

# Reform Traditional Primaries and Top Two Primary with Ranked Choice Voting

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**Summary:** Policymakers in the United States Congress lurch from one artificial crisis to another, and voters are growing increasingly alienated with their government. It's easy to blame individual politicians for governmental dysfunction, but the real problem lies in the incentives created by how they are elected. On the one hand, the combination of natural partisan imbalances by geography and voters' increasingly rigid partisan preferences result in few general elections being competitive, yet primary elections are even more lopsided and draw far fewer voters. As a result, representatives largely focus on their party's activist base and have little incentive to reach out to independents and backers of the other major party when they are running for office or to reach across the aisle in crafting legislation.

With congressional action to reform elections remote in the immediate future, it is up to states to act to use their power to reform congressional elections in order to change electoral incentives. Any true fix will fall short if it fails to make more general elections matter, however. I therefore propose state laws that combine two reforms: upgrading the Top Two primary model with a Top Four primary, and implementing ranked choice voting. While keeping the virtues of the Top Two for allowing all voters to participate in government-funded elections, the Top Four primary with ranked choice voting corrects the flaws of the Top Two primary by creating general elections that are far more likely to matter and establishing new incentives for candidates to reach out to more voters.

## **Current Primary Rules and the Top Two Primary Alternative Fall Short**

In our modern era of polarized politics, the nature of primary elections can seem like the culprit for much of what is broken in the policymaking process. Given the combination of growing intensity of partisan voting patterns and increasing imbalance by partisan preference in most regions, few general elections are meaningfully contested. Last November, a mere two days after Election Day 2014, FairVote was able to project winners in 373 U.S. House seats in 2016 using a methodology that has been accurate in 699 of its last 700 projections. In other words, even as 2014 election ballots were being tallied, we already knew the winners in six out of seven congressional races to be held more than two years later. In those districts – and realistically, a good half of the remaining 62 seats – the only real chance for any change is in the 2016 primaries.

Lack of contested general elections goes far beyond House races. Nationally, more than four in ten state legislative races didn't even draw two major party candidates in 2014, and most of the rest were contested in name only. Results are so governed by underlying partisanship that we are now seeing entire state legislative chambers – including the state senates in Georgia, North Carolina, Texas and Virginia – without even one "crossover" representative who won in a district where his or her party's presidential nominee in 2012 did not equal or surpass his national average. To be clear, that means that outcomes in state legislative elections in 2013 and 2014 in these chambers could essentially have been entirely predicted by even relatively modest differences in partisanship as measured by a presidential election in 2012.

In tandem with these telling numbers are the fact that half of states have closed primaries where participants in a party's primary must be registered with that party even as a plurality of voters no

longer register with major parties. But even in states where primaries are open to all voters, research is clear that they remain largely dominated by older, whiter, wealthier and more ideological voters. FairVote shortly will release a report reviewing the disparities in who votes in primaries and general elections that will show that even in open primaries, unaffiliated voters participate at levels less than half their share of registered voters, and three-quarters are at least 50 years old. With primary election turnout hitting all-time lows in most states and the remaining voters typically a party's most committed and ideological members, you have a perfect storm: general elections where one side almost always can't lose and primary elections where party diehards almost always control outcomes.

Backers of the Top Two primary see their reform as breaking open this calculus. As implemented for all state and congressional elections in California and Washington, separate primary contests are abolished in favor of a single free-for-all primary that is open to every registered voter. The top two finishers in that primary go the general election ballot – with the potential of two candidates from the same party facing general election voters in the same district. Every voter is treated equally, regardless of party registration, and there's a chance that previously safe seat will become competitive when two nominees of the same party have to woo backers of others parties along with their own.

But despite having significant financial backing, the Top Two primary isn't sweeping the nation. In recent ballot measures in Arizona and Oregon, voters defeated it by two-to-one margins. And while its advocates are optimistic about its results, there is reason to be concerned. Among them:

- ***Overall voter turnout has plunged:*** It's too early to finger the Top Two primary as the culprit, but even as the whole nation experienced its lowest turnout congressional election since 1942, the single biggest decline in general election turnout among all 50 states from 2010 to 2014 took place in California, where the Top Two primary had been introduced in 2012. California's primary turnout in 2012 also hit a record low for a presidential primary in the state, and Washington State's primary turnout is shrinking as well.

