

**DEPARTMENT OF THE SECRETARY OF STATE
BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS
DIVISION OF ELECTIONS**

**Chapter 535: RULES GOVERNING THE ADMINISTRATION OF ELECTIONS
DETERMINED BY RANKED-CHOICE VOTING**

SUMMARY: This rule sets forth the procedures for the administration of elections determined by ranked-choice voting, including collection, security and handling of ballots and memory devices between the municipal offices and the central counting facility; aggregating and counting the cast vote records; administering the rounds of ranked-choice counting until only two candidates remain, and the candidate with the most votes in the final round is the winner; and reporting the results.

SECTION 1. Applicability of Ranked-choice Voting

Elections for an office defined in 21-A M.R.S.A. §1, sub-§27-C will be determined by the ranked-choice voting process described in these rules when there are three or more candidates who have qualified to be listed on the ballot for that office or when there is a combination of at least two candidates who have qualified to be listed on the ballot for that office plus at least one declared write-in candidate.

SECTION 2. Definitions

1. “Continuing ballot”, as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph B, means a ballot that is not an exhausted ballot.
2. “Continuing candidate,” as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph C, means a candidate who has not been defeated.
3. “Election results reporting program” means the software program that is compatible with the current tabulation system used by the state and is capable of processing and aggregating the results and cast vote records.
4. “Ranking,” as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph I, means the number or the numeric position assigned on a ballot by a voter to a candidate to express the voter’s preference for that candidate. Ranking number one is the highest ranking, ranking number two is the next-highest ranking and so on.

5. “RCV count” means the ranked-choice counting process defined in these rules.
6. “RCV counting facility” means a facility in the Augusta area selected by the Secretary of State and the room or rooms in that facility in which one or more RCV counts will take place.
7. “RCV counting utility” means a specialty software program or utility that incorporates the ranked-choice vote counting requirements defined in Section 4, subsection 2 of these rules, and electronically completes the rounds of the RCV count.
8. “Skipped ranking,” as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph K, means a circumstance in which a voter has left a ranking blank and ranks a candidate at a subsequent ranking.
9. “UOCAVA election officials” means the officials who centrally process and count the absentee ballots received by the Secretary of State from Maine uniformed service and overseas voters pursuant to Chapter 525, Rules for Administering the Central Issuance and Processing of UOCAVA Absentee Ballots.

SECTION 3. Ballot Design

1. **Authority of Secretary of State.** The Secretary of State has the sole authority to determine the design of ballots containing ranked-choice voting contests, including whether to place ranked-choice contests and non-ranked-choice contests on the same or separate ballot pages. This determination will be made after the candidate filing deadline has passed, when the number of contests subject to ranked-choice voting and the number of candidates who have qualified for those contests is known. Ranked-choice contests will be grouped together and presented either on a separate ballot page from the non-ranked-choice contests, or on one side of a combined ranked-choice and non-ranked-choice ballot page. Ballot heading information and specific instructions will be presented above or next to the first contest of each type (i.e., ranked-choice contest, non-ranked-choice contest or referendum contest). Each ballot page or grouping of contests will adhere to the ballot order and layout requirements, as near as practicable, of 21-A M.R.S.A. §601, §604-A, §723-A. The final design will be based on the space and design limitations of the ballot design software, while following the best practices for ballot design to the greatest extent possible.
2. **Ranked-choice layout.** The ballot will be designed in a manner that allows voters to rank as many candidates as they wish, up to and including all listed candidates and one declared write-in candidate, in order of choice. If there is no declared write-in candidate who has qualified in accordance with 21-A M.R.S.A. §722-A for a ranked-choice voting contest, then the Secretary of State may eliminate the write-in space for the contest so that the voter will have the ability to rank only the candidates listed on the ballot.

