

**Testimony of Sean Parnell
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to the

**Veterans and Legal Affairs Committee
Maine Legislature**

Re: LD 1502

**An Act to Provide Consistency of Process for Maine's Electoral Votes by Prohibiting
Enactment of the National Popular Vote Interstate Compact**

May 17, 2023

Chairman Hickman, Chairwoman Supica, please accept my written testimony on this legislation, which is offered neither in support of nor opposition to LD 1502, but that I hope provides useful information regarding this bill.

LD 1502 proposes to bar the state of Maine from entering the National Popular Vote interstate compact (NPV) so long as the state uses ranked choice voting (RCV) in any election. I would like to explain the key issue involved here, which is the problems that Maine's use of RCV would create for the operation of the compact – regardless of whether Maine is or is not a member of the compact – should NPV ever go into effect.

RCV creates serious problems for NPV because the compact anticipates that every state will, at the end of the election, provide a single vote total for each presidential slate, which can then be added into the national vote count. Under RCV, however, there are at least two vote totals for each presidential slate – an initial total of first round votes, and then a final total, after the RCV process has concluded. The compact does not provide any guidance on which vote totals are to be used by member states in determining the national vote count for each presidential slate, leaving it to the discretion of each member state's chief election official (typically, as in Maine, the Secretary of State). Because the difference in first round and final round vote totals can be in the tens or even hundreds of thousands, in a close national election the choice of which vote totals are used in determining the national vote count could determine the outcome under NPV.

Lobbyists for NPV reject this analysis, claiming that Maine's law requiring that final-round vote totals appear on the state's Certificate of Ascertainment resolve this issue. What this assertion

ignores, however, is that Maine’s law has no effect on the choice made by other states that are in the compact. The chief election official of another state is not required to obtain Maine’s vote totals from the state’s Certificate of Ascertainment – the compact only requires that they obtain vote totals from an “official statement,” a term that encompasses any number of other documents typically produced by states during the post-election tabulation and certification process. NPV Chairman and founder John Koza explained to the Connecticut legislature in 2014:

“...the National Popular Vote Compact does not depend on any particular piece of paper... The “final determination” of a state’s presidential vote does not have to come in the form of the Certificate of Ascertainment. It could just as well be evidenced by, say, the official minutes of the state board of canvassers or any other official document from the state containing the vote count.”¹

As part of the RCV process, Maine produces an “official statement” that includes both first-round and final-round vote totals. Maine’s Secretary of State is required to file with the Governor and make public a report detailing vote totals for all rounds,² as was done following the 2022 election in the state’s 2nd Congressional district.³ No law passed by Maine can direct the chief election officer of another state to prefer Maine’s Certificate of Ascertainment over this report or any other “official statement” produced by Maine when they gather vote totals for inclusion in the national vote count.

One reason another state’s chief election official might prefer to use the first-round results rather than those on the Certificate of Ascertainment would be to avoid the erasure of hundreds of thousands of votes from the national vote count in the event either the Democratic or Republican presidential slates finished behind an independent or third-party candidate. For example, in 1992 Ross Perot finished in second place in Maine (and Utah), just ahead of George H. W. Bush. Had the state used RCV in that election, Bush’s final vote total from Maine that year would have been 0, erasing more than 206,000 votes from his national vote count.

¹ Koza, John. “Answers to Questions about Presidential Vote Counting and the National Popular Vote Bill,” February 2014. Available upon request.

² Under rules adopted by the Maine Secretary of State in 2018, initial, final, and any intermediate vote totals are to be reported to the Governor and made publicly available following the election. Section 6, subsection 4, “Rules Governing the Administration of Elections Determined by Ranked Choice Voting.” Available at <https://www.maine.gov/sos/cec/elec/upcoming/pdf/250c535-2018-230-complete.pdf>.

³ The 2022 report to Maine’s governor for the 2nd Congressional district race, which includes both initial and final vote totals, is available at: <https://www.maine.gov/sos/cec/elec/results/2022/Rep%20to%20Congress%20Dist%20%20RCV%20results.pdf>

Finally, I will note that lobbyists for NPV claim that it's not possible for there to be any conflict between the compact and RCV because the nation's leading proponent of RCV (Rob Richie, president of FairVote) helped write the compact. This ignores a 2021 paper on this issue that Richie served as the lead author of, which noted:

“...as currently drafted, the [NPV compact] seems to assume a plurality system.... [U]sing RCV for Presidential elections in states might seem incompatible with [NPV]. Most fundamentally, which votes should be reported out for the purpose of [NPV]? Would it be the first choices among all the candidates? Or would it be the final “instant runoff” totals after the RCV tallies are completed? If that latter choice were made, what if one of the two strongest national candidates was eliminated during the RCV tally in a given state?”⁴

That paper came out in August 2021, months after Maine changed its law regarding what information is to be reported on its Certificate of Ascertainment in an unsuccessful effort to address the problem. Other leaders in the area of alternatives to plurality voting have also noted the conflict. For example, Dr. Warren D. Smith of the Center for Range Voting warns that there will be a “trainwreck” if any state uses RCV while NPV is in effect and observes “Different kinds of voting systems in different states simply were not designed to be agglomerated to yield one overall “popular vote winner””⁵ Other experts in alternatives to plurality voting have offered similar criticisms.⁶

While there may have been some recognition by the drafters of the compact that some states in the future may use RCV or other forms of non-plurality voting, the fact is that NPV as written does not adequately address the issue, which I hope you will keep in mind as you consider LD 1502. I am happy to provide additional information on this or any related topic, and I can be reached at (571) 289-1374 or sean@saveourstates.com. Thank you.

⁴ “Toward a More Perfect Union: Integrating Ranked Choice Voting with the National Popular Vote Interstate Compact,”⁴ p. 159. Available at: <https://harvardlpr.com/wp-content/uploads/sites/20/2021/08/HLP106.pdf>

⁵ “Warning! Voting reform trainwreck approaching – need to act now to avoid the problem” available at: <https://www.rangevoting.org/NPVtrainwreck.html>

⁶ See: “Voting Reform Community Sees Major Problem with National Popular Vote,” January 2023. Available at: <https://saveourstates.com/blog/voting-reform-community-sees-major-problem-with-national-popular-vote>