June primaries where no one wins just don't seem to very interesting to most voters, and general elections that exclude nearly all minor parties and independents may seem less interesting as well. Instructively, voters are most likely to skip voting in general elections in the Top Two system in contests that the system's designers promote – that is, ones where only candidate from one major party advance to November. Voters from the parties not on the ballot are far more likely to abstain.

- ***The primary almost always determines final outcomes:*** Backers of Top Two often highlight examples of particular races where two people of the same party advance to the general election – such as Democrat Eric Swalwell's defeat of incumbent Pete Stark in a 2012 California congressional race or an intraparty congressional race won by Republican Dan Newhouse in Washington's four congressional district in 2014. But however powerful these storylines, such arguments by anecdote are no substitute for systematic review.

Primary voters in Top Two continue to effectively determine the winner of nearly every contest. In Washington State, for example, there have been 56 statewide and congressional elections since the Top Two primary was first used in 2008. Only a single race has had two candidates from the same party, and all but two have involved a Democrat facing a Republican.

As the parties learn to adjust to Top Two in California, we are seeing similar patterns: only one of 53 House races in 2014 had a competitive race between two candidates of the same party, and no incumbents were defeated. All eight statewide races for partisan offices in California in 2012-2014 ended up with a November contest in which a Democrat comfortably defeated a Republican. In 2012, of the 212 candidates endorsed by major parties in primary races for Congress and the state legislature, 200 (94%) advanced to November, including all 99 incumbents (with all but four finishing first).

- **Primary turnout is particularly low and unrepresentative:** Even as the primary is still determining most outcomes, it is becoming even less representative of the overall potential electorate and of the November electorate, as FairVote is finding through use of the L2 votermapping tool. In Washington State, for example turnout among unaffiliated voters tripled between the primary and general election in 2012, -- and while unaffiliated voters represented more than one in four voters in the November elections in 2010-2014, they were less than one in five voters in primaries. Young voters under 30 represented only a five percent share of the primary electorate in 2012, as opposed to 10 percent in November that year.

California has similar pattern. Among other findings, unaffiliated voters' share of overall turnout was exactly the same in the Top Two primaries in 2012 and 2014 as in the 2010 primary in the prior system, and their share of the electorate in 2014 was 19% in the primary and 21% in the general election even though their share of registered voters has risen to 28%.

- **Split votes can mean unrepresentative outcomes and give parties leverage to reduce candidates:** Washington State for many decades used the 'blanket primary' (one where all candidates contest the primary together, with the leader in each party's contest then advancing to the general) before it was struck down by the Supreme Court in 2000. As a result, parties and associated interest groups had a history of knowing how best to "work" primary electorates in which all voters can participate. That fact may explain how rare it is under Washington's Top Two primary for major offices to have a primary with truly competitive intraparty competition, as party-linked interests typically instead rally around particular candidates in what amounts to a "shadow primary."

Obvious efforts this year by California Democrats to clear the U.S. Senate field for Kamala Harris in 2016 show how the fear of potential fractured votes in the primary – fractures that cost California Democrats a congressional seat in 2012 when the majority Democratic 31<sup>st</sup> congressional district advanced two Republicans over a divided Democratic field and that almost cost Democrats the statewide controller office in 2014 – gives such interests all the more leverage to reduce primary election competition.

- **Third party and independent candidates are virtually eliminated from the November ballot:** Third party and independent candidates rarely have been viable in California and Washington, but at least were a consistent part of those state's politics before enactment of the Top Two primary. Since its adoption, they have never reached the general election ballot in a statewide

race and rarely been serious factors in any other election. Given low voter attention to primary elections, their messages are even less likely to be heard by most eligible voters – thereby curtailing debate rather than open it.

- ***Polarized voting patterns remain high in these states’ legislative chambers:*** According to [a 50-state analysis](#) in 2014 by Boris Shor and Nolan McCarty California’s 2013 legislative session earned it the title of most polarized state legislature in the nation. The same analysis determined that Washington has the fourth most polarized state legislature. If Top Two is intended to mitigate polarization, its impact to date has been more anecdotal than systematic. That said, it is possible that the mere prospect of a potential November challenger against a more moderate candidate from their party may change more incumbents’ behavior over time.

