citizens for Clean Elections (MCCE)

Maine Citizens for Clean Elections was formed in 1995 to lead the charge for a Clean

Elections ballot measure, passed by Maine voters the following year. It had started as a coalition

funded and staffed by another non-profit, the Maine Citizen Leadership Fund, with LWVME as

chair. When Maine Citizen Leadership Fund went bankrupt in 2006, LWVME members rallied

to the cause and brought the organization

under the fiscal sponsorship of LWVME.

By 2010, MCCE had raised enough money

to be cut loose and become its own

501(c)(3) organization. MCCE also has a

501(c)(4) arm, MCCE Action. Together,

MCCE's mission has been to defend,

implement, and build support for clean

elections law in Maine.

> **John Brautigam**
>
> John Brautigam had done legal, policy, and to some extent campaign work for MCCE during both campaigns for Clean Elections. He was elected to the Maine state legislature in 2004 using Clean Elections public funding. After leaving the legislature, Brautigam did legal work and policy advising for non-profits, including LWVME and MCCE. In 2017, Brautigam served as interim executive director for MCCE. He currently serves as Senior Advisor and Counsel to LWVME and MCCE.

In 2015, after the Supreme Court struck down an important campaign finance provision,

MCCE spearheaded a hard-fought citizen initiative campaign to reinforce the Clean Election

program. Through its experience leading campaigns to advance the clean elections cause, MCCE

had developed organizing experience, staffing, and infrastructure—all assets that LWVME

lacked. However, as a single-issue organization, MCCE found itself having to downsize between

campaign efforts in a manner very disruptive to the organization.

LWVME had remained a close partner with MCCE throughout its history, with

significant overlap in vision and board membership between the two organizations. The League

brought volunteers with significant government and public policy expertise and strong brand

recognition, but lacked the staffing, fundraising capacity, and campaign expertise that MCCE had. Through parallel strategic planning exercises, the two organizations came to the same conclusion that combining their boards and organizational infrastructure would strengthen their ability to advance a pro-democracy vision together. In the summer of 2018, the two boards voted to combine under the banner "Democracy Maine"—an effort that they expect will take a year or more to fully complete.

FairVote

FairVote is a nonpartisan national organization that champions electoral reforms intended to "give voters greater choice, a stronger voice, and a representative democracy that works for all Americans."[44] The organization was founded in 1992 by President and Executive Director, Rob Richie as a vehicle to advance the use of ranked choice voting and proportional representation in the United States. Originally called the Center for Voting and Democracy, the organization changed its name to FairVote in 2004 and expanded its focus to include additional electoral reform innovations such as the national popular vote for presidential elections. While a national organization, FairVote has set up projects within states from time to time, such as the current FairVote California. (FairVote Minnesota, however, is a separate and unaffiliated organization founded locally in 1996 and currently led by Executive Director, Jeanne Massey.) In addition, the Ranked Choice Voting Resource Center began as a project of FairVote.

In the summer of 2016, FairVote established the FairVote BQC as a vehicle for filing campaign disclosures related to the political canvassing work of the FairVote Maine project. Virtually all of the funds that flowed through the FairVote BQC came from FairVote.

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[44] https://www.fairvote.org/about

The Maine People's Alliance (MPA)

The Maine People's Alliance is a major force in progressive politics in the state and was one of the founding members of Maine Citizens for Clean Elections (MCCE). With a full-time staff of thirteen and a supporter list upwards of 32,000, the group focuses on grassroots organizing, often in coordination with other groups, to "lift up the voices of people that might not otherwise have a say." MPA was one of the few groups outside the "good government" realm that was active in support of the RCV ballot measure. Having their support was an important signal to progressives that they could get behind RCV. While MPA lent their support to the signature-gathering effort, their primary contribution was in helping to get the campaign's messages out to a progressive audience, using their news website, email list, and social media. The group's BQC supported multiple initiatives on the 2016 ballot, and so it is not possible to isolate and quantify MPA's contributions specific to RCV.

Appendix C. Funders and Funding Associated with RCV in Maine

In total, well over $3 million was contributed to support the two RCV ballot initiative campaigns in Maine. Almost 80 percent of this money came from the top eleven donors—all of them originating from out-of-state sources. Almost half of the money supporting the two campaigns came from the Arnold's Action Now Initiative and, particularly for the 2018 People's Veto, Peter Ackerman's Level the Playing Field. In addition, FairVote also made a significant investment in the Question 5 campaign via its own BQC. Others who made significant financial contributions to the two RCV Maine campaigns included:

- A handful of individual donors, including Jonathan Soros ($125,000), William Ackman ($100,000), Louis Bacon ($75,000), Mary and John Palmer ($75,000), Alexander Navab ($50,000), and Nelson Peltz ($50,000).