RECOMMENDATION:

“... If there is no declared write-in candidate who has qualified in accordance with 21-A M.R.S.A. §722-A for a ranked-choice voting contest, then the Secretary of State may eliminate the write-in space for the contest so that the voter will have the ability to rank only the candidates listed on the ballot. If the listed candidates, including any declared write-in candidate, number more than six, the Secretary of State may limit the number of rankings to no fewer than six. The ballot will be designed in a manner that allows voters to rank as many candidates as they wish, up to and including all listed candidates and one declared write-in candidate, or no fewer than six, in order of choice. ~~If there is no declared write-in candidate who has qualified in accordance with 21-A M.R.S.A. §722-A for a ranked-choice voting contest, then the Secretary of State may eliminate the write-in space for the contest so that the voter will have the ability to rank only the candidates listed on the ballot.~~”

RATIONALE:

Statute allows the Secretary of State to limit the rankings to no fewer than six. Does the Secretary of State wish to preserve that option? As the proposed rule reads, that option could never be invoked, no matter how many candidates were listed.

SECTION 4. Vote Counting Procedures

1. **Municipal vote counting and reporting.** After the polls close on election day, election officials in each municipality will tally the ballots either by hand-count or by using an approved tabulation system as authorized by the Secretary of State and will record the first choice votes cast for all ranked-choice voting contests in the same manner as for contests determined by plurality pursuant to 21-A M.R.S.A. §695. Each municipality will prepare an election return and will submit an attested copy of the election return to the Secretary of State within 3 business days after election day as provided in 21-A M.R.S.A. §§ 711 and 712.

2. **Ranked-choice vote counting**

A. **General procedures.** If no candidate receives more than 50% of the first choice votes based on the election returns provided by municipalities under subsection 1 of this section, the RCV count must be conducted under the supervision of the Secretary of State in successive rounds, as further described in Section 6 of these rules. In each round, the number of votes for each continuing candidate must be counted. Each continuing ballot counts as one vote for its highest-ranked continuing candidate for that round. Exhausted ballots are not counted for any continuing candidate. At the end of each round, if more than 2 candidates remain, the last-place candidate is defeated, and the vote for the next-highest-ranked continuing candidate on the defeated candidate’s ballots is then counted in the next round. More than one candidate may be defeated in a single

round by batch elimination, as defined in paragraph B(7) below. In the final round, when only 2 continuing candidates remain, the candidate with the most votes in that round is the winning candidate.

RECOMMENDATION:

“If no candidate receives **first choice votes** on more than 50% of **ballots cast in that race**~~the first choice votes~~ based on the election returns provided by municipalities under subsection 1 of this section, the RCV count must be conducted under the supervision of the Secretary of State ...”

RATIONALE:

Ballots that have a skipped ranking in the first choice column should count in the denominator when deciding whether the 50% threshold has been achieved. It may not be possible to tell what effect those ballots have on the winner’s tabulation until after the RCV count has been implemented, but it is possible that those skipped ballots might have a determining effect. In the June primary, as many as 4.4% of continuing ballots had a skipped ranking in the first column. To make sure these valid ballots are considered, the test should be whether any candidate has a majority of all ballots cast in the race.

B. **Handling of certain ballot rankings.** As provided in 21-A M.R.S.A §723-A, sub-§1, and these rules, the following ballot ranking situations will be counted as follows:

- (1) **Overvote.** An overvote occurs when a voter marks more than one candidate for the same ranking (i.e., in the same ranking column). An overvote invalidates the overvoted rankings and all subsequent rankings marked for that contest on the ballot.
- (2) **Single skipped ranking.** A single skipped ranking occurs when a voter does not mark (i.e., skips or leaves blank) a ranking but marks the subsequent ranking for a candidate. The single skipped ranking is ignored, and the subsequent ranking is counted in the current round, as long as that ranking is for a continuing candidate. For example, if the voter did not mark any candidate for the first ranking, but marked a continuing candidate for the second ranking, then the second ranked choice is counted in the first round of the RCV count.
- (3) **Two consecutive skipped rankings.** When a voter does not mark (i.e., skips or leaves blank) two or more consecutive rankings, then the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.

(4) **Duplicate ranking for the same candidate.** A duplicate ranking occurs when a voter marks more than one ranking column for the same candidate. If a voter marks a duplicate ranking for one candidate and ranks no other candidates, then the ballot will be counted for the highest ranking of that candidate. If the candidate with the duplicate ranking is defeated, the ballot is deemed exhausted for that contest and no subsequent candidate rankings marked on that ballot are counted. If a voter marks a duplicate ranking for one candidate but also ranks other candidates, and if the candidate with the duplicate ranking is defeated, then the vote for the next continuing candidate ranked by that voter will be counted in the next round.

