

FAIRVOTE

Ranked Choice Voting *ABA Midyear Conference*

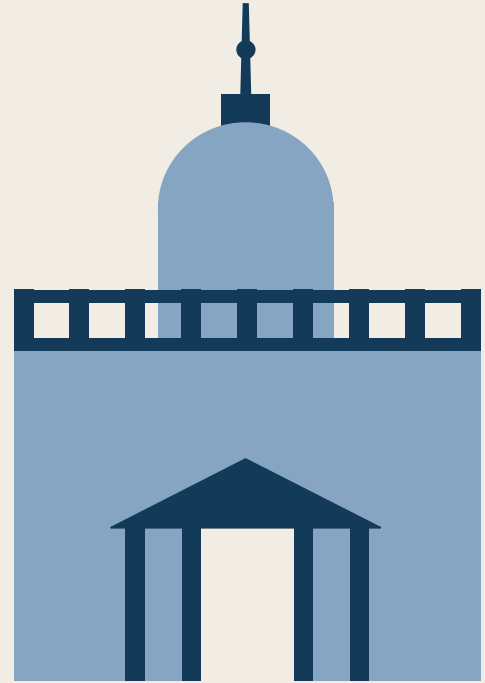
- ▶ Michael Parsons, FairVote, Senior Legal Advisor
- ▶ Monte Frank, Member, Pullman & Comley



WHY REFORM IN THE U.S.?

AV

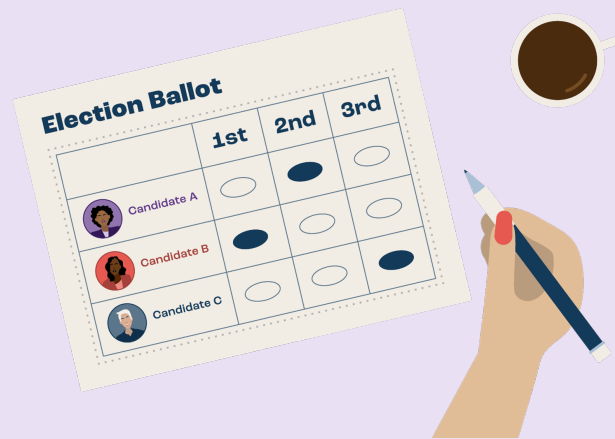
- ▶ Limited voter choice
- ▶ Vote-splitting & strategic voting
- ▶ Non-majority winners
- ▶ Toxic (“affective”) polarization
- ▶ Non-competitive elections
- ▶ Gerrymandering
- ▶ Lack of representation



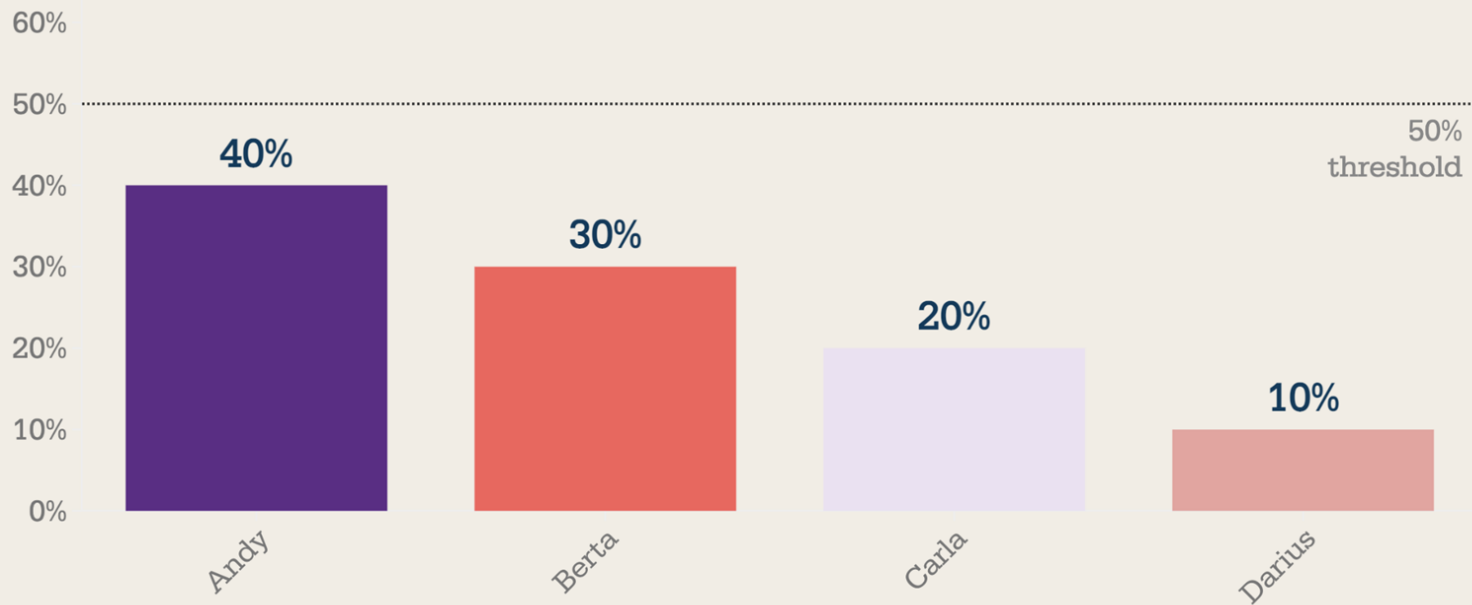
WHAT IS RANKED CHOICE VOTING



- Voters have the option to **rank candidates** in order of their preference.
- RCV **promotes majority winners**. If no candidate has a majority of first-choice preferences, candidates are eliminated one-by-one in an **“instant runoff”** until there is a majority winner.
- It's a **simple change** with **powerful impacts** for our democracy.