- Committee to Elect an Independent Senate ($72,500 to the Question 5 campaign through The Chamberlain Project BQC)

- Represent.Us ($50,000 to the Question 1 campaign through The Chamberlain Project BQC 2018 and a small amount to the Question 5 campaign through the Committee for Ranked Choice Voting)

- Maine People's Alliance (an undetermined amount through their own BQC)

In contrast with some other ballot initiative campaigns in Maine (notably, the recreational marijuana campaign), the RCV Question 5 campaign was able to raise a more significant percentage of total contributions from small-dollar individual donors within the state. Although it was no secret that there was significant out-of-state money behind the two RCV campaigns, this turned out not to be a particular concern for most voters. To the extent it was recognized, the money was perceived to be coming from well-meaning progressives who felt the reform would

help the tone of American democracy. As there was no big commercial enterprise behind the

push for RCV, neither was there a perceived mercenary motivation for the ballot initiative.

See Table 1 and Table 2 at the end of this document for additional detail about total

funding and funding sources for the Question 5 (2016) and Question 1 (2018) campaigns.

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Tables

Table 1

Contributions to committees supporting Maine RCV ballot initiatives (2015-2018)

Committee	Amount raised	Sources
The Chamberlain Project BQC 2018	$1,043,000	Mostly nonprofits
Committee for Ranked Choice Voting	$915,000	Mostly individuals
The Chamberlain Project BQC	$665,000	Mix (nonprofits, PACs, individuals)
FairVote - BQC	$374,000	FairVote
The Chamberlain Project PAC	$255,000	Mostly PACs
Total	$3,252,000	

Source: Maine Ethics Commission (https://www.mainecampaignfinance.com). Amounts are rounded to nearest thousand and include in-kind contributions.

Table 2

Top contributors to committees supporting Maine RCV ballot initiatives (2015-2018)

Donor	Amount	Vehicle
Action Now Initiative (TX)	$1,054,000	The Chamberlain Project
Level the Playing Field (VA)	$513,000	The Chamberlain Project
FairVote (MD)	$372,000	FairVote BQC
Jonathan Soros (NY)	$125,000	CRCV
William Ackman (NY)	$100,000	The Chamberlain Project
Louis Bacon (NY)	$75,000	The Chamberlain Project
Mary and John Palmer (CA)	$75,000	CRCV
Committee to Elect an Independent Senate (VA)	$73,000	The Chamberlain Project
Represent.Us (MA)	$52,000	The Chamberlain Project
Alexander Navab (NY)	$50,000	The Chamberlain Project
Nelson Peltz (NY)	$50,000	CRCV

Source: Maine Ethics Commission (https://www.mainecampaignfinance.com). Amounts are rounded to nearest thousand and include in-kind contributions.

Table 3

User Experience in Key 2018 Ranked Choice Contests in Maine

Contest	Overvotes	Undervotes	Exhausted Ballots	Total Ballots Cast but Not Included in Final Tally
Democratic Primary – Governor	0.44%	10.70%	0.20%	11.34%
Democratic Primary – CD2	0.26%	14.19%	0.06%	14.52%
General Election – CD2	0.18%	4.67%	0.11%	4.97%

Source: Maine Secretary of State Election Results (https://www.maine.gov/sos/cec/elec/results/index.html)

Note: An "overvote" occurs when the voter marks more than one candidate at the same ranking position. This results in a spoiled ballot starting in the round where the overvote occurs. An "undervote" occurs when the voter fails to mark any candidate at a given ranking position. An undervote does not result in a spoiled ballot, but does represent a failure by that voter to use the full power of ranked choice voting. An "exhausted ballot" is a ballot that is initially valid but that is not counted in the final round of an election, either because of an overvote, an undervote, or exhausted choices.

Table 4

Cost Estimates to Implement Ranked Choice Voting in Maine

Source	Estimate	Notes
Secretary of State's "Report on the Feasibility of Instant Runoff Voting" (2005)	Multiple $ millions	Estimates for hardware along ranged from $2.4 million to over $11 million. Other expected costs include software, ballot printing, voter outreach, poll worker training, and transportation.
LD 518 fiscal note (2013)	$336,873	Cost over two fiscal years, including hardware, software, security, and transportation.
LD 1557 fiscal note (2016)	$1,551,658	Cost over two fiscal years, including hardware, software, ballot printing, security, and transportation.
Secretary of State's briefing to Joint Committee on Veterans and Legal Affairs (March 2018)	$254,418	One-time cost for June 2018 primary, including hardware, software, transportation, and voter outreach
Secretary of State's letter to Joint Committee on Veterans and Legal Affairs (April 2018)	~ $110,000	One-time cost for June 2018 primary, including hardware, software, ballot printing, security, and transportation.
LD 1925 fiscal note (Aug 2018)	$334,300	One-time cost for November 2018 election, including hardware, software, additional ballots, and transportation.
Secretary of State's estimate before June 2018 primary, as reported in FPI brief "Ranked Choice Voting: Saving Money While Improving Elections"[45]	$495,990	Cost over two fiscal years, including hardware, software, transportation, and voter outreach. $200,000 of this estimate is for additional voting machines for hand-count precincts.
Secretary of State's reported actual costs for June and November 2018 elections	$441,804	Cost includes hardware, software, ballot printing, and transportation.

Note: While no an exhaustive list of all documented cost estimates associated with implementing RCV in Maine, this listing provides a representative sample of the range of estimates put forward over the years.

[45] http://fiscalpolicy.org/wp-content/uploads/2018/06/RankedChoiceVoting-FPI-Brief.pdf