(5) **No ranking for a continuing candidate.** In any round, if a voter has not ranked any continuing candidate, the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.

(6) **Ties.** A tie between candidates for the most votes in the final round must be decided by lot and the candidate chosen by lot is defeated. A tie between last-place candidates in any other round must be decided by lot and the candidate chosen by lot is defeated, except that tied candidates who are mathematically impossible to be elected as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph G, may be defeated by batch elimination, as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph A. The result of the tie resolution must be recorded and relied upon in the event of a recount.

(7) **Batch elimination.** Batch elimination means the simultaneous defeat of multiple candidates for whom it is mathematically impossible to be elected, as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph G.

SECTION 5. Preparation for Ranked-choice counting

1. **Central location for ranked-choice count.** The Secretary of State will select a suitable facility in the Augusta area, in which to securely store the election materials and conduct the RCV count. The space used for storage of ballots and memory devices that contain cast vote records must be secured against access by unauthorized personnel and all access must be logged. The Secretary of State is responsible for security of the storage and counting space.

2. **Retrieval of election materials.** The Secretary of State will contract with a private courier service (hereafter “courier”) to provide secure retrieval of the election materials from the affected municipalities and deliver them to the RCV counting facility if an RCV count is needed. Once the Secretary of State determines that an RCV count is needed for one or more ranked-choice contests, the Secretary of State will notify the courier and the affected municipalities that election materials will be retrieved. The courier is responsible for the coordination and retrieval of the ballots and/or

memory devices, as applicable, from the affected municipalities; transportation of these materials to the RCV counting facility; and ensuring the security of these materials while in the courier's custody. The Secretary of State will provide transmittal forms to document the chain of custody from the municipality to the courier's personnel. Secretary of State personnel at the RCV counting facility will accept and log the materials upon receipt from the courier. Municipalities that used the digital scan tabulators to tabulate their ballots will provide the courier with all memory devices containing results and cast vote records for the election. The Secretary of State will provide transmittal packaging and tamper-evident seals to be used for memory device transmittal. If any ballots were not scanned by a tabulator, the municipality must seal these ballots in a separate container or envelope from the fully scanned and counted ballots, and must provide the container or envelope of unscanned ballots to the courier along with the memory devices. Municipalities that hand-counted their absentee and election day ballots must provide the courier with all tamper-proof containers used to seal the hand-counted ballots cast in the election.

RECOMMENDATION:

~~“... Once the Secretary of State determines that an RCV count is needed for one or more ranked-choice contests, t~~The Secretary of State will notify the courier and the affected municipalities that election materials will be retrieved **beginning on the Wednesday or Thursday after Election Day. Depending on unofficial results available overnight after the election, the list of affected municipalities may be reduced.**”

RATIONALE:

Elapsed time from Election Day to the time when preliminary results are available to the public is one of the most critical elements affecting public perception of the success of ranked choice voting. The “plan to retrieve” should be the default, not requiring a specific determination by the Secretary of State. This is what was done in practice for the June primary. For November and future elections, retrieval on some scale will be required unless there is a majority winner in EVERY ranked choice contest. We suggest reframing this rule so that the plan goes into effect automatically unless affirmatively canceled by the SOS. The Courier should be prepared to begin retrieval the day after the election or Thursday at the latest.

3. **Ranked-choice counting personnel.** The following personnel may participate in the ranked-choice counting process.

A. **Supervisor of ranked-choice voting count.** The ranked-choice counting rounds will be conducted under the supervision of the Secretary of State, or his or her designee, who is called the RCV Supervisor. The RCV Supervisor will direct and oversee the conduct of the RCV count according to all applicable laws, rules and procedures.

B. **Ranked-choice voting assistants.** The Secretary of State or RCV Supervisor will designate the necessary number of Department staff to act as RCV

Assistants. If additional personnel are needed, the Secretary of State may designate municipal election officials or UOCAVA election officials to act as RCV Assistants.