### **Fixing Top Two by Moving Forward, Not Back**

Despite these defects with Top Two, the answer is not simply restoring the previous primary system nor defending traditional primaries against efforts to establish Top Two. While my organization FairVote sees fair representation voting systems as the best way to elect representatives, combination of three changes could be done by states for all their elections right now:

- Adopt ranked choice voting for contests both primary and general election contests.
- Give voters more choices on the general election ballot by either eliminating the primary or advancing the top four candidates from an open primary.
- Protect association rights for both parties and candidates with better ballot labels

### ***Proposed Improvement #1: Adopt ranked choice voting for primary and general elections***

Ranked choice voting (RCV, known also as “instant runoff voting,” “the alternative vote” and “preferential voting”) is a voting method that can address a range of defects derived from our current electoral rules when more than two candidates run for an office. Voters are given the option to rank candidates in order of preference. Their vote is counted initially for their first choice. If no candidate has more than half of those votes, then the last-place candidate is eliminated. The votes of those who selected the defeated candidate as a first choice are then added to the totals of their next choice. This process continues until a candidate wins the final instant runoff with more than half of the active votes.

Used for decades for parliamentary elections in Australia and presidential elections in Ireland, ranked choice voting has been approved by voters in more than a dozen ballot measures in American cities, and is used today to elect mayors in Minneapolis (MN), St. Paul (MN), Oakland (CA), San Francisco (CA), San Leandro (CA) and Portland (ME). Nongovernmental uses of RCV include: major private associations like American Association of University Women, American Chemical Society, American Political Science Association, American Psychiatric Association and Society of Actuaries; political parties for internal elections, including for choosing leaders by nearly every major party in Canada, New Zealand, Scotland and the United Kingdom and often for filling state legislative vacancies by Utah Republicans; and elections of student governments at more than 50 American colleges and universities.

In elections for one candidate, RCV upholds majority rule while accommodating increased voter choice. It allows voter to consider three or more choices without “splitting” their vote in a manner that might otherwise result in an unrepresentative outcome. The RCV ballot has drawn support in several different

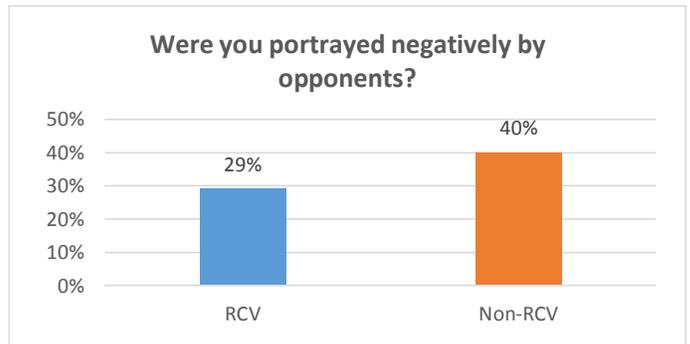
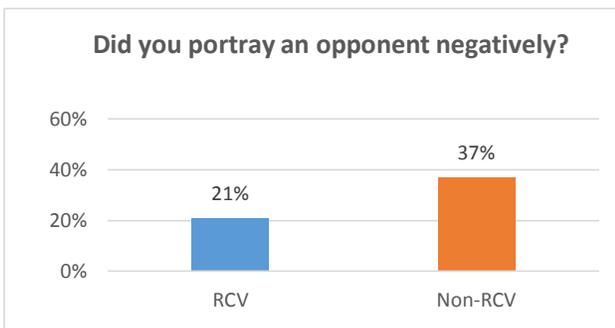
contexts. RCV has been adopted in American cities typically to condense two voting rounds into one – for example, by replacing runoffs or a primary-general election combination with a single RCV election when most voters are at the polls. RCV ballots were used by overseas voters in five states in congressional elections in 2014 to protect overseas and military voters’ participation in runoff elections. RCV is a valuable reform when replacing plurality voting rules in general elections with more than two serious candidates; the state of Maine will hold a statewide ballot measure in 2016 to adopt RCV for all state and congressional elections in the wake of its last three governors all winning an election with less than forty percent of the vote.

For reformers seeking to mitigate partisan polarization, RCV has a particularly desirable feature in races with more than two strong candidates. Candidates have an incentive to appeal to the backers of every other candidate – that is, to learn to find common ground with more voters. Winners in RCV elections often stress how different their campaigns were with RCV than with non-RCV campaigns. For instance, Michael Brennan, mayor of Portland (ME), is a former congressional candidate and state senate majority leader. In a 2013 interview, he said of his 2011 mayoral campaign with ranked choice voting,

You’re not only trying to get a number one vote, you’re trying to get a number two vote or a number three vote. So you don’t spend a whole lot of time saying things about your opponent that might be construed as being negative ....The second major feature of it for me was the fact that I really ended up focusing on all Portland voters as opposed to just looking at targeted voters. In almost every other campaign you sit down and you say ‘Ok, I need 28% to win or 32% to win or I need 35% of the vote to win’ and you target voters to get you that percentage that’s going to allow you to win.... I didn’t care if they were Democrats, Republicans, or Independents but generally speaking you really tried to reach out as much as you possibly could to people that were registered voters.

A [two-year study](#) by political scientists Todd Donovan and Caroline Tolbert found robust evidence that this difference is more than anecdotal. As part of the project, the Eagleton-Rutgers Poll surveyed more than 4,800 likely voters in 21 cities – seven with RCV and 14 control cities with out after their local city elections in November 2013 and November 201. They found that consistent findings that respondents in cities using RCV reported candidates spent less time criticizing opponents than in cities without RCV.

Evidence from a Donovan-Tolbert candidate survey that drew responses from more than 200 candidates after the 2013 elections found similar opinions about the effects of RCV. Candidates in RCV contests were significantly less likely to claim that they had been portrayed or described negatively by their opponents, or to say that they had portrayed an opponent negatively.



Ranked choice voting could be used in any of multiple ways to improve a Top Two primary process. For example, California's form of Top two would be improved by these statutory changes even while maintaining the basic model of two candidates advancing from the primary:

- *Use RCV in the primary when reducing the field to two candidates.* Doing so would:  
1) eliminate concerns about vote-splitting that might allow one party to advance two candidates to the general election even when the other major party has more votes;  
2) allow voters to vote their true preferences even if they have a preference among the more favored candidates and their first choice is a longshot; and 3) create incentives for candidates to reach out to more voters in order to earn the second and third choice rankings of backers of others candidates.
- *Use RCV in the general election and allow write-in candidates.* California does not allow write-in candidates, presumably because of a fear of vote-splitting and backers of one of the major parties orchestrating a write-in campaign when the other party has the potential to advance two candidates from the primary. Adoption of RCV in November would: 1) eliminate concerns that allowing write-ins would result in unrepresentative outcomes because it would avoid vote-splitting; and 2) give voters the opportunity to write-in candidates when unhappy with the two candidates on the ballot or when a leading candidate has died or been forced to withdraw.

***Proposed Improvement #2: Give voters more than two viable choices on the general election ballot***

Going hand in hand with adoption of RCV is the value of expanding meaningful choice on the general election ballot by making one of two changes. The first approach would be to eliminate the primary altogether and adapt the Louisiana Top Two model by having all candidates go straight to the November ballot. A compromise approach would be to advance four candidates in a "Top Four primary" rather than advancing only two. Either change would have a dramatic impact in creating incentives for candidates to each out to more voters in the general election. Although they would take a new vote of the people and a state constitutional change in California, they could be adopted by statute in Washington and should be considered in states seeking to reform traditional systems.

*How the Louisiana model would work with RCV:* In Louisiana congressional races, the first vote is held on Election Day in November. If a candidate wins a majority, he or she wins. If no candidate receives a majority, a runoff election takes place between the top two candidates in December.<sup>1</sup> By holding the first round on the general election date, Louisiana capitalizes on the higher voter turnout experienced during general elections and gives all candidates a chance to make their case to that electorate.

The Louisiana system would be even better if voters cast a ranked choice voting ballot in November. Without RCV, the current approach allows for distorted outcomes due to split votes in the first round and does not create incentives for candidates to reach out to backers of other candidates. It also results in December runoff with lower turnout than in November.

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<sup>1</sup> Although the Louisiana election system refers to the first round as a "primary" and the second as a "general" election, the system is better understood not as a Top Two primary, but as having no primary election whatsoever and as holding a runoff election if no candidate wins a majority in the November general election.

One way to build RCV into this system would be to establish that a candidate will be immediately elected if winning the election with more than a certain share of first choices, say 40 percent. Where no candidate receives that minimum share of first choices, RCV would be used to reduce the field to two runoff candidates for the December election, thereby avoiding split votes and rewarding more inclusive campaigning. Notably, Louisiana already has its runoff relatively close to the November election because its more than 10,000 overseas and out-of-state military voters get to cast RCV ballots before November and have that ballot counted in December toward whichever candidate is ranked higher on the ballot

*How a Top Four primary would work with RCV:* The second approach would represent a compromise between the Louisiana model and the Top Two primary: a “Top Four Primary.” It changes the Top Two system in two ways: first, four candidates advance from a primary rather than advancing two; and second, RCV is used first to reduce the field in the primary (done by so eliminating last-place candidates one by one and retallying votes until four remain) and then in the general election to uphold majority rule with more than two choices. With these uses of RCV, voters would never need to be asked to rank more than three candidates and would always get a second look at the frontrunners. The primary contest would remain open to all voters, but the much bigger, more representative general electorate would have more choices and more power.

FairVote has simulated the results of a Top Four system using actual vote totals in Washington and California, as summarized in this chart.

	California Congressional Elections and Partisan Statewide Offices (2012-2014 – 114 Races)				Washington Congressional Elections and Partisan Statewide Offices (2008-2014 – 56 Races)			
	Top Two		Top Four		Top Two		Top Four	
	# Races (out of 114)	% Races	# Races	% Races	# Races (out of 56)	% Races	# Races	% Races
<b>Both major parties in general election</b>	90	78.9%	100*	87.7%	54	96.4%	55	98.2%
<b>Intraparty race in general election</b>	<b>15</b>	<b>13.2%</b>	<b>86*</b>	<b>75.4%</b>	<b>1</b>	<b>1.8%</b>	<b>43*</b>	<b>76.8%</b>
<b>Non-major party candidate in general</b>	7	6.1%	36*	31.6%	1	1.8%	22*	39.3%

\* More candidates from these categories would have advanced with Top Four if they had run, which would have been likely if candidates were aware of greater access to the general election. For example, in no contest did one major party’s candidates take the first four positions ahead a candidate from another major party – not surprising when a candidate is guaranteed to advance if securing 20% of the vote and likely to advance with 12% to 15%.

The results are dramatic, particularly in the number of intraparty contests and elections with minor parties in November. This combination of results would address concerns both of those favoring Top Two and those opposing it. Speaking to critics of Top Two, the Top Four primary would almost certainly avoid races in which a major party ends up being blocked from the ballot despite fielding a candidate in the primary, and it would increase the number of contests in which unaffiliated and minor party candidates advance; in Washington, on-major party candidates rise from being in 1.8% of November

elections to 39.3%. Speaking to supporters of Top Two, the Top Four primary would greatly increase the number of races where more than one candidate from the dominant party advances; in Washington, intraparty contests rise from 1.8% to 76.8%.

More broadly, it makes little sense to have full choice in June when most voters aren't paying attention and then limit choice in November when candidates are actually elected. Take last year's 33<sup>rd</sup> congressional district primary in Los Angeles County. After Henry Waxman decided to retire, 18 candidates ran in a wide-open primary that included prominent author and political independent Marianne Williamson, strong Democratic woman candidate Wendy Greuel, and well-financed pundit Matt Miller. Yet only Republican Elan Carr and Democrat Ted Lieu advanced to November with a combined vote total of just 40%. Lieu then cruised to an easy November victory in this Democratic district, turning an exciting chance for real debate into just another lopsided November election. With Top Four, some 70% of voters would have voted for an advancing candidate (and even more with RCV used in the primary), and the general elections voters would have had the chance to consider two strong women candidates, Williamson and Greuel, along with Liu and Carr.

Similarly, the statewide race for controller in 2014 would have been a fairer contest with Top Four. Four candidates – two Republicans and two Democrats – each won between 21% and 24.8% of the primary vote. If the first-place Republican had earned 0.7% fewer votes that instead went to the other Republican, then both Democrats would have been defeated. As it was, Democrat Betty Yee edged out fellow Democrat John Perez for second by just 481 votes, and then won comfortably in November. With the Top Four primary, these top four controller candidates would have faced the bigger general electorate and needed to work harder to reach out to earn second and third choices, and the number of votes for candidates failing to advance from the primary would have declined from 54% to a mere 11%, and the prospect of a one party general election would have been eliminated.

Other California races last year might have been as fairly decided by a coin flip or where general election voters missed out on important debate include:

- In the secretary of state race, Democrat Alex Padilla and Republican Peter Peterson outpaced a fascinating field that included reform-minded independent Dan Schnur, the Green Party's David Curtis and reform leader Derek Cressman, all of whom were raising important questions about the future of California democracy before their elimination in the low turnout primary.
- In the statewide attorney general race, Republican Ronald Gold earned second place behind Democrat Kamala Harris with just 12.8% of the vote, barely ahead of three fellow Republicans who all earned at least 8%. In the 24<sup>th</sup> congressional district, Republican Chris Mitchum advanced with less than 16% of the vote in a race where 55% of voters did not vote for the Democratic incumbent. Mitchum then lost in November.
- In the heavily Democratic 15<sup>th</sup> congressional district, Republican Hugh Bussell barely edged out Democrat Ellen Corbett for second. As a result, Democratic incumbent Eric Swalwell won easily in November rather than having to face a much more competitive race against Corbett.

In races like these, narrowing the field down to two in a primary created the potential for distorted outcomes. In fractured fields it is important to know more than a voter's first choice – and give the November electorate a chance to choose among more than two candidates with RCV.

***Proposed Improvement #3: Uphold association rights for both parties and candidates***

We should further improve Top Two by better upholding the First Amendment freedom of association. In California, Louisiana and Washington, candidates indicate their preferred party on the ballot, but those parties cannot indicate which candidates they support. Trying to take these associations out of politics can diminish participation because voters can have trouble distinguishing among candidates.

The Top Two proposal as defeated by Oregon voters in 2014 would have allowed candidates to indicate one or more party endorsements on the ballot in addition to candidates being able to indicate their party preference. We should consider expanding association rights even further by allowing candidates to also indicate a confirmed endorsement from an individual or another private association.

**Conclusion**

Backers of the Top Two primary have fingered an important fact: our traditional primary system is broken. More than half of states had their lowest-ever primary turnout in 2014, and disparities among who votes and who abstains are far greater in primaries than in November election through the lens of age, race and educational background. The steadily rising number of unaffiliated voters puts particular stress on the system in states with closed primaries. These unaffiliated voters – now approaching more than half of registered voters in states like New Jersey and Oregon – must have their taxes go to funding primaries in which they cannot participate without changing their party registration.

But Top Two opens primary elections at the expense of closing down general elections. Rather than try to rescue a primary system that is being fundamentally rejected by most voters, we should make general elections more open and relevant – and in so doing create incentives for our representatives to be, well, representative. RCV can be woven into Top Two in a way that dramatically improves it, either by using it with a Top Four primary format that expands voter choice in November or by eliminating primaries altogether. Doing so preserves the right of unaffiliated voters to participate in taxpayer-funded elections even while it addresses each of the problems associated with advancing only two candidates, and it creates new incentives for winners to learn how to earn the first, second or third choice support of a majority of voters that that they ultimately will be tasked to represent.

Even states that want to keep their primary system intact would benefit greatly from RCV. In Maine, for example, voters in 2016 will consider a ballot measure to use RCV in each party's primary and then in the general election. With a history of highly fractured primaries in major elections for Congress and governor and similarly fractured general election, RCV will would mark a major improvement.

No matter how RCV is used, its adoption for elections to the U.S. Senate, U.S House and state offices is in the hands of states. It's time to seize this opportunity and greatly expand voter choice, incumbent accountability and, ultimately responsible governance in a democracy that not only must govern itself well, but set a model for representative democracy for the rest of the world.

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<sup>1</sup> Rob Richie is executive director of FairVote. He thanks colleague Drew Spencer and Stanford University senior fellow Larry Diamond for their assistance with this paper.