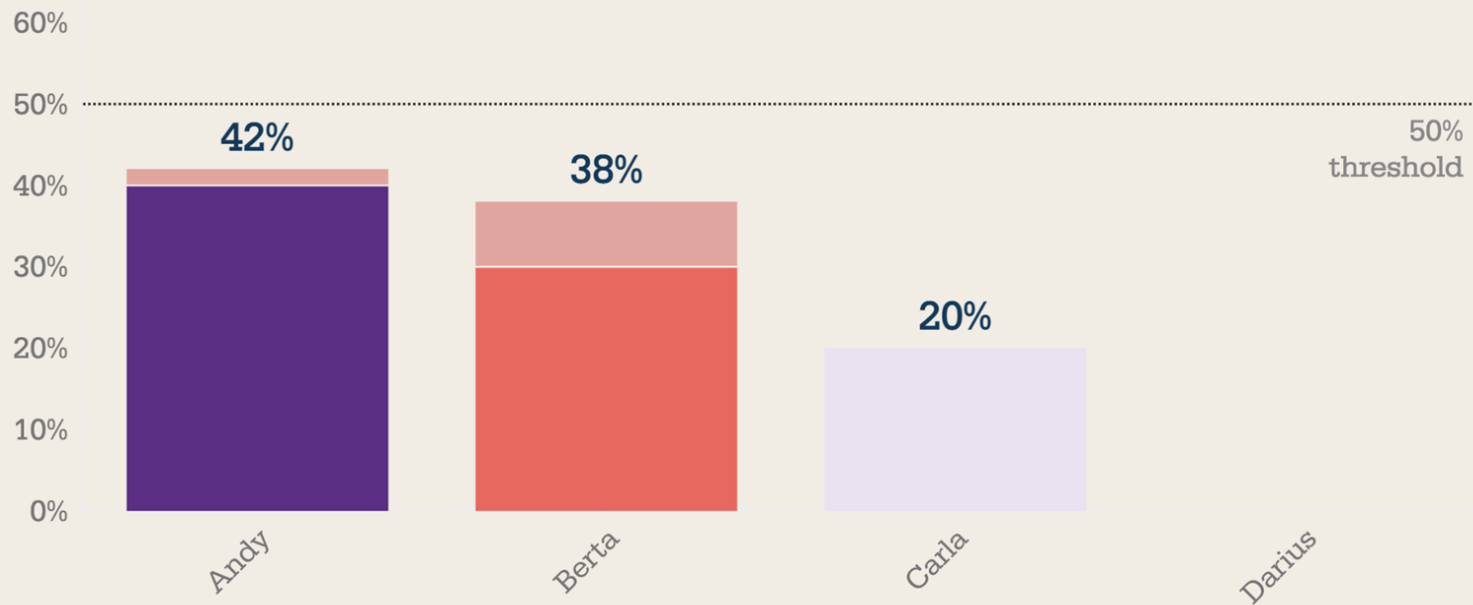


ROUND 1



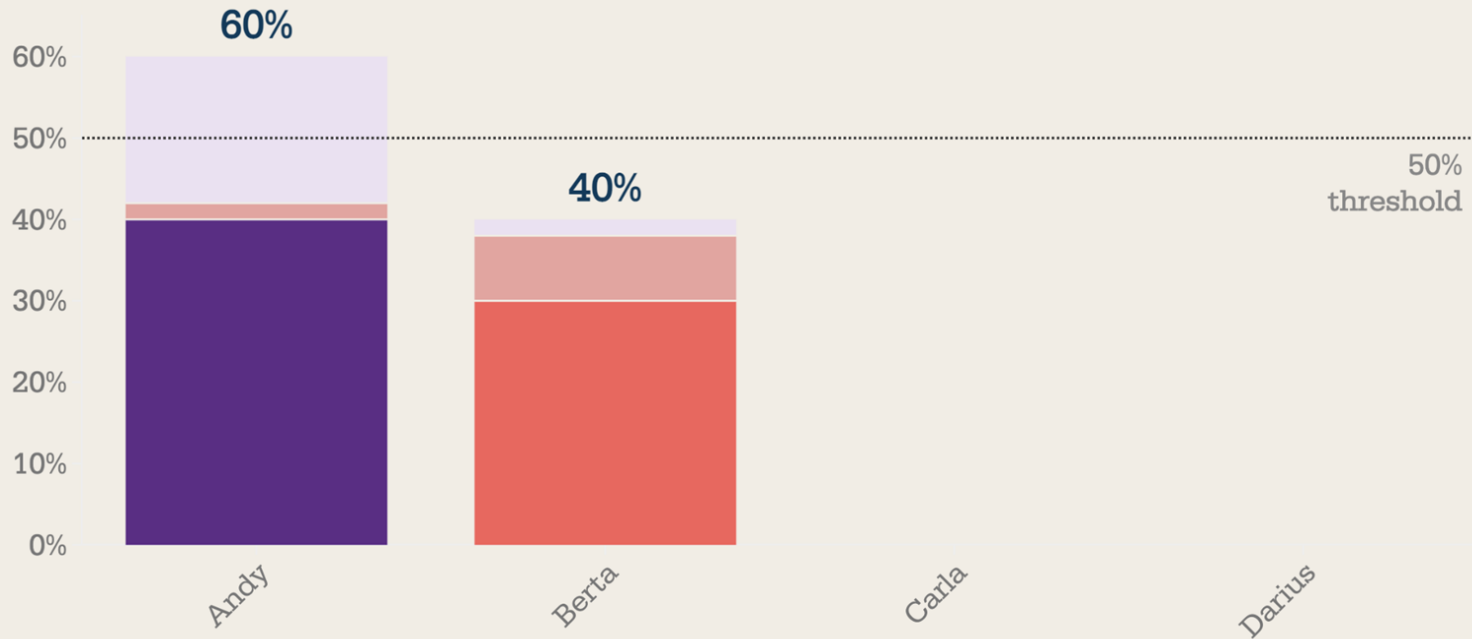
No candidate has more than half of 1st choices. The last-place candidate will be eliminated.