C. **Security personnel.** The Secretary of State may use law enforcement personnel from the Department's Office of Investigations to receive the election materials from the courier's personnel and secure the materials at the RCV counting facility.

D. **Vendor support staff.** The Secretary of State may authorize support staff from the voting system vendor to be present during the ranked-choice voting count to assist ranked-choice counting personnel with using the software and hardware necessary to complete the count.

E. **Additional staff.** The Secretary of State and the Department's legal counsel may assist with the RCV count as needed.

4. **Notice of public proceeding.** The RCV count is a public proceeding, and members of the media and the general public may attend, to the extent the space allows. The Secretary of State will provide notice to the public regarding the RCV count for each contest, including information about scheduling. Depending on the number of municipalities in the district for the particular contest that is subject to an RCV count, the RCV count will not be scheduled to begin until the memory devices and ballots from the majority of municipalities in the district have been delivered to the RCV counting facility, so that the RCV count can proceed in an orderly and efficient manner.

RECOMMENDATION:

“The RCV count is a public proceeding, and members of the media and the general public may attend, to the extent the space allows. **The public proceeding will begin as soon as election materials begin arriving at the central counting facility no later than Thursday after the election.** The Secretary of State will provide notice to the public regarding the **public proceeding and the RCV count for each contest, including information about location, time, and scheduling.** ~~Depending on the number of municipalities in the district for the particular contest that is subject to an RCV count, the RCV count will not be scheduled to begin until the memory devices and ballots from the majority of municipalities in the district have been delivered to the RCV counting facility, so that the RCV count can proceed in an orderly and efficient manner.~~

RATIONALE:

Waiting for a majority of municipalities to report before even scheduling the RCV count is an extremely high threshold to meet before starting. Since a large number of municipalities comprise only a small percentage of the total ballots, we may find ourselves held up a long time for no more than 2 or 3% of the ballots. If this part of the rule is retained, we strongly suggest using an estimated percentage of ballots as the trigger, instead of what is presented here.

In any case, this was not what was done in practice for the June primary. We suggest something in rule like what was done then: beginning the public process and the RCV count on the Thursday or Friday after Election Day without reference to how many towns or what percentage of ballots have been retrieved.

We note also that the public and the campaigns were interested in observing the process of ballot retrieval from the time the courier arrived at the central counting facility. Perhaps the public process should begin there, rather than at the point when processing begins on the materials retrieved.

SECTION 6. Process for Ranked-choice counting

1. **Security of the ranked-choice counting area.** There will be a guardrail enclosure set up to separate the ranked-choice counting area from the public viewing area at the RCV counting facility. Only the ranked-choice counting personnel designated in Section 5 of this rule will be allowed inside the guardrail enclosure. All persons allowed inside the guardrail must sign in each day, on a form provided by the Secretary of State. Candidates, media and members of the general public must remain outside the guardrail area. Only limited conversation will be permitted in the RCV counting facility. Cell phones must be silenced during the count and may be used within the guardrail area only by the ranked-choice counting personnel as needed to conduct the process. Any person who causes a disruption of the RCV count may be removed from the room, at the discretion of the RCV Supervisor.

2. **Inspection of Materials.** Prior to opening tamper-proof containers of ballots that were hand-counted on election night, or sealed packages containing memory devices for ballots that were machine tabulated on election night, the ranked-choice counting personnel will inspect each container or package to document whether it was properly sealed. As each container or package is opened and ballots or memory devices are removed and processed, personnel will complete a tracking log. **After processing is complete, the materials will be resealed in the containers or delivery packages and secured until after any recount period has passed.** Ballots will be returned to the municipality of origin, while memory devices will be delivered to the Elections Division for coding the next election.

RECOMMENDATION:

Eliminate the highlighted section here and leave it in place below. Or consolidate the highlighted section in paragraphs 2, 3.A, and 3.B into a new paragraph after 3.B to read as follows:

After processing of ballots or memory devices is complete for each tamper-proof container, the materials will be resealed in the containers or delivery packages and secured by the Secretary of State until after any recount period has passed.

RATIONALE:

Avoids duplicating material.

3. **Processing of ballots and memory devices.** The following activities may be conducted simultaneously or consecutively, depending on the number of ranked-choice counting personnel available.

