

## Q&A

# NATIONAL POPULAR VOTE AND RANKED CHOICE VOTING

### **What is the problem Ranked Choice Voting (RCV) creates for National Popular Vote (NPV)?**

RCV produces at least two vote counts for each candidate, first-round totals and final-round totals. NPV provides no guidance on which vote totals should be used to calculate the national vote count, leaving it to the chief election official in each member state to decide whether to use first-round or final-round totals.

### **Can this choice of vote totals make a difference?**

If the Democratic or Republican candidate finished in third place (as happened in Maine and Utah in 1992) in Alaska and Maine (the two states that currently use RCV), the vote differential for that candidate in the national count between using first-round and final-round totals would likely be between 300,000 and 400,000 votes. If Oregon voters approve RCV this fall, the difference between first-round and final-round totals could be well over one million votes.

### **So is this only a problem when a third-party or independent candidate does well?**

If only Alaska and Maine use RCV in presidential elections and there is not a strong third-party or independent candidate, the difference in vote totals would likely be too small to affect the outcome. But if Oregon or another small- or mid-size state adopts RCV, the difference in vote totals is likely to be in the hundreds of thousands even without a strong third-party or independent candidate, and so the choice of vote totals could affect the outcome of a close national election. The more states that use RCV, and the more populous they are, the more likely it will affect the outcome even without a strong third-party or independent candidate.

## **Why wouldn't final-round vote totals have to be used?**

Final-round totals might seem like a reasonable choice – they are what an RCV state would use to appoint its electors (assuming it is not in the compact). But NPV does not require this, and first-round results are a reasonable choice as well – they are most comparable to what other states report. Using first-round results would avoid erasing hundreds of thousands or millions of votes from a major party candidate who finished in third place in an RCV state, as well as protecting voters whose ballots would be discarded (“exhausted”) in later rounds of RCV tabulation. A belief that RCV is illegitimate or a desire for partisan advantage could also cause the first-round totals to be chosen.

## **Didn't Maine pass a law to solve this problem?**

Maine's law requires the final-round vote totals be reported on the state's Certificate of Ascertainment. But states in the NPV compact are not required to use the vote totals on the certificate. They can use any other “official statement,” such as a statewide canvas or the Secretary of State's report to Maine's governor, which include both first-round and final-round vote totals. And Alaska does not have a law similar to Maine's, and likewise will produce “official statements” that include both first-round and final-round vote totals.

## **What do experts on alternative voting say?**

Dr. Warren Smith of the Center for Range Voting anticipates a “trainwreck” as a result of these issues,<sup>1</sup> while Dr. Jameson Quinn at the Equal Vote Coalition states that “NPV is not, and will never be, compatible with a non-summable method like [RCV].”<sup>2</sup> Steve Cobb at Unsplit the Vote observes “[NPV] was unfortunately written assuming the current [plurality voting] method, with no regard for alternative voting methods,”<sup>3</sup> and the organization promoting STAR Voting explains that “When [NPV] was drafted, no provisions were made and no clause was included which specifies how the popular vote would be counted in states which use alternative voting methods...”<sup>4</sup>

Rob Richie, head of FairVote, identified similar concerns in a 2021 paper he is lead author of, stating: “...as currently drafted, the [NPV compact] seems to assume a plurality system...” and raising questions about whether the first-round or final round should be used for NPV's purposes as well as what would happen “...if one of the two strongest national candidates was eliminated during the RCV tally...”<sup>5</sup>

## Can this problem be fixed?

Other than rewriting the NPV compact, there is no solution short of eliminating transparency in the RCV process. As long as states using RCV produce any “official statement” that includes both first-round and final-round vote totals, NPV state officials will be faced with the choice of which totals to use. There has been discussion of a second interstate compact among states using RCV or other alternatives to plurality voting,<sup>6</sup> but NPV states could not be compelled to use vote totals provided by this second compact. Some have also proposed legislation by Congress to solve this issue, but that is probably unconstitutional.<sup>7</sup>

## What do representatives of the National Popular Vote campaign say about this?

NPV’s current position is that only final-round vote totals can be used when determining national vote counts, but they cite no reasoning other than that the final-round totals are what RCV states will themselves use to appoint electors (assuming they are not in the compact). They have also argued in the past that it must be final-round totals because that is what will appear on a state’s Certificate of Ascertainment. But NPV appears to have abandoned that position, admitting in a 2024 hearing in Maine that other “official statements” can be used as a source of vote totals.

Before attention was brought to this issue, NPV Chairman John Koza admitted to at least one alternative voting activist that it was unclear how to combine totals from states using plurality voting with totals from states using RCV or other alternative forms of voting. And as recently as October 2022 Koza or others at NPV were reported to be working on another interstate compact that would address these issues. But in testimony, written materials, and public statements NPV denies that RCV poses any problem for the compact and have not acknowledged it is working to develop a new compact to address this issue.

- <sup>1</sup> “Warning! Voting reform trainwreck approaching – need to act now to avoid the problem,” available at: <https://www.rangevoting.org/NPVtrainwreck.html>
- <sup>2</sup> Google Groups message, February 2018. Available at: <https://groups.google.com/g/electionscience/c/OLkt-G2ilTo/m/Rw5gHTk6AgAJ>
- <sup>3</sup> “The NPVIC and Approval Voting,” available at: <https://unsplitthevote.org/the-npvc-and-approval-voting/>
- <sup>4</sup> “How Would STAR Voting work with the National Popular Vote Interstate Compact?” [https://www.starvoting.org/presidential\\_elections](https://www.starvoting.org/presidential_elections)
- <sup>5</sup> Richie, et. al., “Toward a More Perfect Union: Integrating Ranked Choice Voting with the National Popular Vote Interstate Compact,” p. 159, *Harvard Law & Policy Review*, August 2021.
- <sup>6</sup> Rob Richie of FairVote proposed such a compact in the 2021 paper cited above, and the Equal Voting Coalition has proposed one as well, see: [https://www.equal.vote/interstate\\_compact](https://www.equal.vote/interstate_compact)
- <sup>7</sup> The Constitution gives broad latitude to the states to determine the method for choosing presidential electors, and it’s unlikely that Congress has the power to step in and dictate, for example, which vote totals must be used under NPV.