ROUND 2



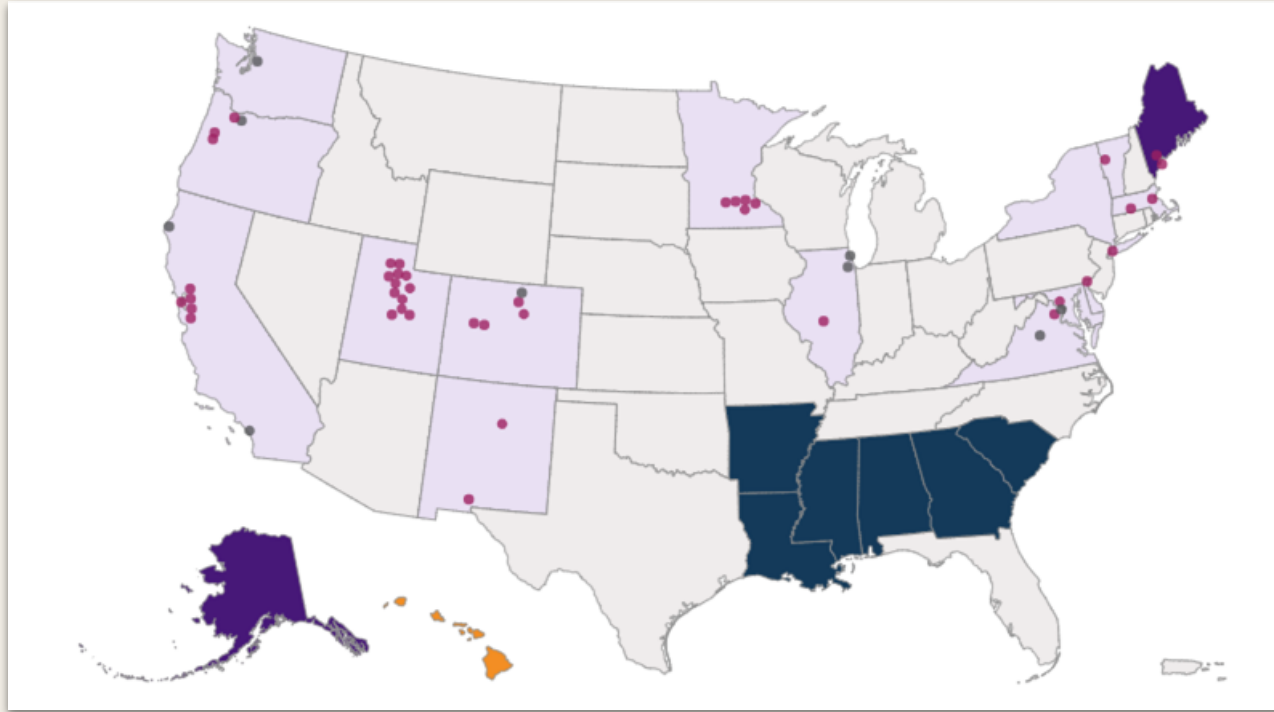
Darius is eliminated. Those ballots count for the voters' 2nd choices.

ROUND 3



Carla is eliminated. Those ballots count for the voters' next choices. Andy wins the election.

WHERE IS RCV USED?



-  **Used Statewide**
-  **Statewide for special elections**
-  **Local elections in some jurisdictions**
-  **Military and overseas voters**

BENEFITS OF RCV



Voters like RCV & use multiple rankings

- ▶ 77% in NYC
- ▶ 94% in Santa Fe
- ▶ 85% in 2024 Portland mayoral
- ▶ 85% in 2022 Oakland mayoral
- ▶ 71% of voters rank 2+ candidates (more in competitive races)

RCV encourages sincere voting

- ▶ In Utah, voters were more likely to vote for their honest favorite by a 30-to-1 margin
- ▶ Maine and Alaska are among the states with the highest vote share for independent & 3rd party candidates

RCV elects winners with broad support

- ▶ All winners have majority in final round
- ▶ 73% of voters ranked the winner in their top 3

BENEFITS OF RCV



RCV improves the tone of campaigns

- ▶ Less mudslinging, more civil campaigning
- ▶ Candidates must appeal to a broader group of voters
- ▶ Evidence is available from exit surveys and campaign analysis

RCV improves representation

- ▶ Over the last decade, women won half of municipal RCV races
- ▶ People of color hold 61% of RCV-elected offices in Bay Area, up from 38% pre-RCV.
- ▶ Most studies show that voters of color tend to use more rankings

RCV improves voter engagement

- ▶ Voters in RCV cities are more likely to be contacted by campaigns

WHERE IS THE RESEARCH MORE MIXED?



Unclear impact on voter turnout

- ▶ Turnout is improved when cities consolidate 2 elections into 1; otherwise, mixed
- ▶ One recent paper finds RCV boosted turnout in odd-year municipal elections
- ▶ Other factors primarily drive general election turnout, like election timing, competitiveness, etc.

Unclear impact on voter trust

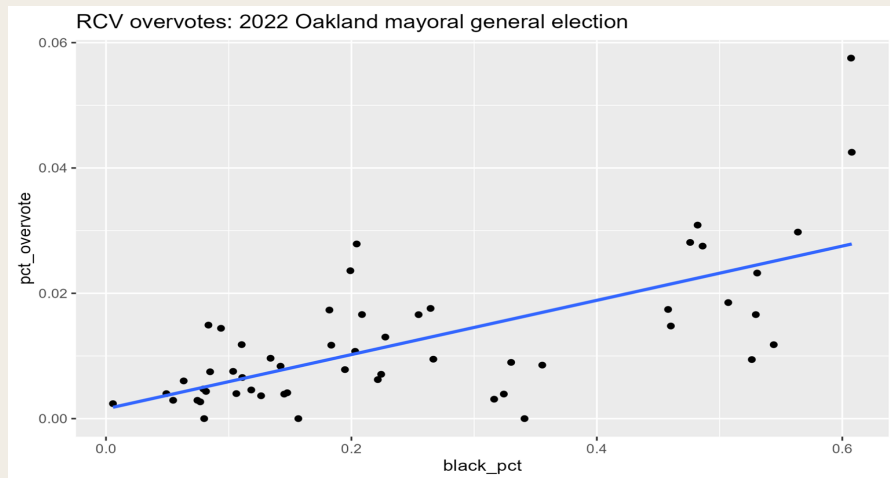
- ▶ Voters who have used RCV report that they like it and trust the outcome
- ▶ Voters who have not used RCV may be more skeptical
- ▶ California voters are equally likely to feel confident in their elections with and without RCV

DO OVERVOTES CORRELATE WITH A VOTER'S RACE OR ETHNICITY?

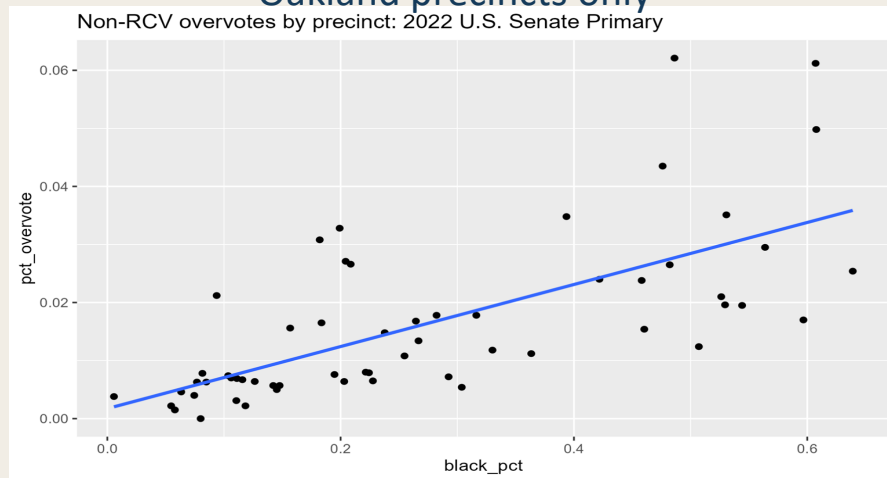


- ▶ Majority of studies find no effect (positive or negative)

RCV election:
2022 mayor of Oakland



Non-RCV election: 2022 U.S. Senate Primary,
Oakland precincts only



RECENT BALLOT MEASURES



- **Continued City-Level Success:**
 - RCV has won 31 of the last 32 city ballot campaigns, including large cities like Washington DC (73%)
 - This includes 8 Proportional RCV wins (with 7 in the last two years)
- **Recent State-Level Setbacks:**
 - Lost statewide campaigns in Nevada, Colorado, Idaho, Oregon
- **RCV Preserved in Alaska** (repeal effort failed)

CHALLENGES / LESSONS LEARNED



- **Statewide reforms require a strong “ground game” and a broad coalition to engage and education voters**
 - Campaign commercials can’t “fill the gap” as with other ballot measures (especially in a presidential year with attention elsewhere)
 - Many voters went to the polls not knowing what these reforms were—defaulted to “no” vote
- **Local adoptions can help make benefits more tangible**
 - State campaigns “ran ahead” in cities with RCV
- **Deeper election official engagement remains critical**

DIFFERENT USES OF RCV



- **Presidential Primaries**
- **Top Four/Five Voting**
- **Proportional Ranked Choice Voting**



PRESIDENTIAL PRIMARIES

RCV IN PRESIDENTIAL PRIMARIES



■ Presidential primaries have large, high profile, dynamic fields

- RCV in primaries (incl. presidential) helps parties advance stronger nominees
- RCV can avoid the problem of “wasted votes” in presidential primaries due to early votes cast for candidates who withdraw before election day
- In 2020, 3+ million (+8%) Dem votes. In 2016, ~2 million (+5%) GOP votes.

■ Already used in 2020 and 2024

- In 2020, Democrats in Wyoming, Alaska, Kansas, and Hawaii replaced caucuses with RCV primaries. Democrats in Nevada held a caucus but allowed absentee voters to cast RCV ballots.
- In 2024, Maine used RCV, and the GOP in the Virgin Islands used RCV.



TOP FOUR/FIVE VOTING

TOP FOUR/FIVE + RCV



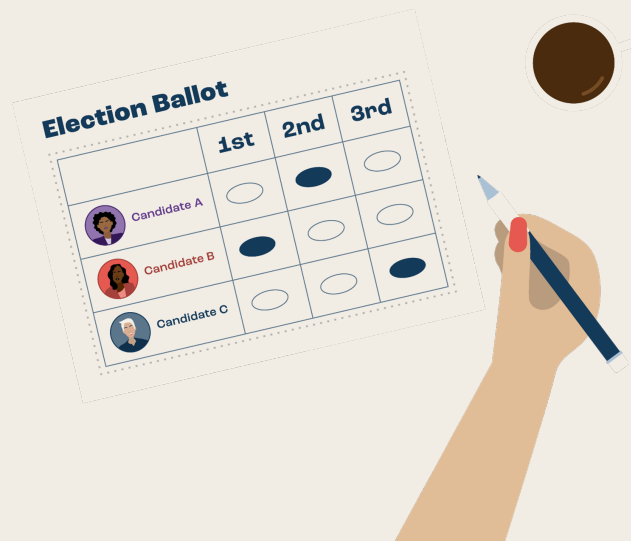
- **2024 Statewide Ballot Measures: NV, CO, ID**
- **Unified nonpartisan preliminary round**
 - All candidates from all parties appear on same primary ballot
 - All voters participate in the same primary together
 - Voters vote for one (“pick-one primary”)
 - Top four/five candidates advance to an RCV general election
- **Campaigns often focus on independence from party control and inclusion of independent/unaffiliated candidates and voters**



PROPORTIONAL RCV

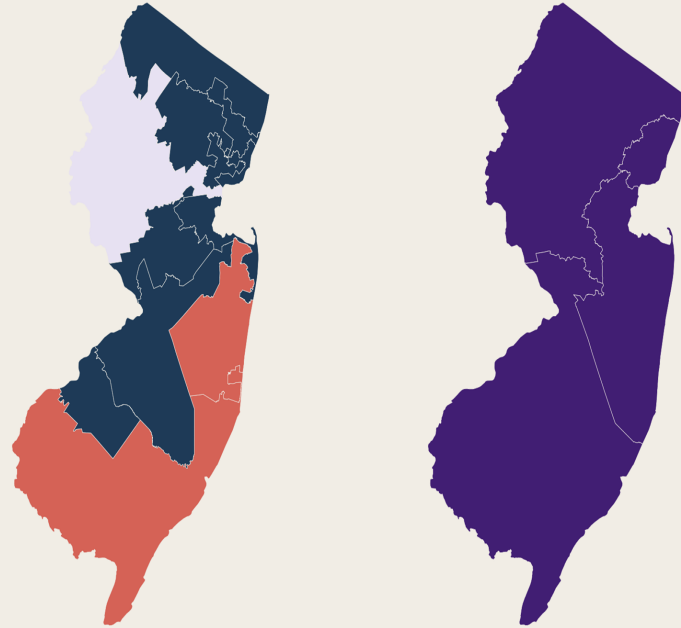
PROPORTIONAL RANKED CHOICE VOTING

- ▶ Represents voter groups in proportion to their vote share
- ▶ Provides more voter choice
- ▶ Improves representation for women and people of color
- ▶ Promotes proportionality across multiple dimensions
 - Partisanship, race, ethnicity, issues
- ▶ No “trade-offs” between values
 - Racial and ethnic representation, proportionality, competition, COIs, compactness, city/county lines, etc.



BENEFITS OF MULTI-MEMBER DISTRICTS

- ▶ Reduces the impact of gerrymandering
- ▶ Allows multi-party and multi-racial representation within each district
- ▶ More competitive elections -- end of “safe districts” vs. “swing districts”
- ▶ Space for representatives from outside the two-party system
- ▶ Incentives for officials to collaborate when they share a constituency



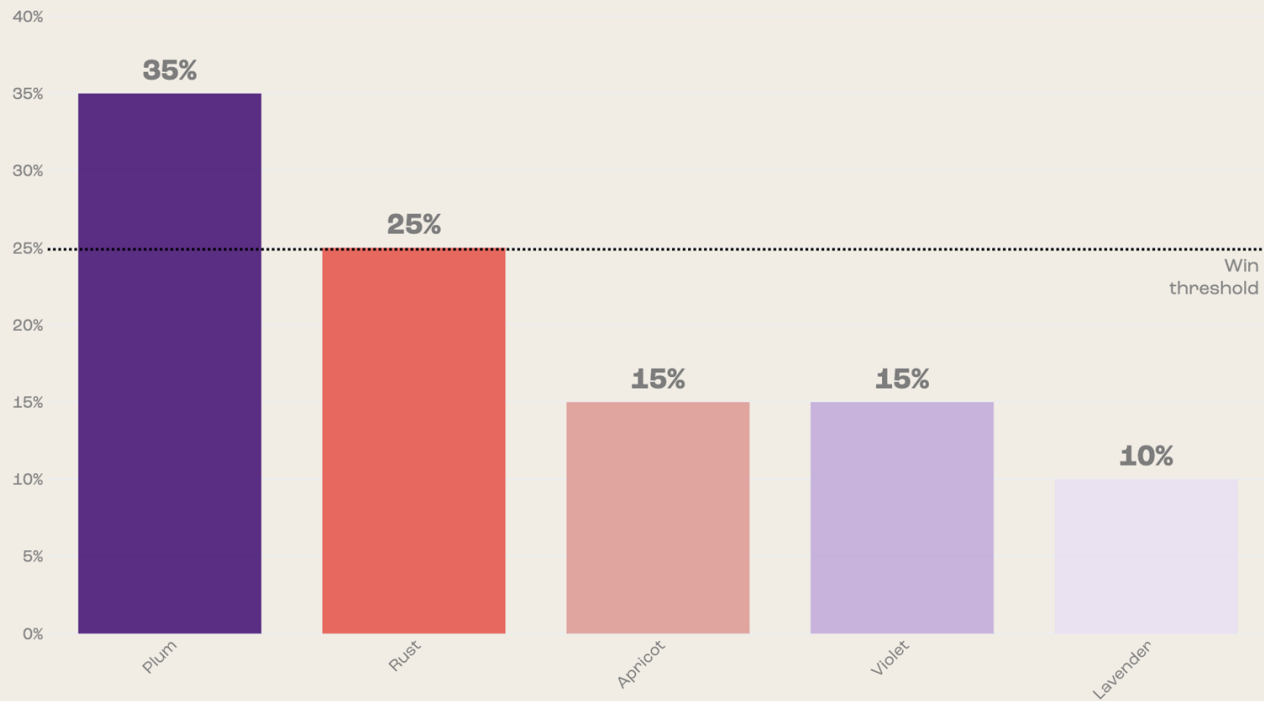
HOW DOES PROPORTIONAL RCV WORK?

- ▶ Voters have the option to rank candidates in order of preference.
- ▶ All candidates who cross the election threshold earn a seat.
- ▶ More seats = lower threshold = more proportional results.
- ▶ Votes transfer from *eliminated* candidates and from *elected* candidates, making the most of every voter's one vote.

ELECTION THRESHOLDS	
Percent for One Seat	Seats to Elect
50% + 1	1 Seat
33.3% + 1	2 Seats
25% + 1	3 Seats
20% + 1	4 Seats
16.7% + 1	5 Seats

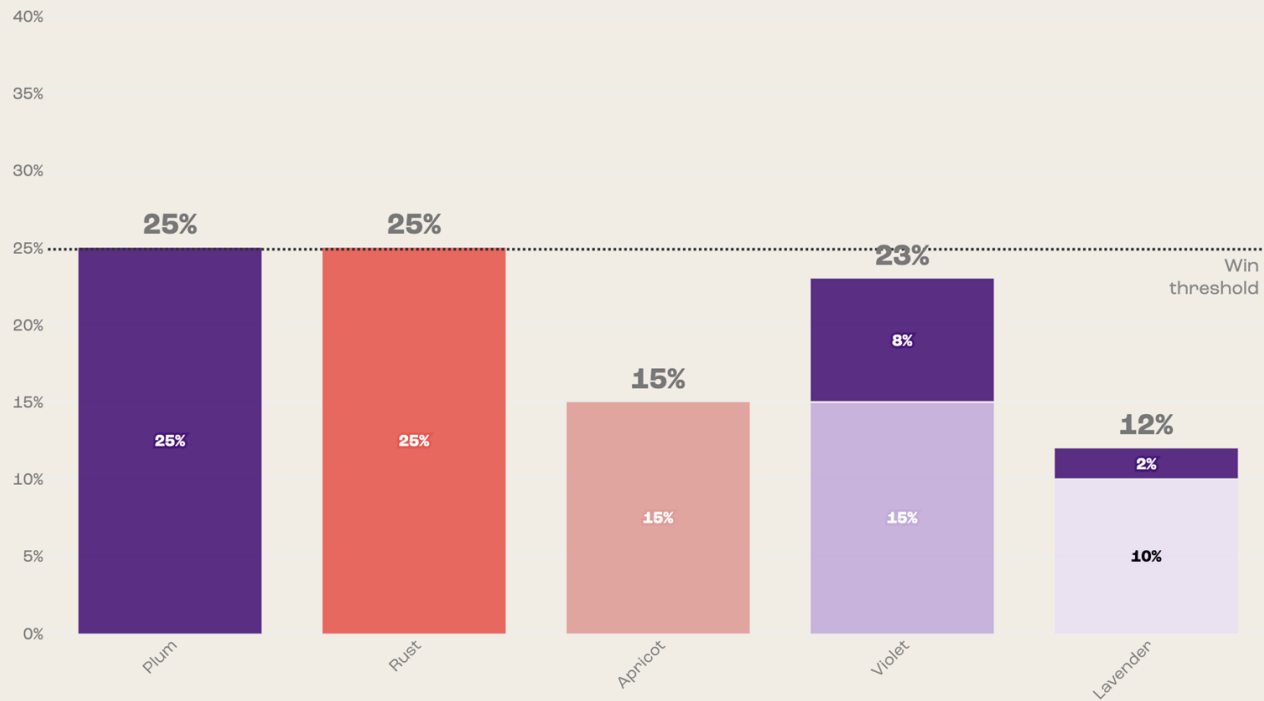
ROUND 1

AV



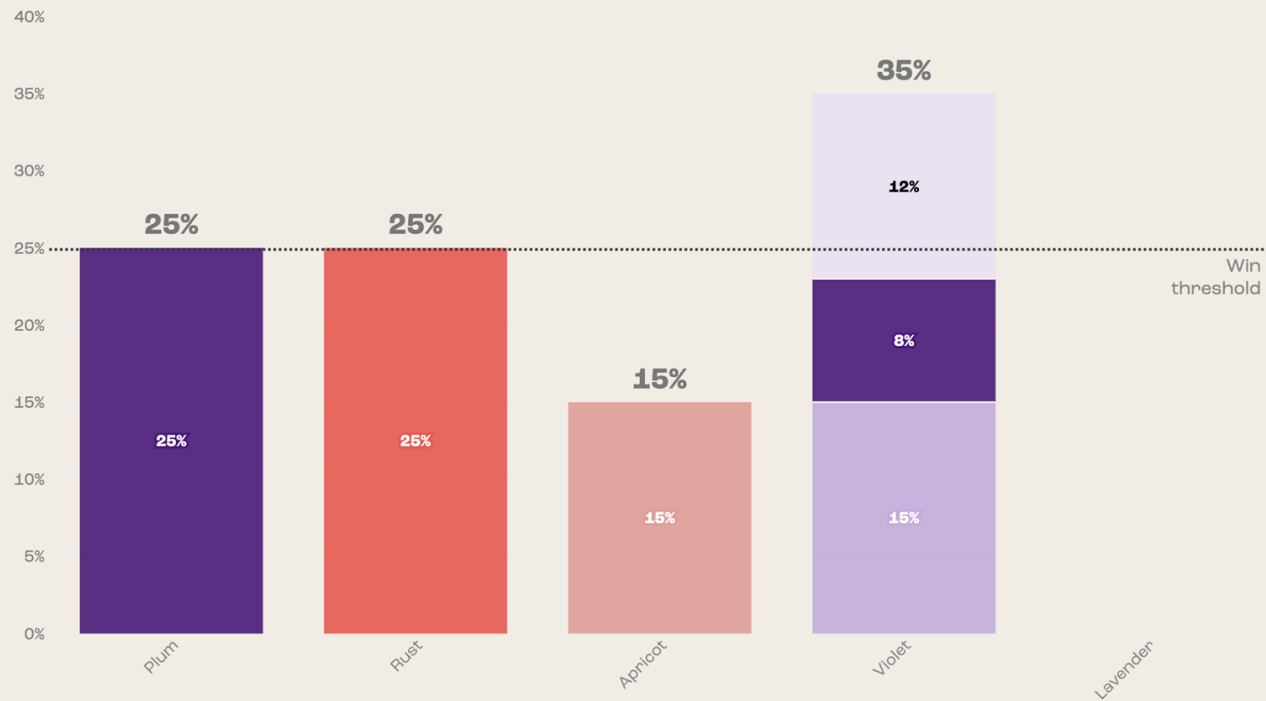
ROUND 2

AV



ROUND 3

FV



FOR LOCALITIES:

Portland, OR

- ▶ Passed in 2022 with 58% support; first use was November 2024
- ▶ Four districts, each electing three winners with PRCV (12 councilors)
- ▶ Campaign focused on racial justice and inclusion



FOR LOCALITIES:

Portland, OR

- ▶ **Voter engagement:** 91% ranked multiple candidates for council; 85% ranked multiple for mayor
- ▶ **Voter consensus:** 80%+ of voters ranked at least one of the three winning councilmembers in each district
- ▶ **Voter representation:** Historically diverse council, with half women, 5 members of color, 3 renters, 28-70 years old

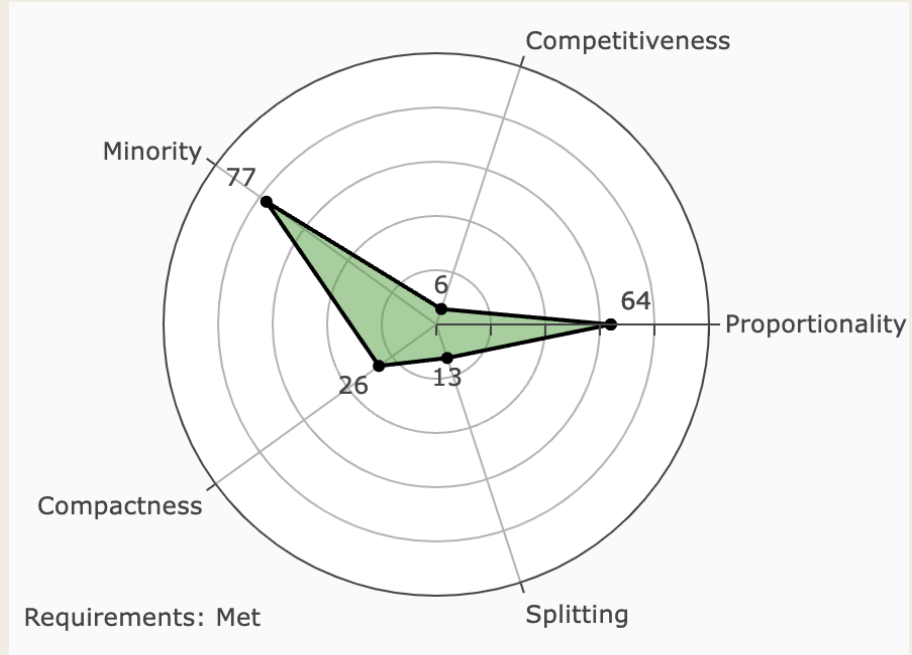
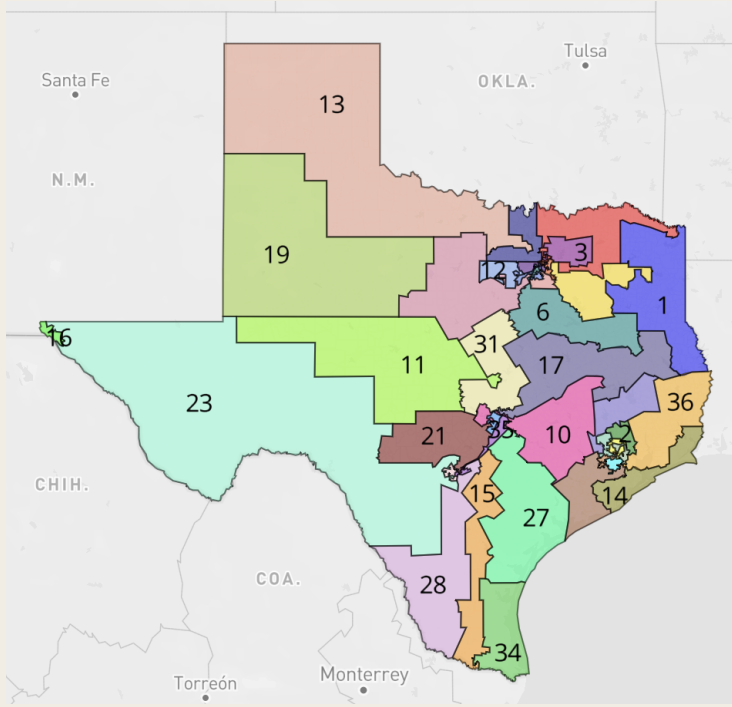




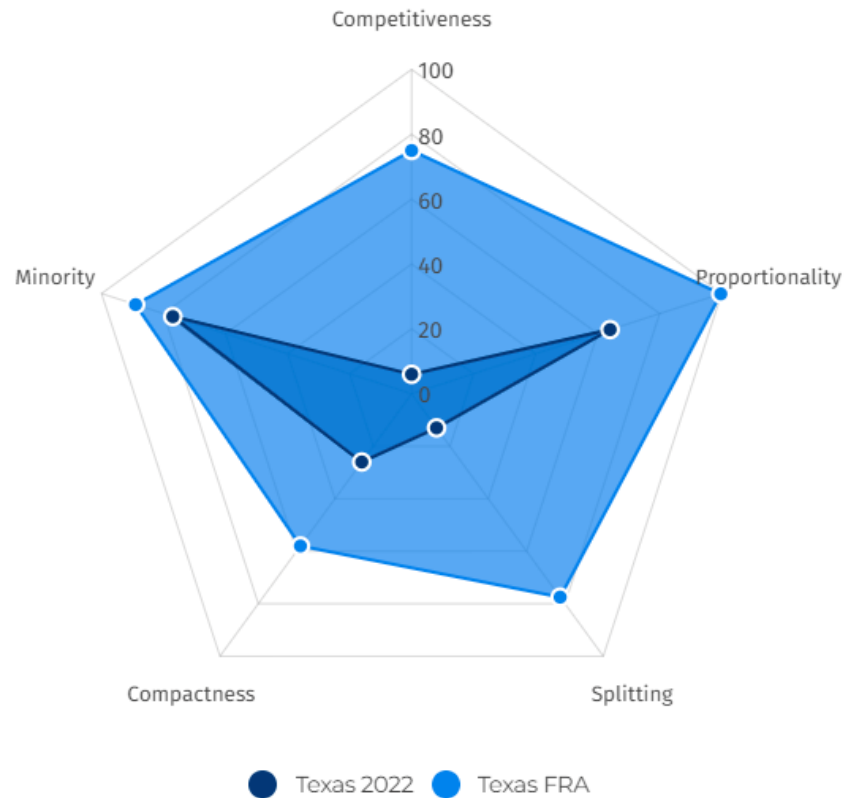
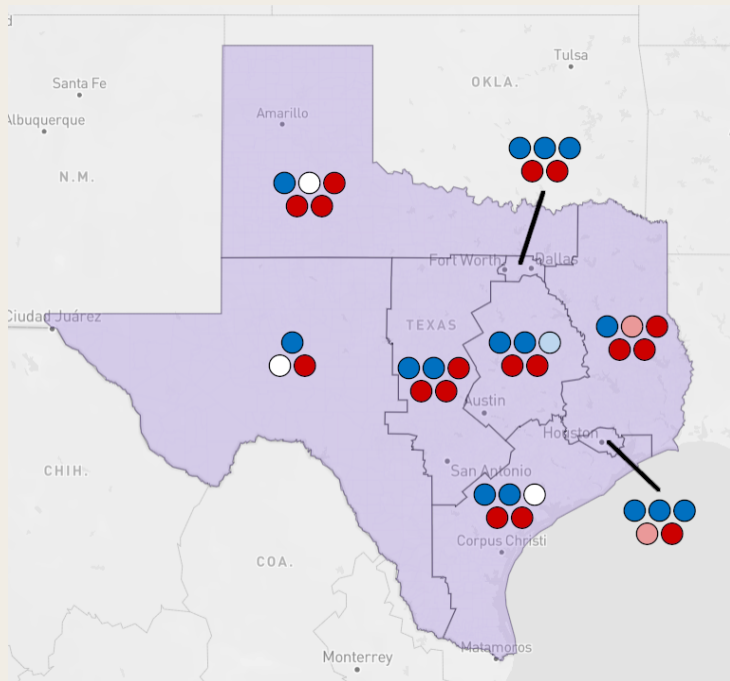
PRCV AS A VOTING RIGHTS REMEDY

- ▶ **Proportional RCV provides for fairer, more robust racial representation**
- ▶ **Representation less dependent on specific line-drawing decisions**

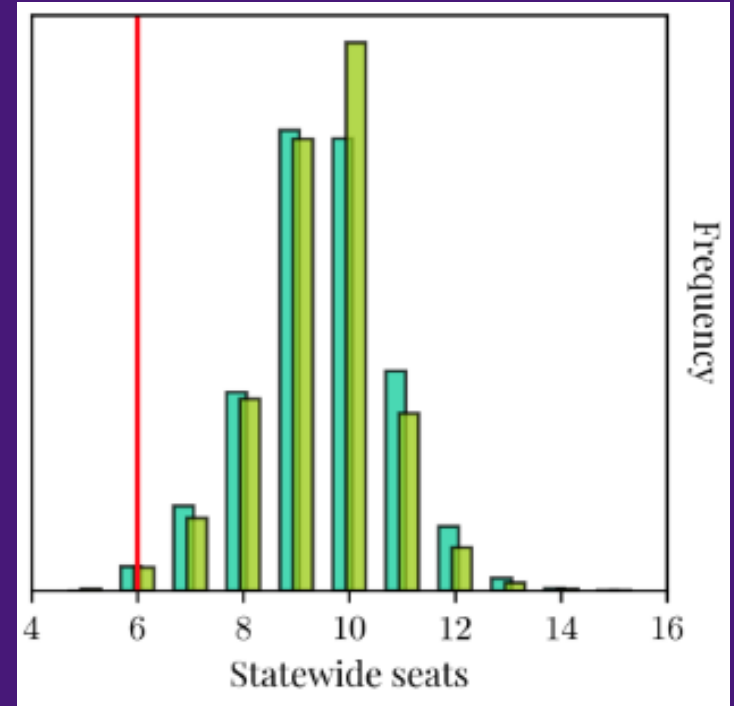
REDUCING REDISTRICTING “TRADE-OFFS”



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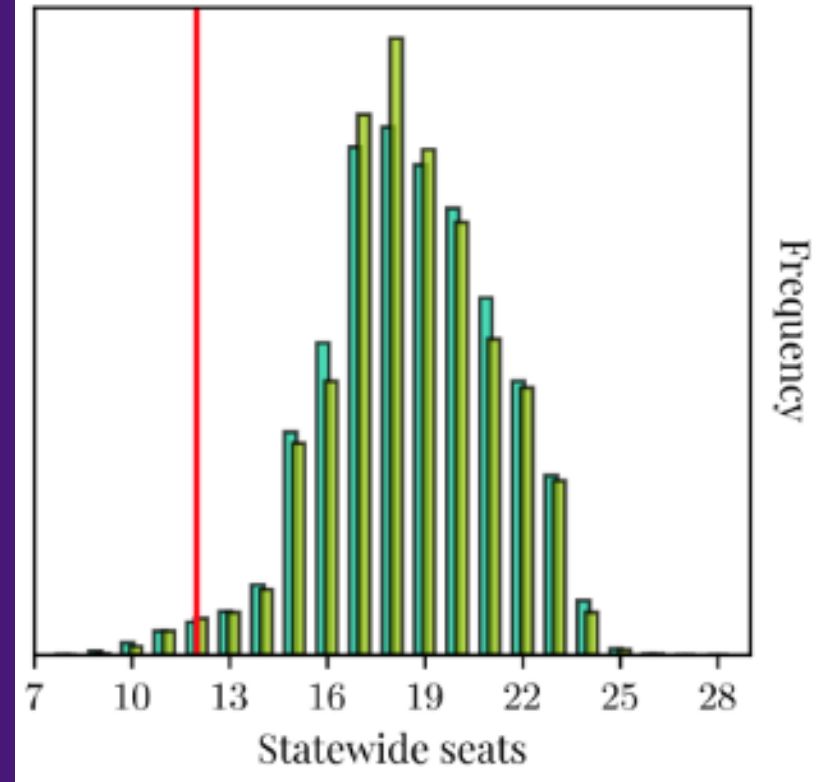


STRUCTURAL VOTING RIGHTS PROTECTIONS



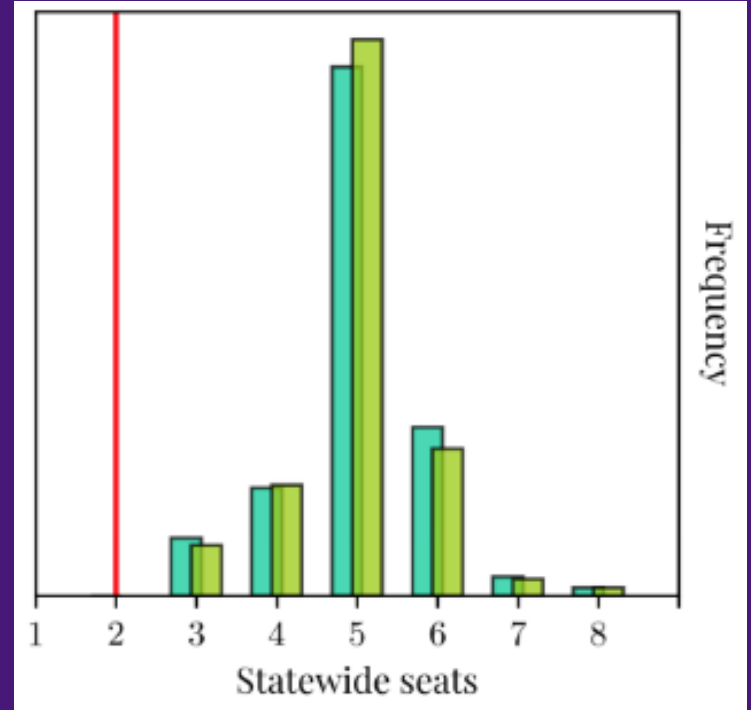
Illinois

STRUCTURAL VOTING RIGHTS PROTECTIONS



Texas

STRUCTURAL VOTING RIGHTS PROTECTIONS



Maryland

PRCV AS A VOTING RIGHTS REMEDY



- ▶ Available under the Federal Voting Rights Act, if *Gingles* factors are satisfied to establish liability
 - See *Eastpointe, MI* (PRCV as Section 2 remedy)
- ▶ Available under State Voting Rights Acts, and may be used to both establish liability and provide a remedy
 - *Pico Neighborhood Ass'n v. Santa Monica*, 534 P.3d 54 (Cal. 2023)
 - *Portugal v. Franklin County*, 530 P.3d 994 (Wash. 2023)
 - See *Albany, CA* (PRCV as CAVRA remedy)
- ▶ SVRAs: MN, CT, NY, VA, OR, WA, CA

PRCV AS A VOTING RIGHTS REMEDY



- ▶ **Protecting voting rights in a challenging environment**
 - Share-based methods of election (like PRCV) offer opportunities to protect ethnoracial representation as scrutiny over line-drawing decisions increases
- ▶ **Fair representation for more communities**
 - SVRAs provide protection against vote dilution for more dispersed communities that may not constitute a majority in a single-member district and may not receive protection under *Gingles*
- ▶ **More options for impacted communities**
 - Share-based methods provide more remedial options so that parties have more agency to decide what solutions work best for their own communities

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APPENDIX

DOES THE U.S. CONSTITUTION PERMIT RANKED CHOICE VOTING?

- ▶ **Yes. The U.S. Constitution is silent as to the method of election for federal, state, and local races.**
 - As long as a voting method is not discriminatory and meets fundamental doctrines/tests, it is constitutional.
- ▶ **State and federal courts have uniformly upheld RCV against every federal constitutional claim ever filed.**
 - This includes: “One person, One vote” claims, Due Process claims, Equal Protection claims, First Amendment claims, *Anderson-Burdick* claims, Elections Clause claims, and Guarantee Clause claims.
 - See *Ranked-Choice Voting: Legal Challenges and Considerations for Congress*, Congressional Research Service, LSB10837 (Oct. 12, 2022) (collecting cases).

ONE PERSON, ONE VOTE

▶ RCV treats all voters equally.

- Every voter gets one vote. That vote always counts towards the election of the voter's favorite remaining candidate.

▶ *Dudum v. Arntz*, 640 F.3d 1098, 1112 (9th Cir. 2011).

“[T]he option to rank multiple preferences is not the same as providing additional votes, or more heavily weighted votes . . .

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.”

ONE PERSON, ONE VOTE

► See also:

- *Hagopian v. Dunlap*, 480 F. Supp. 3d 288 (D. Me. 2020).
- *Baber v. Dunlap*, 376 F. Supp. 3d 125 (D. Me. 2018).
- *Minn. Voters Alliance v. City of Minneapolis*, 766 N.W.2d 683 (Minn. 2009).
- *McSweeney v. City of Cambridge*, 422 Mass. 648 (1996).
- *Stephenson v. Ann Arbor Bd. of Canvassers*, No. 75-10166 AW (Mich. Cir. Ct. 1975).

STATE CONSTITUTIONAL CASES

- ▶ **Almost all state courts have upheld RCV against state constitutional challenges.**
 - Although a few courts have limited RCV because of unique state constitutional provisions, all such opinions were either advisory or applied to provisions that have since been removed from the relevant state constitution.