A. **Hand-counted ballots.** Tamper-proof containers of ballots that were hand-counted on election night will be unsealed and scanned through a tabulating device in order to obtain electronic results and cast vote records. RCV Assistants will be assigned to unseal the tamper-proof containers of hand-counted ballots, remove the ballots related to the ranked-choice contest(s) to be counted, and prepare them for scanning. This will be done on a municipality-by-municipality basis and an RCV assistant will generate a report of the scanned results . **Once the ballots have been scanned, the ballots will be resealed in the tamper-proof containers from that municipality and stored until after any recount period has passed.** On a periodic basis, the memory devices from the hand-count ballot scanning will be uploaded into the election results reporting program.

B. **Machine-tabulated ballots.** Packages containing memory devices from municipalities whose ballots were machine-tabulated on election night will be unsealed and the contents uploaded into the election results reporting program. RCV Assistants will be assigned to perform this task. This will be done on a municipality-by-municipality basis and an RCV assistant will generate a report of the results that were uploaded . **Once all memory devices for a municipality have been uploaded into the election results reporting program, the memory devices will be securely stored until after any recount period has passed.**

C. **Ballots that cannot be scanned.** Ballots that cannot be scanned, either by the tabulating device used by the Secretary of State at the central location for the ranked-choice count or by the ballot tabulator used by the municipality, must be manually entered into a spreadsheet to create an electronic cast vote record for these ballots. After the cast vote record for all ballots that could not be scanned are entered and verified, the file will be uploaded into the election results reporting software.

QUESTION: What is the process for verifying the digital cast vote record for the ballots that could not be scanned? Since this is a manual process, open to error, should there be a way for the campaigns and/or the public to inspect or audit that digital record?

D. **Hardware and software.** The Secretary of State will use hardware and software compatible with the current tabulating system for performing the RCV count. Precinct tabulators or high-speed tabulators used for scanning the hand-counted ballots will be non-networked devices and will not be connected to the internet or employ any wireless

technology. The computers used for the election results reporting program will be a self-contained, single-purpose, hard-wired network and will not be connected to the internet or employ any wireless technology. The Secretary of State will procure a software utility or algorithm that incorporates the ranked-choice vote counting requirements as described in section 4, subsection 2 of these rules. The RCV counting utility will utilize the cast vote records and apply the ranked-choice vote counting requirements to complete the rounds of the RCV count and determine a winner.

E. **Quality control reports.** As each municipality's results are uploaded into the election results reporting program, the RCV Supervisor or an RCV Assistant will generate a report of the total ballots cast to compare with the total ballots cast figure reported by the municipality based on the election night count. This comparison will be used to verify that all results from election night for each municipality have been uploaded or all hand-count ballots have been scanned and results uploaded.

4. **Ranked-choice vote reporting.** After all the results from each ranked-choice voting election are uploaded and verified in the election results reporting program, the RCV Supervisor will initiate the RCV counting utility. Reports will be generated to document the round-by-round results as well as the final winner. However, if the results from all but a few small jurisdictions have been uploaded and verified in the election results reporting program by the end of the day on the Monday after the election, then the RCV Supervisor may initiate the RCV counting utility to produce an unofficial result. The RCV Supervisor must run the RCV counting utility again once the results from all the jurisdictions have been uploaded and verified in the election results reporting program, in order to produce an official result for the RCV election. The Secretary of State will report the statewide ranked-choice result to the Governor and will publish the results on the Department's public website, as soon as possible after completing the RCV count.

RECOMMENDATION:

'...The Secretary of State will report the statewide ranked-choice result to the Governor and will publish the results on the Department's public website, as soon as possible after completing the RCV count. *At the same time, the Secretary of State will publish the complete digital cast vote record on the Department's public web site.*'

RATIONALE:

Once the RCV count is complete and final, official results have been announced, we urge you to publish a digital copy of the complete cast vote record for each contest. This should be stipulated in rule. It allows campaigns and interested citizens to check the round-by-round results using public-domain counting utilities, and it is essential to candidates contemplating a recount request.

STATUTORY AUTHORITY:

21-A MRS §723-A sub-§5-A

EFFECTIVE DATE: