

THE ALASKA MODEL FOR DEMOCRACY IN ELECTIONS

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I. INTRODUCTION

Democracy in the United States depends on constitutional cornerstones such as the First Amendment, from a political candidate's freedom of expression in conveying and defending positions, to a private citizen's freedom of association with any political party (or none whatsoever), to a voter's ultimate choice at the ballot box. While at times uncomfortable to bear witness to, the contentious, vitriolic, emotionally charged nature of the 2024 U.S. presidential election cycle positively affirms America's ingrained acceptance of the principles of our First Amendment freedoms. Surely a democracy founded on such sound and necessary precepts as those enabled by the First Amendment should embrace open public discourse in the election realm, even as imperfections may manifest during such exchanges.

But on July 13, 2024, polarized political angst of citizens was acted on, to the shock of our nation. The shooting of presidential candidates has occurred before in our history. Each time it has happened, our nation was startled into its senses and became motivated to address the frustrations that created the chasm between extreme political positions.

In the U.S., political policy makers and candidates at every level of public service should not fear speaking their opinions or sharing their ideas. Likewise, voters must be confident that their participation in choosing policy leaders is maximally impactful, respected, and foundational to the process. Frustration with the binary choices, set forth by a minute fraction of partisan participants in choosing candidates for public office through restricted primary elections, often results in a sense of futility and frustration. It is important for policy leaders to consider reasonable reforms that could alleviate citizen dissatisfaction and mistrust, lead to abatement of political violence while preserving the integrity of our democratic systems, and encourage peaceful, if passionate, discourse.

In recent years Alaska has served as a laboratory of democracy through election reform intended to temper extremes and to hear the voices and choices of voters. In Alaska, the 2022 emergence of open primary elections and utilization of ranked-choice general elections pursuant to a 2020 voter-approved ballot initiative has opened doors for more diverse candidates running for state elected office, effected a toning down of political attacks and hateful rhetoric, and enabled broader voter choice, resulting in higher voter satisfaction.

Alaska is geographically unique in several ways, making it a challenging venue in which to conduct accessible and fair elections. It is the U.S. state with the largest land mass, more than twice the size of Texas, with more coastline than the rest of the United States put together. Yet, spread across this massive area, our population is the second smallest among the states. Twelve distinct indigenous Alaskan Native groups live throughout the state, many on their original tribal lands in remote towns and villages or on native allotments provided by an act of Congress and administered through Alaska Native corporations. One of Alaska's school districts is comprised of among the most diverse student populations in the United States, which includes the three top-most diverse high schools in the nation, and amongst its students, 20% of them originally learned to speak in foreign and

Alaskan Native-languages.¹ With this great size and diversity come widely diverse policy viewpoints. Nearly 60% of Alaskans do not affiliate with either the Democratic or Republican Party.²

The Alaska Republican Party got an initiative on the August 2002 ballot to establish ranked-choice voting (“RCV”), recognizing its benefits, but that initiative failed.³ Since 2004, across the nation, between state and local races, there have been over 500 elections and tens of millions of ballots cast using RCV.⁴

Through the 2020 citizens’ initiative, Alaska enacted an innovative state election process that allows voters to express their relative preferences more fully among several potential candidates. The procedure applies to legislative races—House and Senate district elections—as well as the statewide elections of the governor, lieutenant governor, and U.S. congressional seats, and even to the general election of the U.S. President.⁵

In this essay, we will reflect on the opposition proffered by state legislators in the ten states that have enacted a ban on the use of ranked-choice general elections. We will respond to misinformation, misunderstanding, and faulty data. We will bring to the reader’s attention the research that has been done, the experiences of other jurisdictions utilizing nonpartisan primary elections and ranked-choice general elections, and the major judicial findings related to constitutional questions. Foremost, we will share the positive experiences of Alaska in which efficient, transparent, and trustworthy elections are a key to representation for a diverse population over a very large geographic area.

II. BACKGROUND & HISTORY

A. *History of Open Primaries in Alaska*

For most of its post-statehood history, Alaska conducted some form of open primary elections, where voters were not restricted in whom they could vote for by party affiliation, to select the party nominees for state and federal elections who

¹ Matt Tunseth, *Anchorage Public Schools Lead Nation in Diversity*, ANCHORAGE DAILY NEWS (2016), <https://www.adn.com/education/article/anchorage-melting-pot-diversity/2015/05/24/#:~:text=Farrell%20said%20the%20nation's%2019,like%20this%2C%22%20Farrell%20said> [https://perma.cc/9D3Y-K82M].

² *Alaska*, INDEPENDENT VOTER PROJECT (2023), <https://independentvoterproject.org/voter-stats/ak> [https://perma.cc/PZU7-H4JB].

³ *Alaska Ballot Measure 1, Ranked-Choice Voting Initiative*, BALLOTEDIA (August 2002), [https://ballotpedia.org/Alaska_Ballot_Measure_1_Ranked-Choice_Voting_Initiative_\(August_2002\)](https://ballotpedia.org/Alaska_Ballot_Measure_1_Ranked-Choice_Voting_Initiative_(August_2002)) [https://perma.cc/PN3T-VREV].

⁴ *Research and Data on RCV in Practice*, FAIR VOTE (2024) <https://fairvote.org/resources/data-on-rcv/> [https://perma.cc/3374-ZKLZ].

⁵ There are no primary elections conducted in Alaska for presidential candidates. Instead, the recognized political parties select presidential and vice-presidential candidates as provided by their bylaws, which is usually by a process of caucusing. *Election Information*, STATE OF ALASKA DIVISION OF ELECTIONS (2024), <https://www.elections.alaska.gov/election-information/#presidential> [https://perma.cc/G7DA-XQBN] (explaining presidential party nomination procedures). Delegates of each party are sent to their national party convention to join other states’ delegates to formally vote and nominate their party’s candidate for U.S. President and Vice President. *Id.*

would advance to the general election. In 1947, while it was still a territory, Alaska adopted an open primary system where voters could vote for candidates without regard for party affiliation.⁶ In 1960, the first state legislature modified this system to require voters to choose a single party and only vote for candidates from that party, but in 1967 the legislature removed this requirement at the urging of Governor Walter J. Hickel.⁷ Open primaries were briefly suspended for the 1992 and 1994 election cycles after the Republican Party of Alaska adopted rules prohibiting members of other parties from voting for Republican nominees,⁸ but they were restored after the Alaska Supreme Court ruled in *O'Callaghan v. State* that Alaska's open primary system was constitutional.⁹

Under the open primary system Alaska used from 1960 to 2000, all candidates from recognized parties for each office appeared on a single ballot. Although the Alaska Division of Elections would report election results and percentages as if all candidates were competing against each other, only the highest vote-getter for each party would advance to the general election. Nonpartisan candidates and those from unrecognized parties could petition onto the general election ballot by gathering enough signatures from registered voters.

Alaska stopped conducting open primaries in 2000 after the state attorney general advised that they were unconstitutional in light of the U.S. Supreme Court's decision in *California Democratic Party v. Jones*, which held that an open primary system enacted by California was unconstitutional.¹⁰ The state adopted emergency regulations for closed party primaries for the 2000 election, and in 2001, the legislature permanently repealed the open primary statutes in favor of party primary elections.¹¹ In the 2022 case *Kohlhaas v. State*, the Alaska Supreme Court succinctly summarized how these partisan primary elections functioned:

⁶ *Alaska's Primary Election History*, STATE OF ALASKA DIVISION OF ELECTIONS (2024) [hereinafter Primary History], <https://www.elections.alaska.gov/research/primary-election-history/> [https://perma.cc/QCL9-E4J6].

⁷ *Id.*

⁸ *Id.*; see generally Memorandum, *Enforcement of Republican Party Prior Registration Requirement*, from Steven Slotnick, Ass't Att'y Gen. Gov'tal Affairs – Juneau to Charlot Thickstun, Dir., Div. of Elections, Off. of the Lt. Gov'r, at 1–2 (Oct. 27, 1992) [hereinafter Slotnick Analysis], https://law.alaska.gov/pdf/opinions/opinions_1992/92-044_663930079.pdf [https://perma.cc/TH4W-PJLM] (referencing Republican Party's adoption of policy preventing non-registered Republicans from voting in Republican primaries).

⁹ The Alaska Republican Party sued the State in federal court to enforce its closed primary rule, and the State agreed to stipulate that the U.S. Supreme Court decision in *Tashjian v. Republican Party* gave the party the right to close its primary. Primary History, *supra* note 6; Slotnick Analysis, *supra* note 8, at 5; see also *Tashjian v. Republican Party*, 479 U.S. 208, 229 (1986). The State adopted regulations to conduct a closed Republican primary for the 1992 election, but the legislature did not repeal the open primary statutes. Primary History, *supra* note 6; *O'Callaghan v. State*, 914 P.2d 1250, 1253 (Alaska 1996) (referencing that the 1992 and 1994 primaries were conducted under the State's regulations). In *O'Callaghan*, the Alaska Supreme Court determined that the open primary statutes were constitutional and ordered the State to conduct open primaries in accordance with the statutes. *O'Callaghan*, 914 P.2d at 1264.

¹⁰ Primary History, *supra* note 6; *California Democratic Party v. Jones*, 530 U.S. 567, 586 (2000); STATE OF ALASKA, DEP'T OF LAW, OP. ATT'Y GEN. NO. 2, at 8 (Aug. 22, 2000), available at https://law.alaska.gov/pdf/opinions/opinions_2000/00-021_663000218.pdf [https://perma.cc/67D9-JA4Q].

¹¹ Primary History, *supra* note 6.

Before [the 2020 election reform initiative was enacted], Alaska used a system of political party primary elections to determine which candidates for office would advance to the general election. The Alaska Division of Elections oversaw and administered these partisan primary elections. Each political party determined through its bylaws who was eligible to vote in the party's primary election and who was eligible to run as a candidate. The Division established polling places and furnished election supplies. The winner of each party's primary election for a particular elective office—that party's nominee for the office—advanced to the general election Aspiring candidates had another path to the general election ballot: submitting a nominating petition with the requisite number of signatures from registered voters.¹²

Since each party could set its own rules for who could vote in its primary, Alaska's primary system was in considerable flux from 2002 to 2020. In 2002, there were six separate primary ballots for the Democratic, Republican, Alaska Independence, Green, Libertarian, and Republican Moderate parties.¹³ In 2003, the Green Party sued for the right to hold combined primaries, arguing that election laws disallowing it were unenforceable, and the Alaska Superior Court ruled in favor of the Green Party.¹⁴ In 2004, because of differing party rules, there were three separate primary ballots: one ballot with Republican candidates that only registered Republicans, nonpartisans, or undeclared voters could use; one ballot with Libertarian, Green, and Alaska Independence candidates that any voter could request; and one ballot with Democratic candidates and candidates from the Libertarian, Green, and Alaska Independence parties that any voter could request except registered Republicans.¹⁵ From the 2006 through the 2020 election cycles, all qualified parties except for the Republican Party agreed to have their candidates appear on a single combined ballot.¹⁶ Of the parties' primary ballots available between 2004 and 2020, only the Republican Party limited its permissible voters to only those registered as members of the party or who were registered nonpartisan or undeclared.¹⁷

The state's partisan primary system and confusion over application of its differing rules may have affected the outcome of a State House election in 2016 when election workers in one Alaska village allowed voters to vote using both the Republican primary and the combined-primary election ballots.¹⁸ In that election, the Division of Elections certified one candidate as the winner of the Democratic

¹² Kohlhaas v. State, 518 P.3d 1095, 1101 (Alaska 2022).

¹³ See *generally* Cards Cast Report State of Alaska 2002 Primary Election (Aug. 22, 2002), <https://www.elections.alaska.gov/Core/Archive/02PRIM/data/cards.pdf> [https://perma.cc/V23F-QCN3].

¹⁴ See State v. Green Party of Alaska, 118 P.3d 1054, 1057 (Alaska 2005). The Republican Moderate Party was also a plaintiff in this lawsuit. *Id.* The Alaska Supreme Court agreed with the Green Party on appeal. *Id.*

¹⁵ See Primary History, *supra* note 6.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Nageak v. Mallot, 426 P.3d 930, 941–42 (Alaska 2018).

nomination, but in an election contest the Alaska Superior Court declared the other candidate the winner.¹⁹ On appeal, the Alaska Supreme Court reversed that ruling, finding that the method of statistical analysis used by the superior court was legally invalid, and that the Division of Election’s original certification of results was appropriate.²⁰ Since there were no other candidates running for that seat, the primary election effectively controlled the outcome of the race altogether—unlike what would have occurred had Alaska utilized an open primary system at the time.²¹

B. *Ballot Measure 2 and The Alaska Model*

In 2020, Alaska voters adopted Ballot Measure 2 (“BM 2”), which restructured Alaska’s election system to restore an open primary except that, instead of choosing one nominee from each party, the four candidates who receive the most votes in the primary would advance to the general election that is conducted using RCV.²² The three primary sponsors of this ballot initiative were a Republican voter, a Democratic voter, and an independent voter, and in their official public statement of support, they described the initiative as ensuring “that every Alaska voter has the right to have their voice heard and vote counted, regardless of whether they think of themselves as Republican, Democrat, or independent.”²³

Under BM 2, a “pick one” open primary allows all registered candidates vying for a certain seat to appear on a single primary election ballot.²⁴ The top four primary vote-getters then proceed to the ranked-choice general election in which, after iterations of eliminating lowest-voted candidates and retabulating ranked selections, the first candidate receiving over 50% of the vote—or “50%+1,” just one vote over to gain a majority—is the winner.²⁵ The type of RCV used in Alaska’s general elections is also known as “instant runoff voting” (“IRV”).²⁶ The Alaska Supreme Court in *Kohlhaas* concisely described how general elections under RCV contrast with the previous system:

¹⁹ *Id.* at 936–37.

²⁰ *Id.* at 948–51.

²¹ See 2016 Primary Election Summary Report Official Results August 16, 2016 (Oct. 17, 2016), <https://www.elections.alaska.gov/results/16PRIM/data/PostCourt/results-1.htm> [<https://perma.cc/4NM5-DKFB>].

²² *Alaska Ballot Measure 2, Top-Four Ranked-Choice Voting and Campaign Finance Laws Initiative (2020)*, BALLOTPEdia (2024) [hereinafter *Ballotpedia BM 2*], [https://ballotpedia.org/Alaska_Ballot_Measure_2,_Top-Four_Ranked-Choice_Voting_and_Campaign_Finance_Laws_Initiative_\(2020\)](https://ballotpedia.org/Alaska_Ballot_Measure_2,_Top-Four_Ranked-Choice_Voting_and_Campaign_Finance_Laws_Initiative_(2020)) [<https://perma.cc/ERT9-5HFJ>].

²³ Bonnie L. Jack, Jason Grenn & Bruce Botelho, *Ballot Measure No. 2, An Act Replacing the Political Party Primary with an Open Primary System and Ranked-Choice General Election, and Requiring Additional Campaign Finance Disclosures, Statement of Support*, <https://www.elections.alaska.gov/petitions/19AKBE/19AKBE%20-%20Statement%20in%20Support.pdf>. [<https://perma.cc/69ET-ZMZF>].

²⁴ See *An Act Replacing the Political Party Primary with an Open Primary System and Ranked-Choice General Election, and Requiring Additional Campaign Finance Disclosures*, https://www.elections.alaska.gov/petitions/19AKBE/19AKBE_Ballot_Summary_FINAL.pdf [<https://perma.cc/A2FZ-B25M>].

²⁵ See *id.*

²⁶ See *Ballotpedia BM 2*, *supra* note 22.

Under the previous general election regime, each voter cast a vote by choosing a single candidate for each office. The total number of votes for each candidate was tallied and the candidate receiving the greatest number of votes was victorious.

[Ballot Measure] 2 adopts ranked-choice voting—also called “instant-runoff” voting—which permits voters to rank candidates for each office in order of preference and instructs the Division of Elections to tabulate these preferences in a series of rounds. The Division “shall initially tabulate each validly cast ballot as one vote” for the highest-ranked candidate on that ballot. If after this tabulation one candidate has more than half of the votes, voting is complete and that candidate is declared the winner. If no candidate has more than half of the votes, the candidate with the fewest votes is eliminated. Each ballot initially counted for the eliminated candidate is reassigned to that voter’s second choice marked on the ballot. If the ballot does not rank a second-choice candidate, it is considered “inactive” and is not counted in further rounds of tabulation. The process repeats until only two candidates remain, when the “tabulation is complete” and the candidate “with the greatest number of votes is elected.”²⁷

RCV and nonpartisan primary elections are not new. RCV was developed in 1850s Europe and perfected by an MIT professor in the 1870s.²⁸ Today, RCV is used in jurisdictions around the world, including Australia, Malta, Ireland, Northern Ireland, New Zealand, Fiji, Papua New Guinea, and Scotland.²⁹ RCV first appeared in use in U.S. municipalities in the 1910s.³⁰ Nebraska passed an initiative creating nonpartisan elections in 1934, and Washington and California adopted open primaries in 2004 and 2010 respectively.³¹

While open primaries and RCV are not unique to Alaska, Alaska is the only jurisdiction that uses this system of open primaries and top-four RCV general elections, which we will refer to as “the Alaska Model” throughout this essay. In their official statement of support, the sponsors of BM 2 described this new election

²⁷ *Kohlhaas v. State*, 518 P.3d 1095, 1102 (Alaska 2022).

²⁸ *History of RCV*, RANKED CHOICE VOTING RESEARCH CENTER (2024), <https://www.rcvresources.org/history-of-rcv> [<https://perma.cc/2M92-MSV2>].

²⁹ *Ranked Choice Voting: An Explainer*, ROCK THE VOTE (2024), <https://www.rockthevote.org/explainers/ranked-choice-voting-an-explainer/> [<https://perma.cc/Y9ZX-RT25>]; *Ranked Choice Voting Information*, FAIR VOTE (2024), <https://fairvote.org/our-reforms/ranked-choice-voting-information/#utah-rcv-pilot-program> [<https://perma.cc/HP27-3N7E>].

³⁰ Chris Hughes, *Ranked Choice Voting in US Goes Back More than a Hundred Years*, FAIR VOTE (July 2, 2018), https://fairvote.org/ranked_choice_voting_in_us_goes_back_more_than_a_hundred_years/?gad_source=1&gclid=Cj0KCQjw6oi4BhD1ARIsAL6pox2J34LWFbwM9_y7vqbLQu5kH2yrM75MDc3R1qXQwO6sL5vHs7LWAMaAugCEALw_wcB [<https://perma.cc/WDE3-XCYF>].

³¹ See *The History of the Open Primaries Movement*, OPEN PRIMARIES, <https://openprimaries.org/history/> [<https://perma.cc/9Y97-U65N>].

system as “a simple change that gives voters more freedom to choose the candidate that best reflects their positions.”³²

A court challenge followed the passage of Alaska’s citizens’ initiative.³³ The Alaska Supreme Court sustained the legality of the Alaska Model.³⁴ In 2022, the first election conducted under the Alaska Model was a special election to fill a vacancy caused by the death of Alaska’s lone U.S. Representative, with the special primary election held on June 11 and the special election held concurrently with the regularly-scheduled August 16 primary election.³⁵

When adopted, BM 2 passed by a slim margin of votes—50.55% to 49.45%.³⁶ It is not surprising that following Alaska’s experience with open primaries and RCV in 2022 that naysayers would persist and attempt to dismantle the Alaska Model’s innovative system of reforms. At the 2024 general election, Alaska voters will be confronted with a ballot measure, brought by the public initiative process, to repeal the election procedures provisions of the Alaska Model.³⁷ But as will be discussed later in this essay, an exit poll conducted by Patinkin Research during the November 2022 general election largely found that voters felt the new voting system to be “simple” and that elections were more competitive under it.³⁸

C. “Dark Money” in Alaska’s Political System

Improving on transparency and voter confidence in our elections system, BM 2 also included a provision aimed at eliminating so-called “dark money,” where political donors use intermediaries to hide the true source of money spent on electoral campaigns.³⁹ In Alaska, candidates for office are required to file campaign disclosures revealing who their campaign contributors are and the amounts given.⁴⁰ However, before BM 2, entities contributing to independent expenditure groups

³² Jack et al., *supra* note 23.

³³ See *Kohlhaas v. State*, 518 P.3d 1095, 1100 (Alaska 2022).

³⁴ See *id.*

³⁵ See Aaron Navarro & John Woolley, *Ranked-Choice Voting Debuts in Alaska Special Election, where Sarah Palin is Fighting for a Seat in Congress*, CBS NEWS (Aug. 17, 2022), <https://www.cbsnews.com/news/sarah-palin-congress-ranked-choice-alaska-lisa-murkowski/> [<https://perma.cc/KYE2-QZ94>].

³⁶ STATE OF ALASKA, 2020 GENERAL ELECTION SUMMARY REPORT (Nov. 30, 2020), <https://www.elections.alaska.gov/results/20GENR/data/sovc/ElectionSummaryReportRPT24.pdf> [<https://perma.cc/VUZ9-H37K>].

³⁷ See generally *Petition Status*, STATE OF ALASKA DIVISION OF ELECTIONS, https://www.elections.alaska.gov/petitions-and-ballot-measures/petition-status/?initiative_id=22akhe#is81213 [<https://perma.cc/9M8A-K662>] (displaying information on 2024 initiative to repeal open primary and RCV).

³⁸ See *Polling Shows Alaskan Voters Received Clear Instructions on the System, Found Ranking to be “Simple,” and saw more Competitive Races*, ALASKANS FOR BETTER ELECTIONS (Nov. 15, 2022), <https://www.alaskansforbetterelections.com/polling-shows-alaskan-voters-received-clear-instructions-on-the-system-found-ranking-to-be-simple-and-saw-more-competitive-races/> [<https://perma.cc/D9SV-54G4>] (providing Patinkin Research Strategies exit poll results on Alaska’s second use of RCV in a regular general election).

³⁹ See Caleb P. Burns & Hannah J. Miller, *Alaska Ballot Measure Targets the ‘True Sources’ of Dark Money*, WILEY (Mar. 2021), <https://www.wiley.law/newsletter-Alaska-Ballot-Measure-Targets-the-True-Sources-of-Dark-Money> [<https://perma.cc/CH7P-2LML>].

⁴⁰ See Alaska Stat. § 15.13.040(a) (2024).

were not required to reveal the sources of their funds.⁴¹ Alaska Statute § 15.13.400(5), enacted by BM 2, defines “dark money” as “a contribution whose source or sources, whether from wages, investment income, inheritance, or revenue generated from selling goods or services, is not disclosed to the public,” and BM 2 amended AS § 15.13.074—which banned making contributions anonymously, under a fictitious name, or the name of another—to also prohibit entities from accepting \$2,000 or more worth of dark money.⁴² This new provision further required that, once a person makes contributions of more than \$2,000 in a year to an entity making independent expenditures in candidate elections, that entity must report the contribution and any subsequent contributions received from that contributor within twenty-four hours of receipt and must report and certify the true sources of contributions and any intermediaries.⁴³

Ballot Measure 2 contained uncodified findings explaining the rationale for these provisions:

The people of Alaska have the right to know in a timely manner the source, quantity, timing, and nature of resources used to influence candidate elections in Alaska. This right requires the prompt, accessible, comprehensible, and public disclosure of the true and original sources of funds used to influence these elections, and is essential to the rights of free speech, assembly, and petition guaranteed by the First Amendment to the United States Constitution and shall be construed broadly.⁴⁴

III. DISCUSSION

A. *Despite the Successes of the Alaska Model, Ten States have Banned RCV Relying on Flawed or Misleading Policy Rationales*

In 2022, state legislatures began taking preemptive steps through enactments of law to prevent implementation of RCV in their state and local elections.⁴⁵ By May of 2024, ten states had banned RCV systems of elections from

⁴¹ See Burns & Miller, *supra* note 39 (“Ballot Measure 2 seeks to combat the role of ‘dark money’ with rigorous disclosure, imposing 24-hour reporting obligations on both entities engaged in independent expenditures and their contributors”).

⁴² See STATE OF ALASKA, *ALASKA’S BETTER ELECTIONS INITIATIVE*, <https://www.elections.alaska.gov/petitions/19AKBE/19AKBE-TheBill.pdf> [<https://perma.cc/5VXM-6Y4Z>].

⁴³ See *id.* at 4.

⁴⁴ See *id.* at 2.

⁴⁵ In November 2024, though, the voters of four states will consider RCV-supportive ballot measures. Oregon, Nevada, and Colorado voters will be asked to approve of RCV election systems, while Idaho voters could repeal its legislatively established RCV ban. See, e.g., Becky Bohrer, *Ranked-Choice Voting that has Rocked Alaska Politics Faces November Tests Across the Nation*, THE ASSOCIATED PRESS (May 29, 2024), <https://alaskapublic.org/2024/05/29/ranked-choice-voting-that-has-rocked-alaska-politics-faces-november-tests-across-the-nation/> [<https://perma.cc/7P3D-VUCK>]. Still yet, the Missouri legislature has placed a question before the electorate whether to ban RCV, while, as explained earlier in this essay, adversaries of Alaska’s RCV election system are also pursuing its repeal. See *id.*

operation at all levels of government within state jurisdiction: Tennessee, Florida, Idaho, South Dakota, Kentucky, Montana, Oklahoma, Alabama, Mississippi, and Louisiana.⁴⁶ While both Democrats and Republicans allege defects in this model of election reform,⁴⁷ the state legislatures so far banning RCV are all controlled by Republican majorities.⁴⁸

Sarah Palin's failed bid for Alaska's sole U.S. congressional seat under Alaska's first election utilizing RCV in 2022 brought widespread attention to the Alaska Model and spurred conservative politicians and national opposition organizations to act, decrying RCV as a flawed and "rigged" system invented to help Democrats win and citing the Palin loss as proof.⁴⁹ The Palin election loss

⁴⁶ See *Where is Ranked Choice Voting Used?*, FAIR VOTE, https://fairvote.org/our-reforms/ranked-choice-voting-information/?gad_source=1&gclid=CjwKCAjwgf3BhBeEiwAFfxrGyLa6EIV69GjUgAbyIII42mSA7whjcKDY21KtRWAK2P3_gH1gBoElxoCV6cQAvD_BwE#where-is-ranked-choice-voting-used [https://perma.cc/PDR3-9XJF]. Among the states legislatively banning RCV, each bill was signed into law by the state's respective governor except Kentucky's, where Democratic Governor Andy Beshear vetoed HB 44 containing the ban for stated unrelated reasons. See, e.g., McKenna Horsley, *Beshear Vetoes Bill that Outlaws Ranked-Choice Voting*, KENTUCKY LANTERN (Apr. 11, 2024), https://www.kentuckynewera.com/ep/news/article_9c497535-93e2-5946-b204-40ddc2f408e1.html [https://perma.cc/PX5V-N7VG]. Beshear's veto was later overridden by the Republican-controlled Kentucky legislature. See also KENTUCKY GENERAL ASSEMBLY, *House Bill 44 Actions*, <https://apps.legislature.ky.gov/record/24rs/hb44.html> [https://perma.cc/WF22-7YRS].

⁴⁷ See Scott Shackford, *Florida, Tennessee Ban Ranked-Choice Voting Despite Citizen Support*, REASON (Apr. 28, 2022), <https://reason.com/2022/04/28/florida-tennessee-ban-ranked-choice-voting-despite-citizen-support/> [https://perma.cc/4NMP-DABR] ("There's a lesson here on how some of the resistance to certain election reforms is actually about entrenched political interests protecting themselves from electoral consequences"); see also Matt Vasilogambros, *As Ranked Choice Voting Gains Momentum, Parties in Power Push Back*, ALABAMA REFLECTOR (Aug. 21, 2023), <https://alabamareflector.com/2023/08/21/as-ranked-choice-voting-gains-momentum-parties-in-power-push-back/> [https://perma.cc/5E82-SUUQ] ("Sometimes, when we see party opposition, that can be a reflection of elected officials who know how to campaign, know how to win under the old system, not quite ready to want to throw that system out yet") (statement of Deb Otis, Dir. Res. and Pol'y, FairVote).

⁴⁸ See *State Partisan Composition*, NCSL (last updated Aug. 6, 2024), <https://www.ncsl.org/about-state-legislatures/state-partisan-composition> [https://perma.cc/M54Q-JYC5] (demonstrating the ten "red" RCV-banning states via map depiction).

⁴⁹ See Yareth Rosen, *North to the future? Alaska's ranked choice voting system is praised and criticized nationally*, ALASKA BEACON (Sept. 19, 2023), <https://alaskapublic.org/2023/09/19/north-to-the-future-alaskas-ranked-choice-voting-system-is-praised-and-criticized-nationally/> [https://perma.cc/JV5G-SEZW] (indicating that Arkansas Republican Senator Tom Cotton attacked RCV as "a scam to rig elections" and that Texas Republican Senator Ted Cruz said the Alaska Plan was "designed to rig the election" and to "make it incredibly difficult to elect a conservative," adding, "I gotta say it sucks for Sarah Palin"); see also Emily Brooks, *Republicans Rage Against Ranked Choice Voting After Alaska Election*, THE HILL (Sept. 1, 2022), <https://thehill.com/blogs/blog-briefing-room/news/3624553-republicans-rage-against-ranked-choice-voting-after-alaska-election/> [https://perma.cc/TT8V-6L3A]; Republican Nat'l Comm., Res., *Officially Oppose Ranked-Choice Voting*, https://prod-static.gop.com/media/2-RESOLUTION-TO-OFFICIALLY-OPPOSE-RANKED-CHOICE-VOTING-ACROSS-THE-COUNTRY.pdf?_gl=1*wbwnwe*_gcl_au*MjA5NzkzODI4MC4xNzIyNjE3NjU0&_ga=2.163867578.448389808.1723150752-444379071.1722617654 [https://perma.cc/M939-ATYV]; THE HERITAGE FOUNDATION, *Ranked Choice Voting Should Be Ranked Dead Last as An Election Reform*, Factsheet No. 242 (Jan. 27, 2023), <https://www.heritage.org/sites/default/files/2023-01/FS242.pdf> [https://perma.cc/XN44-T3S4].

further fueled Republican-led legislatures to enact RCV prohibitions.⁵⁰ During her campaign, the former Alaska governor and 2008 vice presidential candidate publicly and harshly criticized RCV, calling it “cockamamie” and, days before her election fate was sealed, declared it “the weirdest, most convoluted and most complicated voter suppression tool that Alaskans could have come up with.”⁵¹

Palin is a polarizing figure—both nationally and within our state. The RCV tabulating results document that Palin clearly lost the election in a contest featuring her and Democrat Mary Peltola, the eventual winner of the congressional seat.⁵² But even as the 2022 congressional race does not serve as evidence that the Alaska Model, or RCV systems generally, are inherently defective or produce partisan, liberally-biased results, Palin’s congressional election loss and her conservative notoriety have played an influential factor in the national movement by Republicans to ban RCV.

Our counterpoints and insights from Alaska’s actual experience with nonpartisan primaries and RCV general elections will highlight the positive aspects of the Alaska Model system and assuage concerns that RCV is an unmanageable process or is untenable as a legitimate election reform. In this section, we focus on the misunderstood constitutional and erroneous policy rationales of those jurisdictions that have banned RCV and we provide our analyses and critiques of the underlying reasoning for the state bans. The rationales for banning RCV lack credibility for a dearth of evidence supporting the contentions, rely on deficient logic or unsound assessment of data, or have otherwise been disproven by the courts.

1. Reasons for Distrusting RCV and Its Results Do Not Withstand Scrutiny

Legislators supporting RCV prohibitions asserted several claims which they contended sow distrust in RCV election systems and corresponding results. These claims involve higher rates of discarded ballots; assertions that minority, low-income, and less educated voters are disenfranchised by RCV; and that resulting returns and race outcomes are reported much later than traditional processes, leading voters to question whether they are accurate. We disagree with these contentions and discuss why the claims are in error.

a) *All Ballots are Counted Despite Allegations to the Contrary*

Two assertions generally emerged from the positions of RCV-banning states, asserting that RCV leads to inordinate numbers of supposed “discarded,” “thrown out,” “tossed,” or “trashed” ballots. First, the ban proponents suggest that ballots are discarded by election officials due to voter failure to understand and abide by the complicated instructions, leading to improperly filled out ballots.

⁵⁰ Two states banned RCV during 2022 legislative sessions, while eight more states adopted bans following the Palin election loss.

⁵¹ Nathaniel Herz, *Rank Choice Voting, in First Test in Alaska, is Already Under Attack*, ANCHORAGE DAILY NEWS (Aug. 17, 2022), <https://www.adn.com/politics/2022/08/17/ranked-choice-voting-in-first-test-in-alaska-is-already-under-attack> [https://perma.cc/HBY4-PD6A]; Iris Samuels, *Palin First to Sign New Ballot Initiative to Repeal Ranked Choice Voting*, ANCHORAGE DAILY NEWS (Nov. 18, 2022), <https://www.adn.com/politics/2022/11/18/palin-first-to-sign-new-ballot-initiative-to-repeal-ranked-choice-voting/> [https://perma.cc/M66M-R57R].

⁵² See *infra* text accompanying notes 63–66.

For instance, in Montana, the sponsor of H.B. 598 proclaimed in its first bill hearing that the “worst” aspect of RCV “is disenfranchisement of voters,” stating that “[b]ecause of its complicated nature [ranked-choice voting] is known to have higher . . . error rates,” and that, among such examples, “Alaska[’s] special election saw 11,000 ballots discarded, and 15[,000] were thrown out in their general election.”⁵³ In the hearing, an official with the office of the Montana Secretary of State also claimed that: “The evidence shows that ranked choice voting creates voter confusion and [an] information deficit which conclusively leads to voter disenfranchisement.”⁵⁴ Louisiana’s RCV ban sponsor announced to his colleagues in SB 101’s first bill hearing that “[t]he biggest concern with ranked-choice voting is that the ballots are pretty much trash[ed], consistently, in every ranked-choice voting election,” and, similarly to Montana, claimed that “in Alaska, [in the] 2022 at-large congressional election, [election officials] trashed nearly 15,000 ballots.”⁵⁵ The Louisiana Secretary of State further testified in support of SB 101 that, because RCV is a “complicated, confusing, cumbersome, and convoluted . . . system,” that “[y]ou end up disenfranchising people, because if [election officials] have to throw their ballot away, that person’s vote doesn’t count, and you end up electing your officials by excluding some of your voters.”⁵⁶

Second, RCV opponents contend that a voter who does not choose to rank the full number of allowable preferences—whether by lack of comprehending instructions, *or* by voluntary non-exercise of more than one preference—but whose first-ranked preference was not the eventual election winner, actually means that the voter’s vote for a losing candidate somehow “did not count”—while the voter’s absent, nonexistent votes for any nonwinning candidates were votes that were “discarded.”⁵⁷ In Mississippi, for example, the sponsor of the stand-alone RCV ban that was eventually incorporated into the multi-faceted election reform bill SB 2144 contended in floor debate that states currently using RCV “are actually taking the voice away from the people by throwing their ballots out; they don’t keep them.”⁵⁸ He elaborated, “[i]f you vote for one candidate, and they . . . don’t make the runoff, your ballot is tossed, and then the next winning candidate is chosen . . . through a system.”⁵⁹ Maintaining that RCV states are “tossing ballots,” he announced, “I can tell you what I don’t like is people throwing out ballots. And that’s what . . . ranked-choice voting would do.”⁶⁰

⁵³ Hearing on H.B. 598, Before the H. Sta. Admin. Comm., 2023 Leg., 68th Sess. (Mont. 2023) (testimony of Rep. Lyn Hellegaard).

⁵⁴ *Id.* (testimony of Austin James, Office of Sec’y of State).

⁵⁵ Hearing on S.B. 101, Before the S. & Gov’t Affairs Comm., 2024 Leg., Reg. Sess. (La. 2024) (testimony of Sen. Blake Miguez).

⁵⁶ *Id.* (testimony of Nancy Landry, Sec’y of State).

⁵⁷ *See, e.g.*, Voting on S.B. 2367, 2024 Leg., Reg. Sess. (Miss. 2024) (statement of Sen. Jeremy England).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*; *cf.* Hearing on S.B. 55, 2023 Leg., Reg. Sess. 36:50–37:12 (S.D. Feb. 2, 2023), <https://sdpb.sd.gov/sdpbpodcast/2023/sen16.mp3#t=2354> [<https://perma.cc/7CVC-33V6>] (statement of Sen. John Wiik) (“If you choose to only vote your first choice in the first column, and leave the rest blank, you’re denied the right to vote in the runoff . . . because you had no idea who would be left on the ballot when you made your voting choice”).

All properly completed and timely submitted ballots from qualified Alaska voters in both open-primary and RCV general elections in Alaska in 2022 were accepted and counted. As in all models of election systems, a voter has the choice to choose a candidate in each elected position or to leave that elected seat choice blank.

Extensive education efforts were implemented during 2021 and 2022 to ensure that Alaskans had the opportunity to have “hands on” experience with the open primary ballots as well as the RCV general election ballots.⁶¹ The Division of Elections website posted copies of the ballots, both open primary and RCV general ballots, with explanatory videos.⁶²

In the 2022 RCV regular general election for Alaska’s single U.S. Representative seat, there were two Republican candidates appearing on the ballot, Sarah Palin and Nick Begich; one Democrat, Mary Peltola; and one Libertarian, Chris Bye. The Republican Party of Alaska had been circulating the slogan “Rank the Red,” urging the state’s approximately 144,000 registered Republican voters in 2022 to only vote for Republican candidates.⁶³

Mary Peltola prevailed as the general election winner.⁶⁴ Republican partisan groups assert that Sarah Palin failed to win in the 2022 Alaska Representative

I. ⁶¹ SEE IRIS SAMUELS, *ALASKA’S FIRST RANKED CHOICE ELECTION IS ON TUESDAY. HERE’S WHAT YOU NEED TO KNOW*, ANCHORAGE DAILY NEWS (AUG. 14, 2022), [HTTPS://WWW.ADN.COM/POLITICS/2022/08/13/ALASKAS-FIRST-RANKED-CHOICE-ELECTION-IS-ON-TUESDAY-HERES-WHAT-YOU-NEED-TO-KNOW/](https://www.adn.com/politics/2022/08/13/alaskas-first-ranked-choice-election-is-on-tuesday-heres-what-you-need-to-know/) [[HTTPS://PERMA.CC/7AVE-BX5Y](https://perma.cc/7AVE-BX5Y)].

⁶² See, e.g., Sample Ballot, State of Alaska Official Ballot June 11, 2022 Special Primary Election, https://www.elections.alaska.gov/election/2022special_primary_sb/SB-English%20HD99.pdf [<https://perma.cc/69SB-PLLZ?type=image>] (depicting sample ballot for 2022 statewide congressional primary election, the first “pick one” open primary under BM 2 changes to law); Sample Ballot, State of Alaska Official Ballot August 16, 2022 Special General Election, <https://www.elections.alaska.gov/election/2022/prim/HD1.pdf> [<https://perma.cc/45E4-92LN?type=image>] (depicting sample ballot for 2022 House District 1 congressional regular “pick one” primary, and on the backside, the congressional special general election, which was the first RCV procedure ballot under BM 2 changes to law); *Election Essentials, Ranked Choice Voting, How to Mark Your Ballot*, STATE OF ALASKA DIVISION OF ELECTIONS, <https://www.elections.alaska.gov/essentials/#RankedChoice> [<https://perma.cc/2E7K-JUEN>] (providing instructive RCV video).

⁶³ See generally Randy Ruedrich, Alaska Republican Party, <https://alaskagop.net/wp-content/uploads/2022/03/Randy-Ruedrich-Rank-Choice-Voting.pdf> [<https://perma.cc/CZ93-UN88>] (explaining primary and RCV processes for 2022 election and encouraging ranking of conservative and moderate candidates while not choosing any Democrats); Liz Ruskin, *Palin and Begich Both Say ‘Rank the Red’ while Diverging in Style*, ALASKA PUBLIC MEDIA (Oct. 10, 2022), <https://alaskapublic.org/2022/10/10/palin-and-begich-both-say-rank-the-red-while-diverging-in-style/> [<https://perma.cc/AUS5-TAPS>]; State of Alaska Division of Elections, *Voters Count by Party and Precinct*, STATE OF ALASKA DIVISION OF ELECTIONS, at 19 (Nov. 3, 2022), <https://www.elections.alaska.gov/statistics/2022/NOV/VOTERS%20BY%20PARTY%20AND%20PRECINCT.pdf> [<https://perma.cc/C7RT-W8B6?type=image>] (demonstrating summary of registered “R” voters of 144,542 residents in 2022).

⁶⁴ Palin lost to Peltola twice, once to fill out the remainder of Don Young’s term, and shortly thereafter, to serve a full congressional term. See Associated Press, *Democrat Mary Peltola, the 1st Alaska Native in Congress, Wins a Full Term*, NPR (Nov. 24, 2022), <https://www.npr.org/2022/11/24/1139155670/mary-peltola-wins-alaska-election-congress> [<https://perma.cc/DQ2U-558L>].

election because of the RCV general election procedure. Analysis of the vote data, however, finds this to be false. Simply put: “enough of Begich’s voters either did not rank Republican Sarah Palin second or voted for Peltola second. This resulted in Peltola winning the race.”⁶⁵ If every Begich voter had uniformly “ranked the red,” Palin would have won by 1.56%. However, Begich voters did not all choose Palin as second choice. Even if all Begich voters who did not rank anyone second would have preferred Palin, Peltola would have won. Even if all exhausted Bye voters (only chose Bye and no second choice) would have gone to Palin, Peltola still would win. More than 50% of people who voted that November decided to fill in the bubble next to Peltola in greater numbers than the bubble next to Palin, even if some chose Begich first or Bye first.⁶⁶

The Division of Election’s 2022 congressional election data documents the complete ballot counting that took place. The same procedures were followed in all the RCV elections held in 2022 and were transparently reported online for all Alaskans to see.⁶⁷ Raw data remains available on the Division of Elections website for the sixty-two elected positions in 2022, including the cast vote record, which allows anyone to verify the results for themselves.⁶⁸ In addition, recounts were conducted in two elections: one for State Senate and one for State House.⁶⁹

Voters had the choice to leave an election race blank, vote for only one, or rank fewer than the permissible full number of candidates in each race. For example, in the U.S. Senate race, there were four candidates, none of whom achieved over 50% on the first tabulation.⁷⁰ By the final tabulation, the Division of Elections recorded 9,107 “exhausted ballots” in that race;⁷¹ these are usually ballots

⁶⁵ Jeff Landfield, *NRCC Announces Key Endorsement of Nancy Dahlstrom in Bid to Unseat Mary Peltola*, ALASKA LANDMINE (July 29, 2024), <https://alaskalandmine.com/landmines/nrcc-announces-key-endorsement-of-nancy-dahlstrom-in-bid-to-unseat-mary-peltola/> [https://perma.cc/84FX-KGKZ].

⁶⁶ See *RCV Detailed Report, General Election State of Alaska November 08, 2022, U.S. Representative*, STATE OF ALASKA DIVISION OF ELECTIONS, at 2–3 (Nov. 30, 2022), <https://www.elections.alaska.gov/results/22GENR/US%20REP.pdf> [https://perma.cc/87K3-HD5Q] (providing raw data demonstrating Palin’s tabulating rounds of votes were insufficient to overcome Peltola’s win).

⁶⁷ See *2022 General Election – November 8, 2022*, STATE OF ALASKA DIVISION OF ELECTIONS (last updated Dec. 20, 2022), <https://www.elections.alaska.gov/election-results/e/?id=22genr> [https://perma.cc/L8TW-B3GL] (providing links to results from 2022 general election).

⁶⁸ *Id.* (providing cast vote record raw data in a ZIP file).

⁶⁹ See *2022 General Election, Statement of Votes Cast, November 8, 2022, Official Recount Results*, STATE OF ALASKA DIVISION OF ELECTIONS (Dec. 7, 2022), https://www.elections.alaska.gov/results/22GENR/SENATE%20E_recount.pdf [https://perma.cc/8R5A-D72T] (Senate District E); *2022 General Election, Statement of Votes Cast, November 8, 2022, Official Recount Results*, STATE OF ALASKA DIVISION OF ELECTIONS (Dec. 8, 2022), https://www.elections.alaska.gov/results/22GENR/HD15_recount.pdf [https://perma.cc/8L6T-W6M7] (House District 15).

⁷⁰ See *RCV Detailed Report, General Election State of Alaska November 08, 2022, U.S. Senator*, STATE OF ALASKA DIVISION OF ELECTIONS, at 2 (Nov. 30, 2022), <https://www.elections.alaska.gov/results/22GENR/US%20SEN.pdf> [https://perma.cc/F3GS-R425].

⁷¹ *Id.* at 3.

in which the voter chose to not rank all the candidates, so their votes were counted until “exhausted.” In that race, 3,271 blank ballots were submitted by voters who chose not to vote in the election for U.S. Senator.⁷² There were 555 ballots that were “overvoted”;⁷³ the voters who submitted these ballots gave more than one candidate the same ranking, which makes it impossible to determine voter intent.

Data from the U.S. House election, in which Palin was a candidate, records more “exhausted” ballots, indicating that voters chose not to rank all the candidates. The Division of Elections recorded 13,894 “exhausted” ballots, 1,775 blank ballots, and 436 “overvotes” for this election.⁷⁴

In all cases, whether “exhausted”, blank, or “overvotes”, all of the available votes were counted. If voters chose to select only one candidate and that candidate had the lowest vote count, they were making clear that no other candidate was acceptable to them. This is an affirmative non-choice, an exercise of one’s First Amendment freedom of speech. In conventional, plurality election systems, voters often leave a choice blank, perhaps because they don’t like any of the choices or they don’t know any of the candidates.

An analysis by the think tank R Street found the number of blank ballots in Maine elections were roughly the same before and after RCV.⁷⁵ In New York City, more people participated in the RCV races than the non-RCV races on the ballot. In New York County, voters elected the district attorney (non-RCV) at the same time as the mayor (RCV); 3% of voters left the RCV race blank, 7% left the non-RCV race blank.⁷⁶ Additionally, in RCV races with more candidates competing, there were lower rates of undervoting⁷⁷ and higher rates of voters using multiple rankings.⁷⁸ This data indicates that RCV races are not dissuading voters but instead are driving more participation.

b) *While Opponents Claim RCV Causes Voter Disenfranchisement or Suppression, No Voter Suppression Occurred in 2022 and RCV Results in More Diversity of Candidates and Elected Officials*

The legislative records of several RCV-banning states document that particular voting groups are susceptible to disenfranchisement or suppression under RCV systems. These groups include minorities that historically experience discrimination and elderly, young, or less-educated voters.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *RCV Detailed Report, U.S. Representative, supra* note 66, at 2–3.

⁷⁵ Matthew Germer, *An Analysis of Ranked Choice Voting in Maine*, R STREET, at 2–3 (Sept. 2021), <https://www.rstreet.org/wp-content/uploads/2021/09/Final-Short-106.pdf> [PERMA].

⁷⁶ Jonah Harwood, *Competitive Races with More Choices See Improved Voter Participation*, FAIR VOTE (Feb. 5, 2021), https://fairvote.org/competitive_races_with_more_choices_see_improved_voter_participation/ [https://perma.cc/U948-A5D3].

⁷⁷ *Id.*

⁷⁸ Deb Otis, *RCV in New York City: Cast Vote Record Analysis*, FAIR VOTE (July 22, 2021), https://fairvote.org/rcv_in_new_york_city/#ballot-use [https://perma.cc/X54J-GYP4].

In the first hearing on Montana’s H.B. 598, the official acting on behalf of the Secretary of State stated, “[r]anked-choice voting has shown to decrease voter turnout by disenfranchised communities, particularly minorities, including Native American voters, younger voters, and those with . . . lower levels of education.”⁷⁹ In another instance, S.B. 101’s sponsor warned Louisiana Senate Committee members to “remember about the elderly . . . when they try to fill out [ranked-choice voting] ballots, and the ballots are very long and they’re very complex, if they fill something out wrong, or incorrectly, that ballot goes in the trash.”⁸⁰ During Tennessee’s S.B. 1820 debate on the Senate floor, one senator stated that in the last New York City RCV mayoral race, 15 percent of the ballots “were turned in blank.”⁸¹ He offered that “many people” believed that this happened “because people didn’t understand how the ballot was supposed to be filled out,” and further added that “[i]n the minority precincts it was even greater than 15 percent, and I know that many of the minority leaders in NYC called this sophisticated voter suppression.”⁸² And a supporter of Mississippi’s RCV prohibition argued in floor discussion that RCV “would cause some serious confusion” and “confusion leads to voter suppression,” while claiming that, to the contrary, “we’re trying to make sure we don’t create some type of voter confusion which leads to voter suppression.”⁸³

Voter suppression and disenfranchisement can be a factor in conventional, political-party-controlled primary elections. In these elections, participation is restricted to only party members or those willing to restrict themselves to one party’s ballot. There are forty-five states conducting partisan primaries, fifteen of which exclude independent voters, thus disenfranchising over fourteen million Americans in these primary elections; nearly thirty percent of African Americans identify as independents.⁸⁴

In 2022, only eight percent of all voters cast ballots in the partisan primaries that determined eighty-three percent of the U.S. House election outcomes.⁸⁵ These partisan primaries represent the real voter suppression and disenfranchisement in U.S. elections, not RCV combined with open, nonpartisan primary elections. The

⁷⁹ Hearing on H.B. 598 Before the H. Sta. Admin. Comm., Reg. Sess. 9:48:57–9:49:07 (Mont. Feb. 27, 2023), <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221-1/48263?agendaId=255049#agenda> (testimony of Austin James, Office of Sec’y of State).

⁸⁰ Hearing on S.B. 101 Before the S. & Gov’t Affairs Comm., Reg. Sess. 37:06–37:17 (part 2) (La. Mar. 13, 2024), https://senate.la.gov/s_video/VideoArchivePlayer?v=senate/2024/03/031324SGA2 (testimony of Sen. Blake Miguez).

⁸¹ Hearing on S.B. 1820, 112th Gen. Assem., Reg. Sess. 33:38–34:05 (Tenn. Feb. 14, 2022), https://tnga.granicus.com/player/clip/26088?view_id=610&redirect=true (statement of Sen. Richard Briggs).

⁸² *Id.*

⁸³ Hearing on S.B. 2367, 2024 Leg., Reg. Sess. 25:56–26:04 (Miss. Mar. 7, 2024), https://law-db.mc.edu/legislature/bill_details.php?id=13287&session=2024 (statement of Sen. Jeff Tate) (arguing in support of the RCV ban later established in S.B. 2144).

⁸⁴ NICK TROIANO, THE PRIMARY SOLUTION: RESCUING OUR DEMOCRACY FROM THE FRINGES 74–75 (2024).

⁸⁵ *Id.* at 11.

courts have not yet established the constitutional right for voters to participate in primary elections.⁸⁶

Voters in Alaska come from very diverse ethnicities and cultures, other states, and countries. That makes Alaska an important venue to disprove the misinformed statements heard in Montana and southern states.

Ballots do not collect demographic information, so infallible documentation of voter ethnicity is not possible. However, in 2022 in Alaska, thirty-two percent of the eligible voters participated in the nonpartisan primary.⁸⁷ This was more than nine percentage points higher than in 2020.⁸⁸

Regarding minority voter turnout, data documents that Alaska Native turnout in the open primary increased in 2022. A post-election report commissioned by Get Out the Native Vote finds that voters in predominantly Alaska Native communities have consistently had lower turnout than voters across the rest of the state.⁸⁹ However, in 2022 open primary turnout increased relative to 2020 and 2018 for predominantly Alaska Native communities and the rest of the state.⁹⁰ Alaska's 2022 election resulted in significant progress for Alaska Native candidates, including the first Alaska Native person elected to Congress, as well as the election of Alaska Native candidates at the legislative level. Local media takes an active role in encouraging election participation in rural Alaska communities.⁹¹

“Voters in predominantly Alaska Native communities [also] had significantly higher rates of crossover voting than voters across the rest of the state.”⁹² “This suggests that Alaska Native voters are especially well served by an open primary election system, in terms of the voting preferences indicated by voter behavior in predominantly Alaska Native communities.”⁹³

⁸⁶ *Id.* at 74.

⁸⁷ See 2022 Primary Election, *Election Summary Report, August 16, 2022, Official Results*, STATE OF ALASKA DIV. OF ELECTIONS 1 (Sept. 2, 2022), <https://www.elections.alaska.gov/results/22PRIM/ElectionSummaryReportRPT.pdf> [<https://perma.cc/HMW7-WZZY>].

⁸⁸ Compare *id.* (demonstrating 32.16% voter turnout), with 2020 Primary Election, *Election Summary Report August 18, 2020, Official Results*, STATE OF ALASKA DIV. OF ELECTIONS 1 (Aug. 31, 2020), <https://www.elections.alaska.gov/results/20PRIM/data/sovc/ElectionSummaryReportRPT20.pdf> [<https://perma.cc/D5ET-UH8V>] (demonstrating 22.70% voter turnout).

⁸⁹ GET OUT THE NATIVE VOTE & SHIP CREEK GROUP, OPEN PRIMARIES IN ALASKA NATIVE COMMUNITIES 4, 22 (July 2024) [hereinafter GOTNV], https://aknativevote.com/wp-content/uploads/2024/07/Open-Primaries-in-Alaska-Native-Communities_-Report.pdf [<https://perma.cc/ETU6-NWNE>].

⁹⁰ *Id.*

⁹¹ See, e.g., Sage Smiley, *Alaska's Primary Election is Aug. 20. Here's What to Know about Voting in the Y-K Delta*, KYUK PUB. MEDIA (Aug. 19, 2024, 8:29 AM AKDT), <https://www.kyuk.org/politics/2024-08-19/alaskas-primary-election-is-aug-20-heres-what-to-know-about-voting-in-the-y-k-delta> [<https://perma.cc/B7MF-ZJ8U>]; *Be Heard. Vote.*, GET OUT THE NATIVE VOTE, <https://aknativevote.com/> [<https://perma.cc/ZEB9-UGED>].

⁹² GOTNV, *supra* note 89, at 4.

⁹³ *Id.* at 5 (emphasis removed).

It is important to note that the Division of Elections provides ballots in nine different Alaska Native languages.⁹⁴ This is in addition to the special needs voter assistance provided by the Division.⁹⁵ The U.S. Justice Department is monitoring compliance with language translation and assistance in 2024, as Alaska is focused on all Alaskans having access to voting.⁹⁶

Political party primary elections, funded and operated by state funds, with rules limiting eligible voters to only those who ascribe to the narrow ideological platform of that political party, are the principal factors that disenfranchise and suppress voter participation in primaries. In Alaska, many voters are not affiliated with either the Republican or the Democratic parties and thus would be limited by a closed primary in their opportunity to participate in choosing candidates that advance to the general election.

Political parties argue that primary election reforms like the Alaska Model infringe on their right to choose their endorsed nominee for the general election. The U.S. Supreme Court and Alaska Supreme Court have rejected this argument, pointing out that the parties can choose a method to proceed with designating their preferred candidate for any election, and underscore that endorsement with funding communications promoting it.⁹⁷

As stated in *Kolhaas v. State*, “[P]olitical parties do not have a right to control the State’s primary elections. They have a right to associate in order to nominate preferred candidates, but . . . political parties do not have a right to a State-run nominating process.”⁹⁸

Many false statements were made during session debate on the floors of state legislatures that have banned RCV, including references to an outdated 2016 paper that analyzed just two RCV elections in San Francisco.⁹⁹ More recent

⁹⁴ *About Language Assistance*, STATE OF ALASKA DIV. OF ELECTIONS, <https://www.elections.alaska.gov/language-assistance/> [https://perma.cc/TSF4-BEXS].

⁹⁵ *Voter Assistance and Accessibility Information*, STATE OF ALASKA DIV. OF ELECTIONS, <https://www.elections.alaska.gov/voting-assistance/#ASL> [https://perma.cc/2L8B-3N8U] (providing information on “special needs voting”).

⁹⁶ Yareth Rosen, *Justice to Monitor Alaska Primary Election for Compliance with Language Requirements*, ALASKA BEACON (Aug. 19, 2024, 4:24 PM), <https://alaskabeacon.com/briefs/justice-to-monitor-alaska-primary-election-for-compliance-with-language-requirements/> [https://perma.cc/P95A-Q37L].

⁹⁷ See *Smiley v. Holm*, 285 U.S. 355, 366 (1932); *Kohlhaas v. State*, 518 P.3d 1095, 1107 (Alaska 2022).

⁹⁸ *Kohlhaas*, 518 P.3d at 1108.

⁹⁹ Jason A. Mcdaniel, *Writing the Rules to Rank the Candidates: Examining the Impact of Instant-Runoff Voting on Racial Group Turnout in San Francisco Mayoral Elections*, 38 J. URB. AFFAIRS 387, 388 (2016).

research finds that voters in RCV jurisdictions are 17% more likely to turn out in municipal elections,¹⁰⁰ and that RCV boosts youth turnout.¹⁰¹

A 2021 study found older voters were *less* likely to leave blank rankings on their ballots than their younger voting counterparts, despite some older voters reporting that RCV was difficult.¹⁰²

The Alaska Model does not disproportionately contribute to voter confusion. In fact, the evidence shows that voters like RCV and understand how to use it. Eighty-five percent of Alaskans understand it,¹⁰³ along with large majorities everywhere it is used.¹⁰⁴ Voters across every ethnic group in New York City understood it well.¹⁰⁵

Evidence shows that RCV benefits candidates and voters of color, as well as women. A 2024 report, *Ranked Choice Voting Elections Benefit Candidates and Voters of Color*, finds that candidates of color saw increased vote counts and support with RCV.¹⁰⁶ Naturalized citizens and permanent residents of color support RCV.¹⁰⁷

In Alaska, the 2022 open, nonpartisan primary and general elections had more women candidates run for election than in the five previous, non-RCV election cycles.¹⁰⁸ The 2022 election resulted in twenty-three new state legislators.¹⁰⁹ New legislators of color included a Filipino woman, two Alaska

¹⁰⁰ E. Dowling, C. Tolbert, N. Miatka, & T. Donovan, *Does Ranked Choice Voting Increase Voter Turnout and Mobilization?*, 90 ELECTORAL STUD. 1, 5 (2024), <https://www.sciencedirect.com/science/article/pii/S026137942400074X?via%3Dihub> [<https://perma.cc/L9Z8-SDSG>].

¹⁰¹ Courtney L. Juelich & Joseph A. Coll, *Ranked Choice Voting and Youth Voter Turnout: The Roles of Campaign Civility and Candidate Contact*, 9 POL. AND GOVERNANCE 319, 329 (2021).

¹⁰² Joseph A. Coll, *Demographic Disparities Using Ranked-Choice Voting? Ranking Difficulty, Under-Voting, and the 2020 Democratic Primary*, 9 POL. AND GOVERNANCE 293, 294 (2021).

¹⁰³ *See generally* ALASKANS FOR BETTER ELECTIONS, POLLING SHOWS ALASKAN VOTERS UNDERSTAND RANKED CHOICE VOTING (2022), <https://www.alaskansforbetterelections.com/polling-shows-alaskan-voters-understand-ranked-choice-voting/> [<https://perma.cc/A7JR-QQRT>].

¹⁰⁴ *See* DEB OTIS, FAIRVOTE, EXIT SURVEYS: VOTERS LOVE RANKED CHOICE VOTING (2024), <https://fairvote.org/report/exit-surveys-report-2024/> [<https://perma.cc/C758-65U3>].

¹⁰⁵ *See* Marissa Solomon, *Rank the Vote NYC Releases Edison Research Exit Poll on the Election*, READMEDIA (June 28, 2021), http://readme.readmedia.com/RANK-THE-VOTE-NYC-RELEASES-EDISON-RESEARCH-EXIT-POLL-ON-THE-ELECTION/17989282?utm_source=newswire&utm_medium=email&utm_campaign=media_pr_emails [<https://perma.cc/76D4-Y57G>].

¹⁰⁶ SABRINA LAVERTY & DEB OTIS, FAIRVOTE, RANKED CHOICE VOTING ELECTIONS BENEFIT CANDIDATES AND VOTERS OF COLOR 7–8, 10–11 (2024), <https://fairvote.app.box.com/s/m0egmp5prl1e5lga2f1wgwnzyl8lj21x> [<https://perma.cc/T7T3-KCXH>].

¹⁰⁷ *Id.* at 12–14.

¹⁰⁸ RACHEL LEVEN & TYLER FISHER, UNITE AM. INST., ALASKA’S ELECTION MODEL: HOW THE TOP-FOUR NONPARTISAN PRIMARY SYSTEM IMPROVES PARTICIPATION, COMPETITION, AND REPRESENTATION 3 (2023).

¹⁰⁹ *See* STATE OF ALASKA, 2022 GENERAL ELECTION, ELECTION SUMMARY REPORT, NOVEMBER 8, 2022, OFFICIAL RESULTS (2022), <https://www.elections.alaska.gov/results/22GENR/ElectionSummaryReportRPT.pdf> [<https://perma.cc/52SP-A3Y4>].

Native representatives and two African American legislators, with three of these five new legislators of color being women.¹¹⁰

In New York City, after the first election held using RCV, women are a majority in the city council for the first time.¹¹¹ At its first use of RCV, Salt Lake City council elections resulted in people of color winning a majority of seats, and most members identify as LGBTQ+.¹¹² In the 2023 elections, St. Paul, Minneapolis elected an all-woman city council; six of the seven members are people of color.¹¹³ Before RCV implementation, only one other African-American woman had served on the city council.¹¹⁴

c) *Ballots are Counted Timely; Concerns of Slow Returns are Overstated*

Elected officials in the jurisdictions that banned RCV adamantly claimed that RCV leads to untimely election results that render a lack of faith in their accuracy and frequently held up Alaska’s 2022 RCV general election results as evidence of slow returns. The sponsor of South Dakota’s SB 55, for example, reported to his Senate colleagues in committee that RCV systems “threaten[] prompt elections results,” saying that the notion that RCV provides “an instant runoff” is a misnomer, because “[i]t’s anything but ‘instant’; [i]t’s a complex process that has taken days or even weeks in some cases.”¹¹⁵ Likewise, in Louisiana, the SB 101 sponsor explained in a hearing: “[T]here[] [are] very complicated rounds of tabulation which often result[] in delays So, in certain situations . . . the election results have been delayed up to two weeks, sometimes, a month. We’ve seen examples of that in New York City [and] Alaska.”¹¹⁶ Montana’s H.B. 598 sponsor testified that with RCV, “ballots across the state must be transported to a centralized location for counting,” leading to long delays in results,

¹¹⁰ *Id.*

¹¹¹ Haly Jungwirth, *History-Making Women and the RCV Elections That Put Them in Power*, FAIR VOTE (Mar. 14, 2022),

https://fairvote.org/history_making_women_and_rcv_elections_that_put_them_in_power/ [https://perma.cc/33QZ-HBBS].

¹¹² LAVERTY & OTIS, *supra* note 106, at 5; *see also* AP, *Historic Salt Lake Council Majority LGBTQ, People of Color* (Jan. 4, 2022, 2:24 PM AKDT), [https://apnews.com/article/lakes-race-and-ethnicity-utah-salt-lake-city-4e2e23fc6896bbc88dcdf7b9ee4ad5ea#:~:text=SALT%20LAKE%20CITY%20\(AP\)%20%E2%80%94,most%20are%20people%20of%20color](https://apnews.com/article/lakes-race-and-ethnicity-utah-salt-lake-city-4e2e23fc6896bbc88dcdf7b9ee4ad5ea#:~:text=SALT%20LAKE%20CITY%20(AP)%20%E2%80%94,most%20are%20people%20of%20color) [https://perma.cc/UJ9E-HDRB].

¹¹³ Rikki Clause, *St. Paul, Minnesota, Elects All-Woman City Council for the First Time in City’s History*, CNN (Nov. 16, 2023, updated 8:40 AM EST), <https://www.cnn.com/2023/11/16/us/st-paul-minnesota-elects-all-women-city-council-reaj/index.html> [https://perma.cc/755W-4HJJ].

¹¹⁴ *Id.*

¹¹⁵ *Hearing on S.B. 55 Before the S. Sta. Affairs Comm.*, Reg. Sess. 4:47–4:55 (S.D. Feb. 1, 2023), <https://sdpb.sd.gov/sdpbpodcast/2023/sen16.mp3#t=2354> (testimony of Sen. John Wiik); *cf.* H.B. 3156, 2024 Leg., Reg. Sess. 10:07:15–10:08:06 AM (Okla. Apr. 24, 2024) (testimony of Rep. Brent Howard, Principal Senate Author) (suggesting that, unlike with RCV, “the other threat . . . would also be the timeliness[,] . . . whenever you run through our current voting system, you can find out pretty quickly who that winner is of that [race], and then go into the next election, however it might be chosen”).

¹¹⁶ *Hearing on S.B. 101 Before the S. & Gov’t Affairs Comm.*, Reg. Sess. 37:15–37:40 (part 2) (La. Mar. 13, 2024), https://senate.la.gov/s_video/VideoArchivePlayer?v=senate/2024/03/031324SGA2 (testimony of Sen. Blake Miguez).

and adding that in its first election under RCV, “Alaska took almost a month to get the results.”¹¹⁷

It is completely erroneous to claim that RCV delayed Alaska election results tabulation. In accordance with long-standing Alaska statutes, all absentee ballots must be counted no later than ten days after the date of the primary election and fifteen days after the general election and all other state conducted elections. This is not new. It applied to the previous, party-controlled primary elections and general elections in Alaska.

As mentioned in the introduction, Alaska is two and a half times the size of Texas with the second smallest population. Alaska also has a very large number of active-duty military, who benefit significantly from RCV. RCV is also referred to as “instant run-off” election; if a run-off is required, Alaska military registered voters have already been included through RCV. Alaska is a paper-based ballot voting system, but also offers voting by fax, in addition to vote-by-mail. Ballots must be postmarked on or before election day.

Alaska uses three voting methods at the precinct on election day. Precinct scanners are typically in urban areas of the state with a larger number of voters. Hand-count precincts are typically in rural areas of the state, and every precinct in Alaska will have a voting tablet that produces a paper ballot.

To allow for rural Alaskan mail and overseas mail to arrive, Alaska has in place the fifteen-day period, after the election, before final ballot count and election certification. In 2022, when Day fifteen arrived, the ballots were quickly and publicly counted. Any election without more than fifty percent on the first tabulation immediately moved to ranked vote counting, which was completed easily, publicly, and within minutes.¹¹⁸

2. Although RCV Opponents Allege Diminished Voter Confidence, RCV is Trustworthy and Benefits Voters

Many of the state lawmakers pushing to ban RCV election systems claimed to their colleagues that RCV is undesirable because of the potential for corrupt practices by elections officials and threats to elections security, leading to an unwanted consequence of diminished voter confidence. As the sponsor of Montana’s H.B. 598 alleged, “Experts contend it makes elections more vulnerable to corruption and mismanagement.”¹¹⁹ In Idaho, a purpose statement published by the sponsors of the RCV prohibition there suggests that H.B. 179 would “preserve a fair and transparent electoral process” and articulated a policy objective “to ensure

¹¹⁷ *Hearing on H.B. 598 Before the H. Sta. Admin. Comm.*, Reg. Sess. 9:47:20–9:47:44 (Mont. Feb. 27, 2023), https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/48263?agendaId=255049#agenda_ (testimony of Rep. Lyn Hellegaard).

¹¹⁸ *Watch Alaska Ranked-Choice Vote Tabulation in 2022 Election*, ANCHORAGE DAILY NEWS (Nov. 23, 2022), <https://www.adn.com/politics/2022/11/23/watch-live-at-4-pm-alaskas-ranked-choice-vote-tabulation-in-the-2022-election/> [<https://perma.cc/96R3-V4DN>].

¹¹⁹ *Hearing on H.B. 598 Before the H. Sta. Admin. Comm.*, Reg. Sess. 9:47:44–9:47:50 (Mont. Feb. 27, 2023), https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/48263?agendaId=255049#agenda_ (testimony of Rep. Lyn Hellegaard).

every vote is counted accurately and the candidate with the most votes is elected.”¹²⁰ In committee testimony in Idaho, RCV opponents asserted that RCV “gave a false impression that a voter was in control of his vote,” and implied that RCV is subject to corrupted or erroneous results because it “ushered in algorithms without a transparent means to audit the vote.”¹²¹ In a similar vein, the House sponsor of Tennessee’s S.B. 1820 stated that he considered RCV to be a “confusing methodology of tabulating votes” that “creates a lack of confidence in the vote totals.”¹²² While in Mississippi, the sponsor of the RCV ban that was eventually enacted in S.B. 2144 expressed in floor debate that the prohibition was “about election security” as well as about “making sure that people vote for who they vote for, that their vote counts . . . [and] they’re not having a situation where ballots are getting cast out.”¹²³ Finally, the sponsor of South Dakota’s S.B. 55 proclaimed his bill to be aimed at “preserv[ing] the sanctity of our election system”¹²⁴ and deemed it “*essential* for voter confidence and a straightforward approach to electing our local and state leaders.”¹²⁵

RCV is so efficient, cost-effective, and trustworthy that five Southern states (Alabama, Georgia, Mississippi, South Carolina, and Louisiana) provide ranked-choice ballots to their military voters. This provides active-duty military members their Constitutional right to vote while deployed or on assignment around the world. The RCV ballot provides the military and overseas voters the full voting opportunity, allowing their votes to count even if a runoff election is required.

If RCV were corrupt, these five conservative Southern states would not be confidently using it to ensure the voting voice is heard from Americans putting themselves in harm’s way to defend our Constitution. And if RCV is good enough for our men and women in uniform, it should certainly be good enough for all voters.

According to a recent analysis, among thirty-two states that had held their 2024 primaries at the time of its reporting, forty-nine candidates had won their statewide and congressional primaries with votes totaling less than fifty percent of those that were cast.¹²⁶ The analysis observed that among those outcomes, there

¹²⁰ Sen. Glenneda Zuiderveld & Rep. Dale Hawkins, Statement of Purpose, RS30353 / H0179 (Idaho Feb. 21, 2023, 9:45 AM), *available at* <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2023/legislation/H0179SOP.pdf> [<https://perma.cc/S2MK-RBEY>].

¹²¹ Minutes, Hearing on H.B. 179 Before the S. Sta. Affairs Comm., Reg. Sess., at 2 (Idaho Mar. 15, 2023), <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2023/standingcommittees/SSTAdmin.pdf#page=645> (testimony of Sen. Glenneda Zuiderveld).

¹²² S.B. 1820, 193d Gen. Assem., Reg. Sess. 35:54–36:30 (Ky. Feb. 2, 2023), https://tnga.granicus.com/player/clip/26088?view_id=610&redirect=true (statement of Rep. Kevin Vaughan).

¹²³ S.B. 2367, 2024 Leg., Reg. Sess. 7:00–7:35 (Miss. Mar. 7, 2024), https://law-db.mc.edu/legislature/bill_details.php?id=13287&session=2024 (statement of Sen. Jeremy England).

¹²⁴ *Hearing on S.B. 55 Before the S. Sta. Affairs Comm.*, Reg. Sess. 4:55–5:03 (S.D. Feb. 1, 2023), <https://sdpb.sd.gov/sdpbpodcast/2023/sen16.mp3#t=2354> (testimony of Sen. John Wiik).

¹²⁵ *Id.* at 6:00–6:06 (testimony of Sen. John Wiik) (emphasis in audio).

¹²⁶ Bailey Bowman, “*Fewest Votes Wins*”: 49 States and Congressional Primaries Won with Less than 50% of the Vote, FAIR VOTE (Aug. 2, 2024), <https://fairvote.org/fewest-votes-wins-49->

were at least twelve candidates who had won their primaries with only one-third or less of the votes.¹²⁷ These elections were conducted through primary systems in which only voters affiliating with specific political parties could participate,¹²⁸ excluding major segments of qualified voters.

Alaska has real experience with RCV that has demonstrated its reliability to count all votes that were cast, transparency in the process, and simplicity in recounting any contested election results. The Alaska Division of Elections utilizes Dominion brand voting machines to receive and count votes; with programming updates, the machines are capable of counting RCV ballots.¹²⁹ In the 2022 election, the counting process was broadcasted through social media and continually updated online for all voters to watch.¹³⁰ Two election results were contested and recounted. In House District 15, the original vote count was 3,476 versus 3,483; the recount vote count was 3,476 versus 3,485, an increase of two votes for the winning candidate.¹³¹ In Senate District E, the original vote count was 5,949 versus 7,881; the recount vote count was 5,951 versus 7,880.¹³² Therefore, neither election outcome changed upon recount.

The Alaska Model incorporates an open, nonpartisan primary, called the “Pick One Primary,” in which the voter chooses one candidate from the entire list of candidates. The list of candidates can be very long, as occurred in the first use of

statewide-and-congressional-primaries-won-with-less-than-50-of-the-vote/
[https://perma.cc/CM8C-QNV3].

¹²⁷ *Id.*

¹²⁸ See *Primary Election Types by State*, BALLOTPEdia, https://ballotpedia.org/Primary_election_types_by_state [https://perma.cc/D6T2-5R22] (demonstrating numbers of open primaries versus closed and partially-closed primaries).

¹²⁹ See Tim Bradner, *Ranked-Choice Voting Worked Well, State Election Officials Say. So Did Dominion Voting Machines*, THE FRONTIERSMAN (Sept. 22, 2022), https://www.frontiersman.com/news/ranked-choice-voting-worked-well-state-election-officials-say-so-did-dominion-voting-machines/article_9037c660-3af6-11ed-a71f-e3e41064f548.html [https://perma.cc/STW4-LULB].

¹³⁰ *Watch Alaska Ranked-Choice Vote Tabulation in 2022 Election*, ANCHORAGE DAILY NEWS, (Nov. 23, 2022), <https://www.adn.com/politics/2022/11/23/watch-live-at-4-pm-alaskas-ranked-choice-vote-tabulation-in-the-2022-election/> [https://perma.cc/Y24B-J9XX].

¹³¹ *Compare RCV DETAILED REPORT GENERAL ELECTION STATE OF ALASKA NOVEMBER 8, 2022, HOUSE DISTRICT 15 2 (2022)*, <https://www.elections.alaska.gov/results/22GENR/15.pdf> [https://perma.cc/UK59-R9PZ], *with RCV DETAILED REPORT GENERAL ELECTION STATE OF ALASKA NOVEMBER 8, 2022, HOUSE DISTRICT 15 2 (2022)*, https://www.elections.alaska.gov/results/22GENR/15_recount_rcv.pdf [https://perma.cc/CH7K-HYKP]. See also STATE OF ALASKA, 2022 GENERAL ELECTION, STATEMENT OF VOTES CAST, NOVEMBER 8, 2022, OFFICIAL RECOUNT RESULTS (2022), https://www.elections.alaska.gov/results/22GENR/HD15_recount.pdf [https://perma.cc/D7GM-SXDY].

¹³² *Compare RCV DETAILED REPORT GENERAL ELECTION STATE OF ALASKA NOVEMBER 8, 2022, SENATE DISTRICT E 2 (2022)*, <https://www.elections.alaska.gov/results/22GENR/E.pdf> [https://perma.cc/7C2Z-2D6L], *with RCV DETAILED REPORT GENERAL ELECTION STATE OF ALASKA NOVEMBER 8, 2022, SENATE DISTRICT E 2 (2022)*, https://www.elections.alaska.gov/results/22GENR/E_recount_rcv.pdf [https://perma.cc/UHV7-7LDP]. See STATE OF ALASKA, 2022 GENERAL ELECTION STATEMENT OF VOTES CAST, NOVEMBER 8, 2022, OFFICIAL RECOUNT RESULTS 2 (2022), https://www.elections.alaska.gov/results/22GENR/SENATE%20E_recount.pdf [https://perma.cc/7BVG-FRF3].

the Alaska Model in the special primary election to replace deceased Congressman Don Young in June 2022, in which forty-eight candidates ran for the office.¹³³ Many Alaskans expressed feeling overwhelmed with the forty-eight choices.¹³⁴ Alaskans made their choices, resulting in the top four vote-getters going forward to the special general election.¹³⁵

The special general election took place in August 2022 with three candidates to rank. This was not confusing to voters, according to exit polling. August 2022 exit polling showed that ninety-five percent of Alaskans reported receiving instructions on how to rank their choices, and eighty-five percent of Alaskans reported ranked-choice voting to be “simple.”¹³⁶ November 2022 exit polling showed that “92% of Alaskans reported receiving instructions on how to rank their choices, 79% of Alaskans reported ranked-choice voting to be ‘simple,’ and 60% [said that] Alaska’s state and local elections were more competitive compared to previous years.”¹³⁷

The special general election’s initial vote count gave Peltola 40.19%, not reaching the more than fifty percent threshold. RCV tabulation was executed, through which Peltola received additional votes as voters’ second choice, giving her 51.48%, enough to win the election.¹³⁸

The benefit of RCV is that candidates no longer win with as little as thirty-four percent of the vote, as was possible under the previous partisan primary

¹³³ See SUMMARY FOR: ALL CONTESTS, ALL DISTRICTS, ALL TABULATORS, ALL COUNTING GROUPS, STATE OF ALASKA – 2022 SPECIAL PRIMARY ELECTION, ELECTION SUMMARY REPORT, JUNE 11, 2022, OFFICIAL RESULTS (2022), <https://www.elections.alaska.gov/results/22SPECPRIM/ElectionSummaryReportRPT.pdf> [<https://perma.cc/6YV5-N6KM>].

¹³⁴ See Becky Bohrer, *Palin Among 48 Candidates Vying for Alaska House Seat*, PBS NEWS (June 5, 2022, 3:24 PM), <https://www.pbs.org/newshour/politics/palin-among-48-candidates-vying-for-alaska-house-seat> [<https://perma.cc/BTZ9-5TVK>].

¹³⁵ See *Q&As with Alaska’s U.S. House Candidates in the 2022 Special Primary Election*, ANCHORAGE DAILY NEWS (May 29, 2022), <https://www.adn.com/politics/2022/05/03/qa-with-alaskas-us-house-candidates-in-the-2022-special-primary-election/> [<https://perma.cc/2LW5-63VK>]; *Guerin v. State*, 537 P.3d 770, 785 (Alaska 2023). One of the four special primary election winners dropped out late in the race, and because of deadlines in Alaska law, no replacement was substituted. If the candidate had withdrawn timely, the fifth-place finisher from the primary would have appeared on the Special General Election ballot. See *id.* at 775, 785.

¹³⁶ See Amanda Moser, *Polling Shows Alaskan Voters Understand Ranked Choice Voting*, ALASKANS FOR BETTER ELECTIONS (Nov. 22, 2022), <https://www.alaskansforbetterelections.com/polling-shows-alaskan-voters-understand-ranked-choice-voting/> [<https://perma.cc/MK54-PM39>] (providing Patinkin Research Strategies exit poll results on Alaska’s first use of RCV, in a special general election).

¹³⁷ See Amanda Moser, *Polling Shows Alaskan Voters Received Clear Instructions on the System, Found Ranking to Be “Simple,” and Saw More Competitive Races*, ALASKANS FOR BETTER ELECTIONS (Aug. 30, 2022), <https://www.alaskansforbetterelections.com/polling-shows-alaskan-voters-received-clear-instructions-on-the-system-found-ranking-to-be-simple-and-saw-more-competitive-races/> [<https://perma.cc/3YFB-ASSD>] (providing Patinkin Research Strategies exit poll results on Alaska’s second use of RCV, in a regular general election).

¹³⁸ See STATE OF ALASKA, 2022 SPECIAL GENERAL ELECTION, RCV TABULATION AUGUST 16, 2022 OFFICIAL RESULTS 2 (2022), <https://www.elections.alaska.gov/results/22SSPG/RcvDetailedReport.pdf> [<https://perma.cc/YEZ5-ABPE>].

system. By requiring more than fifty percent of the vote, Alaskans know that the candidate is truly representing a majority of the voters.

3. RCV Implementation Costs are Not Excessive and Preserve the Constitutional Right to Vote

Among the states prohibiting RCV through legislative enactment, several proponents of prohibition contended that implementation and utilization of RCV are expensive or otherwise cost the state financially. The argument against RCV as an election reform appears rooted in the traditional conservative pronouncement of concern for government waste and overspending, readily working as a persuasion tactic among conservative-majority legislatures. For instance, in his floor speech to the Kentucky Senate, the sponsor of SB 1820 stated that among the several ills enveloping RCV is that it “leads to reporting results in a process that’s difficult, slow, and costly.”¹³⁹ Montana HB 598’s sponsor expounded that belief, explaining that RCV “doesn’t result in a cost savings.”¹⁴⁰ In fact, she asserted to the contrary that RCV “requires purchase and installation of a special software, additional training on that software, security-risk solutions, and with the inevitable cost that we all know about when the government institutes a new program.”¹⁴¹ And South Dakota SB 55’s sponsor raised a similar complaint during floor session, describing the RCV tabulating procedures as “a complicated, drawn out, expensive process.”¹⁴²

As previously reviewed, five Southern states (Alabama, Georgia, Mississippi, South Carolina, and Louisiana) provide ranked-choice ballots to their military voters. This method provides active-duty military members their constitutional right to vote while deployed or on assignment around the world.

If a federal election requires a runoff, federal law requires that the ballots be provided to military and overseas voters forty-five days prior to any federal election.¹⁴³ This typically means that the state must delay the runoff election to allow for the printing of new ballots, followed by the forty-five-day window for the ballots to be provided overseas. This creates expenses, including creating and printing new runoff ballots, staffing polling sites, postage costs, and operating the counting mechanisms.

Before BM 2 passed, in March 2020, the Division of Elections sought and received an appropriation from the Alaska Legislature of \$4.4 million, representing

¹³⁹ S.B. 1820, 112th Gen. Assem., Reg. Sess. 25:58–26:02 (Tenn. Feb. 14, 2023) (statement of Sen. Brian Kelsey), https://tnga.granicus.com/player/clip/26088?view_id=610&redirect=true.

¹⁴⁰ *Hearing on H.B. 598, Before the H. Sta. Admin. Comm.*, 68th Leg., Reg. Sess. 9:47:50–9:48:11 (Mont. Feb. 27, 2023) (testimony of Rep. Lyn Hellegaard) (emphasis added), https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/48263?agendaId=255049#agenda_.

¹⁴¹ *Id.*

¹⁴² S.B. 55, 98th Leg., Reg. Sess. 36:34–36:42 (S.D. Feb. 2, 2023) (statement of Sen. John Wiik), <https://sdlegislature.gov/Session/Bill/23968>.

¹⁴³ *See The Uniform and Overseas Citizens Absentee Voting Act Overview*, FED. VOTING ASSISTANCE PROGRAM, <https://www.fvap.gov/info/laws/uocava> [https://perma.cc/FE85-VAU2] (noting that “among other provisions, the *MOVE Act* requires States to send absentee ballots to *UOCAVA* voters at least 45 days before federal elections”).

the costs for usual Division operations in fiscal year 2021.¹⁴⁴ After BM 2 passed, the Division only needed an additional, one-time appropriation of \$804,000 for the capital costs to physically implement RCV system modifications.¹⁴⁵ A fiscal year 2022–23 multi-year appropriation of \$4.3 million was meant for multiple purposes, including RCV and voter education, with three million dollars ultimately devoted to that purpose.¹⁴⁶ The fiscal year 2024–25 multi-year appropriation to the Division was \$2.5 million for RCV outreach and education,¹⁴⁷ some of which has been applied for the 2024 election. These funds have been used for multiple purposes, including voting machine software updates, informational mailings to all voters, media advertising, and presence and presentations at various fairs, festivals, and conferences around the state.¹⁴⁸ The Division of Elections website posted copies of the ballots, both open primary and RCV general ballots, with explanatory videos.¹⁴⁹

To summarize on fiscal costs, ordinary Division of Elections operations typically ran over four million dollars. Alaska spent \$804,000 on the infrastructure for RCV and will have invested three million dollars for education and outreach, and \$2.5 million moving forward. Voter education and outreach are necessary for transitioning to a new election system, empowering citizens to understand and fully exercise their voting rights, so those expenses amount to a valuable investment for the state. Those costs are likely short-term, tapering off as voters gain experience with RCV. The low dollar amounts expended support the position that RCV is not too costly, at least in Alaska’s experience.

4. Legislatures Banning RCV Wrongly Believe It Is Inconsistent with “One Person, One Vote”

Several state legislatures hearing from sponsors of bills banning RCV were instructed, without substantiation, that RCV election systems violate the constitutional principle of “one person, one vote.” The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution “guarantees the opportunity for

¹⁴⁴ 2020 Alaska Sess. Laws ch. 8, § 1 (evidencing, under Section 1 of HB 205 covering “operating expenditures,” a general appropriation item for the Office of the Governor titled “Elections”).

¹⁴⁵ 2021 Alaska Special Sess. Laws ch. 1, § 8 (demonstrating, under HB 69, appropriation item for “Ballot Measure 2 Implementation”).

¹⁴⁶ See LEGIS. FIN. DIV. FISCAL YEAR 2025 OPERATING BUDGET OFFICE OF THE GOVERNOR ENACTED BUDGET 3 (providing “Fiscal Analyst Comment” on previous FY 22–23 multi-year appropriation and amount expended for educational purposes).

¹⁴⁷ *Id.* (depicting appropriated sum under “Amount Enacted”).

¹⁴⁸ 2021 Alaska Special Sess. Laws ch. 1, § 8.

¹⁴⁹ See, e.g., SAMPLE BALLOT, STATE OF ALASKA OFFICIAL BALLOT JUNE 11, 2022 SPECIAL PRIMARY ELECTION, STATE OF ALASKA https://www.elections.alaska.gov/election/2022special_primary_sb/SB-English%20HD99.pdf [https://perma.cc/S8MH-73TC] (depicting sample ballot for 2022 statewide congressional primary election, the first “pick one” open primary under BM 2 changes to law); SAMPLE BALLOT, STATE OF ALASKA OFFICIAL BALLOT AUGUST 16, 2022 SPECIAL GENERAL ELECTION, STATE OF ALASKA <https://www.elections.alaska.gov/election/2022/prim/HD1.pdf> [https://perma.cc/9RXM-Z5GL] (depicting sample ballot for 2022 House District 1 congressional regular “pick one” primary and, on the backside, the congressional special general election, which was the first RCV procedure ballot under BM 2 changes to law); *Elections Essentials, Ranked Choice Voting, How to Mark Your Ballot*, STATE OF ALASKA DIV. OF ELECTIONS, <https://www.elections.alaska.gov/essentials/#RankedChoice> (providing instructional RCV video).

equal participation by all voters.”¹⁵⁰ Each voter possesses equivalent value to the next; as embodied by *one person, one vote*, “[n]ot the rich more than the poor; not the learned more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune” may be accorded a stronger role or voice in the democratic process.¹⁵¹

Proponents of RCV bans relayed claims to fellow lawmakers that RCV was constitutionally infirm under the “one person, one vote” doctrine in two seeming ways: first, that in selecting preferences in excess of one, the voter is actually voting more than once; and second, that if a person casts votes for fewer preferences than permitted, the person’s voting rights are abridged relative to the voters who follow through with ranking the full range of permissible preferences.

For instance, the sponsor of South Dakota’s SB 55 told members in committee that contrary to the contentions of advocates that RCV represents a fair model of elections reform, “In reality, RCV breaks the longstanding principle of ‘one person, one vote.’”¹⁵² In Louisiana, the sponsor of SB 101 criticized RCV processes as “un-American,” while further declaring, “[R]emember, it’s ‘one person, one vote’ and . . . we . . . need to respect that.”¹⁵³ When asked about the applicability of Oklahoma’s HB 3156 to ban RCV for even local elections, the prime senate sponsor testified that “allowing people to go to the ballot and . . . have that say of one voter[,], one vote of who they prefer to get elected to that position is enough of an election integrity issue” to warrant that application.¹⁵⁴ A senate supporter of Idaho’s HB 179 expressed to committee members at its first senate hearing that “[h]ow votes [are] counted [is] important . . . [whereas] RCV changed the presumption of one man[,], one vote.”¹⁵⁵ She further suggested that “RCV [gives] certain people two votes instead of one.”¹⁵⁶ While addressing his counterparts during final passage, the sponsor of SB 55 articulated an example:

If you choose to only vote your first choice in the first column, and leave the rest blank, you’re denied the right to vote in the runoff. If your second-choice candidate is thrown out on the first [round], then

¹⁵⁰ *Reynolds v. Sims*, 377 U.S. 533, 566 (1964).

¹⁵¹ *See Wesberry v. Sanders*, 376 U.S. 1, 18 (1964) (quoting THE FEDERALIST No. 47, at 385 (James Madison) (Cooke ed., 1961)) (citing *Gray v. Sanders*, 372 U.S. 368, 381 (1963)) (construing Art. I, § 2, of the U.S. Constitution regarding apportionment for congressional representation).

¹⁵² *Hearing on S.B. 55, Before the S. Sta. Affairs Comm.*, 98th Leg., Reg. Sess., 3:36–3:43 (S.D. Feb. 1, 2023) (testimony of Sen. John Wiik), <https://sdpb.sd.gov/sdpbpodcast/2023/sst15.mp3#t=216>.

¹⁵³ *Hearing on S.B. 101, Before the S. & Gov’t Affairs Comm.*, 2024 Leg., Reg. Sess. (pt. 2), 36:34–36:59 (La. Mar. 13, 2024) (testimony of Sen. Blake Miguez), https://senate.la.gov/s_video/VideoArchivePlayer?v=senate/2024/03/031324SGA2.

¹⁵⁴ *Hearing on H.B. 3156, Before the S. Gen. Gov’t & Transp. Comm.*, 59th Leg., 2d Reg. Sess., 2:10:48–2:11:00 (Okla. Apr. 11, 2024) (testimony of Rep. Brent Howard), <https://sg001-harmony.sliq.net/00282/Harmony/en/PowerBrowser/PowerBrowserV2/20241030/-1/77882?startposition=20240411141045&mediaEndTime=20240411141100&viewMode=3&globalStreamId=3>.

¹⁵⁵ *Hearing on H.B. 179, Before the S. Sta. Affairs Comm.*, 67th Leg., 1st Reg. Sess. 2 (Idaho Mar. 15, 2023) (testimony of Sen. Glenneda Zuiderveld), <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2023/standingcommittees/SSTAdmin.pdf#page=645>.

¹⁵⁶ *Id.*

you're denied the right to vote in that runoff—because you had no idea who would even be left on the ballot when you made your voting choice.¹⁵⁷

During floor debate on HB 3156, the prime senate sponsor explained that he believed the voting rights of Oklahoma citizens to be so fundamental as to be “something that we need to protect, especially when it comes to one vote for one voter, and not having ways of dilution or otherwise . . . diminishing that one vote for the person.”¹⁵⁸

Every voter has exactly one equal vote in RCV. The voter can choose to use their one vote or not; in other words, they may choose to vote for only one person, relinquishing their opportunity to have their vote recorded in a second or third ranking. Once the voter has cast their ranked ballot, there is no later opportunity to update or cast new votes. The subsequent tabulations record the ballot as submitted, with one, two, three, or four preferences expressed, as chosen by the voter.

Several courts have affirmed the principle of “one person, one vote.” The claim that some voters get “more votes” than others in RCV is false. Several state and federal courts have found that RCV fully complies with the principle of “one person, one vote.”

The clearest statements have come from the Ninth Circuit Court of Appeals in *Dudum v. Arntz* in discussing the ranking tabulations in Instant-Runoff Voting (IRV):

In actuality, all voters participating in a restricted IRV election are afforded a single and equal opportunity to express their preferences for three candidates; voters can use all three preferences, or fewer if they choose. Most notably, once the polls close and calculations begin, no new *votes* are cast. To determine the winner of the election based on that single set of votes cast, restricted IRV uses an algorithm. The ballots, each representing three or fewer preferences, are the initial inputs; the sequence of calculations mandated by restricted IRV is used to arrive at a single output—one winning candidate.¹⁵⁹

The series of calculations in RCV entails counting of votes in a single round of voting. In the *Kohlhaas* case, the Alaska Supreme Court reiterated this conclusion, explaining, “[T]here is no question that a ranked-choice vote *is a single vote*. Rankings reflect alternative votes, not multiple votes.”¹⁶⁰

RCV is designed to give the dominant voice to voters, not political party mechanisms which limit who can vote in primary elections. Simply put, nonpartisan primary and RCV general elections follow the voiced intent of

¹⁵⁷ S.B. 55, 2023 Leg., Reg. Sess. 36:40-37:10 (S.D. Feb. 2, 2023) (statement of Sen. John Wiik), <https://sdpb.sd.gov/sdpbpcast/2023/sen16.mp3#t=2354>.

¹⁵⁸ H.B. 3156, 2024 Leg., Reg. Sess. 10:04:55-10:05:40 AM (Okla. Apr. 24, 2024) (statement of Rep. Brent Howard), <https://oksenate.gov/room-535> [<https://perma.cc/6G78-59R8>].

¹⁵⁹ *Dudum v. Arntz*, 640 F.3d 1098, 1107 (9th Cir. 2011).

¹⁶⁰ *Kohlhaas v. State*, 518 P.3d 1095, 1122 (Alaska 2022) (emphasis added).

America's Founders related to political parties. As John Adams—who would later become the second U.S. president—once stated:

There is nothing which I dread so much as a division of the republic into two great parties, each arranged under its leader, and concerting measures in opposition to each other. This, in my humble apprehension, is to be dreaded as the greatest political evil under our Constitution.¹⁶¹

And as President George Washington sagely advised in his presidential farewell address to the nation:

Let me now take a more comprehensive view and warn you in the most solemn manner against the baneful effects of the spirit of party, generally. . . . The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism.¹⁶²

Voters turn out in nonpartisan primary elections. With the institution of the nonpartisan primary in 2022, nine percent more voters participated than in 2020; 2020 and 2022 were the highest voter turnout years compared to pre-COVID-19.¹⁶³

The nonpartisan primary election addresses the problem of voter suppression and disenfranchisement that is prevalent in conventional, political-party-controlled primary elections. In these elections, participation is restricted to only party members or those willing to restrict themselves to one party's ballot. There are forty-five states conducting partisan primaries, fifteen of which exclude independent voters, thus disenfranchising over fourteen million Americans in these primary elections; nearly thirty percent of African Americans identify as independents.¹⁶⁴

To reiterate previous findings, in 2022, only eight percent of all voters cast ballots in the partisan primaries that determined eighty-three percent of the U.S. House election outcomes.¹⁶⁵ Partisan primary elections represent the real voter suppression and disenfranchisement in U.S. elections, not non-partisan primary

¹⁶¹ LETTER FROM JOHN ADAMS TO JONATHAN JACKSON (Oct. 2, 1780), *reprinted in* FOUNDERS ONLINE, <https://founders.archives.gov/documents/Adams/06-10-02-0113> [<https://perma.cc/U9VD-QDQ4>].

¹⁶² George Washington, President of the United States, Farewell Address to the People of the United States (Sept. 19, 1796), *available at* https://www.senate.gov/artandhistory/history/resources/pdf/Washingtons_Farewell_Address.pdf [<https://perma.cc/8UY9-EXU2>].

¹⁶³ James Brooks, *Alaska's Pre-Primary Election Turnout is Down from Extraordinary 2022 and 2020 Primaries*, ALASKA PUBLIC MEDIA (Aug. 13, 2024), <https://alaskapublic.org/2024/08/13/alaskas-pre-primary-election-turnout-is-down-from-extraordinary-2022-and-2020-primaries/> [<https://perma.cc/DJ9F-P8B4>].

¹⁶⁴ Troiano, *supra* note 84, at 5–6.

¹⁶⁵ *Id.* at 5.

elections combined with RCV general elections. The courts have not yet established the constitutional right for voters to participate in primary elections.¹⁶⁶

B. *Federal and State Court Decisions Confirm that the Alaska Model and RCV are Constitutionally Sound*

As more states and local governments adopt ranked-choice voting, there have been a variety of lawsuits challenging RCV on federal and state constitutional grounds. Common legal challenges against RCV have included claims that RCV violates, *inter alia*: (1) the Equal Protection Clause of the Fourteenth Amendment,¹⁶⁷ (2) the First Amendment freedom of association¹⁶⁸; and (3) state constitutional requirements that election winners possess a plurality of votes.¹⁶⁹ While the Maine Supreme Judicial Court issued a nonbinding advisory opinion finding RCV violated the Maine constitution for non-federal races,¹⁷⁰ several courts across the United States—in binding decisions—have upheld the constitutionality of ranked-choice voting¹⁷¹ and the Supreme Court in 2008 upheld the constitutionality of Washington’s open primary.¹⁷² The following discussion outlines some of the major recent court findings pertinent to RCV.

1. States are Granted Wide Latitude to Conduct Elections

The U.S. Constitution grants states wide latitude in how they conduct elections.¹⁷³ While voting is the cornerstone of our federal republic,¹⁷⁴ states are empowered to regulate their own elections.¹⁷⁵ The Supreme Court has noted that the U.S. Constitution gives states the authority to:

provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt

¹⁶⁶ *Id.* at 83.

¹⁶⁷ U.S. CONST. amend. XIV, § 1 (“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws”).

¹⁶⁸ U.S. CONST. amend. I, § 1 (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”).

¹⁶⁹ See Richard H. Pildes & Michael G. Parsons, *The Legality of Ranked-Choice Voting*, 109 CALIF. L. REV. 1773, 1788 (2021) (citations omitted).

¹⁷⁰ Op. of the Justices, 162 A.3d 188, 211 (Me. 2017).

¹⁷¹ See, e.g., *Kohlhaas v. State*, 518 P.3d 1095 (Alaska 2022); *Baber v. Dunlap*, 376 F. Supp. 3d 125 (D. Maine 2018); *Dudum v. Arntz*, 640 F.3d 1098 (9th Cir. 2011); *Minnesota Voters All. v. City of Minneapolis*, 766 N.W.2d 683 (Minn. 2009).

¹⁷² *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008).

¹⁷³ U.S. CONST. art. 1, § 4 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of [choosing] Senators”).

¹⁷⁴ *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (“Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society”).

¹⁷⁵ *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (explaining that “voting is of the most fundamental significance under our constitutional structure,” yet “[s]tates retain the power to regulate their own elections”) (citations omitted).

practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved All this is comprised in the subject of “times, places and manner of holding elections,” and involves lawmaking in its essential features and most important aspect.¹⁷⁶

Concomitant with the right of states to conduct their own elections is the right of states to choose how to select nominees to appear on general election ballots. For many years, political parties selected their nominees not through state-run primary elections, but rather through their own internal, often murky, party processes. As a report by the National Conference of State Legislators the historical process:

A century ago, political parties did not select their nominees through primary elections. Instead, parties ran their own processes using their own rules, and hearing from—mostly—party stalwarts, with little role for rank-and-file members. In other words, nominees were selected in the proverbial smoke-filled back room.

Half a century ago, primaries were still uncommon. By then, in an effort to be more inclusive, caucuses had largely replaced insider decision-making. At a caucus, the rank-and-file could express support for the candidates of their choice. Still, only highly motivated party members attended caucuses, then or now.

Over the last few decades, most parties have switched from caucuses to primary elections to select their nominees for general elections. The motivating factor was—again—to permit participation by more party members, continuing a century-long trend.¹⁷⁷

Virtually all states now conduct state-run primary elections, but these primaries vary to some degree. Ten states conduct “closed primaries,” wherein a voter must be a registered member of a political party to vote for that party’s nominee.¹⁷⁸ Nine states have partially closed primaries, wherein political parties choose whether to allow voters not registered with the party to participate in their nominating election.¹⁷⁹ Four states have partially open primaries, which allows voters to vote in any political party primary, although by voting the voter becomes

¹⁷⁶ *Smiley v. Holm*, 285 U.S. 355, 366 (1932); *see Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 9 (2013) (explaining states’ authority to regulate functions only insofar as federal law does not conflict).

¹⁷⁷ PRIMARIES: MORE THAN ONE WAY TO FIND A PARTY NOMINATION, NCSL (Jan. 19, 2021), <https://www.ncsl.org/elections-and-campaigns/primaries-more-than-one-way-to-find-a-party-nominee> [<https://perma.cc/B9LU-PW7C>].

¹⁷⁸ *See* STATE PRIMARY ELECTION TYPES, NCSL (Feb. 6, 2024), <https://www.ncsl.org/elections-and-campaigns/state-primary-election-types> [<https://perma.cc/6K8F-TGFL>].

¹⁷⁹ *Id.*

registered with the party who they voted for.¹⁸⁰ Seven states allow voters not registered with any party to vote in the party primary of their choice but do not allow voters registered in one party to vote in a different party's primary.¹⁸¹ Fifteen states have "open primaries," where voters are free to vote privately for whichever party's ballot they choose, and they do not become registered with the party whose ballot they choose.¹⁸²

Four states have a single primary in which all candidates, regardless of party, appear on a single ballot.¹⁸³ In California and Washington, each candidate lists their political party on the ballot and the top two vote-getters in each race, regardless of political party, advance to the general election. Nebraska's elections are similar except the candidates' political parties are not listed on the ballot. In Alaska, the candidate's political parties are listed on the ballot and the top four vote-getting candidates proceed to the general election.¹⁸⁴

Louisiana has a unique majority-vote system, with no true primary. If a candidate receives a majority of the votes cast for an office, they win the election outright. If no candidate obtains a majority of votes, a second round of voting is held between the top two vote-getters. Any registered voter can participate in both the first-round and second-round elections.¹⁸⁵

2. RCV Has Been Found to Advance Important State Interests

As more jurisdictions explore RCV and multi-party primaries, legal challenges have inevitably arisen.¹⁸⁶ Courts seek to balance a state's sovereign right to conduct its elections versus an individual's constitutional voting rights.¹⁸⁷ In these legal challenges, courts assess "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" versus "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."¹⁸⁸

Courts have recognized that every election system in some way impacts the individual's right to vote.¹⁸⁹ For election laws that impose a "severe" burden on voting rights, a strict scrutiny standard is applied in which the law must be

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Primary Elections in Louisiana*, BALLOTPEdia, https://ballotpedia.org/Primary_elections_in_Louisiana [https://perma.cc/8HHU-AU2Q].

¹⁸⁶ *See, e.g.*, *Minnesota Voters All. v. City of Minneapolis*, 766 N.W.2d 683 (Minn. 2009); *Dudum v. Arntz*, 640 F.3d 1098 (9th Cir. 2011); *Baber v. Dunlap*, 376 F. Supp. 3d 125, 134 (D. Maine 2018); *Maine Republican Party v. Dunlap*, 324 F. Supp. 3d 202, 209 (D. Maine 2018); *Kohlhaas v. State*, 518 P.3d 1095, 1101 (Alaska 2022).

¹⁸⁷ *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

¹⁸⁸ *Id.*

¹⁸⁹ *Weber v. Shelley*, 347 F.3d 1101, 1106 (9th Cir. 2003); *see Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Anderson*, 460 U.S. at 788) ("[W]hether [a provision of a code] governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree the individual's right to vote").

“narrowly drawn to advance a state interest of compelling importance.”¹⁹⁰ However, as the *Dudum* court noted, “voting regulations are rarely subjected to strict scrutiny.”¹⁹¹ When the burden is not severe and imposes only reasonable nondiscriminatory restrictions, courts apply a “less exacting review, and a State’s important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.”¹⁹²

General elections are usually conducted via plurality or “first-past-the-post” voting—where voters vote for one candidate and the person who receives the most votes wins. However, “first-past-the-post” voting is not legally required.¹⁹³ Courts that analyze RCV laws must examine whether these RCV laws advance “important regulatory state interests.”¹⁹⁴ In *Dudum*, the court found that “the three-candidate restriction furthers important interests in maintaining the orderly administration of San Francisco’s elections and in avoiding voter confusion.”¹⁹⁵ The court also found that San Francisco’s RCV system would save the City from having to conduct further runoff elections, which cost between \$1.5 and \$3 million and, “[t]he interest in alleviating the costs and administrative burdens of conducting additional elections can be ‘a legitimate state objective.’”¹⁹⁶ The court further found a legitimate state interest in, “providing voters an opportunity to express nuanced voting preferences and electing candidates with strong plurality support.”¹⁹⁷

In *Maine Republican Party*, the court found that the following interests were “rational and survive constitutional scrutiny.”¹⁹⁸

- (1) conducting statewide elections in an orderly manner, and in preserving the integrity and reliability of the electoral process; and
- (2) establishing a uniform set of rules governing the process of casting and counting ballots at the primary election for all parties in order to assure consistency and uniformity of election administration by all officials involved... the State [also] has a legitimate regulatory interest in requiring that candidates demonstrate a preliminary showing of substantial support to qualify to appear on the general election ballot.¹⁹⁹

¹⁹⁰ *Norman v. Reed*, 502 U.S. 279, 289 (1992).

¹⁹¹ *Dudum v. Arntz*, 640 F.3d 1098, 1106 (9th Cir. 2011) (citing *Lemons v. Bradbury*, 538 F.3d 1098, 1104 (9th Cir. 2008)).

¹⁹² *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 355 (1997) (quoting *Burdick*, 504 U.S. at 434) (internal quotation marks omitted); see also *Caruso v. Yamhill Cnty.*, 422 F.3d 848, 859 (9th Cir. 2005).

¹⁹³ *Baber v. Dunlap*, 376 F. Supp. 3d 125, 134 (D. Maine 2018) (“Plaintiffs argue that the force of history calls for the Court to interpret Article I as requiring a plurality or ‘first-past-the-post’ standard for deciding election results. There is no textual support for this argument and a great deal of historical support to undermine it”).

¹⁹⁴ *Dudum*, 640 F.3d at 1114 (citations omitted).

¹⁹⁵ *Id.* at 1115.

¹⁹⁶ *Id.* at 1116.

¹⁹⁷ *Id.*

¹⁹⁸ *Maine Republican Party v. Dunlap*, 324 F. Supp. 3d 202, 212–13 (D. Maine 2018).

¹⁹⁹ *Id.*

In *Kohlhaas*, the Alaska Supreme Court found the following to be legitimate state interests in support of RCV:²⁰⁰

A ranked-choice voting system will help ensure that the values of elected officials more broadly reflect the values of the electorate, mitigate the likelihood that a candidate who is disapproved by a majority of voters will get elected, encourage candidates to appeal to a broader section of the electorate, allow Alaskans to vote for the candidates that most accurately reflect their values without risking the election of those candidates that least accurately reflect their values, encourage greater third-party and independent participation in elections, and provide a stronger mandate for winning candidates.

The State's interests in allowing voters to express more nuanced preferences through their votes and to elect candidates with strong plurality support are important and legitimate regulatory interests.²⁰¹

Since several courts, as noted above, have found that RCV advances a variety of important state interests, this validates the constitutionality of RCV.

3. RCV Upholds the Guarantee of “One Person, One Vote”

The Equal Protection Clause²⁰² guarantees that American citizens have “a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction,” which generates the doctrine of “one person, one vote.”²⁰³ Courts across the nation have found that RCV does not violate the principle of “one-person, one-vote.”²⁰⁴ In *Dudum*, the plaintiffs argued that under RCV, “some voters are literally allowed more than one vote (i.e., they may cast votes for their first-, second-, and third-choice candidates), while others are not.”²⁰⁵ The plaintiffs argued that this resulted in a “dilution of certain votes” as “some voters—those who vote for continuing candidates—only have one vote counted in ‘the election’; other voters, however, have votes counted for three different candidates” and this violated the equal protection guarantee of “one person, one vote.”²⁰⁶ The court rejected this argument:

²⁰⁰ *Kohlhaas v. State*, 518 P.3d 1095, 1124 (Alaska 2022).

²⁰¹ *Id.* (citations omitted).

²⁰² U.S. CONST. Amend. XIV, § 1.

²⁰³ *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). The Supreme Court has articulated that the Equal Protection Clause is violated when an election is held that “impairs the ability of a protected class to elect its candidate of choice on an equal basis with other voters.” *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994) (applying Section 2 of the Voting Rights Act); *see also* *Hunter v. Erickson*, 393 U.S. 385 (1969).

²⁰⁴ The Fourteenth Amendment’s guarantee of equal protection of the laws means that a “[s]tate may not, by...arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104 (2000) (citing *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665 (1966)).

²⁰⁵ *Dudum v. Arntz*, 640 F.3d 1098 (9th Cir. 2011).

²⁰⁶ *Id.* at 1112.

[T]he option to rank multiple *preferences* is not the same as providing additional *votes*, or more heavily-weighted votes, relative to other votes cast. Each ballot is counted as no more than one vote at each tabulation step, whether representing the voters' first-choice candidate or the voters' second- or third-choice candidate, and each vote attributed to a candidate, whether a first-, second- or third-rank choice, is afforded the same mathematical weight in the election. The ability to rank multiple candidates simply provides a chance to have several preferences recorded and counted *sequentially*, not at once.²⁰⁷

The plaintiffs in *Dudum* contended that the treatment of “exhausted” ballots as the votes were counted effectively prohibited certain voters from voting in an election, and therefore imposed a severe burden on voters' constitutional rights.²⁰⁸ The court rejected this argument too, stating, “[i]n actuality, all voters participating in a restricted IRV election are afforded a single and equal opportunity to express their preferences for three candidates; voters can use all three preferences, or fewer if they choose. Most notably, once the polls close and calculations begin, no new *votes* are cast.”²⁰⁹

Similarly, in *Baber*, the plaintiffs contended that Maine's RCV elections violated the Equal Protection Clause by allowing those voters who voted for the candidates in a federal congressional election who were eliminated in the initial rounds of ballot counting to effectively vote multiple times.²¹⁰ The federal district court rejected this challenge, opining that “one person, one vote does not stand in opposition to ranked balloting so long as all electors are treated equally at the ballot.”²¹¹ The court noted that the plaintiffs “participated fully in the election”²¹² and that “Plaintiffs have not demonstrated that their votes received less weight. They understood that a majority victory was the standard to avoid a second round of ballot counting.”²¹³

The Minnesota Supreme Court likewise rejected a claim that the City of Minneapolis' RCV system violated the one-person, one-vote principle.²¹⁴ The plaintiffs there claimed that those voters whose first-choice candidates were eliminated were able to vote multiple times.²¹⁵ The court denied this claim, stating, “Every voter has the same opportunity to rank candidates when she casts her ballot,

²⁰⁷ *Id.* at 1113.

²⁰⁸ *Id.* at 1107.

²⁰⁹ *Id.*

²¹⁰ *Baber v. Dunlap*, 376 F.Supp.3d 125, 139 (D. Maine 2018).

²¹¹ *Id.* at 140 (citing *Hadley v. Jr. Coll. Dist. of Metro. Kansas City*, 397 U.S. 50, 56 (1970)) (“[A]s a general rule, whenever a state or local government decides to select persons by popular election...the Equal Protection Clause...requires that each qualified voter must be given an equal opportunity to participate in that election, and...each district must be established [so] that equal numbers of voters can vote for proportionally equal numbers of officials”).

²¹² *Id.* at 141.

²¹³ *Id.* at 140–41.

²¹⁴ *Minnesota Voters All. v. City of Minneapolis*, 766 N.W.2d 683, 698 (Minn. 2009).

²¹⁵ *Id.* at 690.

and in each round every voter's vote carries the same value."²¹⁶ The court further stated that the one-person, one-vote principle had its origins in redistricting cases and that, "[n]o such vote inequality is created by IRV."²¹⁷

While opponents of RCV have argued that RCV violates the one-person, one-vote principle, these cases make clear that such arguments are misplaced. The one-person, one-vote principle does not give some voters more than one vote. Rather, as discussed above, all voters are given the exact same opportunity to rank their candidate choices.

4. RCV Does Not Infringe on Political Parties' Freedom of Association Rights Under the First Amendment

RCV does not violate First Amendment speech or association rights. The U.S. Supreme Court has observed the "special place the First Amendment reserves for, and the special protection it accords, the process by which a political party 'select[s] a standard bearer who best represents the party's ideologies and preferences.'"²¹⁸ That said, political parties do not have a right to a State-run nominating process.²¹⁹

In *Maine Republican Party v. Dunlap*, the Maine Republican Party alleged that Maine's RCV system severely burdened its freedom of association by changing the way the Maine Republican Party selected candidates to a mandated RCV system.²²⁰ The court observed that U.S. Supreme Court cases that found violations of political party association rights were "limited to regulations that severely impair a political party's ability to function as a party composed of voters who share a common platform and beliefs because the regulations unduly restrict or expand the pool of voters given a voice in the party's primary elections."²²¹ The court concluded, "[t]he RCV Act has no similar effect."²²² The court found that "the RCV Act does not interfere with the internal governance or processes of the Maine Republican Party."²²³

The Maine Republican Party further argued that the "RCV Act's effect on the selection of the Party's nominees interferes with its internal governance."²²⁴ The court noted the Maine Republican Party was free to change its rules to the extent the RCV system had any impact on its internal governance.²²⁵ The Court also noted that, "Because the remedy to this potential consequence of the RCV Act is in the Party's control, any burden the RCV Act places on the regulation's effect is

²¹⁶ *Id.* at 693.

²¹⁷ *Id.* at 698.

²¹⁸ *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 453 (2008) (quoting *Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000)).

²¹⁹ *Id.*

²²⁰ *Maine Republican Party v. Dunlap*, 324 F. Supp. 3d 202, 209 (D. Maine 2018).

²²¹ *Id.* at 210.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.* at 210.

²²⁵ *See id.* at 211.

primarily external, it is unlikely to impose a severe burden on a party's associational rights."²²⁶

In *Kohlhaas*, the plaintiffs alleged that Alaska's open primary and RCV system violated speech rights under the United States and Alaska Constitutions by "weakening political parties' ability to select candidates for the general election and by allowing candidates to identify their party affiliation on the ballot without regard to whether the party had nominated or endorsed them."²²⁷ The Alaska Supreme Court rejected this argument, finding that Alaska's RCV system effectively gave political parties *greater* freedom.²²⁸ Whereas under Alaska's former primary system, political parties were forced by state legislation regarding primaries to choose their standard bearers via a state-run primary election governed by legislation and administered by the state Division of Elections, under the Alaska Model political parties were now unconstrained and free to choose their standard bearers by straw poll, caucus, or whatever means they wish.²²⁹ The Alaska Model simply removed the State from involvement in the process by which political parties select the candidates they wish to support. Moreover, political parties are free to allow whichever voters they choose to participate in this selection process.²³⁰ Having freely selected the candidate or candidates the parties believe best represent their values, the parties are free to support their chosen candidate or candidates and throw whatever support they desire in the open primary election and general election. The nonpartisan open primary "places no burden on political parties' associational rights precisely because it decouples the State's election system from political parties' process of selecting their standard bearers."²³¹ The *Kohlhaas* plaintiffs further alleged:

[A]llowing candidates to designate a party on the ballot violates political parties' associational rights because it "force[s] the political parties to accept those candidates that they may or may not want...and allows the candidates to identify themselves (truthfully or falsely) or hide their beliefs." *Kohlhaas* also faults Initiative 2 for not allowing the parties to indicate their nominees on the ballot. These rules, *Kohlhaas* argues, will result in forced association: Voters, seeing on the ballot that a candidate is registered with a particular political party, will believe that the party supports

²²⁶ *Id.*

²²⁷ *Kohlhaas v. State*, 518 P. 3d 1095, 1103 (Alaska 2022).

²²⁸ *See id.* at 1108 ("Previously, political parties were forced to hold a primary election under rules passed by the legislature and administered by the Division of Elections. Now they can select their preferred candidate through whatever mechanism they desire and are under no obligation to allow participation by voters they do not want. If a political party would like to choose the candidate that best represents its platform by primary election, caucus, or straw poll, it is entirely free to do so. The party can then throw whatever support it can muster behind that candidate's election bid. The parties' nomination process stands apart from the primary election, which serves merely to winnow the field of candidates to a manageable number for the general election") (internal citations omitted).

²²⁹ *See id.*

²³⁰ *See id.*

²³¹ *Id.*

that candidate, and that the candidate supports that party's platform.²³²

The court rejected this argument:

Kohlhaas's assertion that a candidate can lie about party affiliation on the ballot is incorrect. A candidate may appear on the ballot as affiliated with a political party only if that candidate truly has registered with the Division of Elections as affiliated with that party. The ballot and polling places must include a disclaimer explaining that these designations mean "only that the candidate is registered as affiliated with the political party." A candidate who is registered with one party can choose to be designated as nonpartisan or undeclared, but may not be listed on the ballot as registered with another party. Candidates not registered with a political party may be designated only as nonpartisan or undeclared. Thus, candidates cannot lie about being affiliated with a particular party.²³³

The court then noted, "Just as the U.S. Supreme Court emphasized in *Washington State Grange* its 'faith in the ability of individual voters to inform themselves about campaign issues,' we have also recognized that Alaska voters are not easily fooled."²³⁴

5. Courts have Generally Rejected Arguments that RCV Violates Various State Constitutional Plurality Vote Provisions Requirements

Several courts have addressed the issue regarding whether RCV violates various state constitutions that require the winner of an election to receive a plurality of votes.²³⁵ The majority of states have some form of plurality provision in their constitution:

The constitutions of thirty-nine states and Puerto Rico include some form of a "plurality" provision. Such provisions state that the candidate who receives "the highest number of votes," "the largest number of votes," "the greatest number of votes," or "a plurality of the votes" at the general election shall be elected.²³⁶

In *Moore v. Election Commissioners of Cambridge*, a Cambridge, Massachusetts voter challenged the city of Cambridge's adoption of a preferential voting system for its municipal elections where "each voter, though entitled to have only a vote for one candidate counted, [was] entitled to express as many relative

²³² *Id.* at 1109.

²³³ *Id.* (internal citation omitted).

²³⁴ *Id.* at 1110.

²³⁵ See, e.g., *Moore v. Election Comm'rs*, 35 N.E.2d 222, 229 (Mass. 1941); *Op. of the Justices*, 162 A.3d 188, 211 (Maine 2017); *Kohlhaas*, 518 P.3d at 1118–19.

²³⁶ Pildes & Parsons, *supra* note 169, at 1788 (citations omitted).

choices or preferences as he [saw] fit.”²³⁷ If a vote was not counted for the candidate of the voter’s first choice, it would be “counted for another candidate for whom he has expressed a choice, in the order of preference shown by him upon his ballot.”²³⁸

The Massachusetts Constitution requires that “the person having the highest number of votes shall be deemed and declared to be elected,”²³⁹ but the court noted this provision was not challenged and did not apply to this office. Nonetheless, the court analyzed the plurality issue and found that the “candidates receiving the largest numbers of *effective votes counted in accordance with the plan* are elected, as would be true in ordinary plurality voting.”²⁴⁰ The Massachusetts Supreme Judicial Court concluded, “preferential voting is fully ‘in accordance with the principle of plurality voting.’”²⁴¹

Maine’s RCV system has been the subject of multiple court challenges. In November 2016, the citizens of Maine enacted by initiative a system of RCV.²⁴² In a non-binding advisory opinion requested several months later by the Maine State Senate,²⁴³ the Maine Supreme Judicial Court advised that the RCV system violated the language in the state constitution, which required that its governor and legislators be elected by a “plurality” of votes cast.²⁴⁴ The court opined that the election of certain state officials by a “plurality” of votes cast in the general election implied that second-round runoffs, whether done instantly or at a later date, violated Maine’s constitution.²⁴⁵

As a result, Maine’s RCV system does not apply to general elections for those state offices:

Although the opinion was only advisory, it set in motion a series of legislative decisions, legal challenges, and popular action that culminated in the patchwork statutory settlement currently in place: RCV is used for federal and state offices in *primary* elections, but for federal offices only in *general* elections. That distinction reflects the scope of the constitution’s plurality provision, which applies only to general elections for state offices.²⁴⁶

This Maine decision has been the subject of both academic and judicial criticism. In an exhaustive analysis of RCV, the authors of a *California Law Review* article stated:

²³⁷ *Moore*, 35 N.E.2d at 229.

²³⁸ *Id.*

²³⁹ MASS. CONST. Art. XIV.

²⁴⁰ *Moore*, 35 N.E.2d at 226, 238 (emphasis added).

²⁴¹ *Id.* at 238.

²⁴² See generally *Question 5, Maine Ranked Choice Voting Initiative (2016)*, BALLOTEDIA, https://ballotpedia.org/Maine_Question_5,_Ranked-Choice_Voting_Initiative (2016) [<https://perma.cc/2TLP-L7TP>].

²⁴³ See generally S. Order, Requesting an Opinion of the Justices of the Supreme Judicial Court Regarding an Initiated Bill, 128th Leg., 1st Reg. Sess. (Maine 2017).

²⁴⁴ See Op. of the Justices, 162 A.3d 188, 211 (Maine 2017).

²⁴⁵ See *id.*

²⁴⁶ Pildes & Parsons, *supra* note 169, at 1812 (citations omitted) (emphasis in original).

The *Opinion of the Justices* is as concise as it is cryptic. Of its seventy-two paragraphs, most are spent analyzing whether it would be appropriate for the Justices to provide an advisory opinion at all. The merits of the “plurality” question occupy only nine paragraphs, and the Justices’ substantive interpretation occurs in only two...

The most fundamental defect in this remarkably brief analysis is that the Justices simply treat, without any analysis or justification, an elector’s first-preference ranking as that elector’s constitutional “vote.” As a formal doctrinal matter, that is at odds with the ranked-choice voting statute. Surprisingly, the decision does not discuss the contrary conclusion of Massachusetts’s highest court, which had found RCV not to violate similar provisions in that state’s constitution, despite the briefs bringing that decision to the attention of the Maine court.

Unlike the *Moore* opinion, which correctly recognized that a voter’s preference ranking cannot be translated into an “effective vote” until it has been “counted in accordance with” the ranked-choice tabulation process, the Maine advisory opinion treated the voters’ first-choice rankings as their “vote,” even though the legislation made it clear that this was not so. In effect, the Justices sever the ranked-choice tabulation into pieces, treat the first step in that tabulation as a freestanding election, and regard RCV ballots as if they are SCV ballots with superfluous marginalia.²⁴⁷

The analysis in *Opinion of the Justices* was also recently rejected by the Alaska Supreme Court.²⁴⁸ In *Kohlhaas*, the plaintiffs alleged the adoption of RCV violated the Alaska Constitution by requiring the winner receive a “majority” of votes, when the Alaska Constitution instead states the candidate “receiving the greatest number of votes” shall be governor.²⁴⁹ After walking through a hypothetical ballot counting analysis, the Alaska Supreme Court rejected the plaintiff’s argument, finding that a majority of total votes was not required to win an election, “a successful candidate can win the election with less than half of the total votes cast even though the candidate receives more than half of the votes counted in the final round of tabulation.”²⁵⁰

The plaintiffs in *Kohlhaas* also argued that “because the candidate who receives the greatest number of first-choice votes does not automatically win the election and may ultimately lose after second-and third-choice votes are tallied, ranked-choice voting unconstitutionally denies victory to the candidate who received ‘the greatest number of votes.’”²⁵¹ The court noted that this argument was

²⁴⁷ *Id.* at 1812–14.

²⁴⁸ See *Kohlhaas v. State*, 518 P.3d 1095, 1120–21 (Alaska 2022) (citations omitted).

²⁴⁹ *Id.* at 1118.

²⁵⁰ *Id.* at 1119–20.

²⁵¹ *Id.* at 1118.

similar to the argument accepted in the advisory opinion by the Maine Supreme Judicial Court.²⁵² However, the Alaska Supreme Court rejected this argument, stating that:

According to both states' ranked-choice voting laws, the vote count is not complete until the final round of tabulation. Yet the Maine Supreme Judicial Court treated the result obtained after the first round of counting as if it were final, without pointing to any text in its constitution that requires votes to be counted in that way or that limits the way a vote can be cast or expressed. The court discussed at length the history of the Maine constitution's plurality provision and the state's history of failed elections but did not explain how ranked-choice voting is any more likely to result in a failed election than single-choice voting. The court's failure to pinpoint constitutional text, structure, or policies inconsistent with ranked-choice voting leaves us unconvinced by its analysis.²⁵³

The Alaska court found the analysis of the Ninth Circuit Court of Appeals in *Dudum v. Arntz* to be more persuasive.²⁵⁴ The *Dudum* court stated:

In actuality, all voters participating in a restricted IRV election are afforded a single and equal opportunity to express their preferences for three candidates; voters can use all three preferences, or fewer if they choose. Most notably, once the polls close and calculations begin, no new *votes* are cast. To determine the winner of the election based on that single set of votes cast, restricted IRV uses an algorithm. The ballots, each representing three or fewer preferences, are the initial inputs; the sequence of calculations mandated by restricted IRV is used to arrive at a single output—one winning candidate.²⁵⁵

The court concluded that “[t]he series of calculations required by the algorithm to produce the winning candidate are simply steps of a single tabulation, not separate rounds of voting.”²⁵⁶ The *Kohlhaas* court accordingly rejected the argument that RCV violated the Alaska constitutional provision that the candidate “receiving the greatest number of votes” shall be elected.²⁵⁷

C. *Alaska Demonstrates that RCV Reflects the Will of the Constituency*

The Alaska Model of open primaries leading to top-four RCV general elections offers voters greater choices in both primary and general elections, giving

²⁵² See *id.* at 1120–21 (citing Op. of the Justices, 162 A.3d 188, 211 (Maine 2017)).

²⁵³ *Id.* at 1121 (citations omitted).

²⁵⁴ See *id.*; see generally *Dudum v. Arntz*, 640 F.3d 1098 (9th Cir. 2011).

²⁵⁵ *Dudum*, 640 F.3d at 1107 (emphasis in original) (citation omitted).

²⁵⁶ *Id.*

²⁵⁷ *Kohlhaas*, 518 P.3d at 1120–23.

diverse voters a greater voice in the democratic process. Whereas in single choice elections that include a typical party primary, in very partisan districts the winner of the primary election typically goes on to win the general election with little effort or debate. Thus, very liberal districts tend to elect the more liberal candidate in a primary - with that candidate a virtual lock to win the general election. Conversely, very conservative districts tend to elect the more conservative candidate in the primary- who then proceeds to trounce any opposition candidate in the general. Thus, in closed, partisan primaries, with lower voter turnout in primary elections, the inevitable outcome in a highly partisan district is often that a tiny fraction of the electorate elects the winner of the general election during the primary.

By switching to open primary elections and having the top four vote getters of any (or no) party move to the general election, the Alaska Model changes all of this and offers the potential for much more competitive general elections. This quickly became evident in Alaska's 2022 election. While many races were unaffected by RCV, with only a single Republican and a single Democrat running in a number of districts, in some of the more partisan districts multiple members of the same party ran against each other. In previous years these elections would have effectively been decided in the primary election. But under RCV, multiple candidates of the same party moved to the general election, allowing for a more robust debate and providing a greater number of citizens the right to choose among various candidates whose platforms and views were more varied or nuanced. This is a key feature of the Alaska Model—it pushes the real competition from the primary to the general election, when more voters are participating.

Moreover, RCV inevitably leads to more coalition building as candidates in even highly partisan districts often seek to broaden their support in the general election by appealing to less partisan voters or voters of various interest groups.

Whereas in the past, candidates in partisan races were often chosen by a small group of partisan primary voters, under the Alaska Model, candidates must finish in the top four of the whole electorate, not just fellow partisans. Instead of adhering to a doctrinaire political party platform, candidates can appeal to voters across a wider political spectrum. Since Alaska voters adopted the Alaska Model in 2020, it has been used twice: once in a special primary and special general election to replace deceased U.S. House member, Don Young, and once in the regular 2022 election cycle. While the data is limited to these two elections, it appears that the new system resulted in a greater diversity of choices for voters in the general election and increased voter participation in the primary. Moreover, the limited data and public comments that do exist support the notion that RCV was simple to use, is supported by diverse communities, and has led to more robust elections and debate.

The 2022 general election ballot offered Alaskans a greater diversity of candidates than in previous general elections. While the historic number of candidates running for U.S. Congress is certainly largely due to the vacancy caused by the death of longtime Congressman Don Young, legislative races also showed a significant increase in number of candidates compared to previous elections. Forty-five State Senate candidates appeared on general election ballots as well as ninety-one candidates for State House, compared to only thirty-five State Senate

candidates and sixty-eight House candidates in 2012. The 2022 general election ballot featured ten State Senate races and eighteen State House races with more than one candidate from the same political party, where under the old system only one candidate from each party would have advanced to the primary. In five State Senate races and eight State House races, only candidates from one party were running, meaning that the under the previous system of party primaries a single candidate would have run unopposed in the general but under the Alaska Model competitiveness increased and general election voters were able to choose from more than one candidate.

Several professional analyses of RCV results in Alaska and other jurisdictions provide empirical evidence that RCV leads to greater representation for diverse communities. An analysis by the Sightline Institute found that the Alaska Model increased political diversity in the Alaska Legislature, concluding that “[t]he new system, more than any other factor, was the most obvious game-changer for political diversity in the Alaska legislature.”²⁵⁸ This report also concluded that age, racial, and gender diversity also increased but that not enough data was available to say whether the new election system was the cause. An analysis of RCV elections across the country by RepresentWomen similarly found that RCV increases representation of women in government.²⁵⁹

An analysis conducted by Get Out the Native Vote, an organization focused on increasing electoral participation by Alaska Natives, and the Ship Creek Group, an Anchorage-based consulting firm, found that “voting preferences of predominantly Alaska Native communities are disproportionately inhibited under partisan primaries.”²⁶⁰ This report showed that in the 2022 primary election, forty-nine percent of all voters cast votes for candidates from different parties, which would have been impossible under the previous system where voters had to choose a single primary ballot and 79.9% of voters in predominately Alaska Native precincts cast such crossover votes.²⁶¹ Voter turnout in the 2022 primary was 32.16%, up significantly from the 20.42% turnout in the previous gubernatorial election in 2018, likely in large part due to the greater choice offered voters by the new system.²⁶²

²⁵⁸ Jeannette Lee, *A Fairer Election System in Alaska Helped More Independents Win Office*, SIGHTLINE INSTITUTE (May 23, 2023), <https://www.sightline.org/2023/05/22/a-fairer-election-system-in-alaska-helped-more-independents-win-office/> [<https://perma.cc/7GBH-8DUY>].

²⁵⁹ See Memorandum from Courtney Lamendola, Marvelous Maeze & Steph Scaglia to Interested Parties, *Ranked Choice Voting and Women’s Representation*, REPRESENTWOMEN (Jan. 2023), <https://representwomen.app.box.com/s/jzs9ycq8i3oo3torozy62vprl0w066vo> [<https://perma.cc/6NM2-XC3U>].

²⁶⁰ GOTNV, *supra* note 89, at 13.

²⁶¹ *Id.* at 15.

²⁶² Compare State of Alaska 2022 Primary Election, *Election Summary Report* (Sept. 2, 2022), <https://www.elections.alaska.gov/results/22PRIM/ElectionSummaryReportRPT.pdf> [<https://perma.cc/V2X3-8LUA>] (demonstrating 32.16% voter turnout), with State of Alaska 2018 Primary Election, *Election Summary Report* (Sept. 4, 2018), <https://www.elections.alaska.gov/results/18PRIM/data/results.htm> [<https://perma.cc/2BVX-BB6W>] (demonstrating 20.42% voter turnout). It is possible that Alaska’s voter turnout rates can appear artificially low when compared to other states, since under a ballot initiative passed in 2016, Alaska automatically registers applicants for the Permanent Fund Dividend to vote unless they opt

The increased choice of general election candidates highlights how the Alaska Model solves problems inherent to the top two open primary system used in Washington, California, and Nebraska. Under the Washington and California systems, the primary functions similar to Alaska's but only the top two candidates advance to the general election which is decided under the first-past-the-post system.²⁶³ With only two candidates advancing, it is more likely that only candidates from one party will advance to the general election, and one study showed that voters are twenty percent more likely to simply not vote in a race when no candidates from their preferred party advance to the general election.²⁶⁴ Under the Alaska Model, single party general elections only occur when no other candidates run or candidates from one party are able to completely sweep the top four positions in the primary, making this a better system for ensuring that voters across the political spectrum are engaged in the general election.

While it is suggested that some voters, especially members of minority communities might find RCV confusing, data from the 2022 election cycle shows this was not the case. Leading up to the first RCV election cycle in 2022, the Alaska Division of Elections, the media and various interest groups undertook an exhaustive effort to educate Alaskans about RCV.²⁶⁵ These efforts appear to have succeeded as an exit poll conducted by Patinkin Research in the November 2022 general election found that ninety-two percent of Alaskans reported receiving instructions on how to rank their choices. At least eighty-seven percent of respondents across all major ethnicities—including Alaska Native, Black, Latino, and Asian/Hawaiian voters—received instructions.²⁶⁶ The poll showed that RCV did not prove to be complex and confusing, as some opponents had suggested. To the contrary, seventy-nine percent of Alaskans reported RCV to be “simple” with at least seventy-eight percent of respondents across all major ethnicities—including Alaska Native, Black, Latino, and Asian/Hawaiian voters—saying it was simple. Sixty percent of Alaskans reported that state and local elections were more competitive compared to previous years with sixty percent of self-identified Republicans and sixty-eight percent of self-identified Democrats agreeing with this

out. See *Alaska Voter Registration via the Permanent Fund Dividend Application, Ballot Measure I* (2016), BALLOTPEDIA, https://ballotpedia.org/Alaska_Voter_Registration_via_the_Permanent_Fund_Dividend_Application,_Ballot_Measure_I (2016) [<https://perma.cc/D3XD-EY59>].

²⁶³ See *Top-Two Primary*, BALLOTPEDIA, https://ballotpedia.org/Top-two_primary [<https://perma.cc/EN8P-8KPC>].

²⁶⁴ Colin Fisk, *No Republican, No Vote: Undervoting and Consequences of the Top-Two Primary System*, 20 *STATE POLITICS & POL'Y Q.* 292, 300 (Sept. 20, 2020).

²⁶⁵ See *Ranked Choice Voting Education Campaign Launches with Mock Elections Today*, State of Alaska Division of Elections, (June 1, 2021), <https://www.elections.alaska.gov/ranked-choice-voting-education-campaign-launches-with-mock-elections-today/> [<https://perma.cc/9YUV-ZVJN>].

²⁶⁶ Press Release, Alaskans for Better Elections, Polling Shows Alaskan Voters Received Clear Instructions on the System, Found Ranking to be “Simple,” and saw more Competitive Races (Nov. 15, 2022), <https://www.alaskansforbetterelections.com/polling-shows-alaskan-voters-received-clear-instructions-on-the-system-found-ranking-to-be-simple-and-saw-more-competitive-races/> [<https://perma.cc/TTA6-PG2J>] (providing Patinkin Research Strategies exit poll results on Alaska's second use of RCV in a regular general election).

assessment. This is not surprising when one considers how RCV fundamentally impacts elections.

D. *The Alaska Model is a Testament to the Merits of RCV*

Freed from the shackles of partisan politicking and bickering, it is perhaps not surprising that after Alaska's first RCV election the Alaska State Senate organized in a bipartisan coalition with all nine elected Democrats joining eight Republicans to form a seventeen to three majority with shared leadership and committee chairs.²⁶⁷ While bipartisan coalitions are not that unusual in Alaska²⁶⁸, given the extreme partisanship that has engulfed the nation in recent years it does provide another data point about the impact of RCV.

The success of the Alaska Model of open primaries and ranked-choice general elections is reflected by the support it has received from leading Alaska Native organizations. In October 2023, nearly one year after the first RCV election in Alaska, the Alaska Federation of Natives ("AFN"), Alaska's largest native organization, representing 160 Tribes, 154 corporations, and ten consortiums endorsed the preservation of the open primary and ranked-choice voting system during AFN's annual convention.²⁶⁹ This is particularly significant since Alaska Natives are Alaska's largest ethnic minority group with 21.9% of Alaska's population identifying as Alaska Native or American Indian.²⁷⁰ Joe Nelson, AFN Co-Chair at the time, said:

Given the polarization in the country, Alaskans cannot afford to merely preserve the non-partisan open primary and ranked-choice voting model. . . . We have an obligation to lead a movement. Our current elections law will help restore confidence in our electoral system by creating a lane that allows politicians to become public servants—in service of all Alaskans.²⁷¹

²⁶⁷ E.g., Yareth Rosen, *In New Bipartisan Alaska Senate Majority of 17, Members Vow Compromise and Consensus*, ALASKA BEACON (Nov. 29, 2022), <https://alaskapublic.org/2022/11/29/in-new-bipartisan-alaska-senate-majority-of-17-members-vow-compromise-and-consensus/> [<https://perma.cc/A3PV-B4VW>].

²⁶⁸ Over the years, in both House and Senate, bipartisan majorities have organized, commonly with a few Democratic legislators joining a Republican-led majority. Usually these members represent rural Alaska; Representatives and Senators from these areas recognize the political benefits of joining a majority coalition in terms of securing beneficial positions and funding. In the Alaska Senate, the most recent large coalition majorities have existed in 2007–2012 and 2023–2024.

²⁶⁹ *2023 Annual AFN Convention Resolutions*, Alaska Federation of Natives 2 (Oct. 2023), <https://nativefederation.org/wp-content/uploads/2023/10/2023-AFN-Convention-Resolution.pdf> [<https://perma.cc/Y5SC-SLQN>].

²⁷⁰ International Association for Indigenous Aging, *American Indians and Alaska Natives: Key Demographics and Characteristics*, NATIONAL COUNCIL ON AGING (Jan. 10, 2023), <https://www.ncoa.org/article/american-indians-and-alaska-natives-key-demographics-and-characteristics/> [<https://perma.cc/53TS-P294>].

²⁷¹ Press Release, Alaskans for Better Elections & Alaska Federation of Natives, *Alaska Federation of Natives Endorses Preservation of Open Primaries and Ranked Choice Voting* (Oct. 23, 2023), https://www.alaskansforbettelections.com/wp-content/uploads/2023/10/20231021_AFN-Resolution.pdf [<https://perma.cc/SPD8-A5ER>].

The Alaska Native Brotherhood and Alaska Native Sisterhood Grand Camp (ANB and ANS), the world's oldest indigenous rights organization, endorsed the preservation of Alaska's open primary and RCV system.²⁷² ANB and ANS noted that repealing the system would “subvert the will of voters... exacerbate polarization and hyper-partisanship; centralize power within the hands of small groups of partisan voters, and discourag[e] common-sense legislating and consensus-building.”²⁷³

Support for the Alaska Model has come from a wide variety of groups and individuals across the state.²⁷⁴

E. *The Alaska Model Demonstrates Success and Provides Insights into Important Improvements*

The nonpartisan primary election, with top four candidates going on to a ranked-choice general election has served Alaskan voters well. Candidates may complain that it costs more for them, requires more work on their part to talk to all voters, requires more transparency of true sources of campaign money, and forces more honest conversations between candidate and voter without reliance on political party platforms. For the voters, the Alaska Model provides more opportunity to express their preferences with their votes, more access to true source funding of campaigns, and more authentic conversations with candidates.

There are recognized improvements that must be implemented to further perfect the process. Alaska's massive size, extremely limited road infrastructure, and widely distributed small population make election administration very challenging.

Ballot delivery can be very unreliable, with vast portions of the state served only by air transportation. Weather is often a factor for planes flying to remote locations in our Arctic state. Nevertheless, delivery of ballots by postal service must be improved, with utilization of technology to track ballot locations. The primary election in 2024 got off to a difficult start with ballots not being delivered to polling locations in a timely manner, with ballots ultimately arriving five days after the primary election early voting had begun.²⁷⁵ In 2022, ballots from rural Alaska did

²⁷² *Oppose the Repeal of State of Alaska Rank Choice Voting*, Alaska Native Brotherhood & Alaska Native Sisterhood Grand Camp, <https://www.alaskansforbetterelections.com/wp-content/uploads/2023/11/23-01-Oppose-the-Repeal-of-AK-Rank-Choice-Voting.pdf> [<https://perma.cc/2N8N-JKXH>].

²⁷³ *Id.*

²⁷⁴ These groups include the Alaska Independence Party, Alaska Libertarian Party, ANCSA Regional Association, Institute of the North, Juneau Pro-Choice Coalition, League of Women Voters, Alaska Nurses Association, Native Peoples Action, Sealaska, Stand Up America, Tanana Chief Conference, Tlingit & Haida, Alaska Professional Firefighters, United Tribes of Bristol Bay, Veterans for Alaska Voters and twenty labor organizations. See No On 2, <https://noon2ak.com/coalition/> [<https://perma.cc/Q4R6-FN2F>].

²⁷⁵ James Brooks, *Mail Delays Postpone the Start of Pre-Election Day Voting in Parts of Rural Alaska*, ALASKA BEACON (Aug. 7, 2024), <https://alaskabeacon.com/2024/08/07/mail-delays-postpone-the-start-of-pre-election-day-voting-in-parts-of-rural-alaska/> [<https://perma.cc/6D8P-SXYU>].

not arrive in time to be counted in the special general election for U.S. Congress.²⁷⁶ To address both delivery and return of ballots, this year the Alaska Division of Elections is initiating the use of tracking devices in the mail bags.²⁷⁷

Rural Alaska polling locations are challenged to find poll workers to open the polling locations. This happened in 2022 for the primary²⁷⁸ and the general election.²⁷⁹ This ongoing problem is being addressed at each election cycle by the Alaska Division of Elections. The Alaska Legislature passed legislation to increase the pay for poll workers, in hopes of drawing more staff.²⁸⁰

Despite significant efforts, communication with rural areas across Alaska, a state which is larger than Texas, California, and Montana combined. This underscores the ongoing work to set up polling places, and the fifteen-day post-election window to allow ballots to arrive in the Division of Election in the state capitol in Juneau.²⁸¹

Absentee voting by mail is very popular in Alaska and can be requested without specifying a justification for the absentee status. Witness signatures and postage affixed to the mailed envelope have been required on any ballots voted absentee by mail. During the COVID-19 pandemic, both requirements were suspended but reinstated in 2022. Voter confusion resulted with some ballots arriving without the witness signature; the U.S. Postal Service nevertheless did deliver ballot envelopes without postage to the Division of Elections. Legislation, Senate Bill 138, was introduced in 2023 to repeal the witness signature requirement and institute a state postage paid return envelope for ballots,²⁸² but the bill failed to pass.²⁸³

The Alaska Model has been implemented twice, with 2024 elections being the third time; improvements are recognized that might be considerations for other states considering some permutation of the Alaska Model for their state. Legislation

²⁷⁶ Iris Samuels, *Alaska's Election Results are Certified with Some Ballots Left Uncounted*, ANCHORAGE DAILY NEWS (Sept. 3, 2022), <https://www.adn.com/politics/2022/09/02/alaska-election-results-are-certified-with-some-ballots-left-uncounted/> [<https://perma.cc/DGE8-JDZR>].

²⁷⁷ James Brooks, *Alaska Elections Officials Plan to Debut New Ballot-Tracking System with Aug. 20 Primary*, ALASKA BEACON (Aug. 16, 2024), <https://alaskabeacon.com/briefs/alaska-elections-officials-plan-to-debut-new-ballot-tracking-system-with-aug-20-primary/> [<https://perma.cc/PEG9-V385>].

²⁷⁸ James Brooks, *Two Rural Alaska Communities Failed to Open Polling Places on Election Day*, ALASKA BEACON (Sept. 2, 2022), <https://alaskabeacon.com/briefs/two-rural-alaska-communities-failed-to-open-polling-places-on-election-day/> [<https://perma.cc/JB6C-24RU>].

²⁷⁹ Alena Naiden, *2 Rural Alaska Polling Places Didn't Open Until Late Afternoon on Election Day*, ANCHORAGE DAILY NEWS (Nov. 10, 2022), <https://www.adn.com/alaska-news/rural-alaska/2022/11/10/two-rural-alaska-polling-places-didnt-open-until-late-afternoon-on-election-day/> [<https://perma.cc/ZV45-JKZ4>].

²⁸⁰ H.B. 268, 33rd Leg., Reg. Sess. (Alaska 2024).

²⁸¹ Andrew Kitchenman, *Two Rural Alaska Precincts Fail to Open for Primary Voting After Workers Don't Respond to State*, ALASKA BEACON (Aug. 20, 2014), <https://alaskabeacon.com/briefs/3-rural-alaska-precincts-fail-to-open-for-primary-voting-after-workers-dont-respond-to-state/> [<https://perma.cc/AX98-QW45>].

²⁸² S.B. 138, 33rd Leg., Reg. Sess., (Alaska 2023).

²⁸³ See *Bill History/Action for Legislature*, ALASKA STATE LEGISLATURE, https://www.akleg.gov/basis/Bill/Detail/33?Root=SB%20138#tab1_4 [<https://perma.cc/D7A6-PENX>] (demonstrating “current status” and “status date” that bill failed to be enacted).

introduced in 2023, but failing to pass, would have required frequent public updates of vote tallies, ballot tracking barcodes to verify date of mailing and to allow voters the ability to track their ballot,²⁸⁴ and a process for “ballot curing” which allows a deficiency to be corrected by the voter within certain guidelines.²⁸⁵ The 2023 legislation would provide that unofficial election result totals, including updated RCV tabulation, be released as counted.²⁸⁶

Campaign funding laws are another topic of Alaska Model reform under consideration. The true source disclosure requirements for “dark money” could be applied to ballot initiatives, referenda, and recalls. There is discussion of restoring Alaska’s campaign contribution limits which were removed in 2021 by the Ninth Circuit Court of Appeals, in *Thompson v. Hebdon*.²⁸⁷

IV. CONCLUSION

In 2020, Alaskan voters were presented with the opportunity to have more choice and voice through election reforms. A citizens’ initiative proposed the Alaska Model, which created nonpartisan primary elections, followed by ranked-choice general elections with up to four candidates to choose from and requiring more than fifty percent of the vote to win election. The initiative also included a requirement for “true source” campaign fund disclosure.

These three elements would create an innovative restructure that has brought much needed transparency and trust in the election conduct and outcome. Funders can no longer hide behind amalgamated funds of independent expenditure groups; all political donation sources must be fully identified. A small fraction of party-affiliated voters’ no longer control which candidates are allowed to appear on the general election ballot for the rest of Alaskans to choose from; all voters can fully participate in nonpartisan primaries. General elections are no longer a binary choice, structured to benefit political parties; all voters can express their full preferences as they rank up to four candidates on the general election ballot.

Nay-sayers asserted that voters would not understand how to rank; the outcomes would be “rigged;” the new systems would violate constitutional rights; and the change would be too expensive and confusing. Alaskans proved these allegations wrong, and courts in Alaska and other jurisdictions agreed.

In this essay we have responded to and clarified the concerns and misunderstandings expressed by various state legislators. As other states consider the Alaska Model, acting as laboratories of democracy envisioned by the Founders, our intention is that this essay will provide a roadmap and valuable background to inform their decisions.

²⁸⁴ S.B. 138, 33d Leg., Reg. Sess. (Alaska 2023).

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Thompson v. Hebdon*, 7 F.4th 811 811, 827 (9th Cir. 2021).