



**Agenda
Minnetonka City Council
Regular Meeting
Monday, August 10, 2020
6:30 p.m.
WebEx**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Kirk-Schack-Carter-Calvert-Schaeppi-Coakley-Wiersum
4. Approval of Agenda
5. Approval of Minutes:
 - A. June 29, 2020 study session
 - B. July 13, 2020 regular council meeting
6. Special Matters:
 - A. Women's Equality Day Proclamation
Recommendation: Read the proclamation
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases: None
10. Consent Agenda - Items Requiring a Majority Vote:
 - A. Resolution approving the final plat of PATRIOT ESTATES at 3515 Park Valley Road
Recommendation: Adopt the resolution approving the final plat (4 votes)
11. Consent Agenda - Items Requiring Five Votes: None
12. Introduction of Ordinances: None

Due to the COVID-19 health pandemic, the city council's regular meeting place is not available. Pursuant to Minn. Stat. § 13D.021, city council members will participate in the meeting remotely via WebEx. Members of the public who desire to monitor the meeting remotely or to give input or testimony during the meeting can find instructions at <https://www.minnetonkamn.gov/government/city-council-mayor/city-council-meetings>.

13. Public Hearings:

A. Items concerning Shady Oak Crossing:

- 1) Resolution approving the final plat of Shady Oak Crossing at 4312 Shady Oak Road and 4292 Oak Drive Lane;
- 2) Resolution approving the Vacation of Easements;
- 3) Resolution approving the execution of an Assignment of Tax Increment Financing Note and Subordination Agreement; and a Consent and Estoppel Certificate

Recommendation: Hold the public hearing and adopt the resolutions (4 votes)

14. Other Business:

A. Consideration of charter commission Resolution 2020-01 on ranked choice voting

Recommendation:

- 1) Introduce ordinance repealing Ordinance No. 2020-12

OR
- 2) Adopt resolution calling special election and establishing ballot language (4 votes)

15. Appointments and Reappointments: None

16. Adjournment

**Minutes
City of Minnetonka
City Council Study Session
Monday, June 29, 2020**

Council Present: Councilmembers Deb Calvert, Bradley Schaeppi, Kissy Coakley, Brian Kirk, Rebecca Schack, Susan Carter, and Mayor Brad Wiersum

Staff: Geralyn Barone, Mike Funk, Corrine Heine, Julie Wischnack, Loren Gordon, Drew Ingvalson, Leslie Yetka, Hannibal Hayes, Susan Thomas, Scott Boerboom, Will Manchester

Wiersum called the meeting to order at 6:30 p.m.

1. Report from City Manager & Council Members

Barone reported the city is expected to receive \$4 million in funding from the CARES Act. She also reported the city will allow the emergency ordinance regarding quarantine for emergency service providers to expire because there have not been any requests for use of the provision. Additionally, solicitor permits will now begin being accepted again. Lastly, Barone reported City Hall will re-open to the public on Monday, July 6, and that City Hall will be closed on Friday, July 3.

Schack reported on her experience at the virtual League of Minnesota Cities annual meeting, and she commended Wiersum for being elected President of the League of Minnesota Cities.

Schaeppi also commended Wiersum's election. Additionally, he expressed appreciation for the city working with the Friends of Lone Lake Park regarding wording of the multi-use trail policy, and stated lack of use of masks in indoor public spaces has continued to be an issue.

Kirk asked whether the city could pass an ordinance requiring residents to wear masks in public, and thanked the Charter Commission for their ongoing work on Ranked Choice Voting. Wiersum stated the use of masks in public is important, but enforcement of a city mask ordinance could be an issue. He deferred to staff on this.

Calvert thanked the Charter Commission and staff for their ongoing work on Ranked Choice Voting. She stated businesses may feel they cannot require masks when we as a city do not require masks.

Carter congratulated Wiersum for his election to the League of Minnesota Cities.

Coakley noted she will be leading a virtual panel discussion on racial equity and diversity.

Wiersum reported on the annual League of Minnesota Cities meeting, and stated race and equity are important issues to the city.

2. Sustainability Action Options

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Barone noted council asked to have this issue come forward at a study session, and that this is the next step before deciding whether to establish a Sustainability Commission.

Wischnack introduced the item and the presenting staff, City Planner Loren Gordon and Planner Drew Ingvalson.

Gordon summarized previous actions and discussions on the issue of sustainability, including the existing city initiatives.

Ingvalson summarized Hennepin County's proposed Climate Action Plan, as well as the climate action plans of comparable cities in the Twin Cities area.

Wischnack provided an overview of each of the sustainability action options available to the city and the associated costs. She stated staff recommends adopting an Energy Action Plan and establishing a Sustainability Commission. She then gave a tentative overview of the membership composition of a Sustainability Commission and how it would serve the city council.

The group then discussed the membership of such a commission, the role of student members, whether it should be interdisciplinary, and its role in relation to the city council. Wischnack noted the scope of work that can be done by the commission is limited, due to statutory guidelines, and indicated a commission of more than nine members could be difficult to manage. Barone added that the appointment process should remain consistent with city process. Carter suggested the city should also be consistent with its policy on the role of student commissioners.

3. Tree Protection Ordinance Update

Wischnack gave a presentation on the proposed ordinance update, while providing background on the ordinance drafting process.

Yetka provided an overview of the threats to the city's trees.

Thomas summarized the history of this ordinance and the update processes it has gone through.

Yetka and Thomas then outlined each of the updates to the ordinance.

Council then provided comments and feedback.

4. Diversity and Inclusion Update

Barone gave a report on city updates pertaining to diversity and inclusion, then outlined the next steps in the process

The council offered their comments and agreed that the issue should be focused on at a future study session meeting. It was also agreed that public comment should be solicited to decide how to improve in these areas, and what actions to take.

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Barone thanked council for the feedback and invited them to send their ideas via emails.

5. Adjournment

Wiersum adjourned the meeting at 9:56 p.m.

Respectfully submitted,

Kyle Salage
Elections Specialist

**Minutes
Minnetonka City Council
Monday, July 13, 2020**

1. Call to Order

Mayor Brad Wiersum called the meeting to order at 6:30 p.m. Due to the COVID-19 pandemic this was a hybrid virtual meeting.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Council Members Bradley Schaeppi, Kissy Coakley, Brian Kirk, Rebecca Schack, Susan Carter, Deb Calvert and Brad Wiersum were present.

4. Approval of Agenda

Calvert moved, Kirk seconded a motion to accept the agenda with addenda to Item 12.A. All voted "yes." Motion carried.

5. Approval of Minutes:

A. June 8, 2020 regular council meeting

Schaeppi requested a modification to the minutes changing the word friend to resident within his statement on Page 3.

Calvert moved, Schack seconded a motion to accept the minutes, as amended. All voted "yes." Motion carried.

B. May 11, 2020 study session

Calvert moved, Schack seconded a motion to accept the minutes, as presented. All voted "yes." Motion carried.

6. Special Matters:

A. Recognition of City Website as Best in State

City Manager Geralyn Barone reported the city received an award for having the Best Website in the State of Minnesota. She commended the communications team for their tremendous efforts.

Assistant City Manager Mike Funk explained he had the pleasure of working with the communications team. He discussed how vital the website was to the community and thanked Kari, Matt and Justin for their dedicated service to the City of Minnetonka.

Communications and Marketing Manager Kari Knoll thanked staff for their kind words. She explained she could not be more happy for receiving Best in State for the city's website given the fact it was a vital communication tool for the city. She indicated this would have not been possible without Matt and Justin. She stated she was incredibly proud of their great work.

Barone reported Ms. Knoll was named Communicator of the Year in 2019. She thanked Ms. Knoll for her great work on behalf of the city.

Wiersum stated he worked in marketing in his career. He explained websites required a great deal of work and he appreciated the tremendous efforts of staff.

Recognized the award.

7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on upcoming city events and council meetings. It was noted a worksession on race and equity was being planned for August.

Calvert reported today was the first of three meetings for the League of Minnesota Cities Improving Service Delivery Committee. She explained this was the first meeting Mayor Wiersum served as president of LMC. She commented on the items that were discussed at this meeting.

8. Citizens Wishing to Discuss Matters not on the Agenda

Tim Liftin explained Tour de Tonka would not happen this year but noted the event would move forward in 2021 on Saturday, August 7. He reported a virtual event would be held in 2020 that would help support the local ICA food shelf. He stated a fall bike ride was being planned for Sunday, September 27 and noted only 250 participants could partake in this event.

Wiersum thanked Mr. Liftin for his work on this great event.

Calvert stated this was a magnificent community event and she looked forward to the Tour de Tonka continuing in 2021.

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

Schaeppi indicated he would like to pull Item 10.A from the Consent Agenda for questions.

B. Resolution appointing election judges and absentee ballot board for the August 11, 2020 State Primary

Kirk moved, Calvert seconded a motion to adopt Resolution 2020-052. All voted “yes.” Motion carried

A. Items concerning Dairy Queen at 4912 County Road 101:

- 1. Final site and building plans; and a**
- 2. Conditional use permit for an outdoor eating area**

Schaeppi explained he received a question from a resident asking about bike parking and how this topic was discussed with the applicant. He commented he received helpful information from staff regarding the landscaping. He indicated he would like to know more about the landscaping proposed between Highway 101 and Dairy Queen. City Planner Loren Gordon discussed the city’s landscaping requirements and noted a landscaping plan would be submitted to the city as part of the building permit process. He commented 25% of the plants and shrubs would have to be pollinator friendly. He reported the landscaping on the site would be improved through this site plan. It was noted the site would have bike parking.

Schaeppi indicated there was a lot of impervious surface in this area and he was pleased the landscaping for the site would be improved.

Kirk moved, Coakley seconded a motion to adopt Resolution 2020-051 approving the request as amended requiring a bike parking area. All voted “yes.” Motion carried

11. Consent Agenda – Items requiring Five Votes: None**12. Introduction of Ordinances:****A. Emergency ordinance regarding face coverings**

City Manager Geralyn Barone and City Attorney Corrine Heine gave the staff report.

Schaeppi requested further comment regarding what businesses would be covered by Item 3.05. Heine explained all businesses in Minnetonka would be subject to the ordinance and would require face masks. She stated any business violating the ordinance would be subject to administrative action for any licenses. She discussed the types of licenses that were issued by the city to local businesses.

Schaeppi questioned what "failure to comply" meant within the ordinance. Heine reported a violation of any provisions within the ordinance would result in enforcement.

Carter requested comment from the police chief regarding this matter. Police Chief Scott Boerboom explained he has spoken to neighboring agencies that have a mask ordinance in place. He stated he could support an ordinance where businesses were encouraged to enforce the mask requirement. He indicated this would be an emotional issue and he was reluctant to get the police involved in enforcing a mask ordinance. He preferred that the police only have to deal with those individuals that were refusing to leave or were becoming belligerent to local business owners.

Coakley stated she was concerned with the fact not all residents may have access to face masks. She recommended the city hold a mask drive in order to provide residents with face masks if a requirement were put in place.

Kirk questioned how the city would address businesses that were failing to comply with the mask requirement. Heine reported in cases where the only enforcement mechanism was potential license action, it would mean the city would not have an effective means to enforce the requirement against businesses that do not have licenses. She stated the city council could consider a criminal penalty. She explained if an ordinance or resolution was approved, the council should provide staff and the police department with expectations on how the ordinance or resolution is enforced.

Kirk asked if the city would have any liability if an ordinance was put in place that disrupted business. Heine explained the city would not be liable to businesses because this was a public healthy decision that would not force businesses to close, but rather would require the business to tell their patrons to wear a mask.

Schaeppi thanked Heine for her information. He stated it was his understanding 20 or so states have mandates in place. He inquired what would happen if Minnesota were to pass an executive order regarding face coverings. Heine advised if the governor were to adopt an executive order under his emergency powers, this order would carry with it the ability to enforce as a violation of Section 12.45 of Minnesota State Statute, which was a misdemeanor offense. She indicated this would depend upon the wording of the executive order.

Coakley asked if someone has a medical condition and should not be wearing a facemask, how this would be made known to business owners. She stated according to the CDC people with certain medical conditions should not be wearing face masks. Heine explained the proposed ordinances encourage businesses to rely upon statements that are made by an individual if they claim to be exempt from the ordinance due to medical disability or for developmental reasons. She then referred to Section 3.05 within the proposed ordinance.

Wiersum opened the meeting to the public.

Dr. Dale Dobrin, reported he has been a physician in Minnetonka for the past 45 years. He considered it a privilege and an honor to speak to the city council regarding this matter. He made a few points stating aerosols and droplets were the key to transmitting the coronavirus that was causing COVID-19 disease. He reported the wearing of masks will decrease cases by lessening the chances of a-symptomatic and symptomatic spread. He discussed recent studies and noted the benefit of wearing a face masks affects the public at large, along with the person wearing the face mask. He encouraged that masks be worn both indoors and outdoors because not all people were properly social distancing when outdoors. He suggested the city send a strong message regarding mask wearing. He recommended "public space" include vehicles that were delivering food, packages and mail to residents in Minnetonka. He strongly urged Minnetonka to close bars and discussed how particles could easily be spread in these establishments. He recommended all city employees wear mask as a sign of good modeling for the general public. He reported businesses will not thrive until this pandemic is under control. He commented on the mask requirements in California and Texas and noted 25 states already have mask mandates. He indicated the rate of the spread of COVID in Minnesota was higher than 38 other states. He stated Governor Walz now needs to mandate mask wearing in indoor and outdoor spaces. He also encouraged the city council to take action on mask wearing.

Robert Dahl explained he was a retired physical therapist. He stated after he retired he took a part time position in a large nursing home. He reported this facility has recorded dozens of COVID deaths. He commented his fingerprints were all over 70 wheelchairs at this facility and he continues to test negative for COVID. He indicated he has been reading a number of research papers on the relationship between an immune system and a persons biome. He described what makes up a persons biome and commented on the importance of one having a healthy biome and immune system. He feared that the longer people stayed in isolation the weaker their immune system would get. He reported he chose to not wear a mask, except for at work, in order to allow his biome to interact with other people. He commented he was against mandating face coverings. He discussed the negative social consequences of requiring masks at

all times and stated fear should not be the driving factor. He stated enough was enough. He believed people needed to come out of their bubble and that people should be having human interaction. He thanked the council for listening to and considering his comments.

Leora Mccabee, resident of Plymouth, explained she was an attorney and mom of two kids. She reported she lived in nearby Plymouth but would do all of her shopping in Minnetonka if a mask ordinance were approved. She discussed the precautions she has taken since the pandemic began. She supported the city council passing a broad mask ordinance because this would protect all residents in Minnetonka. She anticipated this action would encourage neighboring communities to follow suit. She discussed the availability of masks in the community and encouraged the city to consider holding a mask drive for those that needed assistance.

Annette Bertelsen, 13513 Larkin Drive, thanked the city and council for being proactive on this issue. She explained when she learned the city was considering a mask ordinance; she reached out to the mayor of Edina. She noted Mayor Jim Hovland was gracious with his time. She explained after Edina passed their ordinance they heard from the medical community where they received a huge thanks for protecting public health and health care workers. She reported the City of Edina received a number of thank you notes from residents both inside and outside of the community, along with thank you's from local business owners. She explained she discussed enforcement with Mayor Hovland and stated he did not believe enforcement was such a big issue. She encouraged the City of Minnetonka to pass a broad mask ordinance in order to properly protect the entire community.

Dr. Megan Shaughnessy explained she was a physician that had expertise in infectious disease. She reported she has been in practice for the past 15 years. She indicated she has never seen anything quite like COVID-19. She stated it was terrifying how quickly people can become sicker. She commented patients were in the hospital alone and afraid. She discussed her experience with COVID patients. She understood people wanted life to return to normal, but noted it was important for the community to work to control the spread of the virus. She explained hand hygiene, social distancing and the use of a mask were all effective tools in slowing the spread. She reported the purpose of wearing a mask was to protect others. She recommended people two years of age or older wear a mask while indoors. She urged the city council to pass an ordinance that would require masks in Minnetonka when indoors. She also recommended that masks be made available to Minnetonka residents in an equitable manner.

Glen Menzies, 14700 Oakwood Rd, reported he has been a resident of Minnetonka for more than 25 years. He commented he was 64 years old and had a couple of medical conditions that put him at high risk for catching COVID.

However, he did not believe Minnetonka needed to put an ordinance in place to require masks. He stated he routinely wore a mask and believed it was reasonable for businesses to have mask policies. He feared it was a governmental overreach to have the city mandate masks. He stated if an ordinance was in place exemptions should be in place for people that should not be wearing masks (those with respiratory conditions, asthma, allergies, etc.). He feared that such an exemption would make it difficult for the city to enforce a mask requirement. He discussed how sunlight and UV rays were the best weapon against COVID. He indicated it was very unlikely someone could catch COVID outdoors. He suggested the city encourage businesses install UV/C lights within their buildings. He explained this would be a more effective tool than wearing a mask. He stated the city could also consider suggesting businesses install air purifiers, but he understood these pieces of equipment came at a cost. He recommended these decisions be left with business owners. He stated one size fits all regulations rarely work well and noted governmental micromanagement invites hostility from the general public. He explained his wife becomes nauseous when wearing a mask for an extended period of time and his wife would no longer shop in Edina where masks are required. He requested the city council not pass a mask ordinance.

Patrick Lee O'Halloran stated he was a resident of Minnetonka. He thanked the council for taking this matter seriously and encouraged the city to demonstrate leadership. He explained it was clear in the science that masks prevent transmission. He indicated there was poor messaging initially but it was irrefutable now that wearing masks will result in a large reduction and risk of infection. He commented on the states that already has mask mandates in place. He stated simply encouraging masks was not enough. He encouraged the city to pass a strong broad ordinance that would require masks as this was the best way to protect the public.

Evy Engrav, stated she was a resident of Minnetonka. She explained she has appreciated all those who have spoken positively for a mask ordinance. She noted she had lost a family member to COVID-19 in Kansas City in April. She discussed how COVID was being spread by people who were a-symptomatic. She indicated this virus was not going away and would remain a threat until a vaccine was in place. She explained this may not occur until 2022. She stated she would not be shopping in Minnetonka until a mask ordinance was in place. She requested the city pass a mask ordinance for the protection of the community.

Wiersum closed the meeting to the public.

Wiersum recessed the city council meeting.

Wiersum reconvened the city council meeting.

Wiersum discussed the options available to the council and asked for comments regarding the potential emergency ordinance regarding face coverings.

Kirk requested staff discuss the differences between the ordinance that was included in the packet and the ordinance that was presented to the council within the addenda. Barone reported the ordinance within the addenda was available to the public on the city's website. Heine summarized the differences between the two ordinances. She noted the new ordinance was similar to the mask ordinance that was approved by the City of Edina.

Kirk questioned how polling places would be addressed by the ordinance. Heine stated polling places located within schools or places of worship would not be covered by the ordinance. She explained that if the council were to require masks at polling places and voters were turned away this could be considered voter suppression. She indicated this topic may require further discussion because curbside voting was available. Barone reported the city has 23 precincts, 14 in churches, 2 in schools, 7 in city facilities and 2 in county facilities.

Calvert stated she would like the council to consider encouraging the governor to pass a statewide mandate for masks in areas where COVID was high or spreading. Heine reported the council could adopt an ordinance for the city while also adopting another ordinance urging the governor to adopt a statewide mandate.

Coakley indicated she has been going back and forth on this issue. She believed the city should mandate masks. She stated if the wearing of masks can save a life, she believed this should be considered. She explained she would be willing to wear a mask in Minnetonka, even if it was uncomfortable in order to improve public health. She recommended masks only be required indoors at this time.

Schack thanked all of the residents for providing the city council with input on this matter. She understood residents did not like to be told what to do, but explained the council may have to make a decision for the greater good. She stated she supported the ordinance that mirrors what the City of Edina has done. She indicated she struggles with how this ordinance will be enforced, but believed it was in the communities best interest to have a mask ordinance in place. She stated she supported the age recommendations in place and suggested exceptions be made to comply with voter regulations. She recommended a resolution be sent to the governor as well.

Schaepfi indicated he supported the council adopting a mask ordinance as well. He appreciated the fact children from the ages of five and under would be exempted. He supported the city pursuing enforcement in a similar manner as Edina. He appreciated the fact the ordinance would require businesses to post

signage. He expressed frustration with the fact this issue has not been addressed by state and federal representatives. He explained he has been taking feedback from local business owners and major retailers in Minnetonka and all supported the use of masks. He believed that it would benefit local businesses if the city were to adopt a mask ordinance. He supported the age requirement of five and under and supported signage being in place.

Calvert stated this was a big topic. She thanked the residents that weighed in on this matter, noting the council received over 250 comments in the addenda. She indicated over 80% of the residents in Minnetonka supported a mask ordinance. She discussed the success New Zealand has had in reopening noting this country had used masks. She believed that as a public official she had the duty to address public safety and to affect change regarding public health. For this reason, she would be supporting the mask ordinance noting this should be required indoors and at city facilities. She supported children five and under being exempt from the ordinance and recommended the ordinance have a broad scope. She indicated the city would have to consider how to address its polling places and suggested an exemption be made to require masks. In addition, she recommended a resolution be passed along to the governor to require masks statewide.

Kirk explained the council was leaning towards an amended version of option 3. He noted the council had not brought this item up, but rather it was being brought up per the request of the public. He asked if the city has given the public enough notice on the amended version of the ordinance. Barone reported this ordinance was posted on the city's website this morning.

Kirk stated he agreed page five was the most appropriate and that signage should be required at local businesses. He noted he was struggling with the criminal penalties. He indicated applying a misdemeanor may be somewhat subjective. He wanted to be assured that the ordinance was being applied fairly. He explained he could accept Item 3.0 but was concerned about Item 3.052. He provided a brief public service announcement regarding the benefits of wearing masks and stated masks serve as a reminder to him that COVID was a part of his everyday life. He understood that masks may not be 100% effective, but the use of masks may save one life and for this reason, he would support a mask ordinance moving forward.

Calvert supported the comments made by Councilmember Kirk. She explained she contacted a constitutional law professor to ensure that the proposed ordinance was constitutional. She stated after discussing this matter with the professor she was informed the council could proceed with a mask mandate, so long as exemptions were in place for people with preexisting medical conditions. She believed that a mask mandate would help get the economy back on track faster because it would keep people safe and feeling safe.

Carter stated she appreciated all of the thoughtful comments. She explained she supported the five and under age exemption. She reported the city council sometimes had to do hard things not because they were popular but because they were the right thing to do.

Kirk commented on Coakley's statement regarding the access to masks and requested the ICA or city hall have masks available to the public.

Schaeppi supported Kirk's recommendation. He noted he was in the City of St. Paul over the weekend where masks were required. He questioned if the city had funds available to assist in purchasing masks.

Coakley thanked the residents that emailed comments to the city. She indicated she was going to lean towards supporting the mask ordinance. She suggested the police department consider enforcing trespassing versus disorderly conduct. She noted she supported the age limit within the ordinance. Barone explained the amended ordinance does specify the police department would be enforcing trespassing, or any other law the individual may violate. Police Chief Boerboom stated trespassing was a misdemeanor. He reported disorderly conduct might apply when people become belligerent or if they are screaming/cursing in public spaces. It was his hope this would be a last resort and that his officers would be able to deescalate situations by having a conversation regarding the importance of wearing masks.

Wiersum commented COVID is raging through the country and trends are starting to look less favorable in Minnesota and Minnetonka. He reported the community was in a public health crisis. He thanked all of the residents that had weighed in on this topic. He explained the city was in a state of emergency at this time and public officials were being called upon to make decisions for the betterment of the community. He discussed how the wearing of masks protects people in close proximity but noted it only works if everyone is wearing a mask. He stated the city council has the authority to pass this ordinance given the fact Minnetonka had declared a state of emergency for the public health crisis. He estimated three-fourths of Minnetonka residents supported a mask ordinance. He stated even if the majority of the population did not support this ordinance he would still be moving forward in order to do what was right for the community. He indicated he supported a mask mandate as it was vital for public health. It was his hope enforcement would not be an issue and that those not complying be trespassed. He recommended masks be required indoors. He stated he could not guarantee all will be protected in Minnetonka, but noted a mask ordinance would assist in protecting the general public.

Barone requested the council consider setting an effective date for the mask ordinance. She anticipated it would take staff at least a week to properly publish and get information out to the public regarding the mask ordinance.

Heine asked if the council wanted to require masks in outdoor spaces.

Calvert stated she did not support the city having a mask requirement in outdoor spaces.

Heine questioned how the city wanted to address polling places.

Schack commented she would like to see voters mandated to wear masks in order to vote, but stated she also did not want to compromise getting voters to the polls.

Wiersum recommended the language be drafted to exempt the requirement for voting circumstances at city hall because this would be the most simple solution. He indicated the city would have limited voting (one week) prior to the primary. He preferred staff mitigating the concerns for the polling places without tying the polling places to the mask ordinance. Barone concurred stating the city's election staff would prefer to let the state rule on this matter.

Kirk suggested that all polling places then not require masks for the primary and general elections. Heine reviewed a language amendment within the mask ordinance with the council stating the ordinance would now read: City employees and all other individuals must wear face coverings within those portions of city owned buildings that are open to the general public; except that with respect to polling locations, no voter may be told to leave the premises for refusal to wear a mask.

Calvert encouraged residents of Minnetonka to wear their masks when voting given the fact a large number of election judges were elderly.

Heine requested comment from the council on how the police department was to enforce the ordinance.

Kirk explained he supported the council keeping Section 3.05.02 in the ordinance as this would allow trespassing or the misdemeanor to apply.

Heine questioned what the effective date for the mask ordinance should be. Heine reported the earliest publication date would be July 23 and the ordinance would then become effective on July 23.

The council supported an effective date of Thursday, July 23.

Coakley recommended the city push this information to the public via news media.

Kirk questioned if the council would also be recommending a letter be sent to the governor suggesting a statewide mandate be put in place for masks. Barone indicated staff could draft a letter that could be signed by the mayor on behalf of the entire city council.

Wiersum stated he would be happy to put a letter out on behalf of the Minnetonka City Council.

Schack moved, Calvert seconded a motion to adopt an emergency Ordinance 2020-14 as amended, enacting a mask requirement in the City of Minnetonka as amended with an effective date of July 23, 2020. All voted "yes." Motion carried

13. Public Hearings:

A. Resolution approving vacation of a drainage and utility easement at 14616 Woodhaven Road

City Planner Loren Gordon gave the staff report.

Wiersum opened the public hearing.

With there being no comments, Wiersum closed the public hearing.

Kirk moved, Carter seconded a motion to hold the public hearing and adopt Resolution 2020-053. All voted "yes." Motion carried.

14. Other Business:

A. Community Survey and Organizational MERIT

City Manager Geralyn Barone gave the staff report.

Peter Leatherman, Morris Leatherman Company, reviewed the results of the community survey with the council. It was noted this survey was conducted via telephone. The demographics of those who conducted the survey were discussed. He reported 63% of the respondents rated the city as having an excellent quality of life. He commented high taxes and lack of sidewalks were two of the concerns noted within the survey. The quality and value of the city's services was described. The greatest public safety concerns were speeding/traffic violations, burglary, drugs, underage drinking and juvenile crimes. Important issues for the city to consider taking action on would be water conservation, reducing waste and energy conservation. He reported affordable

housing was another concern for respondents. The courtesy and professionalism of staff was discussed and it was noted the city was doing quite well in this area. It was noted 51% of the respondents supported ranked choice voting.

Carter asked if the community survey can be made available to non-English speaking individuals. Mr. Leatherman stated he has staff members that were able to complete the survey in Spanish, Hmong, and Somali. He indicated 5% of the city's surveys were completed in a non-English format. He commented further on how the survey was drafted to remain neutral and reduce bias.

Schaeppi questioned how staff worked with Mr. Leatherman to draft the questions within the survey. Barone reported staff reviews the questions and if important issues arise in the community staff works with Mr. Leatherman to draft new questions.

Wiersum thanked Mr. Leatherman for his presentation and thorough report to the council on the community survey. Barone stated she was very proud of the survey results and of her staff for their strong commitment to serving the public.

Informational only.

B. Resolution upholding the planning commission approval of an expansion permit and a variance for garage and living space additions at 16610 Cottage Grove Avenue

City Planner Loren Gordon gave the staff report.

Schaeppi requested further information on the language regarding the Planning Commission's dialogue regarding moving the building further away from the adjacent property. Gordon explained questions arose regarding the separation of the two homes given the fact there was a fire. He noted the appellant was concerned about their home catching fire. He discussed how the building would impact the hill because more grading would be required in order to move the structure to the west.

Wiersum asked if the 10 feet provided created enough space so that the new structure can be built without having a negative impact on the adjacent property. Gordon stated 10 feet was the common area to work in around a home. He indicated there were no other features to work around in this yard.

Schack questioned if the property line was conforming on the west side, the council would not be addressing this issue. Gordon reported this was the case. He commented on the city's small lot provision within city code and stated this property was 600 square feet over the small lot qualification.

Moanie Wheelock thanked the council for their time and consideration.

Chris Wheelock stated he lives with his wife and daughter to the east of the Cottage Grove renovation project. He reported he had difficulties logging on at the last city council meeting but wanted to share his viewpoint. He stated in general he believed the plans to improve the structure were good. However, he had concerns with the fact the builder was not pursuing a variance. He explained his building was an older grandfathered structure. He discussed the amount of space that would be between his home and the new structure. He believed this was a fire hazard that would negatively impact his property. He indicated the proposed garage addition was being proposed to be built where the hill sloped down and away from the homes. He feared that building into the hill would impact stormwater runoff and that his home may flood in the future. He explained the proposed garage would push more snow and water towards his home. He anticipated the proposed garage would negatively impact the value of his home because the garage would be quite close to his home. He recommended the west property line be considered for the proposed garage as there was an open field adjacent to this property line. He thanked the council for their time and consideration.

Ms. Wheelock stated 10 feet between buildings was not typical in her neighborhood. She explained most homes had 20 feet. She discussed how her view and level of sunlight would be impacted by the proposed garage. She feared she would have additional water running into her basement.

Mr. Wheelock indicated he met with the new owner and was told the water mitigation was his problem and not the new owner's problem. This was a concern to Mr. Wheelock. He implored the city to make the right decision regarding this variance.

Wiersum reported the planning commission recommended approval of the variance. He noted it would take five affirmative votes to uphold the decision of the planning commission. He questioned how the council wanted to proceed with this item.

Schack stated this was a difficult matter because the neighbors were only four inches from the property line. She commented anything that happens on the adjacent property would inherently impact this property. She explained the issue really was with the neighbors lack of setback. She reported this matter was properly vetted by the planning commission and she reluctantly supported their decision.

Kirk asked if the applicant was able to attend this meeting. He noted he watched the planning commission meeting and stated a logical compromise would be to move the garage to the west property line. He questioned if the city council were

to overrule the planning commission's decision would the applicant have to come back before the city council. Gordon explained as the planning commission's action was the final action, the matter before the city council would now be the final decision. He commented the council could modify the setbacks, side or aggregate, for the expansion permit or for the variance. He noted findings of support would have to be included if the council were to make modifications to the setbacks. He reported the applicant was on the phone.

Schaeppi agreed this was a difficult matter. He believed it was reasonable for the applicant to not have the proposed structure 10 feet from the adjacent home. He was of the opinion this case was different because one property line had a structure in very close proximity while the other property line had nothing adjacent to it.

Calvert stated she would like to understand from the applicant why the proposed garage was not being built adjacent to the open field.

Wiersum recessed the city council meeting.

Wiersum reconvened the city council meeting.

Wiersum commented the lots in this area of the city were challenging. He explained the real issue was the four inch setback from the neighboring property. He indicated the 10 feet on this side was conforming. He stated the property owners rights have to be considered given the fact he was proposing a 10 foot setback. He reported he could not support the appeal.

Schack moved, Calvert seconded a motion to adopt Resolution 2020-054 upholding the planning commission's decision. Schack, Carter, Calvert and Wiersum voted "yes." Schaeppi, Coakley and Kirk voted "no". Motion carried.

C. 2021 – 2025 Economic Improvement Program (EIP)

City Manager Geralyn Barone requested the council postpone this item to a future council meeting.

Schack recommended this item be postponed to the July 27 city council meeting.

Coakley concurred.

Calvert moved, Carter seconded a motion to table the 2021-2025 Economic Improvement Program (EIP) to the July 27, 2020 city council meeting. All voted "yes." Motion carried.

15. Appointments and Reappointments: None

16. Adjournment

Kirk moved, Calvert seconded a motion to adjourn the meeting at 11:33 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Becky Koosman
City Clerk



City of Minnetonka Proclamation

Women's Equality Day Wednesday, August 26, 2020

WHEREAS on January 10th, 1918, a Constitutional Amendment allowing women's suffrage was passed by the United States House; and

WHEREAS on June 4th, 1919, the United States Senate passed the Nineteenth Amendment and sent it out to the states for ratification; and

WHEREAS on September 8th, 1919, Minnesota ratified the 19th Amendment to the United States Constitution; and

WHEREAS on August 26th, 1919, the Nineteenth Amendment was certified as part of our Constitution, assuring that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex"; and

WHEREAS the 19th Amendment did not guarantee suffrage for all women, including Native Americans who did not gain the right to vote in every state until 1962. For Asian Pacific Islander Americans it was 1952. And many African-American and Latin Americans did not gain their voting rights until passage of the Voting Rights Act of 1965 and 1975; and

WHEREAS Women of every race, class, and ethnic background have made historic contributions to the growth and strength of our Nation and our community in countless recorded and unrecorded ways; and

WHEREAS Women have been leaders, not only in securing their own rights of suffrage and equal opportunity, but also in the abolitionist movement, the emancipation movement, the industrial labor movement, the civil rights movement, and today, in the pursuit of equity and justice; and

WHEREAS communities across the state are celebrating the passage and ratification of the 19th Amendment, providing for women's suffrage, to the Constitution of the United States; and,

NOW, THEREFORE, The City of Minnetonka, Minnesota hereby proclaims August 26, 2020 as: Women's Equality Day, AND, do hereby call upon the people of our community and interested groups and organizations to safely observe August 26th, as "Women's Equality Day" with appropriate ceremonies and activities to honor those who fought for promoting the values of our Republic and women suffrage.

Brad Wiersum, Mayor

Aug. 10, 2020

**City Council Agenda Item #10A
Meeting of Aug. 10, 2020**

Brief Description Resolution approving the final plat of PATRIOT ESTATES at 3515 Park Valley Road

Recommendation Adopt the resolution approving the final plat

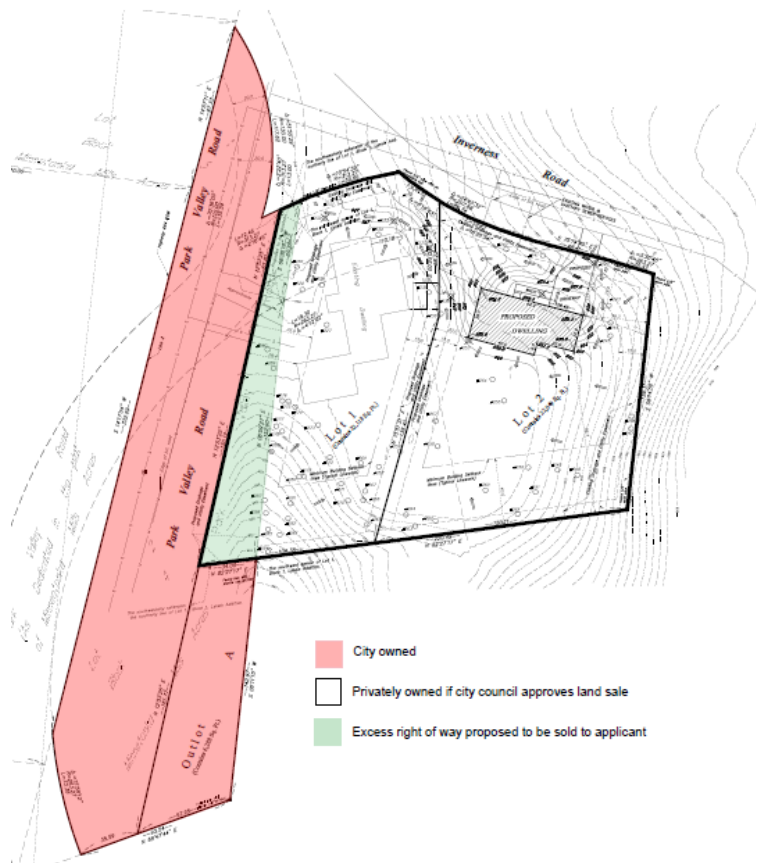
Proposal

On May 20, 2019, the city council approved: (1) the preliminary plat of PATRIOT ESTATES; (2) vacation of existing drainage and utility easements; and (3) the ordinance authorizing the sale of the unused portion of the right-of-way (west of the property). The area included as part of the sale is shown in green in the image to the right.

Staff recommended approval of the preliminary plat, finding:

1. The lots within the preliminary plat would meet dimensional standards as outlined by city code.
2. The proposal would be in compliance with the city's tree protection ordinance, as the subdivision would result in the removal of three – or 19 percent – of the site's high priority trees.

At the same meeting, the city council approved the purchase agreement for the unused portion of the right-of-way. The final closing of the sale will occur after the final plat is approved.



On May 18, 2020, the city council approved a 12-month extension of the preliminary plat of PATRIOT ESTATES.

Andy Freeland, on behalf of The Patriot Business Group, is now requesting approval of the PATRIOT ESTATES final plat.

Staff Comment

The submitted final plat is substantially consistent with the previously approved preliminary plat.

Staff Recommendation

Adopt the resolution approving the final plat of PATRIOT ESTATES.

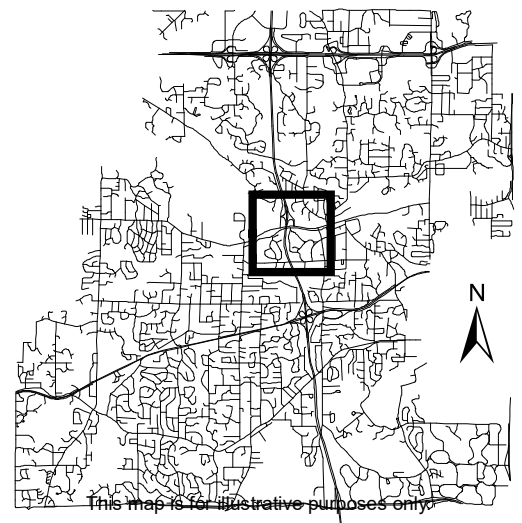
Through: Geralyn Barone, City Manager
 Julie Wischnack, AICP, Community Development Director
 Loren Gordon, AICP, City Planner

Originator: Ashley Cauley, Senior Planner



Location Map

Project: Patriot Estates
Address: 3515 Park Valley Rd



This map is for illustrative purposes only.

LEGAL DESCRIPTION:

Lot 1, Block 1, LYNEIS ADDITION, Hennepin County, Minnesota.

PROPOSED LEGAL DESCRIPTION OF VACATED PARK VALLEY ROAD:

Beginning at the southwest corner of Lot 1, Block 1, LYNEIS ADDITION, Hennepin County, Minnesota; thence on an assumed bearing of South 82 degrees 50 minutes 59 seconds West along the southwesterly extension of the southerly line of said Lot 1, a distance of 34.00 feet; thence North 13 degrees 02 minutes 53 seconds East a distance of 215.11 feet to a point on the extension southwesterly of the northerly line of said Lot 1, said point being 13.00 feet southwest of the northwest corner of said Lot 1; thence northeasterly along the southwesterly extension of the northerly line of said Lot 1 a distance of 13.00 feet to the northwest corner of said Lot 1; thence southwesterly along the westerly line of said Lot 1 to the point of beginning.

Contains 4,360 Sq. Ft.

SCOPE OF WORK & LIMITATIONS:

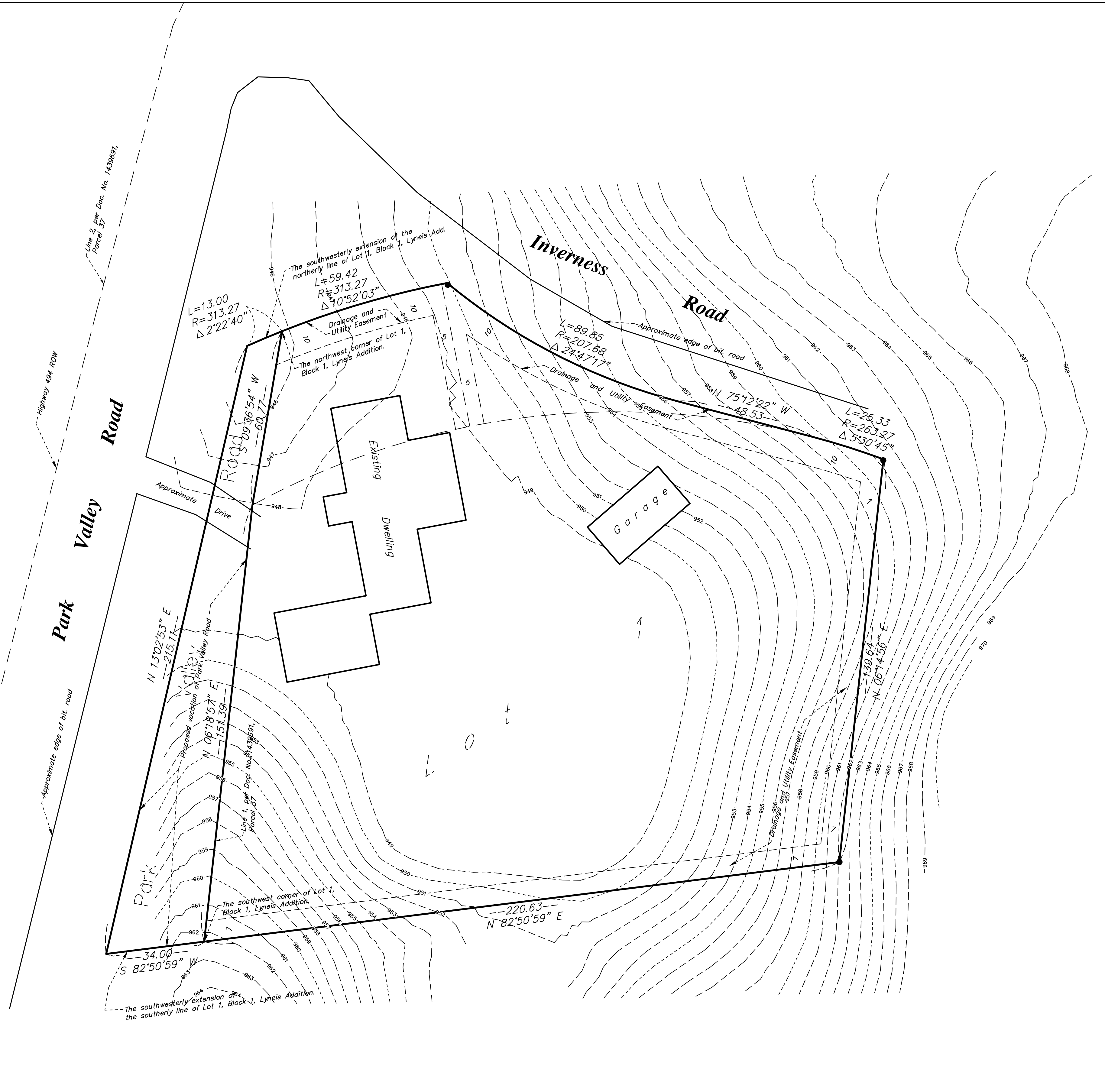
- Showing the length and direction of boundary lines of the legal description listed above. The scope of our services does not include determining what you own, which is a legal matter. Please check the legal description with your records or consult with competent legal counsel, if necessary, to make sure that it is correct and that any matters of record, such as easements, that you wish to be included on the survey have been shown.
- Showing the location of observed existing improvements we deem necessary for the survey.
- Setting survey markers or verifying existing survey markers to establish the corners of the property.
- The subject property contains 39,799 Sq. Ft.
- Showing elevations on the site at selected locations to give some indication of the topography of the site. These contours were derived using LIDAR only.
- This survey has been completed without the benefit of a current title commitment. There may be existing easements or other encumbrances that would be revealed by a current title commitment. Therefore, this survey does not purport to show any easements or encumbrances other than the ones shown hereon.
- Note that all building dimensions and building tie dimensions to the property lines, are taken from the siding and or stucco of the building.
- We show a proposed division of the property. Please review the proposal to see that it is what you intend and submit to those governmental agencies that have jurisdiction to obtain their approvals, if you can, before making any decisions regarding the property.

STANDARD SYMBOLS & CONVENTIONS:

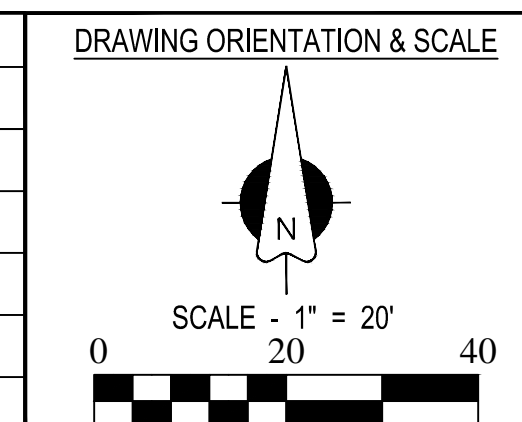
"●" Denotes iron survey marker, set, unless otherwise noted.

LEGEND

- = CATCH BASIN
- = FIRE HYDRANT
- = POWER POLE
- = MANHOLE
- = TELEPHONE PED.
- = ELEC. TRANSFORMER
- = WELL
- = GATE VALVE
- = LIGHT POLE
- = TREE
- = FENCE LINE
- = SANITARY SEWER LINE
- = WATER LINE
- = GAS LINE
- = STORM DRAIN LINE
- = OVERHEAD UTILITY LINE
- = CONCRETE SURFACE



DATE	REVISION DESCRIPTION
3/30/18	TO SHOW A PROPOSED VACATION OF PARK VALLEY ROAD
7/19/18	TO SHOW LINES 1 AND 2 PER TURNBACK DOCUMENT



CLIENT NAME / JOB ADDRESS

ANDY FREELUND
3515 PARK VALLEY ROAD
MINNETONKA, MN

Advance
Surveying & Engineering, Co.

1:91
M
9
MAR 04 2018
DATE

I HEREBY CERTIFY THAT THIS PLAN, SURVEY OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

Y. M. B.

DATE SURVEYED: MAR 04 2018
DATE DRAFTED: MAR 04 2018

SHEET TITLE

EXISTING CONDITIONS SURVEY

DRAWING NUMBER

**180103 TB
REV 7 - 19**

SHEET SIZE 22 X 34

SHEET NO.

1

EET 1 0 1

LEGAL DESCRIPTION:

Lot 1, Block 1, LYNEIS ADDITION, Hennepin County, Minnesota.

AND

Those parts of Lot 2, Block 4, "Minnetonka Mills Acres", except that part thereof embraced within the plat of Lyneis Addition, and Lot 1, Block 3, "Minnetonka Mills Acres", which lie easterly of Line 2 described below:

Line 2: Beginning at a point on the east line of Lot 2, Block 3, "Minnetonka Mills Acres", distant 300 feet northerly of the southeast corner of said Lot 2, Block 3 (when measured along the east line of said Lot 2); thence northerly to a point distant 160 feet easterly (measured at right angles) of a point on Line 3, described below, distant 449.72 feet southerly of its point of termination; thence northerly to a point distant 210 feet easterly (measured at right angles) of a point on said Line 3 distant 100 feet southerly of its point of termination; thence northerly to a point distant 225 feet easterly (measured at right angles) of the point of termination of said Line 3 and there terminating.

Line 3: Beginning at a point on the south line of Section 15, Township 117 North, Range 22 West, distant 913.8 feet west of the south quarter corner thereof; thence northwesterly at an angle of 68 degrees 54 minutes 04 seconds from said south section line (measured from west to north) for 90.26 feet to a tangent spiral point; thence deflect to the right on a spiral curve of decreasing radius (spiral angle 03 degrees 00 minutes 00 seconds) for 300 feet to a spiral curve point; thence deflect to the right on a 02 degree 00 minutes 00 seconds circular curve (delta angle 23 degrees 24 minutes 45 seconds) for 1170.6 feet to a curve spiral point; thence deflect to the right on a spiral curve of increasing radius (spiral angle 03 degrees 00 minutes 00 seconds) for 300 feet to a spiral tangent point; thence on tangent to said curve for 244.32 feet and there terminating.

PROPOSED LEGAL DESCRIPTION OF VACATED PARK VALLEY ROAD:

Commencing at the southwest corner of Lot 1, Block 1, LYNEIS ADDITION, Hennepin County, Minnesota; thence on an assumed bearing of South 82 degrees 27 minutes 17 seconds West along the southwesterly extension of the southerly line of said Lot 1, a distance of 34.00 feet; thence North 12 degrees 53 minutes 25 seconds East a distance of 150.12 feet to the point of beginning of the tract to be described; thence continuing North 12 degrees 53 minutes 25 seconds East a distance of 65.80 feet to a point on the extension southwesterly of the northerly line of said Lot 1, said point being 13.00 feet southwest of the northwest corner of said Lot 1; thence northeasterly along the southwesterly extension of the northerly line of said Lot 1 a distance of 13.00 feet to the northwest corner of said Lot 1; thence southwesterly along the westerly line of said Lot 1 a distance of 60.25; thence on a non tangential curve concave to the South having a radius of 263.27, a central angle of 4 degrees 12 minutes 02 seconds, a distance of 19.30 feet to the point of beginning.

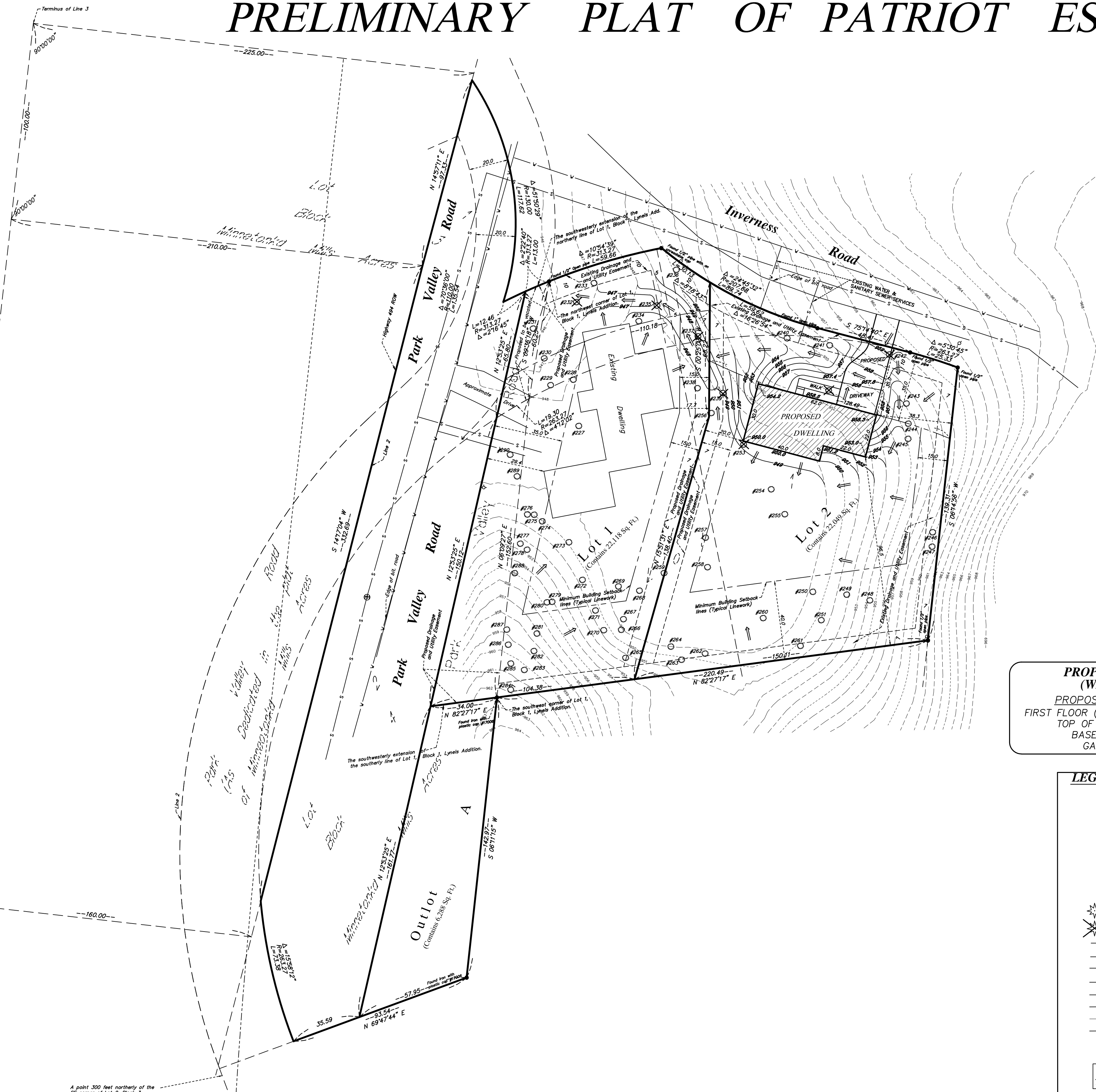
SCOPE OF WORK & LIMITATIONS:

- Showing the length and direction of boundary lines of the legal description listed above. The scope of our services does not include determining what you own, which is a legal matter. Please check the legal description with your records or consult with competent legal counsel, if necessary, to make sure that it is correct and that any matters of record, such as easements, that you wish to be included on the survey have been shown.
- Showing the location of observed existing improvements we deem necessary for the survey.
- Setting survey markers or verifying existing survey markers to establish the corners of the property.
- The subject property contains 39,799 Sq. Ft.
- Showing elevations on the site at selected locations to give some indication of the topography of the site. These contours were derived using LIDAR only.
- This survey has been completed without the benefit of a current title commitment. There may be existing easements or other encumbrances that would be revealed by a current title commitment. Therefore, this survey does not purport to show any easements or encumbrances other than the ones shown hereon.
- Note that all building dimensions and building tie dimensions to the property lines, are taken from the siding and or stucco of the building.
- We show a proposed division of the property. Please review the proposal to see that it is what you intend and submit to those governmental agencies that have jurisdiction to obtain their approvals, if you can, before making any decisions regarding the property.

STANDARD SYMBOLS & CONVENTIONS:

"●" Denotes iron survey marker, set, unless otherwise noted.

PRELIMINARY PLAT OF PATRIOT ESTATES

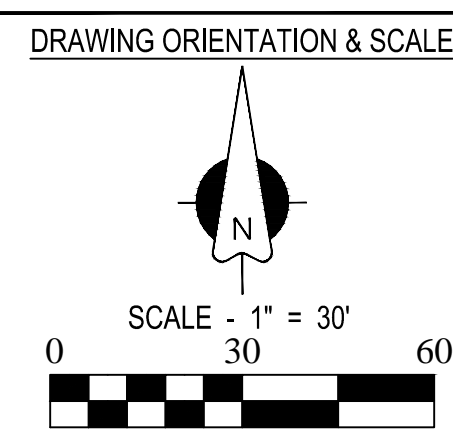


PROPOSED LOT 2 (WALK OUT)
PROPOSED ELEVATIONS
 FIRST FLOOR (SUB-FLOOR) = 960.50
 TOP OF FOUNDATION = 959.00
 BASEMENT FLOOR = 950.50
 GARAGE FLOOR = 958.50

LEGEND

- = CATCH BASIN
- = FIRE HYDRANT
- = POWER POLE
- = MANHOLE
- = TELEPHONE PED.
- = ELEC. TRANSFORMER
- = WELL
- = GATE VALVE
- = LIGHT POLE
- = TREE
- = TREE REMOVAL
- = FENCE LINE
- = SANITARY SEWER LINE
- = WATER LINE
- = GAS LINE
- = STORM DRAIN LINE
- = OVERHEAD UTILITY LINE
- = EXISTING CONTOUR
- = PROPOSED CONTOUR
- = PROPOSED SPOT ELEVATION
- = DRAINAGE ARROW
- = CONCRETE SURFACE

DATE	REVISION DESCRIPTION
4/15/19	ADD 2 TURNBACK PARCELS FOR DEDICATION



CLIENT NAME / JOB ADDRESS

ANDY FREELAND
 3515 PARK VALLEY ROAD
 MINNETONKA, MN

Advance
 Surveying & Engineering, Co.

1:91
 M
 9:2
 AN AR 1, 201
 DATE

I HEREBY CERTIFY THAT THIS PLAN, SURVEY OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

Y. M. Bl

AN AR 1, 201
 DATE

DATE SURVEYED: MAR 11, 2019

DATE DRAFTED: AN AR 1, 2019

SHEET TITLE

PRELIMINARY PLAT

DRAWING NUMBER

190297 TB

SHEET SIZE 22 X 34

SHEET NO.

1

EET 1 0 1

Exhibit:
For illustrative purposes only



A point 300 feet northerly of the SE corner of Lot 2, Block 3

PATRIOT ESTATES

R.T. DOC. NO. _____

KNOW ALL PERSONS BY THESE PRESENTS: That The Patriot Business Group, LLC, a Minnesota limited liability company, fee owner of the following described property:

Lot 1, Block 1, LYNEIS ADDITION.

And that the City of Minnetonka, a Minnesota municipal corporation, fee owner of the following described property:

Those parts of Lot 2, Block 4, "MINNETONKA MILLS ACRES", except that part thereof embraced within the plat of LYNEIS ADDITION, and Lot 1, Block 3, "MINNETONKA MILLS ACRES", which lie easterly of the following described Line 2:

Line 2: Beginning at a point on the east line of Lot 2, Block 3, "MINNETONKA MILLS ACRES", distant 300 feet northerly of the southeast corner of said Lot 2, Block 3 (when measured along the east line of said Lot 2; thence northerly to a point distant 160 feet easterly (measured at right angles) of a point on Line 3, described below, distant 449.72 feet southerly of its point of termination; thence northerly to a point distant 210 feet easterly (measured at right angles) of a point on said Line 3 distant 100 feet southerly of its point of termination; thence northerly to a point distant 225 feet easterly (measured at right angles of the point of termination of said Line 3 and there terminating.

Line 3: Beginning at a point on the south line of Section 15, Township 117 North, Range 22 West, distant 913.8 feet west of the south quarter corner thereof; thence northwesterly at an angle of 68 degrees 54 minutes 04 seconds from said south section line (measured from west to north) for 90.26 feet to a tangent spiral point; thence deflect to the right on a spiral curve of decreasing radius (spiral angle 03 degrees 00 minutes 00 seconds) for 300 feet to a spiral curve point; thence deflect to the right on a 02 degree 00 minute 00 seconds circular curve (delta angle 23 degrees 24 minutes 45 seconds) for 1170.6 feet to a curve spiral point; thence deflect to the right on a spiral curve of increasing radius (spiral angle 03 degrees 00 minutes 00 seconds) for 300 feet to a spiral tangent point; thence on tangent to said curve for 244.32 feet and there terminating.

AND

That part of the City Property described as follows: Beginning at the southwest corner of Lot 1, Block 1, LYNEIS ADDITION; thence on an assumed bearing of South 82 degrees 50 minutes 59 seconds West along the southwesterly extension of the southerly line of said Lot 1, a distance of 34.00 feet; thence North 13 degrees 02 minutes 53 seconds East a distance of 215.11 feet to a point on the extension southwesterly of the northerly line of said Lot 1, said point being 13.00 feet southwest of the northwest corner of said Lot 1 a distance of 13.00 feet to the northwest corner of said Lot 1; thence southwesterly along the westerly line of said Lot 1 to the point of beginning.

Have caused the same to be surveyed and platted as PATRIOT ESTATES and do hereby dedicate to the public for public use the public way and the drainage and utility easements as created by this plat.

In witness whereof said The Patriot Business Group, LLC, a Minnesota limited liability company has caused these presents to be signed by its proper officer this _____ day of _____, 20__.

The Patriot Business Group, LLC

Luke E. Juhl, President

STATE OF MINNESOTA
COUNTY OF _____

This instrument was acknowledged before me this ____ day of _____, 20__ by Luke E. Juhl, President of The Patriot Group, LLC, a Minnesota limited liability company.

(Signature)

(Print)

Notary Public, _____ County, Minnesota
My Commission Expires _____

In witness whereof said City of Minnetonka, a Minnesota municipal corporation, has caused these presents to be signed by its proper officers this _____ day of _____, 20__.

Mayor

City Manager

STATE OF MINNESOTA
COUNTY OF _____

The instrument was acknowledged before me this ____ day of _____, 20__ by Brad Wiersum, Mayor and GERALYN BARONE, City Manager, of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the corporation.

(Signature)

(Print)

Notary Public, _____ County, Minnesota
My Commission Expires _____

I, Thomas M. Bloom, do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat; that all public ways are shown and labeled on this plat.

Dated this _____ day of _____, 20__.

Thomas M. Bloom, Licensed Land Surveyor
Minnesota License Number 42379

STATE OF MINNESOTA
COUNTY OF _____

This instrument was acknowledged before me on _____ by Thomas M. Bloom.

(Signature)

(Print)

Notary Public, _____ County, Minnesota
My Commission Expires _____

CITY COUNCIL, CITY OF MINNETONKA, MINNESOTA

This plat of PATRIOT ESTATES was approved and accepted by the City Council of the City of Minnetonka, Minnesota, at a regular meeting thereof held this _____ day of _____, 20__, and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

CITY COUNCIL, CITY OF MINNETONKA, MINNESOTA

Mayor

Clerk

RESIDENT AND REAL ESTATE SERVICES, Hennepin County, Minnesota

I hereby certify that taxes payable in 201__ and prior years have been paid for land described on this Plat, dated this _____ day of _____, 20__.

Mark V. Chapin, Hennepin County Auditor

By _____, Deputy

SURVEY DIVISION, Hennepin County, Minnesota

Pursuant to MN. STAT. Sec. 383B.565 (1969), this plat has been approved this _____ day of _____, 20__.

Chris F. Mavis, County Surveyor

By _____

REGISTRAR OF TITLES, Hennepin County, Minnesota

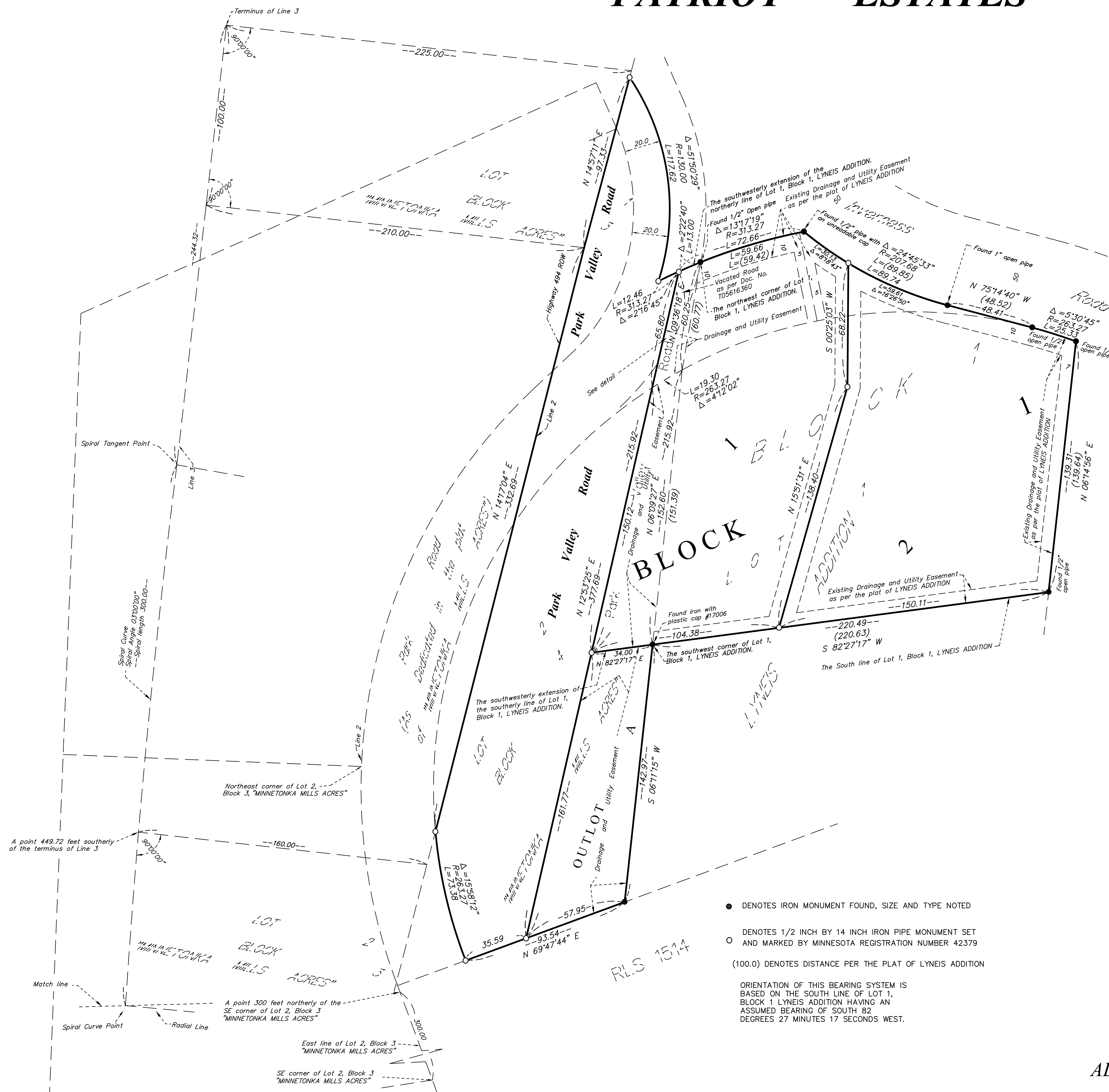
I hereby certify that the within plat of PATRIOT ESTATES was filed in this office this _____ day of _____, 20__ at _____ o'clock _____ M.

Martin McCormick, Registrar of Titles

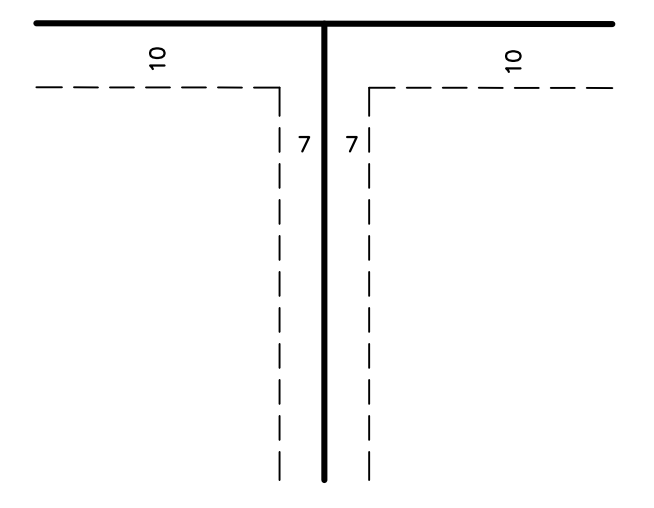
By _____ Deputy

PATRIOT ESTATES

R.T. DOC. NO. _____

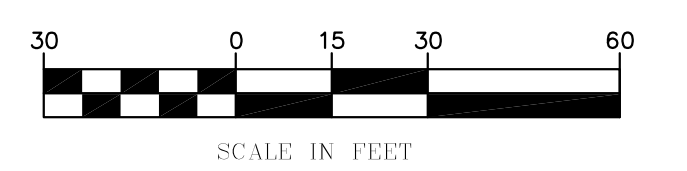


DRAINAGE AND UTILITY EASEMENTS ARE SHOWN THUS:

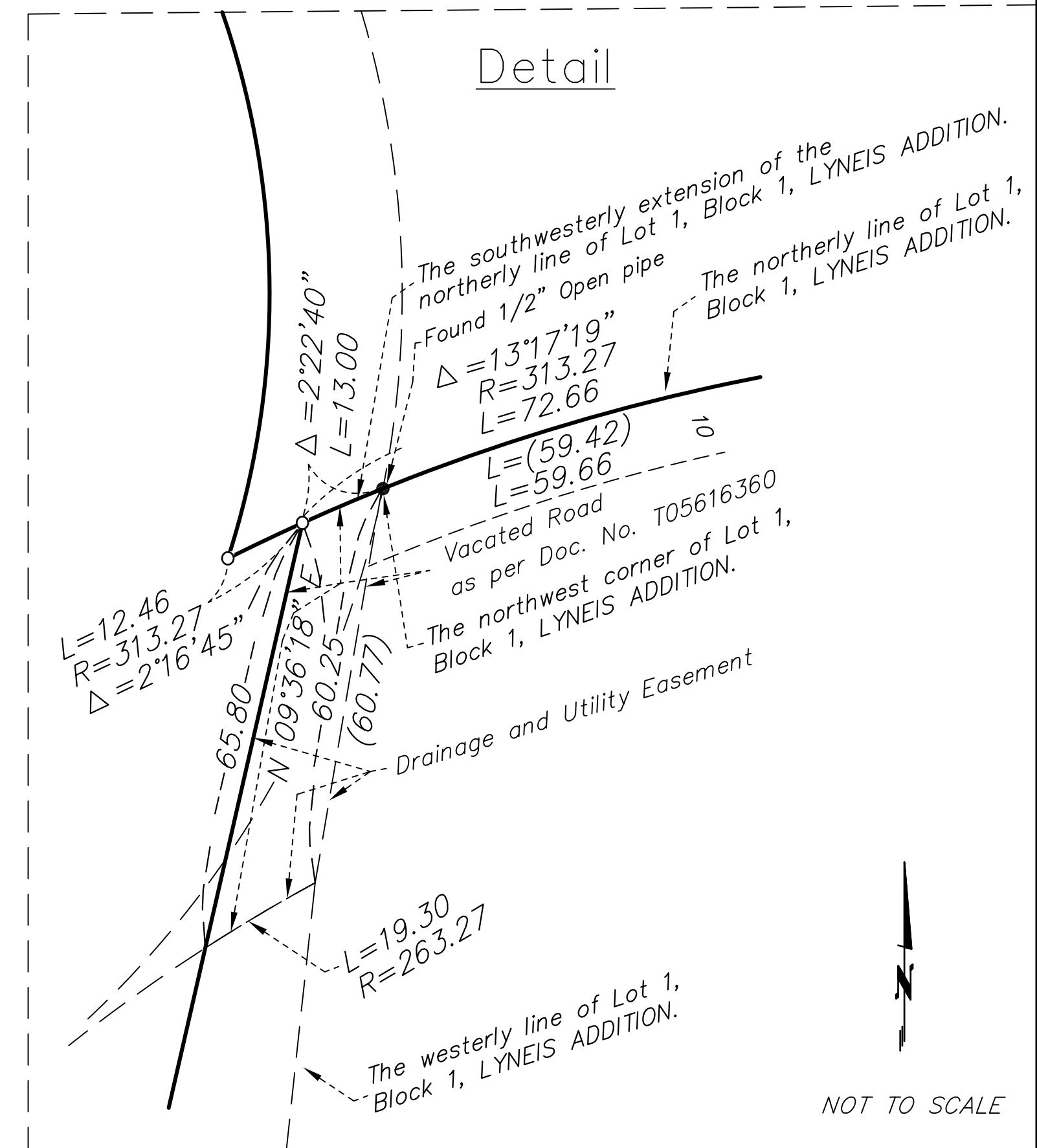


NOT TO SCALE

BEING 7 FEET IN WIDTH AND ADJOINING LOT LINES UNLESS OTHERWISE SHOWN ON THIS PLAT AND 10 FEET IN WIDTH AND ADJOINING RIGHT OF WAY LINES AS SHOWN ON THIS PLAT.



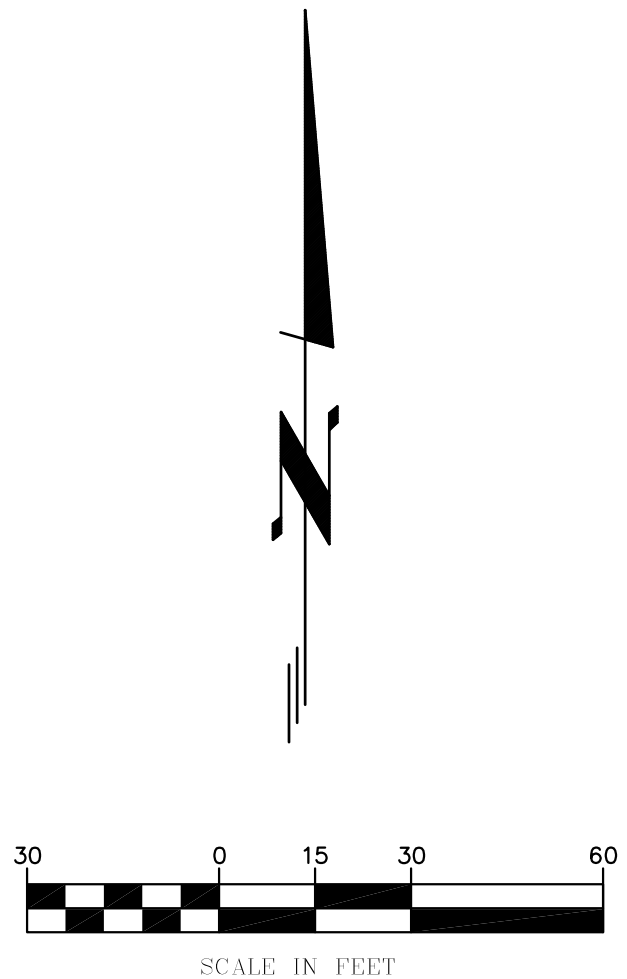
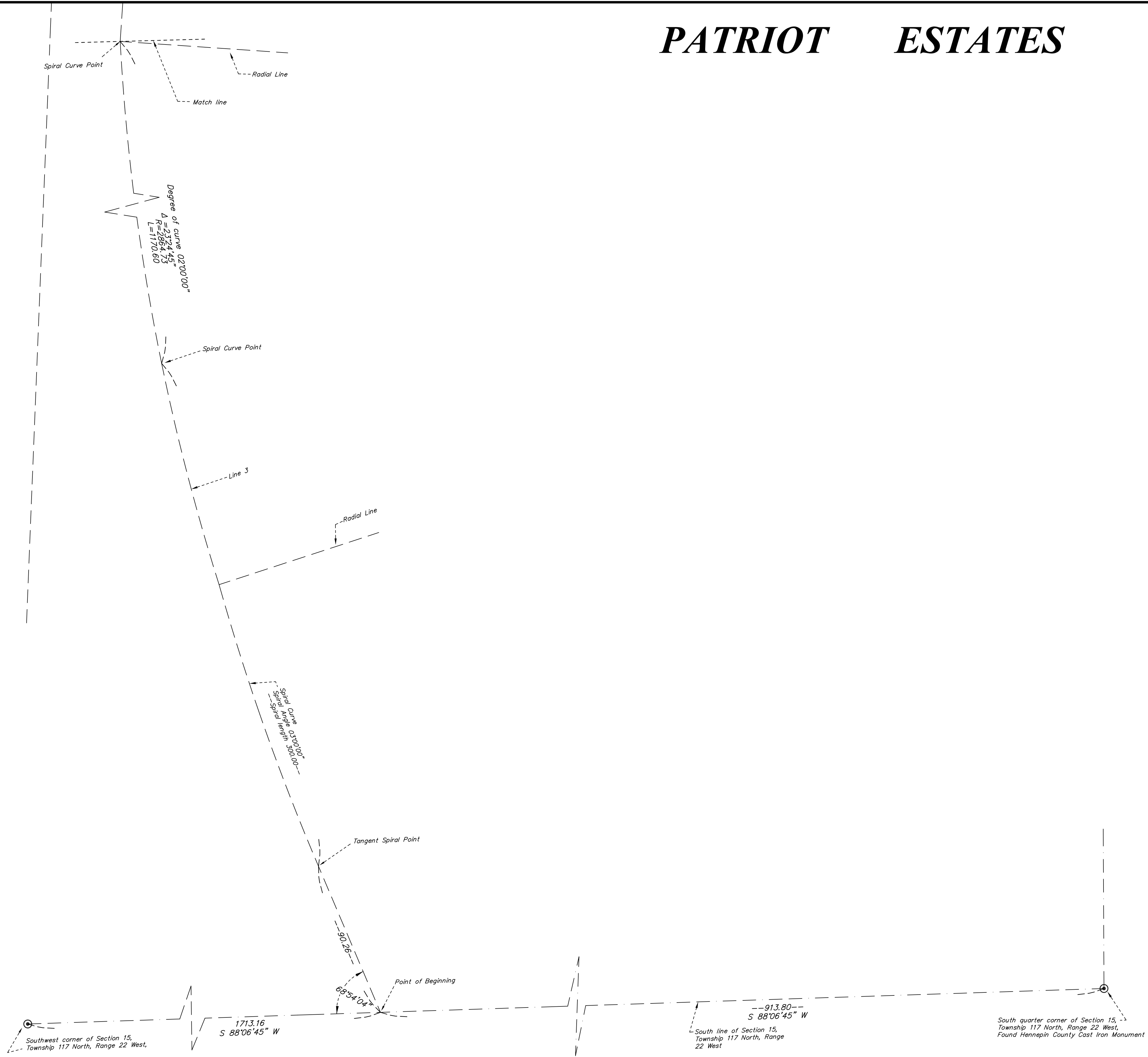
SCALE IN FEET



NOT TO SCALE

PATRIOT ESTATES

R.T. DOC. NO. _____



Resolution No. 2019-043

**Resolution approving the preliminary plat of
PATRIOT ESTATES at 3515 Park Valley Road**

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

- 1.01 Andy Freeland, on behalf of The Patriot Business Group LLC, has requested preliminary plat approval for PATRIOT ESTATES.
- 1.02 The subject property is located at 3515 Park Valley Road. The property is legally described in Exhibit A.
- 1.03 On May 2, 2019, the planning commission held a hearing on the proposed plat. The applicant was provided the opportunity to present information to the commission. The planning commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The Commission recommended that the city council grant preliminary plat approval.

Section 2. General Standards.

- 2.01 City Code §400.030 outlines general design requirements for residential subdivisions. These standards are incorporated by reference into this resolution.

Section 3. Findings.

- 3.01 The proposed preliminary plat meets the design requirements as outlined in City Code §400.030.

Section 4. Council Action.

- 4.01 The above-described preliminary plat is hereby approved, subject to the following conditions:

1. Final plat approval is required. A final plat will not be placed on a city council agenda until a complete final plat application is received. Submit a final plat drawing that clearly illustrates:
 - a) Minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.
 - b) Drainage and utility easements over the entire area to be acquired from the city and Outlot A.
 - c) Utility easements over any existing or proposed public utilities, as determined by the city engineer unless dedicated by an easement document.
 - d) Any changes to the final plat drawing as required by the Minnesota Department of Transportation.
2. Prior to final plat approval:
 - a) This resolution must be recorded with Hennepin County.
 - b) The turnback parcel must be acquired from the city.
 - c) Outstanding utility bills must be paid.
3. Prior to the release of the final plat for recording, submit the following:
 - a) Two sets of mylars for city signatures.
 - b) An electronic CAD file of the plat in microstation or DXF.
 - c) Park dedication fee of \$5,000.
 - d) Title evidence for all property described on Exhibit A current within thirty days before the release of the final plat.
4. Subject to staff approval, PATRIOT ESTATES, must be developed and maintained in substantial conformance with the preliminary plat plans, except as modified by the conditions below.
5. Prior to issuance of a building permit:
 - a) The final plat must be filed at Hennepin County.
 - b) Submit the following:
 - 1) Utility easement over public utilities unless the city

engineer determines that it is no longer required or dedicated as part of the final plat.


- 2) Final utility plan. The plan must clearly illustrate the connection to the sanitary sewer.
- 3) Final grading plan and tree preservation plans.
 - a. The plans must be in general compliance with the overall grading and tree removal and preservation plan referenced above. All site improvements should be located to minimize tree impacts. Specifically, the grading should reduce impacts to the critical root zone of tree #238.
 - b. No more than five high priority trees can be removed across both lots.
 - c. The tree mitigation plan must meet minimum mitigation requirements as outlined in the ordinance. However, at the sole discretion of staff, mitigation may be decreased.

Unless specifically approved by staff, no grading or tree removal is allowed prior to the issuance of a building permit.

- 4) A construction management plan. The plan must be in a city-approved format and must outline minimum site management practices and penalties for non-compliance.
- 5) If applicable, evidence of closure/capping of any existing wells, septic systems, and removal of any existing fuel oil tanks.
 - c) Install a temporary rock driveway, erosion control, tree and wetland protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.
 - d) Permits may be required from other outside agencies including Hennepin County, the Minnehaha Creek Watershed District, and the MPCA. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.
6. During construction, the streets must be kept free of debris and sediment.

7. The property owner is responsible for replacing any required landscaping that dies.
8. The city must approve the final plat within one year of the preliminary approval or receive a written application for a time extension, or the preliminary approval will be void.

Adopted by the City Council of the City of Minnetonka, Minnesota, on May 20, 2019.



Brad Wiersum, Mayor

Attest:



Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption: Carter

Seconded by: Happe

Voted in favor of: Happe, Bergstedt, Ellingson, Calvert, Schack, Carter, Wiersum

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on May 20, 2019.

Becky Koosman, City Clerk

Exhibit A

Lot 1, Block 1, LYNEIS ADDITION, Hennepin County, Minnesota.

AND

Those parts of Lot 2, Block 4, "Minnetonka Mills Acres," except that part thereof embraced within the plat of Lyneis Addition, and Lot 1, Block 3, "Minnetonka Mills Acres," which lie easterly of Line 2 described below:

Line 2: Beginning at a point on the east line of Lot 2, Block 3, "Minnetonka Mills Acres" distant 300 feet northerly of the southeast corner of said Lot 2, Block 3 (when measured along the east line of said Lot 2); thence northerly to a point distant 160 feet easterly (measured at right angles) of a point on Line 3, described below, distant 449.72 feet southerly of its point of termination; thence northerly to a point distant 210 feet easterly (measured at right angles) of a point on said Line 3 distant 100 feet southerly of its point of termination; thence northerly to a point distant 225 feet easterly (measured at right angles) of the point of termination of said Line 3 and there terminating.

Line 3: Beginning at a point on the south line of Section 15, Township 117 North, Range 22 West, distant 913.8 feet west of the south quarter corner thereof; thence northwesterly at an angle of 68 degrees 54 minutes 04 seconds from said south section line (measured from west to north) for 90.26 feet to a tangent spiral point; thence deflect to the right on a spiral curve of decreasing radius (spiral angle 03 degrees 00 minutes 00 seconds) for 300 feet to a spiral curve point; thence deflect to the right on a 02 degree 00 minutes 00 seconds circular curve (delta angle 23 degrees 24 minutes 45 seconds) for 1170.6 feet to a curve spiral point; thence deflect to the right on a spiral curve of increasing radius (spiral angle 03 degrees 00 minutes 00 seconds) for 300 feet to a spiral tangent point; thence on a tangent to said curve for 244.32 feet and there terminating.

Resolution No. 2020-039

Resolution approving a twelve-month extension of the preliminary plat of PATRIOT ESTATES, a two-lot subdivision, at 3515 Park Valley Road

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

- 1.01 On May 20, 2019, the city council approved the preliminary plat for PATRIOT ESTATES, a two-lot subdivision.
- 1.02 The subject property is located at 3515 Park Valley Road. The property is legally described in Exhibit A.
- 1.03 As a condition of 2019 approval, the city must approve the final plat by May 20, 2020, unless the city granted a time extension. To date, the final plat has not been approved.

Section 2. General Standards.

- 2.01 City code does not include any specific conditions under which previous approvals may be extended. Nevertheless, the city has generally considered:
 - 1. Whether there have been any changes to city code or policy that would affect the previous approvals; and
 - 2. Whether such an affirmation would adversely affect the interest of the neighboring property owners.

Section 3. Findings.

- 3.01 A twelve-month extension of the previous approval would meet the general city considerations, as:
 - 1. There have not been any changes to city code or policy that affect the

proposed plat.

- 2. Reaffirming the preliminary plat approval would not impact the interests of neighboring properties.

Section 4. Council Action.

4.01 Resolution No. 2019 is extended, approving the preliminary plat of PATRIOT ESTATES, a two-lot subdivision at 3515 Park Valley Road

4.02 The extension is subject to the following condition:

- 1. The city must approve the final plat or receive a written application for a time extension, by May 19, 2021, or the preliminary approval will be void.

Adopted by the City Council of the City of Minnetonka, Minnesota, on May 18, 2020.

DocuSigned by:

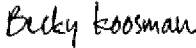


21AA42DB33P7413

Brad Wiersum, Mayor

Attest:

DocuSigned by:



60FF689054B54E1

Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption: Schack

Seconded by: Calvert

Voted in favor of: Kirk, Schack, Carter, Calvert, Schaeppi, Coakley, Wiersum

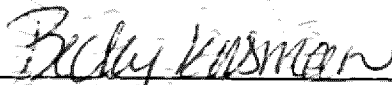
Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on May 18, 2020.



Becky Koosman, City Clerk

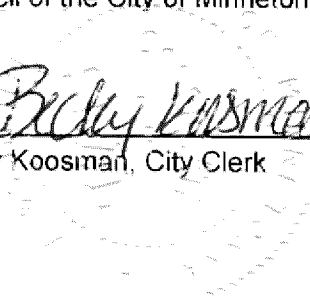


Exhibit A

Lot 1, Block 1, LYNEIS ADDITION, Hennepin County, Minnesota.

AND

Those parts of Lot 2, Block 4, "Minnetonka Mills Acres," except that part thereof embraced within the plat of Lyneis Addition, and Lot 1, Block 3, "Minnetonka Mills Acres," which lie easterly of Line 2 described below:

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Line 3: Beginning at a point on the south line of Section 15, Township 117 North, Range 22 West, distant 913.8 feet west of the south quarter corner thereof; thence northwesterly at an angle of 68 degrees 54 minutes 04 seconds from said south section line (measured from west to north) for 90.26 feet to a tangent spiral point; thence deflect to the right on a spiral curve of decreasing radius (spiral angle 03 degrees 00 minutes 00 seconds) for 300 feet to a spiral curve point; thence deflect to the right on a 02 degree 00 minutes 00 seconds circular curve (delta angle 23 degrees 24 minutes 45 seconds) for 1170.6 feet to a curve spiral point; thence deflect to the right on a spiral curve of increasing radius (spiral angle 03 degrees 00 minutes 00 seconds) for 300 feet to a spiral tangent point; thence on a tangent to said curve for 244.32 feet and there terminating.

Resolution No. 2020-

**Resolution approving the final plat of PATRIOT ESTATES
at 3515 Park Valley Road**

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

- 1.01 Andy Freeland, on behalf of The Patriot Business Group LLC, has requested approval of the final plat for PATRIOT ESTATES.
- 1.02 The property to be included in the plat is located at 3515 Park Valley Road. The property is legally described in Exhibit A.
- 1.03 On May 20, 2019, the city council approved the preliminary plat of PATRIOT ESTATES.
- 1.04 On May 18, 2020, the city council approved a twelve-month extension of the preliminary plat of PATRIOT ESTATES.

Section 2. Findings

- 2.01 The final plat meets the requirements and standards outlined in the Subdivision Ordinance, City Code §400.
- 2.02 The final plat is consistent with the previously approved preliminary plat.

Section 3. Council Action.

- 3.01 The city council approves the final plat of PATRIOT ESTATES. Approval is subject to the following conditions:
 - 1. Compliance with the conditions outlined in preliminary plat Resolution No. 2019-043, except as modified with the following conditions.
 - 2. Prior to the release of the final plat for recording, submit the following:
 - a) Two sets of mylars for city signatures.

- b) An electronic CAD file of the plat in microstation or DXF.
 - c) Park dedication fee of \$5,000.
 - d) Title evidence for all property described in Exhibit A current within thirty days before the release of the final plat.
 - e) Verify that the legal description of the vacated portion being added to the plat is correct.
3. Unless the city council approves a time extension, the final plat must be recorded by Aug. 10, 2021.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Aug. 10, 2020.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on Aug. 10, 2020.

Becky Koosman, City Clerk

Exhibit A

Lot 1, Block 1, LYNEIS ADDITION, Hennepin County, Minnesota.

AND

Those parts of Lot 2, Block 4, "Minnetonka Mills Acres," except that part thereof embraced within the plat of Lyneis Addition, and Lot 1, Block 3, "Minnetonka Mills Acres," which lie easterly of Line 2 described below:

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City Council Agenda Item #13A
Meeting of Aug. 10, 2020

Brief Description

Items concerning Shady Oak Crossing:

1. Resolution approving the final plat of Shady Oak Crossing at 4312 Shady Oak Road and 4292 Oak Drive Lane;
2. Resolution approving the Vacation of Easements;
3. Resolution approving the execution of an Assignment of Tax Increment Financing Note and Subordination Agreement; and a Consent and Estoppel Certificate

Recommendation

Hold the public hearing and adopt the resolutions

Background

On Feb. 24, 2020, the city council approved the preliminary plat, master development plan, site and building plan, a detachment/annexation and associated comprehensive guide plan amendment and rezoning for the Shady Oak Crossing project.

With the sale of the property, final project approvals are now in order. Those approvals include:

- Final Plat
Ron Clark Construction is now requesting the approval of the Shady Oak Crossing final plat. All documents required prior to final plat approval have been submitted or are conditions of release of the plat for recording.
- Vacation of Easements
Two drainage and utility easements that are no longer needed require vacation. The Shady Oak Crossing final plat establishes new easements for the two platted lots.
- Assignment of the Tax Increment Financing Note
Assignment of the Tax Increment Financing Note, which includes the Subordination Consent and Estoppel Certificate, requires approval. The attached memo from Julie Eddington, the city's EDA counsel, provides additional information on this recommendation. This request requires approval from both the city council and Economic Development Authority.

Staff Recommendation

Staff recommends the city council hold a public hearing (regarding the vacation of easements) and adopt the following:

1. Resolution approving the final plat of Shady Oak Crossing at 4312 Shady Oak Road.
2. Resolution approving the vacation of easements.

3. Resolution approving the execution of an Assignment of Tax Increment Financing Note and Subordination Agreement; and a Consent and Estoppel Certificate in connection with the Shady Oak Crossing project.

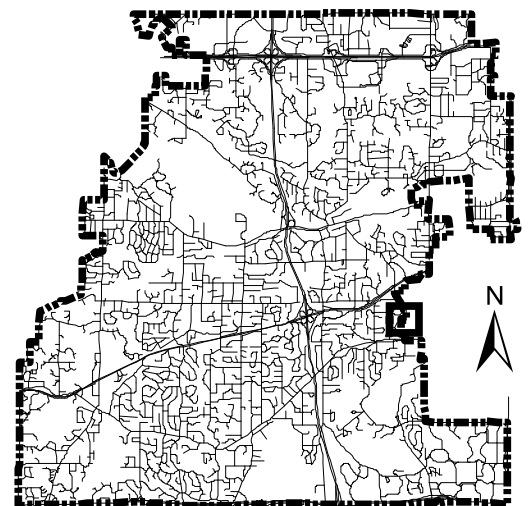
Through: Geraldyn Barone, City Manager
 Julie Wischnack, AICP, Community Development Director

Originator: Alisha Gray, EDFP, Economic Development and Housing Manager
 Loren Gordon, AICP, City Planner



LOCATION MAP

Project: Shady Oak Redevelopment
Address: 4312 Shady Oak Rd. and 4292 Oak Drive Lane



This map is for illustrative purposes only.

SHADY OAK CROSSING FINAL PLAT

AD OAK RO IN

R.T. DOC. NO. _____

KNOW ALL PERSONS BY THESE PRESENTS: That Shady Oak Crossing, LLC, a Minnesota limited liability company, owner of the following described property situated in the County of Hennepin, State of Minnesota to wit:

Lots 19 and 20, Block 2, GINKELS OAK RIDGE ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota.

And also that part of the West Half of the Southeast Quarter of Section 23, Township 117 North, Range 22 West, Hennepin County, Minnesota being described as follows:

Beginning at the northeast corner of the Southwest Quarter of said Southeast Quarter of Section 23; thence on an assumed bearing of South 03 degrees 09 minutes 36 seconds West along the east line of said West Half of the Southeast Quarter a distance of 6.07 feet; thence North 78 degrees 08 minutes 08 seconds West a distance of 140.43 feet; thence North 89 degrees 06 minutes 57 seconds West a distance of 40.85 feet; thence northwesterly 113.10 feet along a tangential curve concave to the northeast having a radius of 70.00 feet and a central angle of 92 degrees 34 minutes 30 seconds; thence North 03 degrees 27 minutes 33 seconds East, tangent to said curve, a distance of 18.99 feet; thence North 86 degrees 32 minutes 27 seconds West a distance of 23.56 feet to the east line of OAK RIDGE 2ND ADDITION, according to the recorded plat thereof; thence North 03 degrees 27 minutes 33 seconds East, along said east line, a distance of 10.00 feet to the northeast corner of said plat, said point also being the southeast corner of said Lot 19; thence continuing North 03 degrees 27 minutes 33 seconds East, along the east line of said Lot 19, a distance of 190.00 feet to the northeast corner of said Lot 19; thence South 86 degrees 32 minutes 27 seconds East, along the south line of said Lot 20, and its easterly extension, a distance of 199.28 feet; thence South 12 degrees 33 minutes 29 seconds East a distance of 278.87 feet to said east line of the Southeast Quarter; thence South 03 degrees 09 minutes 36 seconds West, along said east line, a distance of 33.50 feet to the point of beginning.

Has caused the same to be surveyed and platted as SHADY OAK CROSSING and do hereby dedicate to the public for public use the public ways and the drainage and utility easements as created by this plat.

In witness whereof said Shady Oak Crossing, LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officer this _____ day of _____, 20____.

Signed: Shady Oak Crossing, LLC, a Minnesota limited liability company,

By: _____ Its: _____

STATE OF MINNESOTA
COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____, 20____ by _____, the _____ of Shady Oak Crossing, LLC, a Minnesota limited liability company, on behalf of the company.

(Notary's Signature) _____ (Notary's Name Printed) _____

Notary Public, _____ County, Minnesota

My Commission Expires: _____

SURVEYOR CERTIFICATE

I, Chris Ambourn do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat; and all public ways are shown and labeled on this plat.

Dated this _____ day of _____, 20____.

Chris Ambourn, Licensed Land Surveyor
Minnesota License No. 43055

STATE OF MINNESOTA
COUNTY OF _____

This instrument was acknowledged before me on this _____ day of _____, 20____, by Chris Ambourn.

(Notary's Signature) _____ (Notary's Name Printed) _____

Notary Public, _____ County, Minnesota

My Commission Expires: _____

CITY COUNCIL, CITY OF MINNETONKA, MINNESOTA

This plat of SHADY OAK CROSSING was approved and accepted by the City Council of the City of Minnetonka, Minnesota at a regular meeting thereof held this _____ day of _____, 2020, and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

City Council, City of Minnetonka, Minnesota

By: _____ By: _____
Mayor Manager

RESIDENT AND REAL ESTATE SERVICES, Hennepin County, Minnesota

I hereby certify that taxes payable in 20____ and prior years have been paid for land described on this plat, dated this _____ day of _____, 20____.

Mark V. Chapin, County Auditor By _____ Deputy

SURVEY DIVISION, Hennepin County, Minnesota

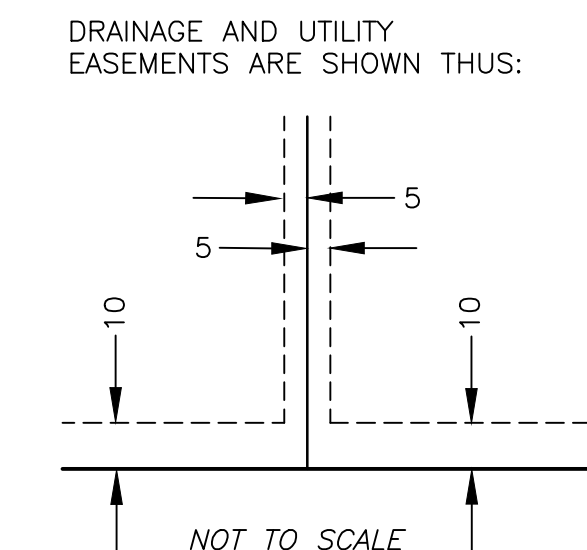
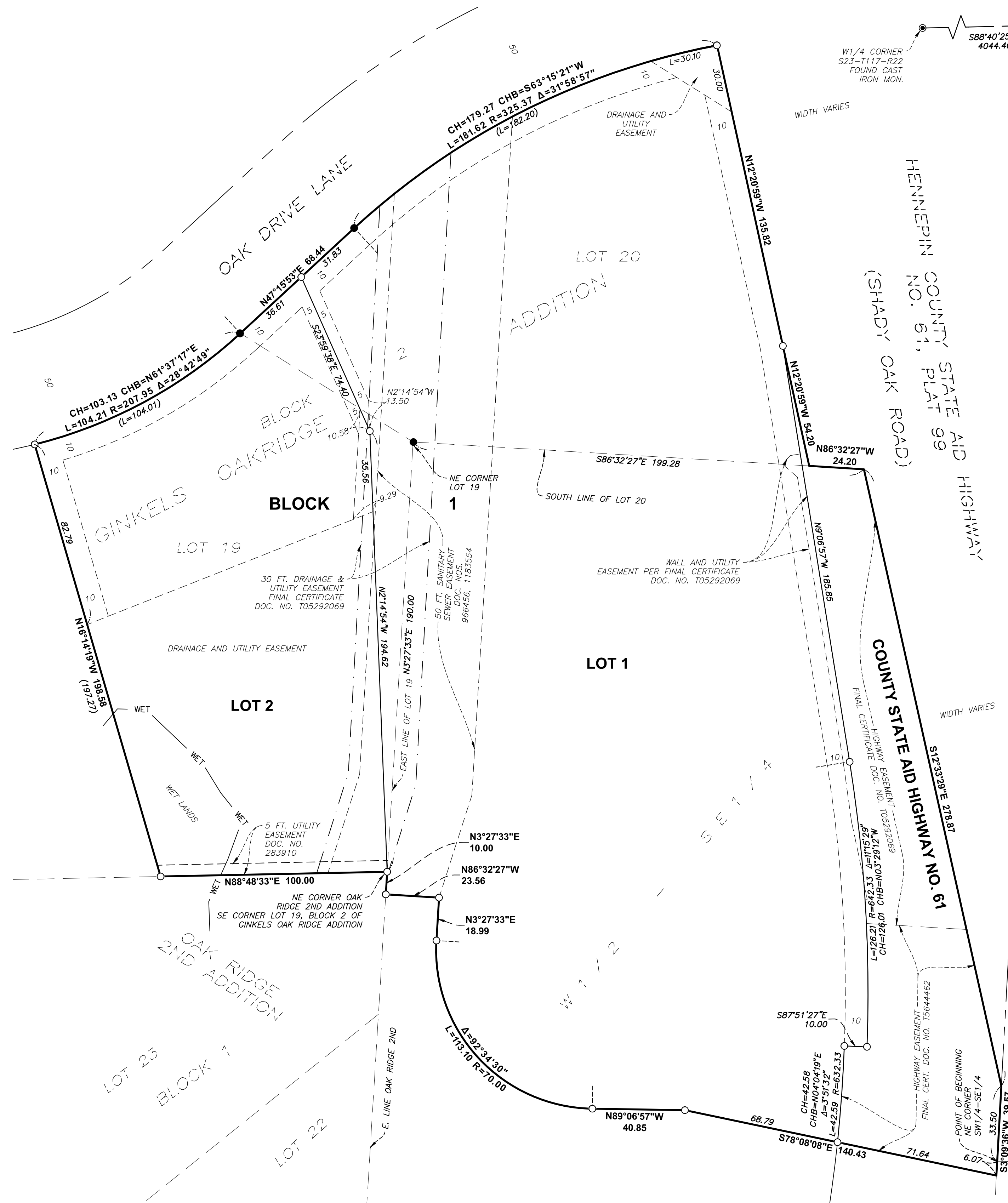
Pursuant to MN. STAT. Sec. 383B.565 (1969) this plat has been approved this _____ day of _____, 20____.

Chris F. Mavis, County Surveyor By _____

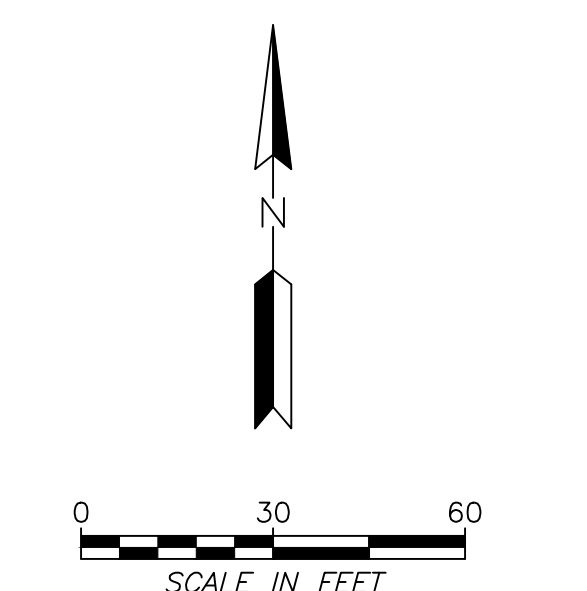
REGISTRAR OF TITLES, Hennepin County, Minnesota

I hereby certify that the within plat of SHADY OAK CROSSING was filed in this office this _____ day of _____, 20____, at _____ o'clock ____M.

Martin McCormick, Registrar of Titles By _____ Deputy



BEING 5 FEET IN WIDTH AND ADJOINING LOT LINES AND BEING 10 FEET IN WIDTH AND ADJOINING PUBLIC WAYS AND REAR LOT LINES, UNLESS OTHERWISE INDICATED ON THIS PLAT.



BEARINGS ARE BASED ON THE EAST LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF S23-T117-R22 WHICH IS ASSUMED TO BEAR N3°09'36"E

- LEGEND**
- SET 3/4"O.D.x15" IRON PIPE WITH PLASTIC CAP MARKED 43055
 - ⊙ SCRIBED "X" ON TOP OF CURB
 - FOUND 1/2 IN. IRON PIPE
 - (xxx.xx) RECORD DIMENSION



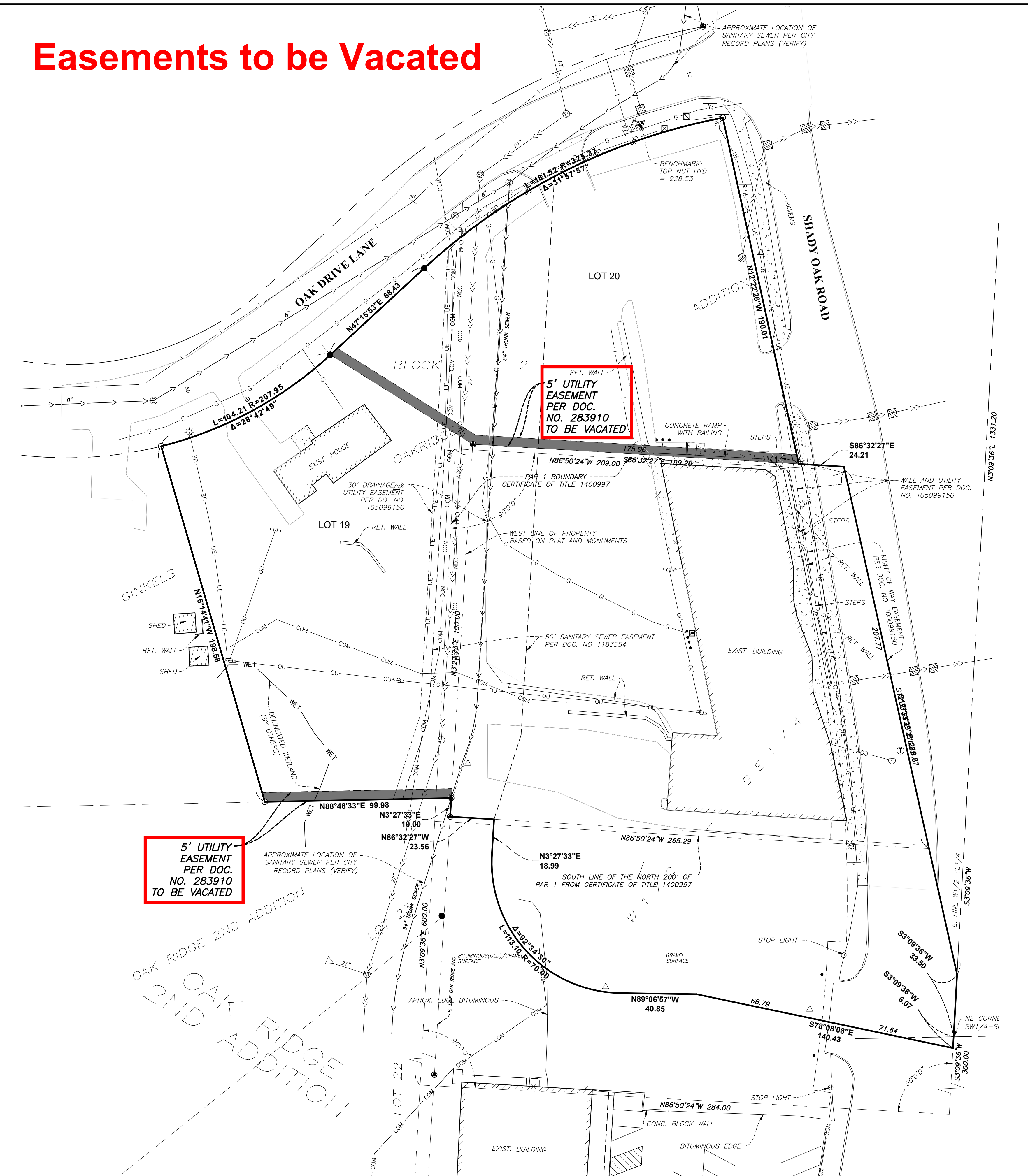
EASEMENT VACATIONS

Easements to be Vacated

CERTIFICATE OF SURVEY

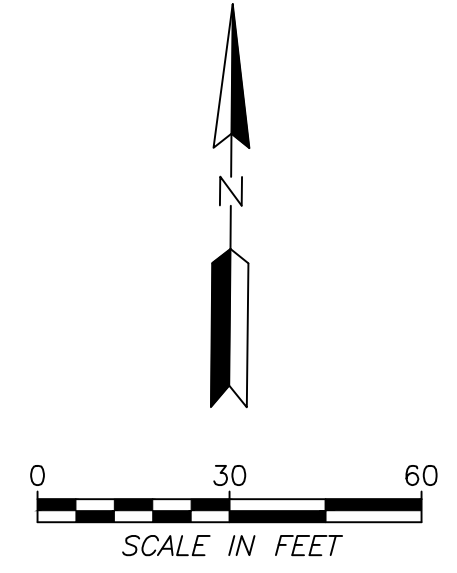
MINNETONKA, MN

Plot Date & Time: 16 July 2020 6:26 AM



LEGEND

- SET 3/4"ODx14" IRON PIPE WITH PLASTIC CAP 43055 OR MAG NAIL W/WASHER
- PROPERTY MARKER FOUND BY HENNEPIN COUNTY SURVEYOR
- FOUND MONUMENT
- ⊙ SANITARY SEWER MANHOLE
- ⊙ STORM SEWER MANHOLE
- ⊙ STORM SEWER INLET
- ⊙ STORM SEWER INLET
- ⊙ TELEPHONE MANHOLE
- ⊙ GAS METER
- ⊙ COMMUNICATIONS PEDESTAL
- ⊙ ELECTRIC MANHOLE
- ⊠ ELECTRIC TRANSFORMER
- ⊠ TRAFFIC SIGN
- BOLLARD/POST
- ⊙ UTILITY POLE
- ⊙ LIGHT POLE
- CONIFEROUS TREE
- ⊙ DECIDUOUS TREE
- ⊙ WATER VALVE
- ⊙ HYDRANT
- STORM SEWER
- SANITARY SEWER
- I — WATERMAIN
- G — UNDERGROUND GAS LINE
- COM — UNDERGROUND COMMUNICATION LINE
- OU — OVERHEAD UTILITY LINE
- TREE LINE — TREE LINE
- ▨ BUILDING
- ▨ CONCRETE SURFACE
- ▨ ASPHALT SURFACE



PROPERTY DESCRIPTION:

PENDING PROCEEDING SUBSEQUENT LEGAL DESCRIPTION:

Lots 19 and 20, Block 2, GINKELS OAK RIDGE ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota.
 And also that part of the West Half of the Southeast Quarter of Section 23, Township 117 North, Range 22 West, Hennepin County, Minnesota being described as follows:

Beginning at the northeast corner of the Southwest Quarter of said Southeast Quarter of Section 23; thence on an assumed bearing of South 03 degrees 09 minutes 36 seconds West along the east line of said West Half of the Southeast Quarter a distance of 6.07 feet; thence North 78 degrees 08 minutes 08 seconds West a distance of 140.43 feet; thence North 89 degrees 06 minutes 57 seconds West a distance of 40.85 feet; thence northwesterly 113.10 feet along a tangential curve concave to the northeast having a radius of 70.00 feet and a central angle of 92 degrees 34 minutes 30 seconds; thence North 03 degrees 27 minutes 33 seconds East, tangent to said curve, a distance of 18.99 feet; thence North 86 degrees 32 minutes 27 seconds West a distance of 23.56 feet to the east line of OAK RIDGE 2ND ADDITION, according to the recorded plat thereof; thence North 03 degrees 27 minutes 33 seconds East, along said east line, a distance of 10.00 feet to the northeast corner of said plat, said point also being the southeast corner of said Lot 19; thence continuing North 03 degrees 27 minutes 33 seconds East, along the east line of said Lot 19, a distance of 190.00 feet to the northeast corner of said Lot 19; thence South 86 degrees 32 minutes 27 seconds East, along the south line of said Lot 20, and its easterly extension, a distance of 199.28 feet; thence South 12 degrees 33 minutes 29 seconds East a distance of 278.87 feet to said east line of the Southeast Quarter; thence South 03 degrees 09 minutes 36 seconds West, along said east line, a distance of 33.50 feet to the point of beginning.

SURVEYORS NOTES:

1. Utility lines shown hereon are based on field markings and maps provided to us as a result of Gopher State One Call private utility locate (Ticket Numbers 170260089, 170260090). the surveyor cannot guarantee that all utilities were marked or that the markings/maps are accurate.
2. Horizontal Datum: Hennepin County Coordinate System NAD83(11)
3. Vertical Datum: NAVD88
4. Date of fieldwork: 2/3/2017
5. Gross area = 2.38 acres.
6. Portions of the subject property were covered by snow and ice at the time of survey, the surveyor does not guarantee that all improvements are shown hereon.
7. This survey was prepared based on a cursory title review, the surveyor does not guarantee that all or any adverse interests, easements or other encumbrances are shown or that the owner listed has fee title to the property.

SURVEYORS CERTIFICATION:

I hereby certify that this survey was completed by me or under my direct supervision and that I am a duly licensed land surveyor under the laws of the State of Minnesota.

Chris Ambourn 4/30/2020
 Chris Ambourn Date
 LS 43055

WENCK ASSOCIATES
 Responsive partner. Exceptional outcomes.
 1802 WOODDALE DRIVE WOODBURY, MN 55125 Ph: 651-395-5212

CLIENT NAME		PROJECT TITLE	
RON CLARK CONSTRUCTION & DESIGN		CERTIFICATE SURVEY	
DWN BY	CHK'D	APP'D	DWG DATE
MLH	CNA	CNA	SCALE 1" = 30'
#	XXX	XXX	XX/XX/XX
REV	REVISION DESCRIPTION	DWN	APP
		REV DATE	1531-0009
			SHEET NO. 1 OF 1

Easements to be Vacated

All those utility easements as reserved in the Protective Covenants For Oak Ridge Addition, recorded in Document Number 283910, over, under and across Lots 19 and 20, Block 2, GINKEL'S OAK RIDGE ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota.



Offices in 470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis Minneapolis, MN 55402
(612) 337-9300 telephone
Saint Paul (612) 337-9310 fax
www.kennedy-graven.com
St. Cloud Affirmative Action, Equal Opportunity Employer

JULIE A. EDDINGTON
Attorney at Law
Direct Dial (612) 337-9213
Email: jeddington@kennedy-graven.com

August 3, 2020

Alisha Gray
Economic Development and Housing Manager
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345

Re: Resolutions approving the execution of an Assignment of Tax Increment Financing Note and Subordination Agreement and a Consent and Estoppel Certificate in connection with the Shady Oak Crossing project

Dear Alisha,

The City of Minnetonka (the "City") and the Economic Development Authority in and for the City of Minnetonka (the "EDA") have entered into an Amended and Restated Contract for Private Development, dated July 13, 2020 (the "Contract"), with Shady Oak Crossing LLC, a Minnesota limited liability company (the "Developer"). Under the terms of the Contract, the Developer will construct an approximately 75-unit rental housing facility on property located in the City (the "Minimum Improvements"), and the EDA will issue a tax increment revenue note (the "TIF Note") in the maximum principal amount of \$1,900,000 to reimburse the Developer for qualified public development costs incurred in connection with the construction of the Minimum Improvements.

North American Banking Company (the "Lender") has agreed to provide a loan to the Developer in the amount of \$14,300,000 (the "Loan") to finance a portion of the costs of the Minimum Improvements. In order to provide the Loan to the Developer, the Lender requires that the Developer assign its rights to and interests in the TIF Note, when issued by the EDA, to the Lender and that the City and the EDA subordinate certain of their rights to and interests in the Contract to the Lender under the documents to be executed in connection with the Loan (the "Loan Documents").

Enclosed are resolutions for consideration by the City Council of the City and the Board of Commissioners of the EDA on August 10, 2020. The resolutions approve the execution and delivery by the City and the EDA of an Assignment of Tax Increment Financing Note and Subordination Agreement (the "Assignment and Subordination Agreement") and a Consent and Estoppel Certificate (the "Consent and Estoppel Certificate"). The Assignment and Subordination Agreement sets forth the terms of the Developer's assignment of its rights to and interests in the TIF Note, if issued by the EDA, and the terms of the City's and the EDA's subordination of certain rights to and interests in the Contract to the rights of the Lender under the Loan Documents. Nothing in the Assignment and Subordination Agreement precludes the City or the Authority from exercising its rights and remedies under the Development

Agreement *except* that (i) the agreement subordinates the City and the Authority's rights to receive insurance and condemnation proceeds from the Minimum Improvements; and (i) if the Lender must foreclose on the property or the property is transferred to the Lender, the City and the Authority's rights to revert the property back to the City's ownership are subordinate to the Lender's interests in the property. The Consent and Estoppel Certificate provides the understanding of the City and the EDA with respect to the Assignment and Subordination Agreement.

Please contact me with any questions you may have prior to the meetings.

Sincerely,

Julie A. Eddington

TAX INCREMENT FINANCING NOTE AND SUBORDINATION AGREEMENT

**ASSIGNMENT OF TAX INCREMENT FINANCING NOTE AND
SUBORDINATION AGREEMENT**

This Assignment of Tax Increment Financing Note and Subordination Agreement (“**Assignment**”) is made this ____ day of _____, 2020, by and between **Shady Oak Crossing LLC**, a Minnesota limited liability company (“**Assignor**”), the City of Minnetonka, Minnesota, a home rule city duly organized and existing under its Charter and the laws of the State of Minnesota (“**City**”), Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota (“**Authority**”), and **North American Banking Company**, a Minnesota corporation (“**Lender**”).

RECITALS

WHEREAS, pursuant to a Construction Loan Agreement of even date herewith by and between Assignor and Lender (“**Loan Agreement**”), Lender has agreed to make a loan to Assignor in an original principal amount not to exceed Fourteen Million Three Hundred Thousand (\$14,300,000) Dollars (the “**Loan**”) to finance a portion of the costs of acquiring certain real property located in Hennepin County, Minnesota and legally described as set forth on *Exhibit A*, attached to the Loan Agreement (the “**Property**”) and constructing a seventy-five (75) unit apartment complex located on the Property (the “**Project**”); and

WHEREAS, the Loan is evidenced by a Promissory Note of even date herewith, executed and delivered by Assignor to Lender in the original amount not to exceed \$14,300,000 (the “**Note**”) and secured by a Combination Mortgage, Security Agreement and Fixture Financing Statement to be recorded as an encumbrance against the Property with the Registrar of Titles in and for Hennepin County, Minnesota (“**Mortgage**”); and

WHEREAS, pursuant to an Amended and Restated Contract for Private Development dated July 13, 2020 (“**Development Agreement**”) by and between the Authority, the City and Assignor, Assignor has agreed to construct the Project on the Property; and

WHEREAS, in exchange for developing and constructing the Project, upon satisfaction of the conditions set forth in Section 3.9 of the Development Agreement, Assignor will receive from Authority, among other things, a Tax Increment Revenue Note, Series 20__ issued by the Authority in the maximum principal amount of One Million Nine Hundred Thousand (\$1,900,000) Dollars payable to Assignor (“**TIF Note**”). Unless the context indicates otherwise, capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the Development Agreement; and

WHEREAS, in consideration of, and to secure the payment of the Loan, Lender has required an assignment of the TIF Note and Assignor’s rights thereunder;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. PRESENT PLEDGE AND ASSIGNMENT. Pursuant to the provisions of the Uniform Commercial Code in effect in the State of Minnesota (“**UCC**”), as security for the Loan, the Assignor grants to Lender a security interest in all of the following property: (a) all right, title and interest of Assignor in the TIF Note; (b) all replacements, substitutions and proceeds (“**Proceeds**”) relating to the

TIF Note; and (c) all documents, ledgers and files of Assignor relating to the TIF Note (collectively, the “**Collateral**”). The term “**Proceeds**” shall include whatever is received by Assignor upon the sale, exchange or other disposition of any item of Collateral. This Assignment shall constitute a perfected, absolute and present pledge and assignment in connection with which Assignor shall deliver to Lender the Collateral documents endorsed and assigned to Lender. Assignor shall execute and deliver to Lender an Allonge in the form attached hereto as *Exhibit A*. The payments under the TIF Note shall be paid directly to Lender until such time as the Loan has been paid in full and Lender has no further obligation to make advances available to Assignor, at which time Lender shall promptly provide notice to the Authority, with a copy to Assignor, that such payments are to be made to Assignor and this Assignment and the security interest created hereby shall terminate. Prior to the full payment of the Loan and the termination of Lender’s commitment to make advances available to Assignor, if Assignor receives any payments or prepayments on the TIF Note, Assignor shall immediately remit such payments and prepayments to Lender.

2. REPRESENTATIONS AND WARRANTIES. Assignor represents and warrants to Lender that:

2.1 Assignor will be the true and lawful, absolute owner of the Collateral and, except for the liens and security interests created by this Assignment, the Collateral is free and clear of any lien, security interest, or encumbrance;

2.2 Subject only to receipt of consent from the Authority, Assignor has the full right and title to assign and pledge the Collateral; there are no outstanding claims, assignments or pledges thereof; and to Assignor’s knowledge, there are no existing defaults under the Collateral documents on the part of the parties thereof;

2.3 There are no defenses, setoffs or counterclaims against or with regard to the Development Agreement or the TIF Note or the indebtedness evidenced thereby;

2.4 As of the date hereof, no payment have been made under the TIF Note;

2.5 The TIF Note has not been amended or modified in any respect and is a valid and enforceable obligation of the Authority in accordance with the TIF Note’s terms;

2.6 The Development Agreement has not been further amended or modified in any respect;

2.7 The TIF Note has not yet been issued and Development Agreement remains in full force and effect; and

2.8 Except for the financing statement filed in connection with the pledge and security interest granted pursuant to this Assignment, no financing statement covering the Collateral is on file in any public office.

3. COVENANTS OF ASSIGNOR. Assignor covenants and agrees that so long as any of the indebtedness evidenced by the Note is outstanding and unsatisfied and until Lender’s commitment to make advances available to Assignor has terminated:

- 3.1 Assignor shall keep the Collateral: (a) free and clear of any lien, security interest or encumbrance, except for the liens and security interests created by this Assignment; and (b) free of all tax liens;
- 3.2 Assignor shall maintain and keep accurate records, books and accounts with respect to the Collateral;
- 3.3 Assignor shall join Lender in prepaying and filing at the appropriate offices one or more financing statements with regard to the Collateral complying with the UCC, in form satisfactory to Lender;
- 3.4 Assignor shall maintain, or cause to be maintained, insurance policies on the Project in accordance with the requirements of the Loan Agreement and Development Agreement;
- 3.5 Assignor shall do any additional acts as Lender may reasonably require for the purpose of more completely assuring to Lender its rights in the Collateral;
- 3.6 At any time Assignor receives a written notice of default under the Development Agreement, Assignor shall promptly provide a copy of such notice of default to Lender; and
- 3.7 Assignor shall fully comply with its obligations under the Development Agreement and shall not waive, excuse, condone or in any way release or discharge the City or the Authority of their respective obligations under the Development Agreement or TIF Note.

4. SECURITY AGREEMENT. This Assignment constitutes a “Security Agreement” under the UCC and shall be governed by the UCC.

5. PREPAYMENTS OF THE TIF NOTE. To the extent not directly paid to Lender, Assignor agrees that should the Authority at any time prepay the TIF Note, Assignor will deposit or cause to be deposited with Lender the entire amount of such prepayment. Any amount deposited with Lender shall, at Lender’s option, be applied by Lender to pay or prepay the Loan in accordance with the terms of the Loan Agreement or shall be held by Lender in an escrow account for payment of the Loan. The sums held in escrow pursuant hereto are held as security for the Loan, Assignor hereby granting a security interest in such sums to Lender as security for the same.

6. AUTHORIZATION TO AUTHORITY. So long as this Assignment remains in effect, the Authority is hereby irrevocably authorized and directed to make payments under the TIF Note directly to Lender, for the account of Assignor, and to recognize the claims of Lender or its successors or assigns without investigating the reason for any action taken or the validity of or the amount of indebtedness owing to Lender or its assigns or the existence of any default or Event of Default (as hereinafter defined), and Assignor hereby irrevocably directs and authorizes the Authority to pay exclusively to Lender or its assigns from and after the date hereof until such time as the Loan is paid in full and Lender’s commitment to make advances available to Assignor has terminated, all sums due under the TIF Note that are otherwise due and payable to Assignor under the TIF Note. To the extent any sum is paid to Lender or its assigns, Assignor agrees that the Authority shall have no further liability to Assignor for the same. The sole receipt by Lender or its assigns of any sum paid by the Authority shall be in discharge and release of that portion of any amount owed by the Authority to Assignor under the TIF Note. The Authority is intended to and shall be a third party beneficiary to the provisions of this

Section 6. The Authority has acknowledged Lender's rights under this Assignment pursuant to a Consent and Estoppel Certificate, dated on or about the date hereof, in the form attached hereto as **Exhibit B**.

7. EVENTS OF DEFAULT. The occurrence of any of the following events shall constitute an "Event of Default" under this Assignment:

7.1 Any failure of Assignor to fully and completely perform any of the duties or obligations of Assignor under this Assignment or any failure of Assignor to fully and completely observe, satisfy and comply with the terms, covenants and conditions of this Assignment and such failure is not cured within thirty (30) days after written notice of said default;

7.2 Any representation or warranty of Assignor contained in this Assignment shall be untrue or misleading in any material respect and Assignor fails to take such actions as may be required to make such representation or warranty true and not misleading in any material respect within thirty (30) days after written notice thereof; and

7.3 Any event designated as an "Event of Default" under the Note, the Loan Agreement or any other Loan Document as defined in the Loan Agreement.

8. REMEDIES. Upon the occurrence of and during the continuance of an Event of Default:

8.1 Lender may: (a) at Lender's option, cure the Event of Default if it involves the payment of money (i) for insurance or taxes, assessments or other charges which Assignor has not paid in accordance with the Loan Agreement, or (ii) for the satisfaction or discharge of any lien, security interest or encumbrance upon the Collateral, in which event the amount of any payments shall be added to the indebtedness secured by this Assignment, shall be secured, and shall be payable by Assignor to Lender on demand; (b) at Lender's option, declare the indebtedness secured by this Assignment and evidenced by the Note to be immediately due and payable; and (c) exercise any and all other rights and remedies accorded to Lender by the UCC. In the event any notice is required to be given under the UCC, such requirements for reasonable notice shall be satisfied by giving at least ten (10) days' notice prior to the event or thing giving rise to the notice requirement.

8.2 Except as set forth in a written notice of Lender, no course of dealing between the parties or any delay on the part of Lender in exercising any rights shall operate as a waiver of any rights or remedies of Lender.

8.3 The rights and remedies herein specified or in law or equity are cumulative and not exclusive of any rights or remedies which Lender would otherwise have and may be exercised together, separately, and in any order.

9. SUBORDINATION. In accordance with the applicable terms and conditions of the Development Agreement, the City and Authority hereby acknowledge and agree that all of their rights, title and interest under the Development Agreement, including, without limitation, the rights of the City and Authority with respect to the receipt and application of any insurance or condemnation awards set forth in Article V of the Development Agreement and any right to revest title set forth in Article IX of the Development Agreement ("**Revest Right**"), shall be subject and subordinate to the rights of Lender under the Loan Agreement, Mortgage and all other associated Loan Documents in all respects. The City

and Authority further acknowledge and agree that the Revest Right will be extinguished without further action upon: (a) the foreclosure of the Mortgage and expiration of any applicable redemption period; or (b) transfer of title to the Property to Lender, or any of Lender's successors or assigns, pursuant to a deed in lieu of foreclosure. Notwithstanding the foregoing, nothing herein precludes the City or the Authority from exercising its rights and remedies under the Development Agreement other than the limitations set forth in this Section 9.

10. MISCELLEANOUS.

10.1 **Notices.** All notices required under the terms of this Assignment are sufficient either: (a) three (3) days after their deposit in the United States mail, postage prepaid; (b) two (2) days after their deposit with a nationally recognized overnight courier service; or (c) on the day of personal delivery, if addressed or delivered to Lender or Assignor at their respective addresses set forth herein, or such other address as is specified in writing by any party to the other as provided herein. In any event, Assignor shall exercise reasonable due diligence to ensure that Lender is at all times advised of Assignor's correct address and any changes thereto, stipulated as the following as of the date of this Agreement.

If to Assignor:	Shady Oak Crossing LLC 7500 W 78 th St Edina, MN 55439 Attn: Mike Waldo
If to Lender:	North American Banking Company 4999 France Avenue South, Suite 120 Minneapolis, MN 55410 Attn: Joe Arends
If to City:	City of Minnetonka 14600 Minnetonka Boulevard Minnetonka, Minnesota 55345-1502 Attn: City Manager
If to Authority:	Economic Development Authority 14600 Minnetonka Boulevard Minnetonka, Minnesota 55345-1502 Attention: Executive Director

10.2 **Binding Effect; Assignment.** This Assignment shall be binding upon and inure to the benefit of Assignor and Lender and their respective successors and assigns. Lender may freely assign this Assignment upon five (5) business days' notice to Assignor and any assignee or successor in interest pursuant thereto shall enjoy all of the various rights and remedies afforded to Lender by the various provisions of this Assignment, and shall also tender any remaining performance required of Lender thereby. Except as expressly approved by Lender in writing, Assignor shall not assign any of Assignor's rights or obligations under this Assignment and any such attempted assignment by Assignor shall be null and void, of no effect, and not require recognition by Lender until approved by Lender in writing. With regard to any assignment permitted by this Section, the various provisions of this Assignment shall inure to the benefit of and be binding upon Assignor and Lender and their respective heirs, legal representatives, successors and assigns.

10.3 **Severability.** It is the intent of this Assignment to confer to Lender the rights and benefits hereunder to the fully extent allowable by law. The unenforceability or invalidity of any provision hereof shall not render any other provision or provisions contained herein unenforceable or invalid. Any provisions found to be unenforceable shall be severable from this Assignment.

10.4 **Governing Law.** This Assignment shall be governed by the laws of the State of Minnesota.

10.5 **Waiver of Trial by Jury.** ASSIGNOR AND LENDER HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS ASSIGNMENT, THE OBLIGATIONS HEREUNDER OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. ASSIGNOR AND LENDER EACH REPRESENT TO THE OTHERS THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

10.6 **Jurisdiction and Venue.** AT THE OPTION OF LENDER, THIS ASSIGNMENT MAY BE ENFORCED IN ANY FEDERAL COURT OR MINNESOTA STATE COURT SITTING IN MINNEAPOLIS OR ST. PAUL, MINNESOTA; AND ASSIGNOR CONSENTS TO THE JURISDICTION AND VENUE OF ANY SUCH COURT AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT. IN THE EVENT ASSIGNOR COMMENCES ANY ACTION IN ANOTHER JURISDICTION OR VENUE UNDER ANY TORT OR CONTRACT THEORY ARISING DIRECTLY OR INDIRECTLY FROM THE RELATIONSHIP CREATED BY THIS ASSIGNMENT, LENDER AT ITS OPTION SHALL BE ENTITLED TO HAVE THE CASE TRANSFERRED TO ONE OF THE JURISDICTIONS AND VENUES ABOVE-DESCRIBED, OR IF SUCH TRANSFER CANNOT BE ACCOMPLISHED UNDER APPLICABLE LAW, TO HAVE SUCH CASE DISMISSED WITHOUT PREJUDICE.

10.7 **Counterparts.** This Assignment may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Assignment is executed as of the date first set forth above.

[Signature Pages Follow]

Signature Page – Assignor

ASSIGNOR:

Shady Oak Crossing LLC,
a Minnesota limited liability company

By: _____

J. Michael Waldo

Its: Vice President

Signature Page – Lender

LENDER:

North American Banking Company,
a Minnesota corporation

By: _____

Joe H. Arends

Its: Senior Vice President

Signature Page – Authority

AUTHORITY:

**Economic Development Authority in and for the
City of Minnetonka, Minnesota**

By: _____
Brad Wiersum
Its: President

By: _____
Geraldyn Barone
Its: Executive Director

Signature Page – City

CITY:

The City of Minnetonka, Minnesota

By: _____
Brad Wiersum

Its: Mayor

By: _____
Geraldyn Barone

Its: City Manager

EXHIBIT A

Allonge

FOR VALUE RECEIVED, **Shady Oak Crossing LLC**, a Minnesota limited liability company, endorses, assigns and transfers with recourse to **North American Banking Company**, a Minnesota corporation, all right, title and interest in and to the following described Tax Increment Financing Note:

Economic Development Authority in and for the City of Minnetonka, Minnesota Tax Increment Revenue Note, Series 20__ in the maximum principal amount of One Million Nine Hundred Thousand (\$1,900,000) Dollars executed by the Economic Development Authority in and for the City of Minnetonka, Minnesota.

Dated this ___ day of July, 2020.

THIS ALLONGE IS TO BE AFFIXED TO THE NOTE DESCRIBED ABOVE.

Shady Oak Crossing LLC,
a Minnesota limited liability company

By: _____
J. Michael Waldo
Its: Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by J. Michael Waldo, as Vice President of Shady Oak Crossing LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

EXHIBIT B

Consent and Estoppel Certificate

This Consent and Estoppel Certificate (“**Certificate**”) is dated this ____ day of July, 2020 by the **City of Minnetonka, Minnesota**, a home rule city duly organized and existing under its Charter and the laws of the State of Minnesota (“**City**”) and the **Economic Development Authority in and for the City of Minnetonka, Minnesota**, a public body corporate and politic under the laws of the State of Minnesota (“**Authority**”) to **North American Banking Company**, its successors and assigns and participants (“**Lender**”).

The City and Authority hereby agree with Lender as follows:

1. Unless the context indicates otherwise, capitalized terms not otherwise defined herein shall have the definitions given such terms in that certain Amended and Restated Contract for Private Development dated July 13, 2020 (“**Development Agreement**”) by and between the City, the Authority and Shady Oak Crossing LLC, a Minnesota limited liability company (“**Borrower**”).
2. Authority understands that Lender contemplates making a loan to Borrower in an original amount not to exceed Fourteen Million Three Hundred Thousand (\$14,300,000) Dollars (the “**Loan**”), which Loan is secured by an Assignment of Tax Increment Financing Note dated _____, 2020 between Borrower and Lender (the “**Assignment**”). Pursuant to the Assignment, Borrower will collaterally assign to Lender and grant Lender a security interest in that certain Tax Increment Revenue Note, Series 20__ in the original principal amount of One Million Nine Hundred Thousand (\$1,900,000) Dollars (“**TIF Note**”) upon issuance of the TIF Note after the Borrower satisfies the requirements for issuance of the Note set forth in Section 3.9 of the Development Agreement.
3. The City and Authority each understand that Lender has required this Certificate as a condition of making the Loan and Lender will rely on this Certificate in connection therewith.
4. The City and Authority each acknowledge that, in exchange for developing the Project (as defined in the Assignment), upon satisfaction of the conditions set forth in Section 3.9 of the Development Agreement, Borrower will receive from the Authority, among other things, the TIF Note. Further, the Authority acknowledges that, to secure the payment of the debt owed by Borrower to Lender arising by reason of the Loan, Borrower will collaterally assign to Lender and grant Lender a security interest in the TIF Note.
5. The City and Authority each further covenant, represent and warrant to and agree with Lender, as applicable, as follows:
 - 5.1 That upon satisfaction of the conditions set forth in Section 3.9 of the Development Agreement, the Authority will issue the TIF Note. Upon issuance of the TIF Note, the TIF Note will be a valid and binding special limited obligation of the Authority, subject to the terms and conditions thereof, payable from the sources provided therefor in the TIF Note and the Development Agreement.

5.2 The City and Authority each has the corporate power and authority to perform their respective obligations under the TIF Note and Development Agreement.

5.3 That the City and the Authority will deposit all payments due under the TIF Note, and any optional prepayments, either in whole or in part, with Lender at the address set forth herein, and upon such deposit its obligation under the TIF Note shall be deemed discharged to the extent paid to Lender.

5.4 That the City and the Authority hereby consent to the execution and delivery of the Assignment and associated documents and to the liens and security interest created therein, as security for the Loan.

6. The Development Agreement has not been further amended or modified in any respect and it, together with all exhibits thereto or other documents referred to in the Development Agreement or in the exhibits thereto, represent the entire agreement of the parties as to all of the subject matters dealt with therein. The Development Agreement is in full force and effect, and the Authority has given no notice of any default thereunder. As of the date hereof, no payments have been made on the TIF Note. To the City's and Authority's knowledge, Borrower has performed all of its obligations under the Development Agreement which are required to be performed as of the date hereof. To the City's and Authority's actual knowledge, Borrower is not in default in the performance or observance of any of Borrower's covenants or agreements under the Development Agreement or any other agreement with the City or Authority as of the date hereof and neither the City or Authority has actual knowledge of any current defenses, setoffs, or counterclaims against or with respect to the TIF Note or the indebtedness evidenced thereby.

7. Until termination of the Assignment, the City and Authority agree to give Lender a copy of each notice or demand given to Borrower with respect to any breach or default by Borrower in its obligations under the Development Agreement at the same time such notice, demand or other communication is given to Borrower, addressed to Lender at:

North American Banking Company
4999 France Avenue South, Suite 120
Minneapolis, MN 55410
Attn: Joe Arends

8. The City and Authority each agree (a) to accept the cure by Lender of any monetary default by Borrower under the Development Agreement within ten (10) days after the later of (i) delivery of notice of such default to Lender pursuant to Section 7 and the Development Agreement, and (ii) the expiration of the cure periods afforded to Borrower in the Development Agreement; and (b) to accept the cure by Lender of any non-monetary default by Borrower under the Development Agreement within thirty (30) days after the later of (i) delivery of notice of such default to Lender pursuant to Section 7 and the Development Agreement, and (ii) the expiration of the cure periods afforded to Borrower in the Development Agreement, but acknowledges that Lender shall have no obligation to cure any such monetary or non-monetary default. No commencement of any performance by Lender or any obligation of Borrower required under the Development Agreement shall obligate Lender to continue or complete such performance or otherwise perform any of Borrower's obligations under the Development Agreement.

9. The City and Authority each acknowledge and agree that neither Lender, nor its successors or assigns shall be obligated to construct or complete the Project.

10. The City and Authority each agree to provide Lender with notice of any modifications or amendment to be made to the Development Agreement. The Borrower shall obtain Lender's approval for all modifications or amendments to the Development Agreement.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the undersigned officers of the City and officers of the Authority have caused this Consent and Estoppel Certificate to be signed by its duly authorized representatives as of the date and year set forth above.

Economic Development Authority in and for the City of Minnetonka, Minnesota

By: _____
Brad Wiersum
Its: President

By: _____
Geraldyn Barone
Its: Executive Director

The City of Minnetonka, Minnesota

By: _____
Brad Wiersum
Its: Mayor

By: _____
Geraldyn Barone
Its: City Manager

Resolution No. 2020-

**Resolution approving the final plat of SHADY OAK CROSSING
at 4312 Shady Oak Road and 4292 Oak Drive Lane**

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

- 1.01 Ron Clark Construction, property owner, has requested approval of the final plat of SHADY OAK CROSSING.
- 1.02 The property to be included in the plat is located at 4312 Shady Road and 4292 Oak Drive Lane.
- 1.03 On Feb. 24, 2020, the city council approved the preliminary plat of SHADY OAK CROSSING.

Section 2. Findings

- 2.01 The final plat meets the requirements and standards outlined in the Subdivision Ordinance, City Code §400.
- 2.02 The final plat is consistent with the previously approved preliminary plat.

Section 3. Council Action.

- 3.01 The city council approves the final plat of SHADY OAK CROSSING. Approval is subject to the following conditions:
 - 1. Compliance with the conditions outlined in preliminary plat Resolution No. 2020-021, except as modified with the following conditions.
 - 2. Prior to the release of the final plat for recording, submit the following:
 - a) Two sets of mylars for city signatures to include the following revisions:

- Revised drainage and utility easements to reflect 7 feet on all side and rear property lines of lots 1 and 2.
 - Include an owner signature block for the City of Minnetonka for the 4292 Oak Drive Lane property.
- b) An electronic CAD file of the plat in microstation or DXF.
 - c) Removal and relocation of any in-place utilities.
 - d) Park dedication fee of \$375,000.
3. Unless the city council approves a time extension, the final plat must be recorded by Aug. 10, 2021.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Aug. 10, 2020.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on Aug. 10, 2020.

Becky Koosman, City Clerk

Resolution No. 2020-

Resolution vacating drainage and utility easements at 4312 Shady Oak Road and 4292 Oak Drive Lane

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 Ron Clark Construction, property owner, has petitioned the Minnetonka City Council to vacate existing drainage and utility easements located at 4312 Shady Oak Road and 4292 Oak Drive Lane.

1.02 The easements are legally described:

All those utility easements as reserved in the Protective Covenants For Oak Ridge Addition, recorded in Document Number 283910, over, under and across Lots 19 and 20, Block 2, GINKEL'S OAK RIDGE ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota.

1.03 As required by City Charter Section 12.06, a hearing notice on said petition was published in the City of Minnetonka's official newspaper, and written notice was mailed to the owners of each abutting property, and all landowners in the plat.

1.04 On Aug. 10, 2020, the city council approved the final plat of SHADY OAK CROSSING, a 2-lot subdivision. This plat dedicated drainage and utility easements along the perimeter of all lot lines.

1.05 On Aug. 10, 2020, the city council held a hearing on the vacation petition, at which time all persons for and against the granting of said petition were heard.

Section 2. Standards.

2.01 Section 12.06 of the City Charter states that "No vacation shall be made unless it appears in the interest of the public to do so..."

Section 3. Findings.

3.01 The Minnetonka City Council makes the following findings:

1. There is no anticipated public need for the easement.
2. New easements will be dedicated within the SHADY OAK CROSSING plat.
3. The vacation is not counter to the public interest.

Section 4. Council Action.

4.01 The above-described easements are vacated.

4.02 The vacations are only effective upon the filing of the SHADY OAK CROSSING plat.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Aug. 10, 2020.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on Aug. 10, 2020.

Becky Koosman, City Clerk

Resolution No. 2020-_____

Resolution approving the execution of an assignment of tax increment financing note and subordination agreement and a consent and estoppel certificate

Be it resolved by the City Council (the "Council") of the City of Minnetonka, Minnesota (the "City") as follows:

Section 1. Background.

- 1.01. The Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority") and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing.
- 1.02. The Authority, the City, and Shady Oak Crossing LLC, a Minnesota limited liability company (the "Developer"), entered into an Amended and Restated Contract for Private Development, dated July 13, 2020 (the "Contract"), pursuant to which the Developer agreed to construct an approximately 75-unit rental housing facility on certain property located in the City (the "Minimum Improvements") and the Authority agreed to issue a tax increment revenue note (the "TIF Note") in the maximum principal amount of \$1,900,000 to reimburse the Developer for land acquisition costs and other costs related to the Minimum Improvements that are reimbursable from tax increment revenue.
- 1.03. In order to finance a portion of the costs of the Minimum Improvements, the Developer is receiving a loan (the "Loan") from North American Banking Company, a Minnesota corporation (the "Lender"), in the maximum principal amount of \$14,300,000 pursuant to a Construction Loan Agreement (the "Loan Agreement") between the Developer and the Lender. The Developer will deliver a Mortgage (the "Mortgage") to the Lender to secure the Developer's repayment obligations under the Loan Agreement.
- 1.04. As a condition to providing the Loan to the Developer, the Lender requires that the Developer assign its rights to and interests in the TIF Note, if and when it is delivered by the Authority, to the Lender and that the Authority and the City subordinate certain of their rights to and interests in the Contract to the Lender under the Loan Agreement, the Mortgage, and the other documents to be executed in connection with the Loan (collectively, the "Loan Documents").
- 1.05. There have been presented before the Council (i) a form of Assignment of Tax Increment Financing Note and Subordination Agreement (the "Assignment and Subordination Agreement") to be executed by the Developer, the Authority, the City, and the Lender, which sets forth the terms of the Developer's assignment of its rights and interest in the TIF Note, if and when it is delivered by the Authority, to the Lender and the subordination of the Authority's and the City's rights to and interests in the Contract to the Lender under the Loan Documents; and (ii) a form of Consent and Estoppel Certificate (the "Consent and Estoppel Certificate") to be executed by the Authority and the City in favor of the Lender.

Section 2. Council Action.

- 2.01. The Assignment and Subordination Agreement and the Consent and Estoppel Certificate are approved in substantially the forms on file in City Hall, subject to modifications that do not alter the substance of the transaction and are approved by the Mayor and City Manager of the City; provided that execution of the Assignment and Subordination Agreement and the Consent and Estoppel Certificate will be conclusive evidence of their approval.

- 2.02. The Mayor and City Manager are authorized and directed to execute the Assignment and Subordination Agreement, the Consent and Estoppel Certificate, and any other documents or certificates necessary to carry out the transactions described therein.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Aug. 10, 2020.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

- Motion for adoption:
- Seconded by:
- Voted in favor of:
- Voted against:
- Abstained:
- Absent:
- Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on Aug. 10, 2020.

Becky Koosman, City Clerk

City Council Agenda Item #14A
Meeting of Aug. 10, 2020

Brief Description: Consideration of charter commission Resolution 2020-01 on ranked choice voting

Recommended Action: 1) Introduce ordinance repealing Ordinance No. 2020-12

OR

2) Adopt resolution calling special election and establishing ballot language

Background

Since September 2019, the city has been reviewing the use of ranked choice voting for election of city officials. At a study session on Sept. 9, 2019, FairVote Minnetonka gave a presentation to the city council and asked the council to implement ranked choice voting (RCV). The city council referred the issue to the charter commission and asked the commission to study RCV.

At its Nov. 12, 2019 meeting, the charter commission agreed to undertake a study of RCV. The commission held a meeting on Jan. 28, 2020 where it heard presentations by representatives of FairVote Minnetonka and FairVote Minnesota, and from Prof. David Schultz of Hamline University. The commission's study was interrupted by the COVID-19 outbreak, which forced the cancellation of the Mar. 17, 2020 commission meeting.

In April 2020, residents and representatives of FairVote Minnetonka asked the city council to move the charter amendment process forward. On May 4, 2020, staff provided a report to the city council on the status of the charter commission's work. The council directed staff to prepare an ordinance proposing a charter amendment to require the use of RCV. The council introduced the ordinance on May 18 and adopted Ordinance No. 2020-12 on June 8, 2020. Ordinance No. 2020-12 proposes to amend Sections 2.06 and 4.02 of the Minnetonka City Charter by eliminating the use of primary elections and requiring the use of RCV for the election of the mayor and councilmembers. As required by law, the ordinance was submitted to the charter commission for review.

The charter commission met virtually via WebEx on May 26, 2020, in anticipation of the ordinance's adoption, to discuss a work plan for its review of the ordinance. The commission held meetings via WebEx on June 9 and 23 and on July 7, 14, 21, and 28. During that time period, the commission received information from local, county and state elections officials, reviewed budget projections related to the cost of implementing RCV, reviewed scholarly articles on the subject of RCV, and listened to public comment from proponents and opponents of RCV.

On July 28, 2020, the charter commission adopted Resolution No. 2020-01, rejecting Ordinance No. 2020-12. In its findings, the commission raised concerns about the cost of ranked choice voting, a lack of evidence to support the asserted benefits of ranked choice voting, and the problems that the pandemic creates for adequately informing voters about the pros and cons of ranked choice voting. The commission asked the council to rescind Ordinance No. 2020-12 and

expressed a willingness to work with the council to develop a schedule under which ranked choice voting could be submitted to the voters in the future. The resolution was signed and submitted to the city clerk on Aug. 1, 2020. Chair John Northrup will appear at the council meeting to present the resolution to the city council.

Option 1: Repeal Ordinance No. 2020-12 and terminate charter amendment process

During the council's consideration of Ordinance No. 2020-12, some members of the council asked whether, upon completion of the charter commission's review, the city council would be obligated to move forward with the charter amendment or might be able to reconsider. Ordinance No. 2020-12 expressly reserves to the city council the option of either submitting the proposed amendment to the voters at a general or special election or repealing the ordinance.

To repeal the ordinance, the council must adopt an ordinance to that effect. Under the city charter, ordinances other than emergency ordinances must be introduced at a separate meeting at least seven days in advance of the meeting at which the ordinance is adopted. A proposed form of ordinance is provided. The council could introduce the ordinance at its Aug. 10 meeting and adopt the ordinance at its Aug. 31 meeting. If adopted, the ordinance would become effective 30 days after its publication, or approximately on October 10, 2020.

If the council repeals the ordinance, it would have the effect of ending the charter amendment process that the council initiated in June. Ending the current process does not preclude the use of a different means to amend the charter. Residents could petition to amend the city charter. If a legally sufficient petition were submitted to the city clerk, the city council would be required to submit the proposed amendment to the voters at future election. However, it is too late for any petitioned amendment to be considered at the Nov. 3, 2020 election.

Option 2: Submit proposed amendment to voters

Even though the charter commission rejected the amendment, the city council may submit the proposed charter amendment to the voters at either a general or special election. If there were a general city election within six months, the law would require the question to be submitted at the general city election. Because that is not the case, the city council may call a special election at any time allowed by law. The special election may be held concurrent with the state general election on Nov. 3, 2020.

State law requires that the city council must fix the form of the ballot. The statement of the question on the ballot must be "sufficient to identify the amendment clearly and to distinguish the question from every other question on the ballot at the same time." In addition, the title of the question must not contain more than 10 words and must be approved by the city attorney. For the Nov. 3, 2020 election, the deadline for submitting the ballot language to the county auditor is Aug. 21, 2020; however, the county would prefer to receive the ballot language by Aug. 14, 2020.

A proposed resolution establishing the form of the ballot question is provided. The resolution contains the title approved by the city attorney, which is nine words in length. The proposed ballot language is generally consistent with the ballot language used by the Cities of Duluth and

Minneapolis, although it removes references to alternate names for ranked choice voting. Alternate forms of the ballot question are included on a separate sheet, if the city council wishes to consider other wording for the question. The city attorney does not recommend the wording used by St. Paul, because the reference to “majority of votes cast” is arguably misleading, due to the possibility of exhausted ballots.

Under state law, the charter amendment will be approved if **51 percent of the votes cast on the amendment** are in favor of adoption, and the amendment will take effect 30 days after the election. NOTE: when asked at a previous council meeting, the city attorney responded that, based on her recollection, the statute required 51 percent of all votes cast at the election in order to approve the amendment, but that she needed to verify by checking the statute. The attorney’s recollection was incorrect. In other words, failure to vote on the question is not the equivalent of a “no” vote – only those votes cast for or against the ballot question will affect the outcome.

Communications regarding the ballot measure

If the council decides to submit the proposed amendment to the voters, the council needs to be aware of legal limitations regarding communications with voters. The city has a duty to inform voters about the ballot question, and city communications may encourage voters to participate in the election. However, the city must be balanced in its communications and should not encourage either a “yes” or a “no” vote on the question.

Historically, the Minnesota Attorney General’s office has opined that public funds may not be used to advocate on one side of a ballot question. Public funds may be used to educate voters and present facts to enable voters to cast an informed vote, but communications financed by public funds cannot favor one side over another. A 1966 Attorney General opinion suggests that the city could conduct a public forum where anyone could attend and express their views pro and con; or, that the city could sponsor a debate between opponents and proponents of the question. It is the use of public funds to support only one side that is not permissible.

In addition, communications about a ballot issue implicate both the Campaign Financial Reports Act (Minn. Stat. ch. 211A) and the Fair Campaign Practices Act (Minn. Stat. ch. 211B). The Minnesota Supreme Court has held that a government entity may be a “committee” within the meaning of the Campaign Financial Reports Act, if it acts to promote or defeat a ballot question. Under the Campaign Financial Reports Act, any committee that receives contributions or makes disbursements in excess of \$750 must file financial reports as required by the act. The city will incur costs in excess of \$750 in providing voter information on the ballot issue, but the city will not be required to file a report so long as the city’s communications do not promote either the passage or defeat of the ballot question. Lastly, claims have been brought against government entities for alleged violation of the Fair Campaign Practices Act, specifically making false statements to promote a ballot question.

Communications plan

The communications plan for informing voters includes the following:

-
- Articles in the September, October and November issues of the *Minnetonka Memo*.
 - Emails to be sent to all 23,000 subscribers and media outlets.
 - Information featured on the city's website at minnetonkamn.gov/rankedchoicevoting
 - Information posted to Nextdoor (19,100 followers), Facebook (4,515 followers), Twitter (6,866 followers) and Instagram (1,808 followers).
 - Printed flyers posted in common areas of city facilities such as Williston Fitness Center.
 - Digital billboards posted in eight locations within Minnetonka.
 - As required by law, the full text of the charter amendment will be published twice in the *Sun Sailor* newspaper
 - At least one mailing will be sent to households that receive the *Minnetonka Memo* (estimated cost \$13,000).

The council is asked to provide direction regarding any additional communications efforts that should be included in the plan.

Guidance for city council

If the council decides to submit ranked choice voting to the voters, council members need to comply with requirements related to use of public funds.

- Council members are allowed to orally express their personal positions on whether to vote “yes” or “no” on the ranked choice voting ballot issue. For example, a council member could attend a campaign rally and express support or opposition verbally, including identifying himself or herself as a council member.
- Council members may not use city resources to promote a “yes” or “no” vote. Use of city letterhead or city email accounts is not allowed for political activity, either for or against the ballot issue. Council members must use personal accounts for any political activity.

Public comment

The Aug. 10 meeting has been advertised as one at which public comment will be accepted. Public comments received since the July 28 charter commission packet are included. The council is reminded that other public comments on RCV were included in the packets for the [council meetings](#) on May 4 and 18 and June 8, as well as the [charter commission meetings](#) on May 26, June 9, June 23, and July 7, 14, 21 and 28.

Recommendation

Take one of the following actions:

- 1) Introduce the ordinance repealing Ordinance No. 2020-12
OR
- 2) Adopt the resolution calling special election and establishing ballot language

Submitted through:

Geralyn Barone, City Manager
Mike Funk, Assistant City Manager
Kari Knoll, Communications Manager

Originated by:

Corrine Heine, City Attorney

ORDINANCE NO. 2020-12

AN ORDINANCE AMENDING SECTIONS 2.06 AND 4.02 OF THE MINNETONKA CITY CHARTER, REGARDING ELECTONS; REQUIRING USE OF RANKED CHOICE VOTING; ELIMINATING USE OF PRIMARY ELECTIONS

The City of Minnetonka Ordains:

Section 1. Preamble. The city council adopts this ordinance pursuant to Minnesota Statutes, Section 410.12, subdivision 5.

Section 2. Section 2.06, subdivision 5 of the Minnetonka city charter, relating to special elections to fill vacancies in the city council, is amended to read as follows:

Subd. 5. Special Election Requirements.

a. Except as provided in subdivison 5.b. below, special elections must be held at the earliest date possible under state law. ~~The following provisions apply:~~

~~—(1) candidates~~ Candidates must file for office no later than four weeks before the election;

~~—(2) no primary will be held; and~~

~~—(3) the candidate receiving the highest number of votes is elected.~~

b. If a special election occurs in the same year as a regular municipal election, the council may at its option schedule the special election to occur in conjunction with the regular municipal election rather than at the earliest possible date under state law. ~~If adequate time exists to conduct a primary in compliance with state law for the special election, the provisions of subdivision 5.a. above will not apply, and the special election will be conducted in the same manner as regular municipal elections.~~

Section 3. Section 4.02 of the Minnetonka city charter is amended to read as follows:

Section 4.02. Primary ElectionsMethod of election.

~~If one or two candidates file for a particular office, they are declared the nominees, and no primary will be held. If three or more candidates file for a particular office, a primary election must be held to determine the nominees for that office. The primary for that office must be held according to the schedule for a primary before a state general election, except that it will be in the year of the city general election. In a primary, the two candidates receiving the most votes for each office are the sole nominees for that office at the regular city election. The voters shall elect the mayor and council members by the method of Single Transferable Vote, also known as Ranked Choice Voting or Instant Runoff voting. The city council must provide by ordinance the ballot format and the rules for counting the votes and breaking a tie.~~

Section 4. The city clerk is directed to submit this ordinance to the charter commission for its review, as provided by law.

The stricken language is deleted; the underlined language is inserted.

Section 5. The council hereby reserves its discretion to determine, after receiving the charter commission's recommendation, whether to submit this charter amendment to the voters at a general or special election or whether instead to rescind this ordinance.

Section 6. This ordinance and the charter amendments herein shall not take effect until 30 days after approved by 51 percent of the votes cast at a general or special election as determined by the city council.

Adopted by the city council of the City of Minnetonka, Minnesota, on June 8, 2020.

Brad Wiersum, Mayor

ATTEST:

Becky Koosman, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: May 18, 2020
Date of adoption: June 8, 2020
Motion for adoption: Kirk
Seconded by: Carter
Voted in favor of: Carter-Calvert-Schaepfi-Coakley-Kirk-Schack-Wiersum
Voted against: None
Abstained: None
Absent: None
Ordinance adopted.

Date of publication:

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on June 8, 2020.

Becky Koosman, City Clerk

Date: _____

**Minnetonka Charter Commission
Resolution No. 2020-01**

Resolution rejecting Ordinance No. 2020-12

Be it resolved by the Charter Commission of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

- 1.01. On June 8, 2020, the Minnetonka city council adopted Ordinance No. 2020-12, “An Ordinance amending sections 2.06 and 4.02 of the Minnetonka City Charter, regarding elections; requiring use of ranked choice voting; eliminating use of primary elections,” and submitted the ordinance to the charter commission for review, pursuant to Minn. Stat. § 410.12, subd. 5.
- 1.02. Under Minn. Stat. § 410.12, subd. 5, the commission has 60 days, or until Aug. 7, 2020, to review the proposed charter amendment and accept, reject, or propose an amendment to the city council.
- 1.03. The commission has made extraordinary efforts to conduct its review during the COVID-19 pandemic and within the 60-day review period, by meeting twice during the month of June and four times during the month of July. As part of its review, the commission heard from: advocates and opponents of ranked choice voting; public elections officials from the State of Minnesota, Hennepin County, Minneapolis, St. Louis Park and Minneapolis; and numerous residents. The commission conducted a review of scholarly articles, surveys and hundreds of pages of information regarding ranked choice voting.
- 1.04. Minnetonka has a long history of making major decisions after thoughtful evaluation of the pros and cons of the action and after a robust community engagement process. Accordingly, consideration of changes to the city charter should be thorough and thoughtful, not rushed.

Section 2. Commission Findings.

2.01. As a result of its detailed study, the commission makes the following findings:

- a. The city, state and nation are under a state of emergency due to an international health pandemic. The health pandemic has prevented the commission from meeting in person and has prevented members of the public from attending commission meetings in person. The pandemic has prevented the commission from engaging in meaningful opportunities to engage residents in face-to-face conversations, either formally through public meetings or informally through encounters with residents in local gathering places or city events. To offer a charter amendment to the public without full public discussion and without a single in-person public meeting is not acceptable and has never occurred in Minnetonka.
- b. Ranked choice voting is relatively new to Minnesota. It is currently in use in only three cities – two of which (Minneapolis and St. Paul) are many times the size of Minnetonka and they often have contentious political election contests. St. Louis Park is comparable in size to Minnetonka, but it has only held one election using ranked choice voting; there is an inadequate track record to

show that ranked choice voting would benefit a city of Minnetonka's size. Some cities, including Duluth, have rejected ranked choice voting.

- c. Even with the removal of primary elections, implementation of ranked choice voting will increase, not reduce, city election costs. According to conservative estimates by city staff, implementation of ranked choice voting is likely to increase annual election costs by \$67,853 to \$106,063, not including additional costs for voter outreach.
- d. There is no election equipment certified for use in Minnesota that will automatically tabulate the results of a ranked choice election beyond the initial round of voting. Unless a candidate wins a majority of votes cast in the initial round, votes must be tabulated manually by elections staff. Manual tabulation requires additional staff time, and therefore increases elections costs. Manual tabulation is time consuming and likely to result in delays in determining the winning candidate. Most importantly, manual tabulation of votes is not easily explained to voters. It is not a transparent process of counting votes.
- e. There is no credible evidence to support the claim that ranked choice voting consistently increases voter turnout. Voter turnout is more influenced by competitive races, voter communication and education, and particular issues of interest to voters, rather than the voting system in use.
- f. There is some evidence that ranked choice voting may result in a greater number of candidates for open seats. However, it is not certain if ranked choice voting is a major reason for this increase.
- g. Ranked choice voting encourages single issue candidates to run. The use of ranked choice voting has become politicized and may result in candidates who are more likely to be aligned with political parties, which runs counter to Minnetonka's long tradition of non-partisan elections.
- h. Ranked choice voting can result in exhausted ballots that are excluded from the final ballot count that results in the winning candidate. Any voter who elects to vote for only their preferred candidate risks having their ballot eliminated by ballot exhaustion. Similarly, even if a voter ranks three different candidates, the voter's ballot may be exhausted if there are more than three candidates running. This situation is not comparable to a voter whose candidate loses in a primary election. In ranked choice voting, the voter must predict what candidates may be eliminated and determine how the remaining candidates might compare; the voter is deprived of the opportunity to decide between directly competing candidates after the initial round of ranked choice voting.
- i. If the city is going to make a fundamental change to its election system, the issue should be put to the voters, but only after an adequate opportunity to inform the voters of the issues and potential impacts of the change. This is not that time. As a result of the pandemic, the city communications efforts are heavily reliant on social media, but social media engages only a portion of the city's residents. The *Minnetonka Memo* is the single source upon which most residents rely for information about the city, but there has not been a single

article in the *Memo* to lay out the pros and cons of the proposed use of ranked choice voting.

Section 3. Commission Action.

- 3.01. The commission hereby rejects the charter amendment proposed by the Minnetonka City Council in Ordinance No. 2020-12.
- 3.02. The commission respectfully requests that the city council formally rescind Ordinance No. 2020-12.
- 3.03. The commission is willing to work with the city council in developing a schedule under which the issue of ranked choice voting could be submitted to the voters in the future, after voters have had multiple opportunities to participate in in-person meetings, to learn about ranked choice voting, and to cast their ballots without the chilling effect of a health pandemic.
- 3.04. The city attorney is directed to file a copy of this resolution with the city clerk immediately.

Adopted by the Charter Commission of the City of Minnetonka, Minnesota, on July, 28, 2020.

DocuSigned by:

John E Northrup

John Northrup, Chair

Attest:

DocuSigned by:

Luanne Tolliver

Luanne Tolliver, Secretary

Action on this resolution:

Motion for adoption: Anderson
 Seconded by: Larson
 Voted in favor of: Allendorf-Anderson-Cheleen-Larson-Schneider-Tolliver-Wiersum-Northrup
 Voted against: Sodergren
 Abstained: None
 Absent: None
 Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Minnetonka Charter Commission at a meeting held on _____, 2020, the original of which was filed with the city clerk on _____ 2020.

Becky Koosman, City Clerk

ORDINANCE NO. 2020-__

AN ORDINANCE REPEALING ORDINANCE NO. 2020-12

The City of Minnetonka Ordains:

Section 1. The city council hereby repeals Ordinance No. 2020-12, "An ordinance amending sections 2.06 and 4.02 of the Minnetonka City Charter, regarding elections; requiring use of ranked choice voting; eliminating use of primary elections."

Section 2. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on _____, 2020.

Brad Wiersum, Mayor

ATTEST:

Becky Koosman, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction:

Date of adoption:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

The ~~stricken~~ language is deleted; the underlined language is inserted.

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on _____, 2020.

Becky Koosman, City Clerk

Date: _____

ALTERNATE FORMS OF BALLOT QUESTIONS

Alternate A: form used by City of Duluth

Shall the Minnetonka City Charter be amended to adopt Ranked Choice Voting, also known as Single Transferable Vote, as the method for electing the mayor and city councilmembers without a separate primary election and with ballot format and rules for counting votes to be adopted by ordinance?

YES
NO

Alternate B: form used by City of Minneapolis

:

Should the City of Minnetonka adopt Single Transferable Vote, sometimes known as Ranked choice voting or Instant Runoff Voting, as the method for electing the Mayor and City Councilmembers without a separate primary election and with ballot format and rules for counting votes adopted by ordinance?

YES
NO

Alternate C: form used by City of Bloomington:

Should the Minnetonka City Charter be amended to elect the Mayor and City council members by the Ranked Choice Voting method?

YES
NO

Alternate D: form used by City of St. Paul

Shall Chapters 2 and 4 of the City Charter be amended to require that the method for electing the Mayor and the City Councilmembers be by Single Transferable Voting, sometimes known as Ranked Choice Voting or Instant Runoff Voting (IRV), which is a method without a separate primary election by which voters rank candidates for an office in order of preference on a single ballot: first, second, third, and so on; and votes are then counted in rounds until one candidate emerges with a majority of votes cast; and with ballot format and rules for counting votes adopted by ordinance?

YES
NO

Resolution No. 2020-

Resolution calling special election and establishing the ballot question for proposed charter amendment regarding ranked choice voting

Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

- 1.01. On June 8, 2020, the Minnetonka City Council adopted Ordinance No. 2020-12, "An Ordinance amending sections 2.06 and 4.02 of the Minnetonka City Charter, regarding elections; requiring use of ranked choice voting; eliminating use of primary elections."
- 1.02. The Minnetonka Charter Commission held meetings on June 9 and 23 and on July 7, 14, 21 and 28 to review the proposed charter amendment.
- 1.03. On July 28, 2020, by a vote of 8-1, the charter commission adopted Charter Commission Resolution No. 2020-01, "Resolution rejecting Ordinance No. 2020-12."

Section 2. Council Action.

- 2.01. The city council acknowledges receipt of Minnetonka Charter Commission Resolution No. 2020-01.
- 2.02. The city council calls a special election, to be held November 3, 2020, for the purpose of submitting to the qualified voters of the City of Minnetonka, for adoption or rejection, the charter amendment as proposed by Ordinance No. 2020-12.
- 2.03. The city clerk is directed to take the necessary steps for publication of the proposed amendment and preparation of the ballot as may be required by law.
- 2.04. The title and language of the question to be submitted to the voters shall be presented as City Question 1, as follows:

**PROPOSED CHARTER AMENDMENT:
ELECTING MAYOR AND CITY COUNCIL BY RANKED CHOICE VOTING**

Shall the Minnetonka City Charter be amended to adopt Ranked Choice Voting as the method for electing the Mayor and City Council members, without a separate primary election and with ballot format and rules for counting votes to be adopted by ordinance?

YES _____

NO _____

Adopted by the City Council of the City of Minnetonka, Minnesota, on .

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on .

Becky Koosman, City Clerk

Item 14A

Public Comments

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Please Move Forward on Ranked Choice Voting
Date: Wednesday, August 5, 2020 2:58:59 PM

From: [REDACTED] on behalf of
alison decker [REDACTED]
Sent: Thursday, July 23, 2020 2:18 PM
To: Brian Kirk
Subject: Please Move Forward on Ranked Choice Voting

Dear Council Member Brian Kirk,

Please support ranked choice voting!
Thank you for listening

Sincerely,
alison decker
16811 Scenic Ln S Minnetonka, MN 55345-5232
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 10:15:38 PM

From: [REDACTED] on behalf
of Annika Graif [REDACTED]
Sent: Friday, July 24, 2020 6:59 PM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Annika Graif
3910 Skyview Rd Minnetonka, MN 55345-2062
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Obstructing Ranked Choice Voting
Date: Wednesday, August 5, 2020 3:01:35 PM

From: [REDACTED] on behalf of
Ben Wilinski [REDACTED]
Sent: Thursday, July 23, 2020 4:36 PM
To: Brian Kirk
Subject: Obstructing Ranked Choice Voting

Dear Council Member Brian Kirk,

Members of the council:

I'm very concerned that after the long process of the charter commission on ranked choice voting, the good faith efforts of this community are being side-stepped by unknown unelected persons to delay the referendum on ranked choice voting in Minnetonka this November.

Please don't let this happen on your watch. The people of this community want this, and those of us actively work toward RCV have played by the rules.

Your constituents need you to take a stand.

Thank you for your leadership.

Sincerely,
Ben Wilinski
5727 High Park Dr Minnetonka, MN 55345-5224
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Ranked Choice voting support
Date: Wednesday, August 5, 2020 11:47:31 PM

From: Brad Joseph [REDACTED]
Sent: Monday, August 3, 2020 6:58 PM
To: Kyle Salage <ksalage@minnetonkamn.gov>
Subject: Ranked Choice voting support

Thank you for considering ranked choice voting. I am a resident of Minnetonka and am strongly in support of ranked choice voting. It works and has been studied numerous times.

Benefits:

Promotes majority support which improves government representation and action
Discourages negative campaigning in brings back class and decorum
Provides more choice, lack of choice is a main reason people do not vote
Promotes more reflective representation with more people running

I would like to see this on our ballot. We, Minnetonka, can be leaders in better voting.

Thank you,
Brad Joseph
17804 Susan Lane
Minnetonka, MN 55345

Brad
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Ranked Choice Voting
Date: Wednesday, August 5, 2020 10:45:19 PM

From: BRUCE DE JONG [REDACTED]
Sent: Sunday, July 26, 2020 11:01 PM
To: Karen Anderson; Dick Allendorf; John Cheleen; David Larson; John Northrup; Terry Schneider; Linnea Sodergren; LuAnn Tolliver; Brad Wiersum
Cc: Deborah Calvert; Brian Kirk; Susan Carter; Rebecca Schack; Bradley Schaeppi; Kissy Coakley
Subject: Ranked Choice Voting

Dear Minnetonka Charter Commission,

I am a long-time resident of Minnetonka and have skeptically followed the debate regarding a change in our voting method. This change seems like a solution in search of a problem, and I would urge you to report to the City Council recommending that we do not implement ranked choice voting.

The proponents of changing the vote seem to have three different focuses. The first is low turnout. If we find that low turnout is the problem to be solved, then as Mayor Wiersum stated at the May 26 meeting, we should move to even year elections. That would certainly bring in more voters.

The second is that primary elections are too expensive. We don't have primary elections every time there is a city election. Quite frankly, the cost of a primary election once every four years is rounding error in a city general fund budget of over \$39 million. Even if the cost is \$60,000 extra, that pales in comparison of total expenditures approaching \$160 million over the same time period. If the problem to be solved is expense, we really should want to go to even year elections and eliminate city election costs altogether.

The third focus is on keeping elections positive and not having candidates attack a primary opponent. I may have missed some slight animosity, but I have not seen this as a regular problem in our elections.

While ranked choice voting is legal for home-rule charter cities it is not yet available to statutory cities. To that end, the voting machines and processes don't seem to be certified by the state. This means a city special election can't take place on the same ballot as a state primary or general election. With ballot security as a concern, I think we should wait until the technology is more mature prior to recommending something as drastic as the proposed charter change.

Lastly, while it may not happen frequently, the possibility exists in ranked choice voting for a candidate who finishes third or lower in the first round to be elected. This is a poor outcome in my opinion. Our current system allows for a wide open primary and a two candidate race in the general election. This assures us that the strongest

candidates are able to be vetted and one receive majority support in the general election.

I believe our current system works well as shown by the confidence and support of our residents in their city's governance and management.

Sincerely,

Bruce DeJong
18420 Old Excelsior Blvd
Minnetonka, MN 55345



cc: City Council

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Rank Choice Voting Ralities
Date: Wednesday, August 5, 2020 3:24:20 PM

From: Bruce Honnigford [REDACTED]
Sent: Friday, July 24, 2020 11:04 AM
To: Brian Kirk; Bradley Schaeppi; Kissy Coakley; Brad Wiersum; Deborah Calvert; Susan Carter; Rebecca Schack
Subject: Rank Choice Voting Ralities

Rank Choice Voting, also known as Instant-Runoff Voting, and is one of many alternative voting schemes being shopped around municipalities with the aim of achieving substantial social change in the interest of special interest groups funded in part by various philanthropists. These wealthy and influential donors are acting to radically transform the landscape of our society based on their own idealistic global vision which has little regard for the U.S. Constitution and as such, buys a lot of influence with which to manipulate the democratic process.

Supporters of RCV would have you believe that there are no downsides to their process, but in reality, it is highly controversial.

One should pay close attention to and be highly skeptical of anyone who wants to tinker with long standing established electoral institutions particularly during times of crisis.

So-called reformers want to change process rules so they can manipulate elections to obtain power and not what may be best for the American People and preserving our great republic.

Sincerely,

Bruce Honnigford
Minnetonka Mills

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka decide, City Council. IThank you.
Date: Wednesday, August 5, 2020 10:35:32 PM

From: [REDACTED] on
behalf of Chris Barry [REDACTED]
Sent: Sunday, July 26, 2020 12:15 PM
To: Brian Kirk
Subject: Let Minnetonka decide, City Council. IThank you.

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Chris Barry
15404 Highland Lawns Ct Minnetonka, MN 55345-5502
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Move forward with Ranked Choice Voting
Date: Wednesday, August 5, 2020 11:38:30 PM

From: Christopher Carlson [REDACTED]
Sent: Saturday, August 1, 2020 2:55 PM
To: Brian Kirk
Subject: Move forward with Ranked Choice Voting

It was great to hear that the Charter Commission finished their study and moved the process forward. I support Ranked Choice Voting. I hope you will vote to put it on the November ballot and give the largest number of residents a chance to help make this decision.

The Minnetonka annual survey shows residents are supportive of RCV, 3-to-1, and the community is ready for the ballot measure!

Thank you for your leadership on this issue.

Thank you!,
Christopher Carlson
16025 Boulder Creek Dr
Minnetonka, MN 55345

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Please Move Forward on Ranked Choice Voting
Date: Wednesday, August 5, 2020 2:54:58 PM

From: [REDACTED] on behalf of
Christopher Carlson [REDACTED]
Sent: Thursday, July 23, 2020 12:12 PM
To: Brian Kirk
Subject: Please Move Forward on Ranked Choice Voting

Dear Council Member Brian Kirk,

I think it is time to move forward on the Ranked Choice Voting, surveys show a vast majority (3 to 1) of Minnetonka citizens are in favor of this cost saving measure. This also enables more participation in the voting process. I think the commission is unnecessarily delaying the process to add RCV to the ballot.

We need RCV on this Novembers ballot!

Thank You

Christopher Carlson
16025 Boulder Creek Drive
Minnetonka, Mn 55345

Sincerely,
Christopher Carlson
16025 Boulder Creek Dr Minnetonka, MN 55345-6413
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Ranked Choice Voting... a boost for democracy..
Date: Wednesday, August 5, 2020 3:21:47 PM

From: clarence [REDACTED]
Sent: Friday, July 24, 2020 10:43 AM
To: Brad Wiersum
Cc: Corrine Heine; Deborah Calvert; Susan Carter; Brian Kirk; Rebecca Schack; Bradley Schaeppi; Kissy Coakley; Kissy Coakley
Subject: Ranked Choice Voting... a boost for democracy..

Mayor Brad Wiersum;

I want to remind you of a of the phone conversation we had two days ago. Thanks for returning my call and being so attentive.

We talked out the survey that was conducted that you had complete faith in, give or take 5%. We know that a 3 to 1, for and against, is a powerful statement from my fellow citizens. Of course their Public Servants will comply.

We talked about the many pluses and you mentioned it probably won't get approved in time for being on the ballot this fall. My heart sank and a red flag went up. You can imagine what went through my mind. Sadness for democracy loving people and what can I do about it and what will I do about it.

Part of democracy is making people in positions, like yours, be accountable. I will do that. Don't make me run for mayor. I don't want your job. You are better at it than I am but ethics are ethics.

Anyhow, our phone conversation went on and I asked you what you find to be downside of RCV. You mentioned exhausted ballots. So I did some research. As I assess the 'up' with the 'down', I'm finding your argument holds little water.

So when thinking how bad exhausted votes are, please consider this; without RCV, my vote is exhausted unless I've voted for the winner. I get exhausted the first round or I don't. We move on. But we shouldn't have to move on quite so quickly. This is important to get the right guy in there the first time. Let's hash it out. I can't see business looking at only 2 candidates for an executive position. Let's get down to business. The alternative is so dysfunctional. Don't you have enough dysfunction in life already. Unpack some of that.

Mayor Wiersum, this is a letter I'm passing around and this is what I heard you say. I hope I got it right. Correct me where I'm wrong and I'll put that amount of toothpaste back in the tube.

I look forward to campaigning for you and all the commissioners when the time comes. Please hold me to it.

Clarence Richard
Minnetonka Citizen 30 years for resident and business.

Ranked choice voting has so many upsides and the Minnetonka voters surveyed want it 3 to 1. The mayor wants to put everything on hold for a year because he sees a problem with Exhausted Votes .

Regarding Exhausted Votes, some voters choose to rank just some of candidates and if the voter's choices have been exhausted before all the ranking process is concluded, that vote will not have an effect on the outcome. That was a voter's choice not to rank all the choices and 10% of us will do that. Nothing to be alarmed about. The election has not been compromised. If you don't want your ballot exhausted, fill in all the ranks. People are free to not vote and free to rank just some of the candidates.

Bay Area Cities (<https://www.fairvote.org>) experienced with Rank Choice Voting puts it this way. "One concern for RCV advocates and critics alike is ballot exhaustion. Because "exhausted votes" is a new concept, some wonder if exhausted ballots affect who wins and loses in close races. If, for example, ten percent of ballots are exhausted, and the election margin was less than five percent, the winner may have a majority of all the non-exhausted votes, but not a majority of total votes counted in the first round. This leaves open the possibility that some other candidate was the true majority choice – and that, if voters who had their ballots exhaust were permitted to choose again, say in a runoff election among the two leading candidates, a different winner might emerge with a clear majority of votes cast in the runoff.

Although this is theoretically possible, it is unlikely. But it also is grounded in assumptions about runoffs that overlook of how much more likely it is to have "exhausted voters" in a traditional runoff than "exhausted votes" in an instant runoff. Runoffs usually mean that fewer voters have a meaningful say in the decisive election".

Minnetonka has until August 10 to convince the Mayor Brad Wiersum bwiersum@minnetonkamn.gov and then it's out of the hands of the people.

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 10:23:00 PM

From: [REDACTED] on behalf of
Colette Rasch [REDACTED]
Sent: Saturday, July 25, 2020 9:36 AM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Colette Rasch
16642 Bywood Ln Minnetonka, MN 55345-2605
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 3:03:00 PM

From: [REDACTED] on behalf of
Cornell and Patricia Anderson [REDACTED]
Sent: Friday, July 24, 2020 7:25 AM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Cornell and Patricia Anderson
5731 High Park Dr Minnetonka, MN 55345-5224
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Next Steps on Ranked Choice Voting - Petition and Special Election
Date: Wednesday, August 5, 2020 11:15:33 PM

From: David Haeg [REDACTED]
Sent: Monday, July 27, 2020 5:20 PM
To: Brad Wiersum; Rebecca Schack; Kissy Coakley; Brian Kirk; Bradley Schaeppi; Geralyn Barone; Dick Allendorf; Karen Anderson; John Cheleen; David Larson; John Northrup; Terry Schneider; Linnea Sodergren; LuAnn Tolliver; Susan Carter; Deborah Calvert
Cc: Barb Westmoreland
Subject: Next Steps on Ranked Choice Voting - Petition and Special Election

Mayor, Council, Charter Commissioners and Staff,

The movement to bring Ranked Choice Voting to Minnetonka city council elections started 2 years ago, and grows stronger by the day. You've likely heard, and will continue to hear, from supporters of this issue. These people are the pillars of our community - they're election judges, community volunteers, parents who have raised families here and young people who will be the next generation of leaders. They care deeply about our community and are determined to find ways to make it better, and with all the various issues out there, they've decided that local election reform is the most important. And these people are just the tip of the iceberg. As your own research shows, residents overwhelmingly support using RCV - most of whom have never felt compelled to write to you in support. This silent majority just assumed that the Charter Commission and City Council would do the right thing, because that's what they've come to expect. And giving the most voters the chance to decide whether or not to use RCV, in November 2020, is the least that you could do.

The Charter Commission has met weekly for two months, meticulously laying out a set of questions they wanted to explore at the onset of its study process and successfully completed that review. With the skillful assistance of Attorney Heine and other staff, the Commission has:

-
- Met with elections administrators in Minneapolis and St. Louis Park, and former Minnetonka Elections Clerk David Maeda
-
-
- Invited opponents to share their perspective for an entire meeting
-
-
- Received projected 5-year cost estimates from city staff
-
-
- Held a public hearing with more than 30 community members testifying for and against

- RCV
-
- Discussed at length at their last meeting the variety of input they have received
-

In addition to all of this was the study session, review and public hearing on RCV held by the City Council prior to asking the Charter Commission to review the RCV proposal. Given the exhaustive review, we expected the Commission to put forward their recommendation at the last meeting. Instead, they said they wanted more time! With hundreds of pages of information already in hand, it is impossible to conceive what might be missing that they can obtain by extending the review period. We were in disbelief. Watching the process, it was clear to us that the Commission members didn't favor RCV. Given the preponderance of information and testimony in favor of RCV, we hoped they would have made a favorable recommendation, but it is their prerogative to recommend as they wish. They should do just that and conclude their process -- and not waste any more staff time redoing the study. There is nothing new they will uncover to help them decide one way or the other and it should now be in the hands of the City Council to decide to put RCV on the ballot. An extension will preclude that option this year.

One key point that many seem to misunderstand: there are two separate tasks that the Charter Commission is completing, with different expectations and deadlines.

1) First, the Commission was asked by the city council in 2019 to study RCV and provide feedback - i.e. "pros and cons, do you think this is a good idea or not". This process is admittedly much more expansive and subjective, and there is no deadline.

2) Second, the Charter Commission is required to have an opportunity to review the draft ordinance approved by the city Council in June. This process is far more specific and has a deadline and urgency. It requires the Charter Commission to review a few paragraphs of text that affect the document they manage - the city charter. And they must complete this process by August 10th in order for the city council to have the opportunity to add it to the November 2020 ballot.

It would be simple for the Charter Commission to comment on the draft ordinance, which would allow the council to continue their work. This would still allow the Commission to continue their study of RCV right up to election day if they like, and this information would be available to the voters. There simply is no reason to delay the simple task of the draft ordinance review in order to continue to study the subjective pros/cons of RCV. They are two separate tasks. You can confirm this with Attorney Heine.

From the outset, our group has prided itself on being inclusive, positive and fully transparent about our plans. So should the Charter Commission decide to extend the review process, we have other paths available to pursue our goal. As afforded in state law, we will immediately begin a petition drive and put RCV on the ballot in a special election next year.

We should also say that this is not our preferred process. A November 2020 ballot question would make the most sense, because of the high turnout already outlined by the Council. But our supporters have been very vocal about their frustration with the Charter

Commission's likely decision on Tuesday, and (based on the recent survey) they know the community supports RCV. They feel like they're on the right side of a winning issue, and thanks to the long and ongoing effort we've made to build a network of RCV advocates, we have enough support to gather the signatures and win.

We hope the Commission does the right thing and finishes their review of the draft ordinance within the 60 day period, but if it does not, we are fired up and ready to move democracy forward in Minnetonka. Let the voters decide.

David Haeg and Barb Westmoreland

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 11:31:48 PM

From: David Haeg [REDACTED]
Sent: Thursday, July 30, 2020 10:37 AM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Thanks for all of your work in advancing this issue so far.

Regards,
David Haeg
17045 Chiltern Hills Rd
Minnetonka, MN 55345

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Response to Charter Commission Resolution
Date: Wednesday, August 5, 2020 3:36:31 PM

From: David Haeg [REDACTED]
Sent: Wednesday, August 5, 2020 3:00 PM
To: Brad Wiersum; Kissy Coakley; Bradley Schaeppi; Rebecca Schack; Brian Kirk; Deborah Calvert; Susan Carter; GERALYN BARONE
Cc: Barb Westmoreland [REDACTED]
Subject: Response to Charter Commission Resolution

Dear Mayor, Council Members and Staff,

We were pleased to see that the Charter Commission completed their study of Ranked Choice Voting last week, giving you the opportunity to decide if RCV should be added to the November 2020 ballot. It was clear early on that many if not most of the Charter Commission members didn't favor RCV as a change to our city elections, but we were hopeful that the final report to the council would have provided a balanced presentation of the arguments. After all the meetings, expert testimony and community input we are disappointed to see a final report with inaccurate statements, so we would like to provide some clarity. Commission statements in italics.

Thank you for your attention to this issue and your service to our community.
-David Haeg and Barb Westmoreland

Charter Commission Statement:

The city, state and nation are under a state of emergency due to an international health pandemic. The health pandemic has prevented the commission from meeting in person and has prevented members of the public from attending commission meetings in person. The pandemic has prevented the commission from engaging in meaningful opportunities to engage residents in face-to-face conversations, either formally through public meetings or informally through encounters with residents in local gathering places or city events. To offer a charter amendment to the public without full public discussion and without a single in-person public meeting is not acceptable and has never occurred in Minnetonka.

Response:

Important decisions by the City Council are being made all the time under COVID and this one is no different, with as much engagement and transparency as possible. In fact, the use of virtual access and community input via phone has made the meetings more accessible.

Further, the Charter Commission has been reviewing the RCV proposal for months and weekly for the past two months, including providing information to the community, holding a public hearing, and surveying the community on the issue. What more could it gain by having additional public input? That is precisely what the ballot measure will do - take the issue to the voters, and in the highest turnout likely in the city's history.

Putting RCV on the ballot this year with 85% or more of voters is far better than an election in 2021 if the ballot measure were postponed, as suggested by some Commission members. The huge majority of residents will never attend community meetings to learn about an issue - they can do their own research on RCV, like they do for every other candidate or issue on a ballot.

Commission Statement:

Ranked choice voting is relatively new to Minnesota. It is currently in use in only three cities – two of which (Minneapolis and St. Paul) are many times the size of Minnetonka and they often have contentious political election contests. St. Louis Park is comparable in size to Minnetonka, but it has only held one election using ranked choice voting; there is an inadequate track record to show that choice voting would benefit a city of Minnetonka's size. Some cities, including Duluth, have rejected ranked choice voting.

Response:

There is enough data showing all kinds of voters - in cities of all sizes - find RCV simple to use and prefer it over the old system. Minnetonka residents can make this decision for themselves.

Commission Statement:

Even with the removal of primary elections, implementation of ranked choice voting will increase, not reduce, city election costs. According to conservative estimates by city staff, implementation of ranked choice voting is likely to increase annual election costs by \$67,853 to \$106,063, not including additional costs for voter outreach.

Response:

According to Minnetonka staff estimates shared on June 9th, **the budget for election administration costs will go down (from \$101k to \$71k = \$30k savings)** because there would never be a primary election. Bloomington cost estimates show a similar decrease in cost. These are permanent predictable savings for future budget years. Every municipal election year budget includes funding for a primary and general election, and the fact that we don't have a primary election some years is not a benefit, it's a symptom of low community engagement.

The additional costs estimated by staff comes from more voter outreach, almost entirely in the form of a new election specialist staff person, and one-time startup costs. Even without RCV, the city may indeed benefit from having a staff person focused on voter outreach, and several Charter Commission members expressed a similar view as a means to increase voter engagement. But this resource is optional for implementing RCV, as indicated in the staff report. Moreover, RCV-specific outreach would become unnecessary after voters have experience using it, so very little of the ongoing role of this staff person would be focused on RCV.

Commission Statement:

There is no election equipment certified for use in Minnesota that will automatically tabulate the results of a ranked choice election beyond the initial round of voting. Unless a candidate wins a majority of votes cast in the initial round, votes must be tabulated manually by elections staff. Manual tabulation requires additional staff time, and therefore increases elections costs. Manual tabulation is time consuming and likely to result in delays in determining the winning candidate. Most importantly, manual tabulation of votes is not

easily explained to voters. It is not a transparent process of counting votes.

Response:

According to Minnetonka staff, ballots in an RCV election will be scanned and counted by the voting machines at the precinct just as they are now. The current process for tabulating results for elections that are not decided in the first round is completed the next day with each race taking one to two hours to count, according to the process used in Minneapolis and St. Louis Park. The machines provide an exported spreadsheet of the cast ballots and the tabulation is conducted using the spreadsheets. It is fully transparent, accurate and auditable. There has not been a single challenge of inaccuracy since the first use of RCV in Minneapolis in 2009.

City Clerk Casey Carl testified to the commission that Minneapolis will be certifying and using software next year to further speed up the counting process. Minnetonka could explore this option as well.

Commission Statement:

There is no credible evidence to support the claim that ranked choice voting consistently increases voter turnout. Voter turnout is more influenced by competitive races, voter communication and education, and particular issues of interest to voters, rather than the voting system in use.

Response:

A voting system by itself doesn't change turnout. But **RCV influences the key variables (competition, communication, etc), thereby influencing turnout in a positive way.** RCV makes elections more competitive with more candidates running and campaigning all the way through November. There is more awareness of elections among residents and engagement of voters by candidates. Speaking with candidates and believing your vote matters are the biggest drivers of turnout. That's what RCV fosters - not in every race every time, but in many races, much of the time. Additionally, by holding just a single election in November when turnout is highest, "effective voter turnout" is higher because there isn't a primary in which a small sliver of voters determines who moves on to the November ballot. All November voters are part of the entire election process.

Commission Statement:

There is some evidence that ranked choice voting may result in a greater number of candidates for open seats. However, it is not certain if ranked choice voting is a major reason for this increase.

Response:

Most people would agree that making something easier to do makes people more likely to do it. There is wide agreement that primary elections make it more difficult for new candidates to run, and **without primary elections and spoiler dynamics, more candidates are running where RCV is used.**

Commission Statement:

Ranked choice voting encourages single issue candidates to run. The use of ranked choice voting has become politicized and may result in candidates who are more likely to be aligned with political parties, which runs counter to Minnetonka's long tradition of non-partisan elections.

Response:

There is no evidence of this, but it is true that RCV allows more voices to be heard throughout the election process. Keep in mind that **it would be harder for narrowly-focused candidates to win under RCV since candidates need to build a large coalition of supporters to win**, i.e. the opposite of a single issue candidate approach.

Commission Statement:

Ranked choice voting can result in exhausted ballots that are excluded from the final ballot count that results in the winning candidate. Any voter who elects to vote for only their preferred candidate risks having their ballot eliminated by ballot exhaustion. Similarly, even if a voter ranks three different candidates, the voter's ballot may be exhausted if there are more than three candidates running. This situation is not comparable to a voter whose candidate loses in a primary election: in ranked choice voting, the voter must predict what candidates may be eliminated and determine how the remaining candidates might compare; the voter is unable to decide between directly competing candidates with the knowledge of which candidates have been eliminated.

Response

If this was an actual problem, the other cities using RCV would have noted it - and they haven't. First, let's compare the current system to RCV. The number of ballots exhausted under RCV is FAR less than the 95% of voters who don't show up for the first round of voting (the primary) under the current system. **It's not even close in comparison - RCV ensures significantly more voters elect our local officials than the current system.**

Second, exhausted ballots are most common when a voter ranks a single candidate. This, of course, is the prerogative of that voter. It doesn't mean these voters are confused or uninformed about their choices. It means that once their first choice is eliminated, they don't care who wins. Had the other candidates made more of an effort to reach out to these voters, perhaps these ballots wouldn't be exhausted.

In some very rare cases, a voter may rank all three available options and have all their choices eliminated before the final round. In these cases, it is not known if they would rank additional candidates, but it is best to provide the option to rank further. This is why it is useful to allow voters to rank up to 6 choices, as St. Paul allows. The limitation of 3 rankings is strictly a feature of the older generation of voting equipment in Hennepin County. With the anticipated change to tabulation software next year, a ballot design with more than 3 rankings should be available for Minnetonka to consider.

Commission Statement:

If the city is going to make a fundamental change to its election system, the issue should be put to the voters, but only after an adequate opportunity to inform the voters of the issues and potential impacts of the change. This is not that time. As a result of the pandemic, the city communications efforts are heavily reliant on social media, but social media engages only a portion of the city's residents. The Minnetonka Memo is the single source upon which most residents rely for information about the city, but there has not been a single article in the Memo to lay out the pros and cons of the proposed use of ranked choice voting.

Response:

Just as the City of Minnetonka doesn't lay out the pros and cons of candidates running for office, **it is not appropriate for the city to promote subjective interpretations of an issue on the ballot unless it takes an official position on the issue. Minnetonka has not done this, so its responsibility is only to ensure voters know that the question is on the ballot.** Like every other choice on the ballot, voters will make their decisions based on their own research and values.

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Ranked Choice Voting in Minnetonka
Date: Wednesday, August 5, 2020 11:33:48 PM

From: Diana Klein [REDACTED]
Sent: Thursday, July 30, 2020 11:32 AM
To: Brad Wiersum; Deborah Calvert; Susan Carter; Brian Kirk; Rebecca Schack; Bradley Schaeppi
Subject: Ranked Choice Voting in Minnetonka

Hello Mayor and City Council --

I am elated that the Charter Commission closed its deliberations on RCV and while I disagree with its decision, am glad all inputs were considered and a recommendation was provided to you, our elected officials.

I wanted to relay to you that I feel quite passionate about this topic. Adding RCV on the ballot in the Fall will give you the best picture possible if the City actually wants this, as we know it should be a very high turnout election by all political parties. If it passes, there will be time to do all the hard work to make sure that the community is trained and understands the methodology (I would be happy to volunteer for this type of effort). If it doesn't, well then we know and can all move on.

I hope you support adding the RCV question to the ballot this fall. This is the most democratic way to move forward. Thank you all for your service and consideration!

I love our city and am very proud of our community.

--

Thanks! *´¨)

(. . . . *´¨) . . . *´¨)
Diana (. . * * [REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Proposed Changes to Minnetonka Voting
Date: Wednesday, August 5, 2020 10:41:09 PM

From: Kari Lorence [REDACTED]
Sent: Sunday, July 26, 2020 6:30 PM
To: Brian Kirk
Subject: Proposed Changes to Minnetonka Voting

Dear Brian,

My husband and I have lived in Minnetonka for 40 some years. We love living here. Our two daughters and their families reside in Minnetonka. We have been honored and privileged to cast our ballots at Minnetonka polling places. Minnetonka has a reliable computer voting system. We have always trusted that our vote counted.

But now, our trusted voting procedures are being threatened. We have learned in recent weeks about an organization called FairVote. They are lobbying for something called Rank Choice Voting. Their desire is that the city constitution be amended and that residents would vote for this change [on November 3, 2020](#). That is a little over three months from now.

And what exactly is FairVote? Well, it has been revealed that the FairVote community organizer is a paid position. And he admits that some of the emails sent to Charter Commission members were generated by a programmed computer from a company that is based in the Washington DC area. More alarming, one supposed email sender declared to a Charter Commission member that their name was used but they never sent the email. But, why should an organization outside of our city be allowed to push a decision that affects the citizens of Minnetonka anyway? And who is funding FairVote? And if some of us question what FairVote is doing, are we then for an UnFairVote?! Their terminology puts us in a corner.

What is Ranked Choice Voting? Our neighbors and family members have never heard the term. Did we miss the public forums that were held to educate our citizens? Did we somehow miss the open discussions where the citizens of Minnetonka were given an opportunity to debate the pros and cons of RCV? Have there been cost analyses of implementing RCV? Have city staff been educated how to interpret the results of this way of voting? How do you know what something like this will cost when it is such a convoluted way of concluding who exactly won an election and never done before in Minnetonka?

Yes, you have asked the Charter Commission to study RCV. We are asking those members these same questions. But you passed this along to the CC. Our question is how did RCV ever get this far? We have taken it upon ourselves to dig into FairVote and who is funding it. It's alarming. We can send you the information. We can also share with you the findings of some organizations that have studied RCV in depth.

One of these organizations concluded three things:

1. RCV is a scheme to disconnect elections from issues and allow candidates with marginal support from voters to win.
2. RCV obscures true debates and issue-driven dialogs among candidates and eliminates genuine binary choices between two top-tiered candidates.
3. RCV disenfranchises voters, because ballots that do not include the two ultimate finalists are cast aside to manufacture a faux majority for the winner.

Does this sound like a sound democratic process? There is a growing group of us Minnetonka citizens who are concerned about FairVote and RCV. We are the true grassroots people in this discussion. We are urging the Charter Commission to table this proposal at this time. Wait for a time post Covid when citizens can get together and debate this issue. In no way should this reach the [November 3rd](#) ballot.

Sincerely,

Drake and Kari Lorence



Sent from my iPad

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 11:22:59 PM

From: [REDACTED] on behalf of
Eileen Levin [REDACTED]
Sent: Tuesday, July 28, 2020 1:01 PM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Eileen Levin
5379 Beachside Dr Minnetonka, MN 55343-4119
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Thank you
Date: Wednesday, August 5, 2020 11:30:39 PM

From: Elaine Rothman [REDACTED]
Sent: Thursday, July 30, 2020 10:12 AM
To: Brian Kirk
Subject: Thank you

A special thank you for going forward with having the issue of RCV on the November ballot.

The citizens of Minnetonka should decide the issue.

Deeply proud of the Mtka Council.

Elaine Rothman

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Ranked Choice Voting
Date: Wednesday, August 5, 2020 11:39:55 PM

From: Gerry Revier-Jensen [REDACTED]
Sent: Sunday, August 2, 2020 11:12 AM
To: Brian Kirk
Subject: Ranked Choice Voting

I am opposed to a change in our voting system. Voters (taxpayers) have not been sufficiently informed about this program to introduce it in the November election. From what I have read, the program does not offer any value versus the significant increase in election costs and, more importantly, the potential of an individual's vote not being counted.

Geraldine Revier
6147 Chasewood Pkwy
Minnetonka, MN 55343

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 3:05:21 PM

From: [REDACTED] on behalf of
Greg Johnson [REDACTED]
Sent: Friday, July 24, 2020 9:14 AM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Greg Johnson
18810 Kingswood Ter Minnetonka, MN 55345-5023
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Ranked Choice Voting
Date: Wednesday, August 5, 2020 10:24:34 PM

From: Janice Bradburn [REDACTED]

Sent: Saturday, July 25, 2020 10:29 AM

To: Brad Wiersum; Deborah Calvert; Susan Carter; Brian Kirk; Rebecca Schack; Bradley Schaeppi; Kissy Coakley; Corrine Heine; Dick Allendorf; Karen Anderson; John Cheleen; David Larson; John Northrup; Terry Schneider; Linnea Sodergren; LuAnn Tolliver

Subject: Ranked Choice Voting

Hey Council and Charter Member Peeps,

I strongly urge you to implement Ranked Choice Voting. It will facilitate more participation in our democracy. And, it will create a better outcome in our ever polarizing two party system.

Thank you for considering this important issue.

Janice Bradburn

5101 Kimberly Rd

Minnetonka, MN 55345

[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Charter commission
Date: Wednesday, August 5, 2020 10:53:20 PM

From: Jay Sachetti [REDACTED]
Sent: Monday, July 27, 2020 2:53 PM
To: Corrine Heine
Cc: Brad Wiersum; Brian Kirk; Deborah Calvert; Susan Carter; Rebecca Sachetti
Subject: Charter commission

Ms. Heine,

I would like to comment on the Charter Commission minutes and upcoming agenda:
<https://www.minnetonkamn.gov/Home/ShowDocument?id=7303>

The Council, as elected representatives of the voters in this community, passed an ordinance. That action has significance and, under their statutory obligations, the commission has not demonstrated sufficient justification to delay putting this issue in front of voters this fall. I do not see any meaningful recommendations for amendment changes at this point in the commission's efforts nor see a need for it. *Voters* need to decide if RCV is better or not and the more of them the better. While I appreciate the commission's hard work and diligent efforts, I would like the commission to move forward with accepting or rejecting the amendment.

Issues such as cost and communication methods absolutely require a transparent and thorough action plan from the city. The city council will need to ensure that happens. I think the suggestion of continued review from the commission, joint work studies and public sessions can add value in the education process between now and election day.

As a highly respected city, Minnetonka needs to take the lead on ensuring that our collective voices are heard and acted on -- not wait to follow others. I am well aware that some costs and change management efforts are associated with that. I hope this is just one step in our process towards growth in this direction from the local level to the state and national level.

Thank you,
Jay Sachetti
5926 Lone Lake Loop

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Rank Choice Voting
Date: Wednesday, August 5, 2020 11:01:58 PM

From: Jeanne Lutgen [REDACTED]
Sent: Monday, July 27, 2020 3:06 PM
To: Brad Wiersum; Susan Carter; Brian Kirk; Rebecca Schack; Bradley Schaeppi; Kissy Coakley
Cc: Barb Westmoreland; David Haeg
Subject: Rank Choice Voting

I would like to speak during the concerned citizens portion of your meeting tonight. However, if I don't get the chance this is what I have to say:

The Chamber Commission appears to have missed the point we have been trying to make. So I will try again.

The reasonable majority sees a problem in our present voting system in Minnetonka. Let's work on a strategy to address that problem. We appear to disagree on strategy not on values.

Rank Choice Voting is a strategy. Instead of an open discussion on its good points, and its weak points the Chamber seems focused on its weaknesses as they discussed RCV. They were given hundreds of pages of material about RCV, have heard from dozens of citizens in person, and many more in the poll. Could they not find one positive thing to say about it?

You speak of wanting more involved citizens, however, if the citizens feel they are not being listened to, then they are more likely to stop being interested.

Denying us the right to choose RCV does not seem to be your right.

Jeanne Lutgen
6089 Rowland Rd. 109
Minnetonka, MN 55343

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Rank Choice Voting
Date: Wednesday, August 5, 2020 11:36:24 PM

From: Jeanne Lutgen [REDACTED]
Sent: Friday, July 31, 2020 3:13 PM
To: Brad Wiersum; Brian Kirk; Deborah Calvert; Rebecca Schack; Bradley Schaeppi; Susan Carter;
kcoakley@minnetonka.com
Subject: Rank Choice Voting

I would like to see RCV on the November ballot.

In my research there seems to be more positive outcomes than the Primary as we do it now. I think it will encourage more thought and re-energize an interest in local elections.

Yes there will be educational issues, but as an election judge I can assure you there are always questions. It is easy to normalize ranking. We do it all day as we make plans and make choices.

Everyone still gets one vote even when they only make one choice.

I ask you to put it on the ballot.

Jeanne Lutgen
6085 Rowland Rd
Minnetonka
Sent from my iPhone

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 3:45:02 PM

From: [REDACTED] on
behalf of Jeanne Lutgen [REDACTED]
Sent: Friday, July 24, 2020 4:52 PM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Jeanne Lutgen
6085 Rowland Rd Apt 109 Minnetonka, MN 55343-8973
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Thank you for Moving Forward on Ranked Choice Voting
Date: Wednesday, August 5, 2020 3:04:18 PM

From: [REDACTED]
[REDACTED] on behalf of Jenna Powers-Page
[REDACTED]

Sent: Friday, July 24, 2020 8:48 AM

To: Brian Kirk

Subject: Thank you for Moving Forward on Ranked Choice Voting

Dear Council Member Brian Kirk,

Thank you for voting to take the next step toward putting Ranked Choice Voting on the ballot in November for Minnetonka voters.

As we heard during the June 8th public hearing, Ranked Choice Voting is more representative and inclusive, saves time and money, and encourages positive, issue-based campaigns.

I would be thrilled to cast my vote in favor of Ranked Choice Voting in November.

Sincerely,
Jenna Powers-Page
10101 Cedar Lake Rd Apt 113 Minnetonka, MN 55305-3220
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Please Move Forward on Ranked Choice Voting
Date: Wednesday, August 5, 2020 2:48:24 PM

From: [REDACTED] on behalf of
Jennifer Johnson [REDACTED]
Sent: Thursday, July 23, 2020 9:26 AM
To: Brian Kirk
Subject: Please Move Forward on Ranked Choice Voting

Dear Council Member Brian Kirk,

Thank you for your progress on Ranked Choice Voting. I urge you to finalize the action and put Ranked Choice Voting on the ballot in November. I'll be voting yes!

Sincerely,
Jennifer Johnson
18810 Kingswood Ter Minnetonka, MN 55345-5023
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Charter Commission and RCV
Date: Wednesday, August 5, 2020 10:47:22 PM

From: Jennifer Rutz [REDACTED]

Sent: Monday, July 27, 2020 1:24 PM

To: Brad Wiersum; Rebecca Schack; Kissy Coakley; Brian Kirk; Bradley Schaeppi; Geralyn Barone; Dick Allendorf; Karen Anderson; John Cheleen; David Larson; John Northrup; Terry Schneider; Linnea Sodergren; LuAnn Tolliver; Susan Carter; Deborah Calvert

Subject: Charter Commission and RCV

Hello Mayor, Council Members, Charter Commissioners and Staff,

My name is Jennifer Rutz and I have lived at 14401 Orchard Rd, Minnetonka MN for 2 years. Some of you may remember me as a spokesperson of the Orchard Rd area neighborhood with respect to the Highcroft Meadows development last summer.

I heard about how the Charter Commission meeting last week went into “delay tactics” to avoid putting the RCV question on the 2020 ballot for Minnetonka voters. It is disappointing on many levels to think that my local government is circumventing the obvious support of residents and research regarding RCV.

Ask yourselves why: why would the Charter Commission be so against something like this when the community seems to support it and they’ve spent months researching the positive outcomes in many other cities. The only thing I can come up with is either fear of change or fear of losing future elections. Either way, it’s unacceptable and I’d like the city council to use their objective lens to review the research carefully and do something about it.

Thank you,
Jennifer Rutz

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Ranked Choice Voting
Date: Wednesday, August 5, 2020 11:35:10 PM

From: JONATHAN WIESE [REDACTED]
Sent: Thursday, July 30, 2020 2:32 PM
To: Brian Kirk
Subject: Ranked Choice Voting

Dear Brian,

We rarely if ever get a chance to improve democracy. This is why I wanted to write and ask for you to vote on 8/10 to put RCV on our Minnetonka ballot. I want the chance, *myself as a citizen*, to make the world more fair in how we vote. RCV does this.

It helps that Minnetonka overwhelmingly supports RCV (like 75%). That may be a reason in itself to put it on the ballot, but the real reason is that it gets closer to voter intent than anything out there. And it's easy. I use it in my business for group decision making, and it has changed how we make decisions, and, more importantly, it has improved the satisfaction of my clients. I was astounded the first time I used it, and I've been doing this work for two decades.

Whether RCV wins or loses, I want the most people possible to weigh in on the issue, and the upcoming election is how we get that kind of broad insight.

Finally, thank you for your work on the City Council. You are part of the reason this is such a great place to live, and I truly appreciate your time and effort to make that happen.

Jonathan Wiese
5726 Creek Park Dr
Minnetonka

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: I support Rank Choice voting and want my voice to count
Date: Wednesday, August 5, 2020 2:51:04 PM

From: [REDACTED] on behalf of Judy Melinat [REDACTED]

Sent: Thursday, July 23, 2020 9:44 AM

To: Brian Kirk

Subject: I support Rank Choice voting and want my voice to count

Dear Council Member Brian Kirk,

To the Mayor and members of the city council,

I have been testifying at the council meetings about rank choice voting in good faith this summer. I was shocked to find out that this issue is being obstructed by the Charter commission who is not a body of citizens elected by me. You are my elected representatives and I want you to know that I am upset, because this is not representative government by the people.

I have learned that Minnetonka Mayor is a member of the charter commission and I see that as an obvious conflict of interest.

The documented evidence of support for rank choice voting in Minnetonka is obvious.

I again state in the strongest terms that I support putting Rank Choice Voting on the Ballot in November so voters have the power that we are entitled to.

Sincerely,
Judy Melinat
5211 Kimberly Rd Minnetonka, MN 55345-4430
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: RCV - Meeting comments for tonight
Date: Wednesday, August 5, 2020 11:08:01 PM

From: [REDACTED]
on behalf of Julie Johnson [REDACTED]
Sent: Monday, July 27, 2020 8:19 PM
To: Brian Kirk
Subject: RCV - Meeting comments for tonight

Dear Council Member Brian Kirk,

Hello All,

I dialed in to listen this evening and wanted to share my thoughts. I was unable to speak as I missed the 24 hour deadline.

I have been involved with Ranked Choice Voting for Minnetonka for the past two years. It is an awesome, diverse and fun group of Minnetonka residents. We have a positive mission to make elections more diverse and inclusive and have been diligent in our work and following the process every step of the way.

What is most disturbing to me has been to watch the Minnetonka Charter Commission- an unrepresentative and unelected group, undermine the process in two ways.

I know undermine is a strong word but it is so clear, and they are fooling no one, when they set an agenda, follow that agenda in such a manner to be clearly headed to vote against recommending RCV at this time. THEN! Upon learning that voters support RCV 3 to 1 from the city's own polling, suddenly they need more time to consider the issue?!

I would respectfully remind the commissioners that they are NOT elected officials and this is not their decision to make. It belongs to the voters.

The other disturbing thing is that they either say things like there has never been a problem that they know about or they disparage, characterize, and insinuate the community organizers are part of some conspiracy that uses dirty tactics is insulting and absurd. I wish I could say it were laughable.

They have been overly attentive and appreciative of opponent testimony and not one person on the commission said a word when the African American proponent was told by another caller to "go back" to where she came from. In fact, when that caller concluded his remarks, the chair said "Thank you. Thank you very much".

Sincerely,
Julie Johnson
13720 Bellevue Dr Minnetonka, MN 55345-4805
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Voting
Date: Wednesday, August 5, 2020 11:41:12 PM

From: Karl and Cheri Wolfe [REDACTED]
Sent: Sunday, August 2, 2020 5:08 PM
To: Brian Kirk
Subject: Voting

I want to express that I am not in support of Ranked Choice Voting. Thanks ,Cheri Wolfe

Sent from my iPad

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 10:28:53 PM

From: [REDACTED] on
behalf of Kathleen Kaysinger [REDACTED]
Sent: Saturday, July 25, 2020 5:52 PM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Kathleen Kaysinger
4754 Winterset Dr Minnetonka, MN 55343-8722
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Put Ranked Choice Voting on the November Ballot for Minnetonka Residents to DECIDE
Date: Wednesday, August 5, 2020 2:42:49 PM

From: [REDACTED] on behalf of Kathleen Kaysinger [REDACTED]
Sent: Wednesday, July 22, 2020 8:58 PM
To: Brian Kirk
Subject: Put Ranked Choice Voting on the November Ballot for Minnetonka Residents to DECIDE

Dear Council Member Brian Kirk,

Minnetonka residents have the right and obligation to decide whether or not we employ rank choice voting (RCV) in our local elections. It is blatantly wrong and undemocratic for a commission made up of unelected commissioners to obstruct placing this decision on our November ballot.

I remind you that there is widespread community support and interest in RCV, demonstrated by the recent community survey result showing overwhelming support (3 to 1 margin) and public comment portion of the recent city meeting again showing widespread public support (10 to 1).

It is tremendously disappointing that a charter commission which includes the mayor would favor obstructing Minnetonka residents the right to decide on RCV.

Please note that because I am so concerned, I will be sending a version on this letter to the local community papers in order to initiate healthy and perhaps, robust community discussion and involvement.

Sincerely,
Kathleen Kaysinger
4754 Winterset Dr Minnetonka, MN 55343-8722
[REDACTED]

From: [Kristian Markon](#)
To: [McKaia Ryberg](#)
Subject: ranked choice voting
Date: Monday, August 3, 2020 9:35:05 AM

I am writing in advance of the August 10 city council meeting to encourage the city council to allow RCV to go to a general vote in November.

RCV is one of the simplest, cheapest, and efficient ways to improve voting in the US. RCV would better represent voter preferences and increase opportunities for greater diversity of representation. In doing so, it would hopefully increase voter satisfaction with outcomes as well. As a behavioral science researcher and former professor whose research focuses on methods of representing preference and response to surveys, it is frustrating that the standard voting system, which is probably the worst possible, is the most common.

Minnetonka is a wonderful place to live. I'm writing not to encourage RCV out of frustration with the city, but so that it might continue to be a civic role model. I sincerely believe RCV is the future of voting systems and hope that Minnetonka provides one more example, along with other municipalities and states that have adopted it, of how to do voting most optimally.

In the very least, give voters the option this fall.

Kristian Markon
(13012 Jane Ln, Minnetonka, MN 55343)

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Please Move Forward on Ranked Choice Voting
Date: Wednesday, August 5, 2020 2:52:54 PM

From: [REDACTED] on behalf of
Kristine Falk [REDACTED]
Sent: Thursday, July 23, 2020 11:10 AM
To: Brian Kirk
Subject: Please Move Forward on Ranked Choice Voting

Dear Council Member Brian Kirk,

I want ranked choice voting on the ballot in November. The residents of Minnetonka should be the ones to decide if we have ranked choice voting not the commission The unelected commission and you the mayor have no right to delay having rcv on the ballot so that the people you serve have their voice and choice heard. I wasn't even aware of the commissions existence and I think it might be time to let the citizens of Minnetonka know that their is a commission that can over rule our elected officials Please put ranked choice voting on the ballot in November

Sincerely,
Kristine Falk
17560 Hampton Ct Minnetonka, MN 55345-2522
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 10:33:14 PM

From: [REDACTED] on behalf of
Laura Hensley [REDACTED]
Sent: Saturday, July 25, 2020 7:51 PM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Laura Hensley
3408 Balsa Ct Minnetonka, MN 55345-1008
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Move forward with Ranked Choice Voting
Date: Wednesday, August 5, 2020 11:28:14 PM

From: Libby Engelbret [REDACTED]
Sent: Thursday, July 30, 2020 9:40 AM
To: Brian Kirk
Subject: Move forward with Ranked Choice Voting

I support Ranked Choice Voting and I hope you will vote to put it on the November ballot and give the largest number of residents a chance to help make this decision.

The Minnetonka annual survey shows residents are supportive of RCV, 3-to-1, and the community is ready for the ballot measure!

Thank you for your leadership on this issue.

Regards,
Libby Engelbret
18308 Woolman Dr
Minnetonka, MN 55345

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Ranked Choice Voting
Date: Wednesday, August 5, 2020 10:26:46 PM

From: Linda & Michael Halley [REDACTED] >
Sent: Saturday, July 25, 2020 1:08 PM
To: Brian Kirk
Subject: Ranked Choice Voting

Dear City Council Member Kirk,

We are deeply disturbed by the dismissive attitude recently taken by the Charter Commission on the issue of Ranked Choice Voting. We believe the best interests of the residents/voters of Minnetonka are not being well served on this issue.

We are not asking the Commission or the City Council to decide on Ranked Choice Voting, but simply to give our citizens the right to vote on this issue!

Below is the letter we have sent to the Commissioners outlining our reactions to their position:

Dear Commissioner...

I was so excited to exercise my right as a citizen to participate in the Charter Commission meeting on July 14th by calling in to register my and my husband's support for Ranked Choice Voting. We listened to the entire meeting ~ by our count approximately 26 people called in, 24 in support of RCV and 2 against. It was stated that emails also were sent with 82 in support and 35 against RCV. At the City Council meeting on July 13th the results of the Morris Leatherman survey commissioned by the City of Minnetonka showed that Minnetonka residents support RCV by a 3 to 1 margin.

Imagine our surprise when listening to the Charter Commission meeting on July 21st we heard the commissioners insulting RCV advocates (our own community members, including us) by suggesting among other things that we are not intelligent enough or too old to understand how RCV works and expressing their distrust of Minnetonka voters, even suggesting that not all of those who called in are residents. As Commissioners you should know the process of registering to call in requires filling out a form that asks for name, address, phone# etc. We are also asked to identify ourselves on the phone, so it is not possible to call in if one is not a resident.

Over the last two months, the Charter Commission has been reviewing the RCV proposal sent to you - by unanimous approval -- by the City Council. You have exhaustively studied every angle of this issue — implementation process and cost, proponents, opponents, and a robust public hearing and yet we heard you, the Charter Commission, discuss why you need more time to think about this and your intention to ask for a 90-day extension - thereby preventing the City Council and voters from deciding the issue this November.

We respectfully ask what more information could you possibly need?

Our understanding is that your role is to simply make a recommendation to the City Council.

Please consider... we have approximately 1000 residents involved in supporting RCV.

Please do not deny our fellow Minnetonka residents the opportunity to register their vote on this issue in November!

Respectfully,

Linda and Mike Halley
18610 Clear View Drive
Minnetonka, MN 55345



From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Ranked Choice Voting
Date: Wednesday, August 5, 2020 10:38:55 PM

From: linda goecke [REDACTED]
Sent: Sunday, July 26, 2020 5:54 PM
To: Brian Kirk
Subject: Ranked Choice Voting

To: Brian Kirk, Councilman for Ward 1

From: Mrs. Linda Goecke (one of your constituents in Ward 1) 6085 Rowland Road #111

I understand that the Charter Commission will not be giving their "blessing" (my term -- I believe it is a recommendation) to proceed for a vote in November to let the Minnetonka residents decide whether they wish to have Ranked Choice Voting.

I would strongly recommend that the Minnetonka City Council vote at the meeting July 27 to move forward to have the RCV question on the ballot in November 2020.

The strongest reasons to me are: (1) so FEW people vote in primary elections -- making them pretty undemocratic, and (2) the City could save MONEY by not holding those primaries.

Please keep my views in mind at your meeting tomorrow night.
Thank you,
Linda Goecke

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Election reform is needed to be more inclusive so we can vote values, not for who can win or had the least negative attack campaign. RCV is a chance to start this, what we can do here and now. Let the voters of Minnetonka decide!
Date: Wednesday, August 5, 2020 11:25:26 PM

From: [REDACTED] on behalf of Lu Bjornoy [REDACTED]

Sent: Wednesday, July 29, 2020 12:50 PM

To: Brian Kirk

Subject: Election reform is needed to be more inclusive so we can vote values, not for who can win or had the least negative attack campaign. RCV is a chance to start this, what we can do here and now. Let the voters of Minnetonka decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Lu Bjornoy
4289 Lindsey Ln Minnetonka, MN 55345-4579
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 3:39:05 PM

From: [REDACTED] on behalf of Lu Bjornoy [REDACTED]
Sent: Friday, July 24, 2020 2:17 PM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Lu Bjornoy
4289 Lindsey Ln Minnetonka, MN 55345-4579
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Move forward with Ranked Choice Voting
Date: Wednesday, August 5, 2020 11:32:58 PM

From: Marc Jaffe [REDACTED]
Sent: Thursday, July 30, 2020 10:38 AM
To: Brian Kirk
Subject: Move forward with Ranked Choice Voting

I support Ranked Choice Voting and I hope you will vote to put it on the November ballot and give the largest number of residents a chance to help make this decision.

The Minnetonka annual survey shows residents are supportive of RCV, 3-to-1, and the community is ready for the ballot measure!

Thank you for your leadership on this issue.

Regards,
Marc Jaffe
5069 Westmill Rd
Minnetonka, MN 55345

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Please Move Forward on Ranked Choice Voting
Date: Wednesday, August 5, 2020 2:40:38 PM

From: [REDACTED] on behalf of Marc Jaffe [REDACTED]
Sent: Wednesday, July 22, 2020 8:34 PM
To: Brian Kirk
Subject: Please Move Forward on Ranked Choice Voting

Dear Council Member Brian Kirk,

Thank you for your service to our community. As a Minnetonka resident and registered voter I urge you to follow the will of the voters and implement RCV in November. I was on the call of the Charter Commission and the residents who testified were overwhelmingly in favor of RCV. The survey also clearly showed that the majority of Minnetonka residents support RCV. Only 4% of Minnetonka residents vote in the primaries and only 15% vote in the general election. Right now there is not only a majority of residents who support RCV but a motivated group of citizen voters in favor of RCV.

Sincerely,
Marc Jaffe
5069 Westmill Rd Minnetonka, MN 55345-3343
[REDACTED]

From: [City of Minnetonka, MN](#)
To: [McKaia Ryberg](#)
Subject: *NEW SUBMISSION* City council and EDA email comments
Date: Wednesday, August 5, 2020 12:29:22 PM

City council and EDA email comments

Submission #: 473654
IP Address: 68.47.48.109
Submission Date: 08/05/2020 12:29
Survey Time: 1 minute, 49 seconds

You have a new online form submission.

Note: all answers displaying "*****" are marked as sensitive and must be viewed after your login.

Read-Only Content

Name

Marion Lorence

Full Address

5627 Green Circle Drive
#209
MNMinnetonka55343
United States

City council or EDA

City council

Meeting date

August 10, 2020

Agenda item

Ranked choice voting

Comment

I am not in favor of ranked choice voting that eliminates the need for a primary. Therefore, I am against any change in the voting system.

Thank you,

City of Minnetonka, MN

This is an automated message generated by the Vision Content Management System™. Please do not reply directly to this email.

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Recent Expert Report on RCV - request for council members to review
Date: Wednesday, August 5, 2020 11:42:29 PM
Attachments: [Dkt.-1-Complaint.pdf](#)
[Expert Report - McCarty.pdf](#)

From: Mark Francis [REDACTED]
Sent: Monday, August 3, 2020 4:24 PM
To: Brad Wiersum; Bradley Schaeppi; Brian Kirk; Deborah Calvert; Kissy Coakley; Rebecca Schack; Susan Carter
Cc: Dick Allendorf; John Northrup; David Larson; John Cheleen; Karen Anderson; Linnea Sodergren; LuAnn Tolliver; Terry Schneider
Subject: Recent Expert Report on RCV - request for council members to review

To the City Council Members,

I am providing you here with a July 2020 report that has been included for consideration in the U.S. District Court of Maine in the widely reported lawsuit involving ranked choice voting. Given that Minnetonka's Charter Commission has issued its recommendation to the Council, I wanted you to see this report that amplifies many of the Charter Commissions concerns. It was written by Professor Nolan McCarthy from Princeton University.

Please, for a few minutes, set aside any possible biases you might bring to this topic and carefully consider Professor McCarthy's credentials on page one of this report. He has impeccable credentials and entered into this work by applying sound academic rigor. His work was done without political bias.

Then, examine the arguments themselves. I would especially direct your attention to section III of the Analysis.

As I have researched RCV, I concluded that it is a complex, multifaceted topic which has been glossed over by many proponents. I believe the Charter Commission has made an informed and wise request of the City Council.

Please find attached the expert report and the source document from the district court.

P.S. I have personally communicated with Professor McCarty and he is willing to discuss the finding of his report with you. I hope as part of your

due diligence process you will take him up on his generous offer.

Respectfully,

Mark Francis

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ROBERT HAGOPIAN,
16 Hagopian Ct.
Madison, ME 04950

DUANE R. LANDER,
P.O. Box 1113
Greenville, ME 04441

STERLING B. ROBINSON, and
1330 Atlantic Highway
Warren, ME 04864

JAMES T. TRUDEL,
616 Fuller Rd.
Hermon, ME 04401

Plaintiffs,

v.

Case No. _____

MATTHEW DUNLAP, *in his official capacity as*
Secretary of State of Maine,
148 State House Station
Augusta, Maine 04333-0148

AARON FREY, *in his official capacity as*
Attorney General of Maine,
6 State House Station
Augusta, ME 04333

JANET MILLS, *in her official capacity as*
Governor of Maine,
#1 State House Station
Augusta, ME 04333

Defendants.

**DECLARATORY AND
INJUNCTIVE RELIEF
SOUGHT**

COMPLAINT

Plaintiffs Robert Hagopian, Duane R. Lander, Sterling B. Robinson, and James T. Trudel,
by and through undersigned counsel, file this Complaint against Matthew Dunlap, the Secretary

of State of Maine, Aaron Frey, the Attorney General of Maine, and Janet Mills, Governor of Maine, in their official capacities, seeking declaratory and injunctive relief on an expedited basis in order to protect their rights to participate fully in the 2020 general election.

INTRODUCTION

1. This case seeks to vindicate the constitutional rights of Mainers who will soon be denied full participation in the 2020 general election.

2. In 2017, Maine became the first—and only—state in our nation’s 233-year-long constitutional tradition to adopt an electoral system known as “ranked-choice voting.”

3. The Maine Act to Establish Ranked-Choice Voting (“RCV Act”) burdens the voting rights of all Mainers. In 2018, it subjected nearly two-thirds of those voters who showed up at the polls on Election Day to a serious risk of disenfranchisement. And it, in fact, disenfranchised a substantial number of voters. The same will happen to Maine voters in the 2020 election if this Court does not intervene.

4. The RCV Act permits voters to rank multiple candidates on their ballots in order of choice. But this opportunity comes at a very high cost. Under the RCV Act, ballots are tabulated in “rounds.” Me. Rev. Stat. tit. 21-A, § 723-A(2). And the RCV Act requires each voter to “rank” enough candidates on his or her ballot to ensure that it “continu[es]” to be counted in the determinative “final round.” *Id.* §§ 723-A(1)(B), (D), 723-A(2), 723-A(3). A voter who fails to mark enough candidates is at risk of having his or her ballot “exhausted” and his or her vote “not counted” in the election round that “determine[s] the winner.” *Id.* § 723-A(2).

5. Maine conducted its first general election under the RCV Act in 2018. The results for Maine voters were abysmal. Although Mainers share a proud democratic tradition that boasts an average rate of full voter participation that is above 97%—meaning that, among Mainers who choose to

vote, nearly all of them complete their ballot in a manner that guarantees that it will be counted in the final tally—under ranked-choice voting, the rate of full voter participation plunged to just **37.7%** in the 2018 Maine Congressional Election. The primary elections were similar: more than half of all voters failed to completely fill out their ballots. Put differently, the majority of Mainers who participated in these elections were at risk of having their votes discarded even though they showed up at the polls and cast legal ballots on Election Day.

6. The risk became reality for tens of thousands of Mainers. Maine exhausted more than **40,000** of the ballots that voters cast in its 2018 ranked-choice elections. These exhausted ballots were “not counted” in the election round that “determine[d] the winner.” Me. Rev. Stat. tit. 21-A, § 723-A(2). Rather, those votes were ignored so that Maine could purportedly declare a “majority” winner.

7. And that is only part of the story. An analysis of town level data from the 2018 general election shows a strong empirical relationship between the number of Maine voters failing to achieve full participation and the number of voters in that town who were over 65 or lacked a college degree. In other words, the burden on voting rights is falling most heavily on older voters and those with the lower levels of educational attainment.

8. The sharp decline in full voter participation in Maine’s 2018 elections cannot be dismissed as anomalous. The academic literature confirms that low rates of full participation and high rates of ballot exhaustion are a common and persistent feature of ranked-choice elections across jurisdictions.

9. These problems will not go away. Empirical studies find no correlation between the length of time a jurisdiction has employed ranked-choice voting and ballot exhaustion rates. In other words, the failure of nearly **300,000** Maine voters to fully complete their ballot in Maine’s 2018

ranked-choice elections cannot be attributed to the novelty of the system.

10. If anything, the problem is likely to worsen this election. The ongoing COVID-19 pandemic all but guarantees that a much larger portion of voters will submit absentee ballots in 2018. Without the ability to obtain in-person voting assistance, it is likely that even more Mainers will inadvertently miscast their ranked-choice ballots.

11. The low rate of full participation under the RCV Act also cannot be explained by voter choice. Ballot data from Maine's 2018 ranked-choice elections—as well as Plaintiffs' own experiences—show voting patterns that are inconsistent with choice and that many voters are confused regarding how to effectuate their vote. Indeed, that the RCV Act disproportionately affects the full participation of older and less-educated voters demonstrates a very serious problem with the system that will continue in the 2020 general election and beyond if this Court does not intervene.

12. In addition, if voters were choosing not to fully participate, one would expect the drop off between rounds in ranked-choice elections to be similar to the drop off between rounds in traditional runoff elections. But it is twice as high. And that is so even though full participation in a majority runoff system requires voters to cast one ballot in the initial election, and then to show up at the polls a second time and cast another ballot in the runoff election. Although this system requires two trips to the polls rather than just one, jurisdictions that use majority runoff elections see average rates of full voter participation (*i.e.*, percentages of voters who show up at the first and second election) from 56% to 91%—much higher than under RCV.

13. It is unreasonable for the State to impose a voting system that it concedes is more complex than plurality and runoff voting, then dismiss as “voter choice” empirical evidence that voters as a whole, and older and less educated voters in particular, struggle to achieve full participation

under that system.

14. In addition, even many voters who understand the RCV Act and how to fully participate in the RCV system are put in an untenable position. That is, many voters—including Plaintiff Robert Hagopian—wish to ensure that their ballots are counted, but do not wish to be forced to vote for other candidates. The only choice these voters have is a Hobson’s Choice—they can either risk ballot exhaustion or cast votes for candidates they find objectionable.

15. The problems with the RCV Act are manifest in this case.

16. Plaintiffs will be injured by the RCV Act in the general election for Maine’s United States Senator set for November 3, 2020 (the “2020 Senatorial Election”).

17. The identities of the candidates who will advance to the general election for the 2020 Senatorial Election were determined by the primaries held on July 14, 2020. Those candidates are Susan Collins (R), Sara Gideon (D), Max Linn (I), and Lisa Savage (I). Because this is a four-candidate election, “[r]anked-choice voting will be used.” Sec’y State, *Upcoming Elections*, Maine.gov, <https://www.maine.gov/sos/cec/elec/upcoming/index.html> (last visited July 16, 2020).

18. Specifically, Plaintiffs are Mainers who intend to vote in the 2020 Senatorial Election and want to guarantee that their ballots are counted regardless of what unfolds.

19. Plaintiffs are concerned that the complicated RCV ballot may cause them to spoil their ballots or to otherwise effectuate results they do not intend.

20. The threat of ballot exhaustion compels some Plaintiffs to rank more candidates than they otherwise would. This burdens Plaintiffs by forcing them to form and express nuanced opinions about the relative merits of candidates for whom they would not otherwise vote.

21. In addition, the threat of ballot exhaustion burdens some Plaintiffs by forcing them to rank candidates they find objectionable in order to ensure that their ballots are counted in the final result.

The RCV Act puts these voters to a Hobson's Choice: express support for and associate with candidates they disapprove of, or risk losing the fundamental right to have their votes counted.

22. The State will not provide Plaintiffs with notice or an opportunity to cure if the State decides to exhaust their ballots.

23. To achieve its so-called "majority" standard, the RCV Act must disenfranchise enough voters to permit one candidate to be deemed the "winner" among the remaining voters.

PARTIES

24. Plaintiff Robert Hagopian is a resident of and registered as a Republican to vote in Somerset County, Maine. Ex. B (Declaration of Robert Hagopian ("Hagopian Declaration")), ¶¶ 4, 7.

25. Mr. Hagopian is 73 years old and of sound mind. *Id.* ¶ 2.

26. Mr. Hagopian is a citizen of the United States and of the State of Maine. *Id.* ¶ 3.

27. Mr. Hagopian resides at 16 Hagopian Ct., Madison, ME 04950. *Id.* ¶ 4.

28. Mr. Hagopian is a former eighth grade science teacher and currently runs his own business, an indoor firing range. *Id.* ¶ 5.

29. Mr. Hagopian received an undergraduate degree from William Penn University in 1969. *Id.* ¶ 6.

30. Mr. Hagopian received a Master's in education from the University of Southern Maine in the early 1980s. *Id.*

31. Plaintiff Duane R. Lander is a resident of and registered as a Republican to vote in Piscataquis County, Maine. Ex. C (Declaration of Duane R. Lander ("Lander Declaration")), ¶¶ 4, 6, 7.

32. Mr. Lander is 79 years old and of sound mind. *Id.* ¶ 2.

33. Mr. Lander is a citizen of the United States and of the State of Maine. *Id.* ¶ 3.

34. Mr. Lander resides at 12 Rail Lane, Harford's Point Twp., Maine, 04441, and his mailing address is P.O. Box 1113, Greenville, ME 04441 in Piscataquis County. *Id.* ¶ 4.

35. Mr. Lander is a United States Army veteran and retired engineer. *Id.* ¶ 5.

36. Mr. Lander attended classes at the University of Maine and graduated from the Wentworth Institute of Technology in Massachusetts in 1963. *Id.* He graduated from the Army School of Engineers in 1964 and from Bryant and Stratton Business School in Massachusetts in 1968. *Id.*

37. Mr. Lander actively participates in Republican Party politics in his county. He has served as the Chairman for the Piscataquis County Republican Committee on several occasions. He served as a member of the Maine House of Representatives from 1984–1986. He was also a delegate on behalf of the State of Maine to the Republican National Conventions in 1992 and 1996. *Id.* ¶ 7.

38. Plaintiff Sterling B. Robinson is a resident of and registered as a Republican to vote in Knox County, Maine. Ex. D (Declaration of Sterling B. Robinson (“Robinson Declaration”)), ¶¶ 4, 8.

39. Mr. Robinson is 72 years old and of sound mind. *Id.* ¶ 2.

40. Mr. Robinson is a citizen of the United States and of the State of Maine. *Id.* ¶ 3.

41. Mr. Robinson resides at 1330 Atlantic Highway, Warren, ME 04864 in Knox County. *Id.* ¶ 4.

42. Mr. Robinson is an eighth generation Maine resident and currently resides in a home built by his family, which is one of the only remaining original homes that was built on the Waldo Patent land grant. *Id.* ¶ 5.

43. Mr. Robinson is retired but was previously employed in a number of different positions,

including as a tractor trailer driver and an office manager and personal assistant to a listed artist. *Id.* ¶ 6.

44. Mr. Robinson attended several years of post-secondary education at the University of Maine in 1967 to 1968. *Id.* ¶ 7.

45. Mr. Robinson participated in the Continuing Education Division and did not receive an undergraduate degree. *Id.*

46. Plaintiff James T. Trudel is a resident of and registered as an Independent to vote in Penobscot County, Maine. Exhibit E (Declaration of James T. Trudel (“Trudel Declaration”)), ¶¶ 4, 7.

47. Mr. Trudel is 73 years old and of sound mind. *Id.* ¶ 2.

48. Mr. Trudel is a citizen of the United States and of the State of Maine. *Id.* ¶ 3.

49. Mr. Trudel resides at 616 Fuller Rd, Hermon, ME 04401 in Penobscot County. *Id.* ¶ 4.

50. Mr. Trudel is a retired Lieutenant Colonel of the Maine National Guard and former electrical engineer. *Id.* ¶ 5.

51. Mr. Trudel received a Bachelor of Science in Electrical Engineering from University of Maine in Orono in 1984. *Id.* ¶ 6.

52. Matthew Dunlap (“the Secretary”) is the Secretary of State of Maine and is sued in his official capacity.

53. The Secretary is responsible for preparing ranked-choice ballots in accordance with state law and furnishing those ballots to municipalities. Me. Rev. Stat. tit. 21-A, §§ 601, 606.

54. The Secretary tabulates the results of ranked-choice ballots. *Id.* § 722.

55. The Secretary is charged with instructing political subdivisions and voters on the procedures for carrying out ranked-choice voting. *Id.* § 605-A.

56. The Secretary may delegate ministerial duties to others under his supervision. *Id.* § 2.

57. Defendant Aaron Frey (“the Attorney General”) is the Attorney General of Maine and is sued in his official capacity.

58. The Attorney General is charged with enforcing Maine’s election laws. *Id.* § 33.

59. Defendant Janet Mills (“the Governor”) is the Governor of Maine and is sued in her official capacity.

60. The Governor is responsible for certifying the results of elections in Maine. *Id.* § 724.

JURISDICTION AND VENUE

61. This Court has subject matter jurisdiction over this action because it arises under the laws and Constitution of the United States. 28 U.S.C. § 1331. Specifically, this action is brought pursuant to 42 U.S.C. §§ 1983 and 1988 to enforce the First, Fourteenth, and Twenty-Sixth Amendments to the U.S. Constitution.

62. Venue is proper in this District because all Defendants reside in Maine and because a substantial part of the events giving rise to Plaintiffs’ claims occurred within this judicial District. *See* 28 U.S.C. §§ 1391(e)(1)(A), (B).

63. Venue is proper in this Division because a substantial part of the events giving rise to the claims herein occurred within Kennebec, Piscataquis, and Somerset Counties. D. Me. Local R. 3(b). Plaintiff Robert Hagopian is a registered voter residing in Somerset County. Hagopian Declaration ¶¶ 4, 7. Plaintiff Duane R. Lander is a registered voter residing in Piscataquis County. Lander Declaration ¶¶ 4, 6. Plaintiff James T. Trudel a registered voter residing in Penobscot County. Trudel Declaration ¶¶ 4, 7. Ranked-choice ballots are tabulated in Kennebec County.

64. Plaintiffs each have Article III standing because they intend to vote in the 2020 Senatorial Election, and that election will be subject to ranked-choice voting. *See* Sec’y State, *Upcoming*

Elections, Maine.gov, <https://www.maine.gov/sos/cec/elec/upcoming/index.html> (last visited July 16, 2020) (“Ranked-choice voting will be used in the 2020 State Primary and General elections.”).

65. Plaintiff Robert Hagopian will be injured by the RCV Act because the threat of ballot exhaustion compels him to rank candidates he finds objectionable in order to ensure that his ballot is counted, or to give up his fundamental right to vote. Hagopian Declaration ¶¶ 8–20.

66. Plaintiff Duane R. Lander will be injured by the RCV Act because he plans to rank only Susan Collins in the 2020 Senatorial Election, and the Secretary may exhaust his vote before the final round. Lander Declaration ¶¶ 15–16. He also does not understand how to ensure his vote is counted, despite his own research and being an active political participant. *Id.* ¶¶ 12–13. The confusing nature of the RCV ballot presents Lander with choices that may cause him to effectuate a result he does not intend, thus undermining his voting interests and/or causing his ballot to be exhausted. *Id.* ¶¶ 12–17. Further, the State will not provide Lander with notice or an opportunity to challenge an exhaustion decision.

67. Plaintiff Sterling B. Robinson will be injured by the RCV Act because the threat of ballot exhaustion compels him to develop plans to rank each candidate and form nuanced opinions about the relative merits of candidates for whom he would not otherwise vote. Robinson Declaration ¶¶ 16–18. Robinson is further injured because the confusing nature of the RCV ballot presents him with choices that may cause him to effectuate a result he does not intend, thus undermining his voting interests and/or causing his ballot to be exhausted. *Id.* ¶¶ 18–19. Further, the State will not provide Robinson with notice or an opportunity to challenge an exhaustion decision.

68. Plaintiff James T. Trudel will be injured by the RCV Act because the threat of ballot exhaustion compels him to rank candidates he finds objectionable in order to ensure that his ballot is counted, or to give up his fundamental right to vote. Trudel Declaration ¶¶ 8–20.

69. Plaintiffs' injuries are caused by the RCV Act and are redressable by this Court.

THE MAINE RCV ACT

70. Maine enacted the Act to Establish Ranked-Choice Voting in 2017. *See* I.B. 2015, ch. 3; *see also* L.D. 1557, §§ 1–6 (referred to the voters, 127th Legis. 2016) (effective Jan. 7, 2017).

71. The RCV Act establishes a system wherein voters must “rank” enough candidates to ensure that their ballot continues to and is counted in the final, determinative round. *See* Me. Rev. Stat. tit. 21-A, § 723-A(2).

72. Under the Secretary's rules, each voter “rank[s] as many candidates as they wish . . . in order of choice.” 29-250-535 Me. Code R. § 3(2); *see also* Me. Rev. Stat. tit. 21-A, §§ 601(2)(B), (D), (J), 723-A(4)(A) (“The number of allowable rankings may be limited to no fewer than 5.”).

73. If a candidate receives a majority of votes in the first round, she is declared the winner. *See* 29-250-535 Me. Code R. § 4(2)(A) (applying ranked-choice voting rules “[i]f no candidate receives more than 50% of the first choice votes”); *see also* Me. Rev. Stat. tit. 21-A, § 723-A(2)(A).

74. If no candidate receives a majority of the votes, then “the last-place candidate is defeated,” and the vote moves to a new “round.” Me. Rev. Stat. tit. 21-A, § 723-A(2)(B); *see also* 29-250-535 Me. Code R. § 4(2)(A).

75. More than one candidate may be eliminated per round if it is “mathematically impossible [for them] to be elected.” Me. Rev. Stat. tit. 21-A, §§ 723-A(1)(A), (4)(B); *see also* 29-250-535 Me. Code R. §§ 4(2)(A), (B)(7).

76. The process is repeated in each subsequent round with the remaining “continuing candidates.” *See* Me. Rev. Stat. tit. 21-A, § 723-A(2); *see also* 29-250-535 Me. Code R. §§ 4(2)(A), (B)(7).

77. Election officials “exhaust” and do “not count[.]” ballots on which a voter did not rank a

continuing candidate. *See* Me. Rev. Stat. tit. 21-A, §§ 723-A(1)(D), (2).

78. Anyone who fails to mark enough candidates is at risk of having his ballot “exhausted” and his vote “not counted” in the election round that “determine[s] the winner.” Me. Rev. Stat. tit. 21-A, § 723-A(2).

79. There is no pre- or post-deprivation procedure by which a voter is informed that his or her ballot has been exhausted and given an opportunity to cure his ballot, nor is there any procedure by which he or she may challenge an exhaustion decision.

80. The winner is the candidate that wins a majority of votes in a round or receives the most votes “[i]n the final round, when only 2 continuing candidates remain[.]” 29-250-535 Me. Code R. § 4(2)(A); *see also* Me. Rev. Stat. tit. 21-A, §§ 723-A(2).

81. Maine adopted ranked-choice voting with the promise that it would, *inter alia*, “ensure[] that candidates with the most votes and broadest support win” and ensure that voters’ “voice[s] matter[] more[.]” *Frequently Asked Questions*, The Committee for Ranked Choice Voting, <http://www.rcvmaine.com/faq> (last visited July 13, 2020).

82. As explained below, these promises have turned out to be illusory.

THE RCV ACT HAS PREVENTED THE MAJORITY OF MAINE VOTERS FROM FULLY PARTICIPATING AND HAS DISENFRANCHISED MANY VOTERS

83. There are two key metrics on which to measure the voter burden caused by the RCV Act: (i) the number of voters that fully participated, and (ii) the number of exhausted ballots.

84. Ranked-choice voting in Maine has led to an abysmally *low* rate of full voter participation and an equally abysmal *high* rate of ballot exhaustion—neither of which can be explained by voter choice.

The RCV Act Has Prevented Many Maine Voters From Fully Participating In Federal Elections and Primary Elections

85. *Hundreds of thousands* of ballots did not reflect full voter participation in Maine’s 2018

ranked-choice elections.

86. To participate fully in an election, voters must complete their ballot in such a manner that they are not at risk of having their ballot exhausted before the final tally. Ex. A (Expert Report of Nolan McCarty, Ph.D., Professor of Politics and Public Affairs at Princeton University (“McCarty Report”)), at 10.

87. Conversely, voters that fail to fully participate run the risk that their ballot will not be counted in determining the winner of a ranked-choice election in the final round of voting. *See id.*

88. There is no strategic reason for a voter to not fully participate in a ranked-choice election. *Id.* at 11.

89. In a ranked-choice election, a fully participating voter is a voter who ranks at least $n-1$ distinct candidates in an n -candidate election and does not overvote at any of the ranks. *Id.* at 10.

90. Ballots that fail to reflect full participation are referred to as “truncated ballots.” *Id.*

91. The full participation rate is an important metric because the number of exhausted ballots tends to underestimate the full burden on voters for four reasons.

92. **First**, voters that do not fully participate run the risk of not having their vote counted in the outcome-determinative round of voting. Even if a truncated ballot happens to rank one of the final two continuing candidates, such an outcome masks the very real risk of disenfranchisement incurred by the voter. *Id.*

93. **Second**, a voter’s ballot may not be exhausted even though the voter filled his or her ballot out in a way that is both irrational and inconsistent with an intentional protest vote—such as ranking a non-first-choice candidate in the second and fourth rounds of voting and a different, non-first-choice candidate in the third round. *Id.* at 11–12. These kinds of votes may not be discarded, but they demonstrate that voters failed to meaningfully understand and engage with the system.

Id.

94. **Third**, the full participation rate better reflects voters who were burdened because they were required to make granular decisions concerning each and every candidate who appeared on the ballot—significantly more work than is required in a traditional plurality or runoff election. The data strongly supports the existence of this burden, as the ballot exhaustion rate increases by approximately 1.3% for every additional candidate in a ranked-choice election, suggesting that voters struggle to form complex preferences about larger slates of candidates. *Id.* at 9. Looking at only exhausted ballots does not fully capture the extent to which voters fail to complete their ballots because of this burden.

95. **Fourth**, merely analyzing exhausted ballots fails to capture the burden on voters who placed their franchise at risk because they refused to speak in favor of and associate with candidates of which they disapprove. For example, Plaintiff Duane R. Lander plans to vote for only Susan Collins in the 2020 Senatorial Election because, *inter alia*, he does not wish to support other candidates who violate his political convictions. Lander Declaration ¶¶ 14–17. While his vote may not be exhausted—if Susan Collins remains a “continuing candidate” through to the final round—his lack of full participation will show that he incurred a very real burden: having to choose between (i) association with candidates he would rather not support in hypothetical matchups that may never occur, and (ii) the risk of not having his vote counted. *Id.*; *see also* Hagopian Declaration ¶¶ 9–20; Trudel Declaration ¶¶ 9–20.

96. Looking at the rate of full participation thus better shows the true extent of the RCV Act’s burden on Mainers’ fundamental right to vote.

97. In 2018, Maine held three elections using ranked-choice voting where a winner was not determined in the first round: (i) the 2018 general election for Maine’s Second Congressional

District (the “2018 Congressional Election”), (ii) the 2018 Democratic primary for Maine’s Second Congressional District (the “2018 Congressional Primary”), and (iii) the 2018 Democratic primary for Maine’s Governor (the “2018 Gubernatorial Primary”). *See Tabulations for Elections held in 2018*, Maine.gov, <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6> (last visited July 10, 2020).

98. In the 2018 Congressional Election, only **38%** of voters cast a fully participating ballot. McCarty Report at 15–16. Nearly two thirds—**184,276 voters**—failed to successfully complete their ballot. *Id.* at 12–13.

99. In the 2018 Gubernatorial Primary, only **35%** of voters cast a fully participating ballot. McCarty Report at 15–16. More than two thirds—**86,166 voters**—failed to successfully complete their ballot. *Id.* at 12–13.

100. In the 2018 Congressional Primary, only **47%** of voters cast a fully participating ballot. McCarty Report at 15–16. More than half—**26,715 voters**—failed to successfully complete their ballot. *Id.* at 12–13.

101. In other words, **most** Maine voters that show up to vote at ranked-choice elections fail to fully complete their ballot.

102. This burden on full participation is disproportionately borne by older voters and less educated voters.

103. Analysis of town-level voting data in Maine shows a substantial empirical relationship between the proportion of truncated or exhausted ballots and the percentage of voters on the voter rolls older than 65. *Id.* at 16–21.

104. As a concrete example, “the town with the most senior voters truncates ballots at an almost 9 percentage greater rate than the town with the least senior voters.” *Id.* at 19.

105. These disparate results show that the statute has the effect of furthering discrimination on account of age.

106. Analysis of town-level voting data in Maine also shows a substantial empirical relationship between the proportion of truncated or exhausted ballots and the percentage of voters without a college degree. *Id.* at 16–21.

107. These numbers show that “the least-educated town truncates ballots at a 14 percentage point greater rate than the most-educated town.” *Id.* at 19.

108. These disparate results show that the statute has the effect of furthering discrimination on account of educational attainment.

109. In sum, the RCV Act results in a ***significant majority*** of Maine voters failing to fully participate in federal and primary elections—a statistic that is driven by elderly voters and voters without a college degree.

The RCV Act Has Disenfranchised Many Maine Voters

110. The Maine RCV Act has disenfranchised ***tens of thousands*** of voters.

111. The 2018 Congressional Election was decided on the second round of voting and featured 14,706 uncounted ballots—more than 10% of all ballots cast. *Id.* at 12–13. More than 8,000 of these ballots were exhausted after the first round of voting—meaning that voters marked a valid choice in the first round but no others. *Id.*

112. In the 2018 Congressional Election, Bruce Poliquin (R) won a plurality of votes in the first round and led his second-place opponent, Jared F. Golden (D), by more than 2,000 votes at the completion of tabulation for that round. *See Tabulations for Elections held in 2018*, Maine.gov, <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6> (last visited July 10, 2020) (hyperlink to “Representative to Congress - District 2 - Results Certified to the Governor

11/26/18”).

113. In the second round, the Secretary “transferred” more than 10,000 votes to Golden. These ballots were originally cast for the third or fourth place finishers but had ranked Golden for a later round. *Id.*

114. The Secretary exhausted approximately 8,000 additional ballots that were originally cast for the third or fourth place finishers but had not validly ranked Golden or Poliquin for the subsequent rounds. *Id.*; *see also* McCarty Report at 12–13.

115. In the second round, Golden was awarded 142,440 votes (50.62%), compared to Poliquin’s 138,931 votes (49.38%). That 3,509-vote margin was magnitudes smaller than the 14,706 votes that were not counted and thus removed from the denominator in calculating the second-round “majority.”

116. The 2018 Congressional Primary was also decided on the second round of voting. That race featured 7,381 uncounted ballots—nearly 15% of all ballots cast. McCarty Report at 12–13. Nearly 2,000 of these ballots were exhausted after the first round of voting. *Id.*

117. The 2018 Gubernatorial Primary was decided on the fourth round of voting. That race featured 15,000 uncounted ballots—more than 10% of all ballots cast. *Id.* More than 8,000 of these ballots were exhausted after the first round of voting. *Id.*

118. In sum, Maine has cumulatively “not counted” ***more than 40,000 ballots*** in ranked-choice rounds that have “determine[d] the winner” of federal and primary elections. Me. Rev. Stat. tit. 21-A, § 723-A(2).

Maine’s Results Are Consistent With The Experience Of Ranked-Choice Voting In Other Jurisdictions And Are Unlikely To Improve Over Time

119. Maine’s abysmal rates of full voter participation and ballot exhaustion are typical for ranked-choice voting systems.

120. Failure to achieve full participation is “very common” in ranked-choice elections. McCarty Report at 10.

121. Truncated ballots in ranked-choice elections often have the potential to alter election outcomes and make it less likely that the candidate preferred by most voters ultimately wins the election. *Id.*

122. In addition, “high numbers of exhausted ballots are a pervasive phenomenon in RCV elections.” *Id.* at 5.

123. In 98 ranked-choice elections in the United States that occurred between 2006 and 2019, on average, “10.8% of votes cast in an RCV election are considered exhausted,” and “a large number of elections had ballot exhaustion rates of 20% and higher.” *Id.* at 6.¹ By contrast, in Maine’s plurality elections, the average proportion of ballots not counted is below 3%. *Id.* at 13.²

124. In RCV elections generally, the rate of ballot exhaustion increases with the number of candidates. *Id.* at 6–9.

125. The evidence demonstrates that these problems are “persistent, as rates of exhaustion do not decline over time.” *Id.* at 2, 7–9.

126. Accordingly, the negative impacts on voter participation and exhausted ballots in Maine cannot be chalked up to a learning curve.

127. These empirical findings support the obvious: ranked-choice voting presents a serious challenge to voters effectively expressing themselves at the ballot box.

¹ “Exhaustion,” for purposes of these calculations, does not include the number of ballots that are eliminated in the first round of voting—for example, ballots that were left completely blank. McCarty Report at 5, 6 n.8. Accordingly, this figure *underestimates* the number of votes that are not counted in ranked-choice elections.

² This figure comes from the 97.3% full participation rate in plurality elections. McCarty Report at 13.

**MAINE’S ABYSMAL FULL PARTICIPATION AND BALLOT EXHAUSTION
FIGURES CANNOT BE EXPLAINED BY VOTER CHOICE**

128. Maine’s high numbers of voters who failed to fully participate and exhausted ballots are not the result of voters who knowingly chose to put themselves at risk of disenfranchisement. McCarty Report at 21–22.

129. *First*, the rate of full participation is significantly lower in ranked-choice voting elections than in traditional plurality and runoff elections. McCarty Report at 13–16.

130. If the rate of full participation in ranked-choice voting was merely a function of voter choice, one would expect that a similar number of voters would fail to complete their ballots in plurality and traditional runoff elections. But the data reveal that this is plainly not what is happening.

131. “Nearly every state” employs a plurality vote system. *See Alternative Voting Systems*, National Conference of State Legislatures (June 25, 2020), <https://www.ncsl.org/research/elections-and-campaigns/alternative-voting-systems.aspx>.

132. In plurality voting, “voters select one candidate per race on a ballot and the candidate that receives the most votes wins.” *Id.*

133. Some states require a candidate to obtain a majority of votes to win. *See* Katharina Owens Hubler & Wendy Underhill, *Primary Runoff Elections*, 25 Nat’l Conference of State Legislatures (Aug. 2017), <https://www.ncsl.org/research/elections-and-campaigns/primary-runoff-elections.aspx>.

134. These states hold a “runoff election” if no candidate receives greater than 50% of the votes. *See id.*

135. Runoff elections are most common in primary elections, “where it is common to have a handful of candidates.” *See id.*

136. Despite the differences in these two systems, they both boast a relatively high full voter participation rate.

137. Recall that a fully participating voter is one who marks his ballot so that it is guaranteed to be counted in the final, determinative round. In a plurality election, full voter participation is achieved by casting one ballot for the race in question.

138. In Maine, the average rate of full participation rate in contested plurality elections is 97.3%. McCarty Report at 13.

139. In runoff elections, full participation is achieved when a voter casts one ballot in the initial election, and one ballot in the runoff election. *Id.* at 15.

140. Maine does not use runoff elections. In jurisdictions that do use runoff elections, the average rate of full voter participation ranges from 56% to 91%. *Id.* at 15–16.

141. In ranked-choice voting elections, full participation is achieved when a voter ranks at least $n-1$ distinct candidates—where n is the number of candidates—and does not overvote any of the ranks. *Id.* at 10.

142. In the 2018 Congressional Election, the rate of full voter participation was **38%**. *Id.* at 15–16.

143. In the 2018 Gubernatorial Primary, the rate of full voter participation was **35%**. *Id.*

144. In the 2018 Congressional Primary, the rate of full voter participation was **47%**. *Id.*

145. The story is the same for ballot exhaustion.

146. The average rate of ballot exhaustion in ranked-choice elections is 10.8%—though variables like the number of candidates often drive the rate higher than 20%. *Id.* at 6.

147. In plurality races in Maine, **less than 3%** of ballots are discarded such that they do not count toward the final result. *Id.* at 13.

148. Ranked-choice voting results in a significant *decrease* in full voter participation and a significant *increase* in exhausted ballots when compared to plurality elections and traditional runoff elections. *Id.* at 13–16.

149. *Second*, lack of full participation falls disproportionately on older and less educated voters. *Id.* at 16–21.

150. The data show that towns with higher shares of voters over the age of 65 and voters that do not have a college education generate lower rates of full participation. *Id.*

151. There is no reason to think that these voters are more likely than others to make an intentional choice to put their ballots at risk of exhaustion.

152. Rather, this finding supports the conclusion that a large number of voters are not fully participating because they do not understand ranked-choice voting and/or it is otherwise burdensome. *Id.* at 21–22.

153. *Third*, at least **17,352** voters cast ballots in a way that is fundamentally inconsistent with an informed choice to place themselves at risk of disenfranchisement. *Id.* at 11–12. These voters’ ballots “defy any clear strategic or logical reason” and “cannot be attributed to voter choice.” *Id.*

154. As a concrete example, nearly 2,000 voters ranked the same candidate in non-consecutive rounds of the 2018 Congressional Election. *Id.* at 12. A voter would meet this criterion if, for example, she voted for Bruce Poliquin in the first rank, Jared Golden in the second rank, and Bruce Poliquin again in the third rank. *Id.*

155. Unlike, for example, voters who rank only a single candidate—which *could* conceivably be interpreted as a protest vote³—these types of voting patterns reflect a fundamental

³ The other evidence highlighted in this section and the experiences of Plaintiffs Duane R. Lander and Sterling B. Robinson, however, show that there are almost certainly a significant number of voters that voted in this way because they did not understand the system. See Lander Declaration ¶¶ 8–17; Robinson Declaration ¶¶ 9–14.

misunderstanding of ranked-choice voting.

156. *Fourth*, Plaintiffs' experience shows that many voters do not fully participate because they do not understand the mechanics of ranked-choice voting.

157. Plaintiffs Sterling B. Robinson and Duane R. Lander attested that they did not fully participate in the 2018 Congressional Election because they did not understand the mechanics of ranked-choice voting. Lander Declaration ¶¶ 8–12; Robinson Declaration ¶¶ 9–14.

158. Mr. Sterling and Mr. Lander did not “choose” to put themselves at risk of not having their respective ballots counted. *Id.*

159. Mr. Sterling and Mr. Lander are also worried about voting in the 2020 Senatorial Election because—even after participating in the 2018 Congressional Election and after attempts to better understand ranked-choice voting—they are still worried that they do not fully understand how the RCV Act works and may spoil or truncate their ballot, or effectuate a result they do not intend. Lander Declaration ¶¶ 12, 16–17; Robinson Declaration ¶¶ 18–19.

EVEN VOTERS WHO FULLY PARTICIPATE ARE BURDENED BY RCV

160. Many voters are burdened even when they fully participate in a ranked-choice election because they are compelled to express support for and associate with candidates who violate their political convictions, as a condition of having their vote counted.

161. In ranked-choice voting, unlike virtually every other election system, voters are required to cast votes for the entire slate of candidates appearing on the ballot if they want to ensure that their vote is counted.

162. In effect, voters are put to a Hobson's Choice: (i) express support for and associate with only candidates who they truly believe in—and risk disenfranchisement, or (ii) express support for and associate with candidates whom violate their political convictions—and ensure their vote is

counted.

163. For example, Plaintiffs Robert Hagopian and James T. Trudel ranked every candidate in the 2018 Congressional Election even though they supported only Bruce Poliquin. Hagopian Declaration ¶¶ 8–15; Trudel Declaration ¶¶ 8–15.

164. Mr. Hagopian and Mr. Trudel would not have voted for the other candidates but for their (correct) fear that their ballots would have been at risk of not being counted if they failed to rank the entire slate of candidates who appeared on the ballot. *Id.*

165. Mr. Hagopian and Mr. Trudel were thus compelled to express support for and associate with candidates with whom they would have preferred to not express support or associate.

166. While the ballots of voters like Mr. Hagopian and Mr. Trudel are counted, these voters are burdened.

THE 2020 GENERAL ELECTION

167. Maine voters will elect one member to the U.S. Senate in the general election on November 3, 2020, and two members to the U.S. House of Representative in the general election held that same day.

168. The primary elections held on July 14, 2020, identified the party candidates who will advance to the general elections.

169. The deadline for non-party candidates to submit petitions to appear on the ballot in Maine's 2020 general election was July 1, 2020, pursuant to the Governor's extended deadline. *See* Me. Rev. Stat. tit. 21-A § 354(8-A); *see also* Me. Exec. Order No. 39 FY 19/20, § I.B.2 (Apr. 10, 2020).

170. Only party candidates are participating in the 2020 election for Maine's First and Second Congressional Districts. These elections thus do not involve the issues raised in this Complaint.

171. The 2020 Senatorial Election will include Susan Collins (R), Sara Gideon (D), Max Linn (I), and Lisa Savage (I).⁴

172. This election will be conducted pursuant to the RCV Act. The respective candidates will be listed on the ballot, and voters will be instructed to rank them in order of preference.

173. To achieve full participation in the 2020 Senatorial Election, voters will have to rank at least three distinct candidates and not overvote any of the ranks. This is similar to the 2018 Congressional Election, where full participation required voters to rank at least three distinct candidates and not overvote any of the ranks.

174. The rate of full voter participation in the 2020 Senatorial Election is likely to be similar to the dismal rate of full participation in the 2018 Congressional Election.

175. The rate of ballot truncation and ballot spoliation may be even higher in the 2020 Senatorial Election due to the Covid-19 pandemic.

176. As a result of Covid-19, more voters are expected to vote by mail.

177. Unlike in-person voting, an individual who votes by mail does not have access to Maine's Accessible Voting System or local election officials whom he or she may ask for help. *See* Sec'y of State, *Maine Voter Guide Part 2: Casting Your Ballot* (last visited July 9, 2020), <https://www.maine.gov/sos/cec/elec/voter-info/videotranscript.html#part2>. Given the fact that the complexity of RCV is directly preventing many Mainers from fully participating, the lack of available assistance is likely to cause the 2020 full voter participation numbers to be even worse than the 2018 numbers.

⁴ There is also a pending lawsuit that may result in another independent candidate—Tiffany Bond—being placed on the ballot. *See generally* *Bond v. Dunlap et al.*, No. 1:20-cv-00216 (D. Me. filed June 19, 2020).

PLAINTIFFS' RIGHT TO VOTE WILL BE UNCONSTITUTIONALLY BURDENED BY RANKED-CHOICE VOTING IN THE UPCOMING ELECTION

178. Plaintiff Robert Hagopian ranked Bruce Poliquin in the first round of the 2018 Congressional Election, followed by the independent candidates, followed by Jared Golden. Hagopian Declaration ¶ 9.

179. Mr. Hagopian completed his ballot in this manner to ensure that his vote was counted and to put additional candidates between his first choice, Bruce Poliquin, and his last choice, Jared Golden. *Id.* ¶ 10.

180. Bruce Poliquin was the only candidate Mr. Hagopian truly supported. *Id.* ¶ 11.

181. Mr. Hagopian did not wish to express support for the other candidates because they stood for principles that violated his political convictions. *Id.* ¶ 12.

182. However, Mr. Hagopian correctly understood that if Bruce Poliquin were eliminated, his ballot would be discarded if he did not vote in additional rounds. *Id.* ¶ 13.

183. Accordingly, Mr. Hagopian voted for candidates other than Bruce Poliquin to ensure that his ballot was counted and to prevent Jared Golden from being elected. *Id.* ¶ 14.

184. Were it not for ranked-choice voting, Mr. Hagopian would not have supported candidates other than Bruce Poliquin. *Id.* ¶ 15.

185. Mr. Hagopian plans to vote in the 2020 Senatorial Election. *Id.* ¶ 16.

186. Mr. Hagopian wants to ensure that his vote will be counted in the 2020 Senatorial Election. *Id.* ¶ 17.

187. In the 2020 Senatorial election, Mr. Hagopian plans to rank Susan Collins first, followed by the independent candidates, followed last by Sara Gideon. *Id.* ¶ 18.

188. Mr. Hagopian does not support Sara Gideon or the independent candidates. *Id.* ¶ 19.

189. However, Mr. Hagopian will rank those candidates on his ballot to ensure that it is

counted. *Id.*

190. Mr. Hagopian will have to violate his political convictions once again in order to ensure that his vote is counted. *Id.* ¶ 20.

191. Accordingly, Mr. Hagopian will once again be compelled to speak and associate as a condition of exercising his fundamental right to vote.

192. Mr. Hagopian's right to vote will be burdened by the RCV Act in the 2020 Senatorial Election.

193. Plaintiff Duane R. Lander ranked Bruce Poliquin in each round of voting in the 2018 Congressional Election. In other words, Mr. Lander filled in the "circle" for Poliquin four times. Lander Declaration ¶ 10.

194. Mr. Lander was confused about the way ranked-choice voting worked in the 2018 Congressional Election. *Id.* ¶ 9.

195. Mr. Lander also did not want to vote for any other candidate. *Id.* ¶ 10.

196. Mr. Lander was under the impression that he needed to fill in each circle with Bruce Poliquin to ensure that his vote was counted. *Id.* ¶ 11.

197. Mr. Lander believed that if he filled in only the first circle for Poliquin, his vote would not be counted. He knows that many people voted that way and was under the impression that their votes were not counted. *Id.* ¶ 11.

198. Mr. Lander did not understand how votes for other candidates would be counted. *Id.* ¶ 12.

199. Mr. Lander did not understand that Poliquin could receive the highest number of votes in the first round and lose in the second round. *Id.* ¶ 12.

200. Mr. Lander still does not understand how votes for other candidates could be recounted

as votes for the eventual winner, Jared Golden. *Id.*

201. The significance of a vote for another candidate was never explained to Mr. Lander prior to his vote. *Id.*

202. Since the 2018 Congressional Election, Mr. Lander has attempted to better understand ranked-choice voting. *Id.* ¶ 13.

203. Among other things, Mr. Lander has had multiple conversations with experts in ranked-choice voting. *Id.*

204. Mr. Lander plans to vote in the 2020 Senatorial Election. *Id.* ¶ 14.

205. Mr. Lander plans to rank Susan Collins in every round of his ballot in the 2020 Senatorial Election. *Id.* ¶¶ 15–16.

206. Mr. Lander is under the impression that he must fill in the “circle” for Susan Collins for each round in order to ensure that his vote is counted. *Id.* ¶ 16.

207. Mr. Lander also does not want to vote for Sara Gideon or any of the other independent candidates. *Id.* ¶ 17.

208. Mr. Lander does not want to risk having his ballot exhausted. *Id.* ¶ 17.

209. However, if Mr. Lander completes his ballot as planned, he will not fully participate in the election, and his ballot may be exhausted.

210. Mr. Lander’s right to vote will be burdened by the RCV Act in the 2020 Senatorial Election.

211. Plaintiff Sterling B. Robinson ranked Bruce Poliquin in the first round of voting in the 2018 Congressional Election and did not rank any additional candidates. Robinson Declaration ¶ 10.

212. Mr. Robinson completed his ballot in this manner, because after researching the ranked-

choice voting options, he was under the mistaken impression that it was not necessary to fill out additional rounds of the ballot to ensure that his ballot would not be exhausted. *Id.* ¶ 11.

213. Mr. Robinson was confused regarding the actions necessary to ensure that his vote was counted in each round of ranked-choice voting. *Id.* ¶ 12.

214. Mr. Robinson did not understand the significance of ranking other candidates on the ballot in the 2018 Congressional Election. *Id.* ¶ 13.

215. In particular, Mr. Robinson did not understand that the failure to rank additional candidates risked having his ballot exhausted. *Id.*

216. Had Mr. Robinson understood the significance of ranking other candidates, Mr. Robinson would have ranked additional candidates in the 2018 Congressional Election. *Id.* ¶ 14.

217. Mr. Robinson plans to vote in the 2020 Senatorial Election. *Id.* ¶ 15.

218. In the 2020 Senatorial Election, Mr. Robinson plans to rank Susan Collins as his first choice and additional candidates to ensure that his ballot is fully counted. *Id.* ¶ 16.

219. Mr. Robinson's goal is to ensure that his vote is counted. *Id.* ¶ 17.

220. However, Mr. Robinson still does not understand how to rank the candidates to both ensure that his preferred candidate is in the best position to win and ensure that his ballot will not be exhausted. *Id.* ¶ 18.

221. Mr. Robinson does not know where or how to research strategic ranked-choice voting, and he is concerned that in attempting to ensure his ballot is counted, he could unknowingly undermine his voting interests. *Id.* ¶ 19.

222. Mr. Robinson's right to vote will be burdened by the RCV Act in the 2020 Senatorial Election.

223. Plaintiff James T. Trudel ranked Bruce Poliquin in the first round of the 2018

Congressional Election, followed by the independent candidates, followed by Jared Golden. Trudel Declaration ¶ 9.

224. Mr. Trudel completed his ballot in this manner to ensure that his vote was counted and to put additional candidates between his first choice, Bruce Poliquin, and my last choice, Jared Golden. *Id.* ¶ 10.

225. Bruce Poliquin was the only candidate Mr. Trudel truly supported. *Id.* ¶ 11.

226. Mr. Trudel did not wish to express support for the other candidates because they stood for principles that violated his political convictions. *Id.* ¶ 12.

227. Mr. Trudel correctly understood that if Bruce Poliquin were eliminated, his ballot would be discarded if he did not vote in additional rounds. *Id.* ¶ 13.

228. Accordingly, Mr. Trudel voted for candidates other than Bruce Poliquin to ensure that his ballot was counted and to prevent Jared Golden from being elected. *Id.* ¶ 14.

229. Were it not for ranked-choice voting, Mr. Trudel would not have supported candidates other than Bruce Poliquin. *Id.* ¶ 15.

230. Mr. Trudel plans to vote in the 2020 Senatorial Election. *Id.* ¶ 16.

231. In the 2020 Senatorial Election, Mr. Trudel wants to ensure that his vote will be counted. *Id.* ¶ 17.

232. Mr. Trudel therefore plans to rank Susan Collins first, followed by the independent candidates, followed last by Sara Gideon. *Id.* ¶ 18.

233. Mr. Trudel does not support Sara Gideon or the independent candidates. *Id.* ¶ 19.

234. However, Mr. Trudel will rank them on his ballot to ensure that it is counted. *Id.*

235. As a result, Mr. Trudel will have to violate his political convictions once again in order to ensure that his vote is counted. *Id.* ¶ 20.

236. Accordingly, Mr. Trudel will once again be compelled to speak and associate as a condition of exercising his fundamental right to vote.

237. Mr. Trudel's right to vote will be burdened by the RCV Act in the 2020 Senatorial Election.

NO STATE INTEREST JUSTIFIES DENYING MAINERS THE RIGHT TO FULLY PARTICIPATE IN FEDERAL ELECTIONS

238. The RCV Act does not advance any legitimate governmental interest.

239. Maine does not have a legitimate interest in putting the majority of Maine voters at risk of disenfranchisement.

240. Maine does not have a legitimate interest in limiting a purported "spoiler effect" associated with plurality voting.

241. The RCV Act does not diminish the spoiler effect. Instead, it introduces new "spoiler effects" due to quirks in the ranked-choice voting system, like the "non-monotonicity" problem. McCarty Report at 26–27.

242. The RCV Act does not advance a purported interest in "nuanced" voter expression. To the contrary, the empirical evidence shows that the RCV Act actually increases the risk of disenfranchisement and forces voters to express views contrary to their beliefs. *Id.* at 5–16.

243. The RCV Act does not advance a purported interest in voter participation. It actually reduces the rate of full participation among voters and results in more ballots not being counted toward the final election result. *Id.* at 5–16, 23–25. In addition, there is no academic literature that has observed "a boost in turnout associated with switching to RCV from plurality voting," and several that have observed a decline in turnout. *Id.* at 23.

244. The RCV Act does not advance a purported interest in ensuring that the winning candidate achieves majority support. In the 2018 Congressional Election, Maine declared Jared Golden the

winner even though he received only 49.2% of ballots cast. McCarty Report at 27. And this is no anomaly: *most* RCV elections that move past the first round result in victors that fail to garner a majority of votes cast. McCarty Report at 27.

245. Plurality elections and majority runoff elections are less burdensome on Plaintiffs' rights.

246. There is no conceivable state interest that would justify the burden on Plaintiffs' constitutional rights.

PREVIOUS FEDERAL LITIGATION INVOLVING THE EFFECTS OF RANKED-CHOICE VOTING ON MAINE VOTERS

247. In December 2018, a Court within this District declined to set aside the results of the 2018 Congressional Election. In that case the Court concluded, among other things, that the plaintiffs "ha[d] not demonstrated that their votes received less weight" as a result of the RCV Act, *Baber v. Dunlap*, 376 F. Supp. 3d 125, 140–41 (D. Me. 2018), *appeal dismissed*, No. 18-2250, 2018 WL 8583796 (1st Cir. Dec. 28, 2018), or that any voters "were disenfranchised during tabulation because they cast invalid overvotes or undervotes," *id.* at 143. *See also Baber v. Dunlap*, 349 F. Supp. 3d 68 (D. Me. 2018) (denying temporary restraining order).

248. The Plaintiffs in that case did not present the Court with evidence that nearly two thirds of Maine voters had been denied full participation in the 2018 Congressional Election and thus had been placed at risk of disenfranchisement. Nor did they show, as Plaintiffs do here, that the average rate of full voter participation and the actual rate of disenfranchisement are much worse under the RCV Act than under other types of voting systems. Finally, Plaintiffs in that case lacked the empirical demographic data demonstrating that the RCV Act disproportionately burdens the right to vote of older and less-educated Mainers.

FIRST CLAIM FOR RELIEF
**(First and Fourteenth Amendments, as enforced by 42 U.S.C. § 1983 – UNDUE BURDEN
ON THE RIGHT TO VOTE)**
(On Behalf of All Plaintiffs)

249. Plaintiffs incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

250. Under the *Anderson-Burdick* balancing test, “[a] court considering a challenge to a state election law must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘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.’” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). This test employs a flexible, sliding scale that analyzes “severe” burdens on First and Fourteenth Amendment rights under “strict scrutiny,” and lesser burdens under less exacting scrutiny. *See Lyman v. Baker*, 954 F.3d 351, 376 & n.15 (1st Cir. 2020).

251. In addition, burdens that “threaten to work patent and fundamental unfairness” or “disenfranchise[]” voters “constitute a violation of due process.” *Bonas v. Town of N. Smithfield*, 265 F.3d 69, 74–75 (1st Cir. 2001).

252. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

253. The RCV Act denied Plaintiffs full participation in the 2018 Congressional Election and will deny them full participation in the 2020 Senatorial Election.

254. The average rate of full voter participation in contested plurality races in Maine is 97.3%. McCarty Report at 13.

255. The average rate of full voter participation in runoff elections is between 56% and 91%.

Id. at 15–16.

256. The rate of full voter participation in the 2018 Congressional Election was 38%. *Id.*

257. The rate of full voter participation in the 2018 Gubernatorial Primary was 35%. *Id.*

258. The rate of full participation in the 2018 Congressional Primary was 47%. *Id.*

259. The reductions in full voter participation caused by the RCV Act severely burden Plaintiffs’ First and Fourteenth Amendment rights by placing them and other Maine voters at risk of disenfranchisement even though they intend to show up at the polling place and cast valid votes.

260. Voters who do not achieve full participation are also denied the opportunity afforded other voters to transfer their vote to a continuing candidate after the first round of tabulation.

261. The RCV Act disenfranchises in every election enough voters as is necessary to manufacture a “majority.”

262. The RCV Act’s flaws amount to a severe burden on the fundamental right to vote.

263. The RCV Act severely burdens Plaintiffs’ fundamental right to vote.

264. **First**, there is substantial empirical evidence that voters are burdened because the RCV Act prescribes a system that is complicated and that voters do not fully understand. McCarty Report at 22 (“Examining the data, it becomes clear that the complexity of the RCV system leads to voter confusion which prevents voters from fully participating.”).

265. Indeed, Plaintiffs Duane R. Lander and Sterling B. Robinson were unable to successfully complete their ballot in the 2018 Congressional Election because they found it incomprehensible. Lander Declaration ¶¶ 8–12; Robinson Declaration ¶¶ 9–14.

266. Both have expressed uncertainty regarding ranked-choice voting in the 2020 Senatorial Election. Lander Declaration ¶¶ 12, 16; Robinson Declaration ¶¶ 18–19.

267. **Second**, some voters may not complete their ballots because they prefer one candidate

and conclude that it is too burdensome to research every additional candidate running for the same position, and to consider every possible hypothetical matchup.

268. Unlike traditional runoff elections—where the voter is given an opportunity to assess the remaining candidates’ platforms in a discrete election with real stakes—ranked-choice voting requires voters to assess the relative strengths and weaknesses of every candidate and express opinions on hypothetical candidate matchups that may never occur.

269. Indeed, voters are less likely to complete their ballot as more candidates appear on the ballot, showing that lack of voter participation stems from this burden and/or voter confusion. McCarty Report at 6–9.

270. **Third**, other voters understand the RCV Act system perfectly and are willing to conduct burdensome research to become informed about hypothetical matchups, but are determined to exercise their constitutional right to associate with only their preferred candidate.

271. In the 2020 Senatorial Election, Mr. Lander intends to vote for only Republican Susan Collins because, *inter alia*, he does not want to cast a vote for Ms. Gideon or the independent candidates. Lander Declaration ¶ 17.

272. If Susan Collins does not continue to the next round, however, Mr. Lander’s ballot will, under the statute, be “not counted,” Me. Rev. Stat. tit. 21-A, §§ 723-A(1)(D), (2), and he will have been deprived of the right to vote.

273. Additionally, Plaintiffs Robert Hagopian and James T. Trudel—while they plan to rank every candidate and thus ensure their votes are counted—are burdened because they will complete their ballots under duress.

274. Mr. Hagopian and Mr. Trudel support only Susan Collins and are thus burdened by the State’s imposition of a requirement for them to support and associate with candidates of whom

they do not approve as a condition of ensuring that their ballots are in fact counted. Hagopian Declaration ¶¶ 16–20; Trudel Declaration ¶¶ 16–20.

275. These burdens on the right to vote are not hypothetical. In the 2018 race for Maine’s Second Congressional District, more than **180,000** votes were subject to this risk and more than **14,000** were, in fact, not counted. McCarty Report at 12–13.

276. Moreover, if Plaintiffs’ preferred candidates continue to the second round, Plaintiffs will not be permitted to change their votes. Only voters who voted for an eliminated candidate in the first round and chose to associate with additional candidates will be allowed to change their vote in the next round.

277. Maine does not have a legitimate governmental interest that justifies the burden on Plaintiffs’ fundamental right to vote.

278. The governmental interests Maine could assert are not furthered—and in fact are undermined—by ranked-choice voting. Moreover, the RCV Act is not an appropriately tailored means of furthering any purported governmental interest.

279. Accordingly, the RCV Act unconstitutionally burdens Plaintiffs’ rights under the First and Fourteenth Amendments.

SECOND CLAIM FOR RELIEF
**(First and Fourteenth Amendment, as enforced by 42 U.S.C. § 1983 – COMPELLED
SPEECH AND ASSOCIATION)**
(On Behalf of All Plaintiffs)

280. Plaintiffs incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

281. “[F]reedom of speech ‘includes both the right to speak freely and the right to refrain from speaking at all.’” *Janus v. Am. Fed’n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2463 (2018) (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)) (collecting cases).

282. “[T]he Government may not deny a benefit to a person on a basis that infringes his constitutionally protected freedom of speech even if he has no entitlement to that benefit.” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 214 (2013) (citation omitted).

283. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

284. The RCV Act conditions a government benefit on engaging in unwanted expressive conduct.

285. In particular, the RCV Act confers a benefit—a higher likelihood of affecting the outcome of an election—on voters ranking additional candidates on their ranked-choice ballot.

286. As a result, voters may rank candidates that they find objectionable solely to receive the benefit of ensuring that their ballot is counted in the final round of tabulation.

287. For example, Plaintiffs Robert Hagopian and James T. Trudel were compelled to express support for candidates in the 2018 Congressional Election who were contrary to their political convictions in violation of their speech and associational rights, solely to preserve their fundamental right to vote. Hagopian Declaration ¶¶ 8–15; Trudel Declaration ¶¶ 8–15.

288. Mr. Hagopian and Mr. Trudel will likewise be compelled to vote in the same manner in the 2020 Senatorial Election. Hagopian Declaration ¶¶ 16–20; Trudel Declaration ¶¶ 16–20.

289. Likewise, Plaintiff Sterling B. Robinson plans to rank candidates he does not support to ensure that his ballot is ultimately counted. Robinson Declaration ¶ 16.

290. On the other hand, Duane R. Lander plans to vote for only Susan Collins in the 2020 Senatorial Election because, *inter alia*, he does not want to vote for the other candidates. Lander Declaration ¶¶ 16–17.

291. Ranking candidates on a ranked-choice ballot is expressive conduct.

292. It is also expressive association.

293. Unlike virtually every other method of voting, many—if not most—of the candidates ranked by a voter will have no effect on the outcome of the election.

294. The RCV Act requires more speech and association from voters than is necessary to determine the outcome of an election, unlike traditional plurality or runoff elections.

295. Under the RCV Act, voters like Plaintiffs will be compelled to choose between (i) engaging in expressive conduct that violates their firmly held political convictions, or (ii) risking having their ballots discarded in the 2020 Senatorial Election.

296. The RCV Act thus unconstitutionally conditions Mainers' fundamental right to vote on engaging in unwanted expressive conduct.

THIRD CLAIM FOR RELIEF
(Fourteenth Amendment, as enforced by 42 U.S.C. § 1983 – PROCEDURAL DUE PROCESS)
(On Behalf of All Plaintiffs)

297. Plaintiffs incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

298. The Fourteenth Amendment provides that states shall not “deprive any person of life, liberty, or property, without due process of law[.]” U.S. Const. amend. XIV, § 1.

299. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

300. The RCV Act denies Plaintiffs' fundamental right to vote without due process.

301. The RCV Act will inhibit the ability of Plaintiffs and Maine voters writ large from achieving full participation in the 2020 Senatorial Election, thus placing them at risk of disenfranchisement.

302. The RCV Act will cause a substantial number of Maine voters—potentially including

Plaintiffs—to have their ballots exhausted before the final round of tabulation in the 2020 Senatorial Election.

303. The RCV Act does not provide Plaintiffs or other voters with notice or opportunity to cure a defective ballot before it is exhausted.

304. The RCV Act does not provide an appeal process to challenge an exhaustion decision.

305. The RCV Act thus violates the Fourteenth Amendment’s Due Process Clause.

FOURTH CLAIM FOR RELIEF
(Fourteenth Amendment, as enforced by 42 U.S.C. § 1983 – EQUAL PROTECTION)
(On Behalf of All Plaintiffs)

306. Plaintiffs incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

307. “[I]n statewide and in congressional elections, one person’s vote must be counted equally with those of all other voters in a State[.]” *Reynolds v. Sims*, 377 U.S. 533, 560 (1964).

308. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

309. For the reasons articulated herein, the RCV Act accords some votes more weight than others.

310. Accordingly, the RCV Act violates the Fourteenth Amendment’s Equal Protection Clause.

FIFTH CLAIM FOR RELIEF
(Twenty-Sixth Amendment, as enforced by 42 U.S.C. § 1983 – ABRIDGEMENT OF THE RIGHT TO VOTE BASED ON AGE)
(On Behalf of All Plaintiffs)

311. Plaintiffs incorporate by reference all prior paragraphs of this Complaint as though set forth fully herein.

312. The Twenty-Sixth Amendment provides that “[t]he right of citizens of the United States,

who are eighteen years of age or older, to vote, shall not be denied or abridged by the United States or by any State on account of age.” U.S. Const. amend XXVI, § 1.

313. The RCV Act abridges the rights of older voters by preventing a substantial number of voters over the age of 65 from achieving full participation in the electoral process and by exhausting their ballots at higher rates.

314. Accordingly, the RCV Act violates the Twenty-Sixth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in its favor and against Defendants, as follows:

- A. Declare that the RCV Act violates Plaintiffs’ rights and the United States Constitution;
- B. Preliminarily and permanently enjoin Defendants and any of their subordinates from enforcing the RCV Act;
- C. Order Defendants to count Plaintiffs’ ballots in the 2020 Senatorial Election;
- D. Award Plaintiffs their allowable costs and attorney’s fees pursuant to 42 U.S.C. § 1988 or any other basis in law, as appropriate;
- E. Grant such further and additional relief as this Court deems just and proper.

July 22, 2020

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**Certifications for Admission Pro Hac
Vice Forthcoming*

EXHIBIT A

**Expert Report of Nolan McCarty, Ph.D.
Professor of Politics and Public Affairs at Princeton University**

***Hagopian, et al. v. Dunlap, et al.,*
U.S. District Court for the District of Maine**

July 22, 2020

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EXPERT QUALIFICATIONS

I am the Susan Dod Brown Professor of Politics and Public Affairs at Princeton University and currently the Director of the Princeton Data-Driven Social Science Initiative. I recently concluded my service as Chair of the Department of Politics at Princeton University, and I was formerly the associate dean at the School of Public and International Affairs at Princeton University. I specialize in U.S. politics, democratic political institutions, and political game theory, with a research focus on political polarization and ideology and statistical voting analysis. I studied ranked-choice voting (“RCV”) in preparation for publication of my book, “Polarization: What Everyone Needs to Know,” which was published in July 2019 and includes a discussion of RCV.

I received my Ph.D. and M.S. in Political Economy from Carnegie Mellon University and my A.B. in Economics with Honors from the University of Chicago. I have taught graduate-level courses (Ph.D.) in game theory and political theory, American political institutions and a variety of political and methodology classes at Princeton University and Columbia University. I have also taught courses in business, legislative politics, and advanced econometrics at the master’s level at Princeton University and the University of Southern California. Additional information about my professional experience as a political scientist and economist, including prior expert testimony, publications, and affiliations, can be found in my curriculum vitae, attached as Appendix A.

I have been asked by attorneys for Plaintiffs to examine the effects of RCV on voter participation in the State of Maine, and how participation in RCV systems in Maine and elsewhere compares to plurality and runoff systems. I have also been asked to evaluate the purported benefits of RCV identified by RCV supporters.

In order to perform this analysis, I have reviewed data from 98 municipal RCV elections, cast-ballot data from the 2018 Maine Second Congressional District general election (“2nd CD election”), 2018 Maine Democratic Congressional primary election (“Congressional primary”), and the Democratic Gubernatorial primary election (“Gubernatorial primary”), voter registration and commercial records for Maine voters who participated in the 2018 general election (“Maine voter file”), election-return data from the 2018 Maine state senate elections, data on the 2018 Congressional elections in California and Washington, and data on majority runoff elections. A description of the data sources relied upon for this report is attached as Appendix B. My analysis is guided by my training and experience as a political scientist and economist, including my work with statistical voter analysis and RCV.¹

I am being compensated for my time in preparing a report and preparing or providing any testimony. My billing rate is \$400 for services performed in connection with this matter. In addition, I will be reimbursed for all reasonable out-of-pocket expenses incurred in connection with my analyses and testimony in this case. My compensation is not dependent on the outcome of this matter or the opinions expressed.

¹ My conclusions stated herein are based upon my review of the information available to me at this time. I reserve the right to alter, amend, or supplement these conclusions based upon further study or based upon the availability of additional information, including the Maine July 2020 primary election data.

SUMMARY OF FINDINGS AND ANALYSIS

The following is a report of my empirical findings and analysis, which demonstrates:

1. RCV resulted in a substantially lower “full participation” rate in Maine in 2018 as compared to plurality and runoff systems, where “full participation” means casting a ballot that could not be exhausted and thus is guaranteed to count toward the final outcome. This is particularly true in jurisdictions like Maine with more elderly and less-educated voters.
2. These results, as well as the high number of ballots cast that lack any clear rational explanation, demonstrate that the low “full participation” rate in Maine cannot be explained by deliberate voter choice alone. Indeed, the results demonstrate that voter confusion causes many voters not to fully participate. The inherent complexities of the system are preventing voters from fully participating and thus effectively disenfranchising large numbers of voters.
3. The purported benefits of RCV have not manifested in jurisdictions where RCV has been utilized over long periods of time.

As I outline in my report, an RCV system comes with a significant number of vices, many of which manifested themselves in the 2018 Maine elections.² Chief among them is that the system provides many significant impediments to full participation of the voters who choose to cast ballots. Central to this issue is the phenomenon of *exhausted* ballots. In an RCV election, ballots may become unusable in later rounds of tabulation when the voter has failed to rank any of the candidates that remain in contention. When such a ballot is cast aside after the first round of voting for this reason, it is said to be exhausted, and it is no longer counted for purposes of determining the “majority” winner. The academic literature and the analyses in my report demonstrate that ballot exhaustion is pervasive in RCV elections, sometimes leading to the discarding of over 20% of the ballots during the final round of tabulation. It also appears to be persistent, as rates of exhaustion do not decline over time. Jurisdictions that have used RCV for decades suffer from ballot exhaustion at similar rates as new adopters of the voting system.

The direct reason why ballot exhaustion is so pervasive is that voters rarely rank a sufficient number of candidates. Whenever a voter does not rank all of the candidates, she runs the risk of having her ballot exhausted. Unfortunately, because of the uncertainties in the level of support for various candidates, a voter may have a difficult time predicting whether or not her ballot will be exhausted. Moreover, the academic literature and my analysis of the 2018 Maine elections suggest a high likelihood that older and less-educated voters are most likely to vote an incomplete ballot, and thus, are most likely to submit an exhausted, uncounted ballot. These findings are troubling in that scholarly work has established that such incomplete (or *truncated*)

² I use the term “2018 Maine elections” to include the 2nd CD election, Congressional primary, and Gubernatorial primary. These are the only RCV elections to have taken place in Maine with reported data on individual ballots at the time I conducted my analysis. The state does not report data on individual ballots for RCV elections that are resolved in the first round of tabulation.

ballots can affect election outcomes in ways that are not transparent to voters and may work against their interests.

In addition, full participation in RCV is low compared to plurality and runoff elections. In plurality elections, full voter participation is the rule, and there are relatively few voters who fail to achieve full participation if they choose to vote at all. Even in a runoff election—which requires voters to choose to and make efforts to vote on two separate occasions and typically take place in primary elections that receive lower voter turnout in general—the percentage of exhausted ballots in an RCV election is not substantively different from a runoff election. But, in states where the majority runoff election occurs on the Federal Election Day, voter turnout actually *increases*, demonstrating a better performance than RCV in producing majority winners and better second-round voter participation.

These results demonstrate that the low full-participation rate in Maine cannot be explained by voter choice or expression alone. As demonstrated by the analysis below, the lack of full voter participation in Maine is due to problems inherent to RCV elections. The complexities of the system are causing voter confusion that is preventing many voters from fully participating.

Finally, as I outline in this report, the purported virtues of RCV are not realized by adoption:

1. There is little evidence that RCV improves the fortunes of smaller parties. Comparisons of legislative election outcomes in Australia, where RCV has been used since the 1920s with other Anglophone democracies, reveal that RCV does not encourage small party electoral success.
2. Similarly, there is little evidence that RCV boosts turnout or voter engagement. In fact, the academic debate on this point is consistent that voter turnout declines with the use of RCV. Original analyses demonstrate that Maine voters were no more attracted to voting in RCV elections than the plurality elections on the same ballot.
3. RCV does not eliminate “spoiler effects” or opportunities for manipulation. Instead, RCV changes the nature of the opportunities for strategic behavior and manipulation.
4. RCV does not guarantee that the winner receives a majority of the vote. In fact, the winner of an RCV election that goes beyond the first round fails to obtain support from a majority of voters most of the time.

BACKGROUND

The use of RCV has gained traction over the past several years. In such systems, voters are asked to rank a set of candidates, and those rankings are then used to determine the election winners. An RCV system generally works as follows:

- Voters are asked to rank the candidates. In some systems, they can rank all of the candidates while others ask only that the voters rank up to a certain number of candidates.

- The first rank votes are counted. If any candidate receives a majority of the first rank votes, she is declared a winner. If there is no majority winner, the last place candidate, as well as any additional candidates that have been mathematically eliminated, are dropped.
- The votes are recounted using the first ranked votes of the remaining candidates and the second ranked votes of those who supported one of the eliminated candidates.
- If a candidate obtains a majority on this round, she is the winner. If not, the process continues until there is a winner.

Maine's RCV system generally follows these principles. *See generally* Me. Rev. Stat. tit. 21-A, § 723-A. In general, if no candidate receives more than 50% of the first-choice votes based on election returns, the RCV count proceeds to successive rounds of voting. "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. . . . In the final round, when only 2 continuing candidates remain, the candidate with the most votes in that round is the winning candidate." 29-250-535 Code Me. R. § 4.2(A).

Advocates of RCV tout many virtues. RCV, advocates contend, improves the electoral fortunes of small parties and independent candidates. By encouraging a larger set of candidates to contest office, advocates argue that voters are provided with more choice, which in turn should result in greater voter turnout and engagement. RCV elections also purportedly eliminate the possibility of spoiler candidates who siphon off too many votes from the most popular major candidate. Finally, RCV elections are said to be more legitimate because the winner has earned the support of a majority of the electorate.

Officials and RCV interest groups in Maine have made similar arguments. The Committee for Ranked Choice Voting in Maine, for example, asserts that

[RCV] gives more choice and more voice to voters. With RCV, you have the freedom to vote for the candidate you like best without worrying that you will help to elect the candidate you like least. Ranked Choice Voting eliminates vote-splitting and ensures that candidates who are opposed by a majority of voters can never win.³

The same group has also contended that RCV in Maine increases voter participation in democratic elections, reduces negative campaigning, results in greater choice for voters, and restores "majority rule."⁴

³ The Committee for Ranked Choice Voting, <http://www.rcvmaine.com/> (last visited July 19, 2020).

⁴ *See e.g.*, The Committee for Ranked Choice Voting, *FAQ: What are the benefits of voting with a ranked choice ballot?*, http://www.rcvmaine.com/what_are_the_benefits_of_voting_with_a_ranked_choice_ballot (last visited July 19, 2020) (listing as benefits of RCV: "restores majority rule," "eliminates vote splitting," "more voice for voters," "more choice for voters," and "reduces incentives for negative campaigning" (capitalization altered)).

Were these virtues demonstrable, it might be difficult to argue against the advocates of RCV. Unfortunately, however, RCV imposes substantial costs. Most important, it results in substantial disenfranchisement of voters, as demonstrated in the 2018 Maine elections. Moreover, the electoral history of RCV as practiced in U.S. municipalities, other national legislatures, and the 2018 Maine elections fails to provide much evidence at all that the purported benefits of RCV have materialized.

ANALYSIS

I. RCV RESULTED IN A SIGNIFICANT NUMBER OF MAINE VOTERS NOT FULLY PARTICIPATING IN THE 2018 MAINE ELECTIONS

A. Exhausted Ballots in RCV Elections

A major problem observed in RCV elections is that increasing numbers of ballots cease to be relevant to the outcome of the election as the vote tabulation proceeds. In an RCV election, a ballot may become *exhausted* if the voter has not ranked a currently viable candidate. For example, if a voter ranks only one candidate and that candidate is eliminated in round 1, that voter contributed nothing to the second round voting tabulations, because an exhausted vote is no longer counted for purposes of determining the “majority” winner.⁵ Specifically, a voter’s ballot may be exhausted if any of the following occur:

1. She has ranked only candidates who are no longer viable;
2. She has *overvoted* by selecting more than one viable candidate for highest rank of her viable candidates; or
3. She *undervotes* by skipping columns or rankings.⁶

My use of the term “exhausted ballot” is slightly narrower than as defined under Maine law. Under Maine law, a ballot can be “exhausted” even in the first round of voting if a voter leaves their ballot blank or overvotes in the first round. By contrast, I use the term “exhausted ballot” to refer to only ballots that are exhausted after the first round of tabulation—*i.e.*, ballots that successfully ranked at least one candidate before being exhausted. I use the term “total undervotes” or “all undervotes” to refer to both exhausted ballots—as defined herein—and ballots that are left blank in the first round of tabulation. Lastly, I use the term “ballots not counted” to refer to all ballots that are not tabulated in the final round. This term is slightly broader than “total undervotes” because it also includes first-found overvotes. In other words, “ballots not counted” is synonymous with Maine’s statutory definition of “exhausted ballots.”

⁵ See 29-250-535 Code Me. R. § 4.2(A).

⁶ Under Maine regulations, an undervote occurs only if two or more rankings are skipped. See 29-250-535 Code Me. R. § 4.2(B)(2)–(3).

Previous research has shown that high numbers of exhausted ballots are a pervasive phenomenon in RCV elections.⁷

To supplement these results and provide some additional empirical evidence concerning the prevalence of exhausted votes, I conducted a statistical analysis of a data set of 98 RCV general elections held in the U.S. from 2006 to 2019. These elections are restricted to those conducted under RCV rules and required more than a single round to determine the winner. Thus, they exclude those for which a candidate received a majority on the first round of balloting.

Figure 1 below provides the frequency distribution of the percentage of ballots that were exhausted during the RCV counting process for the 98 elections in the first dataset.⁸ Clearly, large numbers of exhausted ballots are the norm. The most typical RCV election (a circumstance that arose more than ten times in the dataset) is one where 8% of the ballots are not counted in the final round. On average, 10.8% of votes cast in an RCV election are considered exhausted. But a large number of elections had ballot exhaustion rates of 20% and higher. Indeed, 15 of the 98 RCV elections resulted in more than 20% of cast ballots being exhausted.

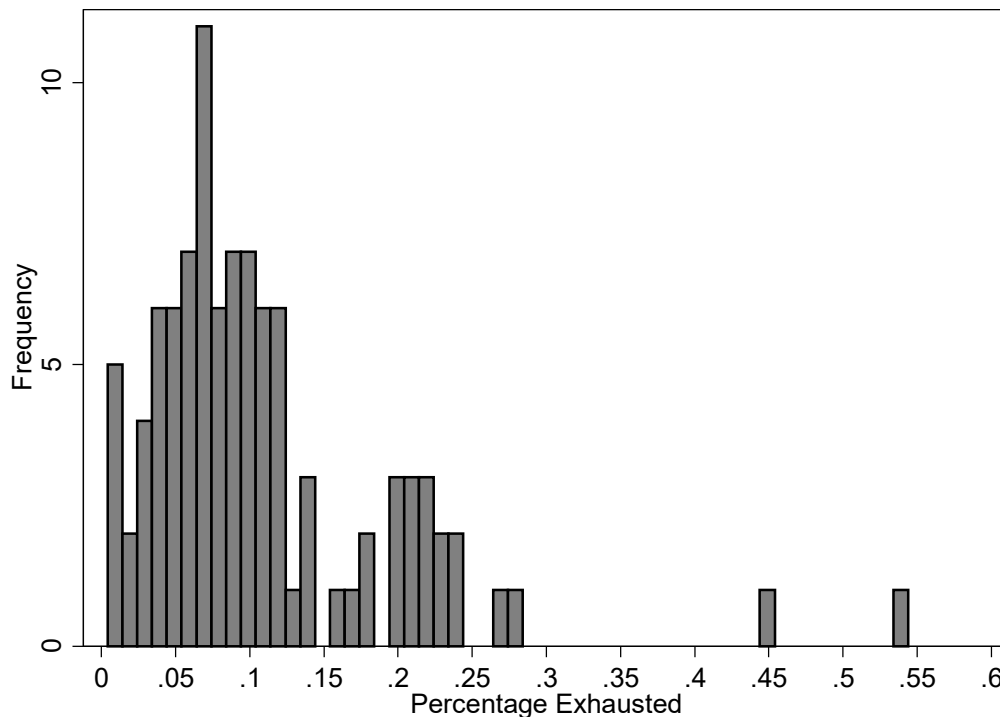


Figure 1: Exhausted Ballots for 98 RCV Elections

The number of exhausted votes across these elections depends on several factors, the most important of which is the number of candidates in the election. Figure 2 shows the relationship

⁷ See Craig M. Burnett and Vladimir Kogan, “Ballot (and Voter) ‘Exhaustion’ Under Instant Runoff: an Examination of Four Ranked-Choice Elections,” *Electoral Studies* 37, 41–49 (2015); Francis Neely and Jason McDaniel, “Overvoting and the Equality of Voice Under Instant-Runoff Voting in San Francisco,” *California Journal of Politics and Policy* 7(4) (2015).

⁸ As noted above, exhausted ballots exclude the over- and undervotes from the first round.

between ballot exhaustion and the number of candidates where the line shows the best linear relationship.

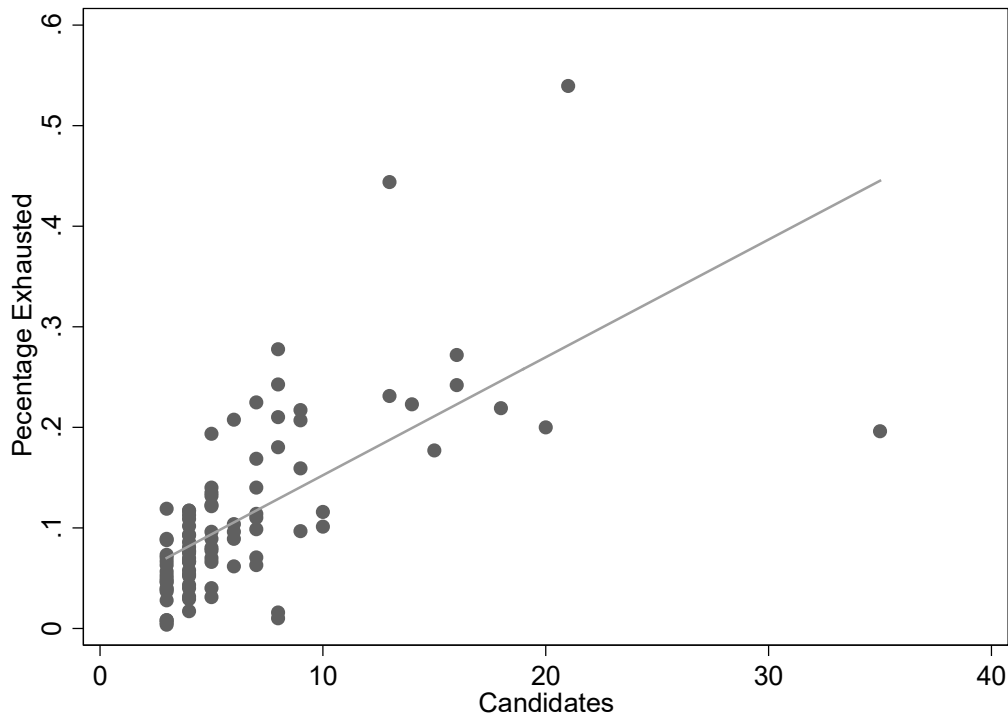


Figure 2: Exhausted Ballots and the Number of Candidates

There is a strong relationship between ballot exhaustion and the number of candidates. And, as demonstrated by Figure 2, the rate of ballot exhaustion only increases with the number of candidates in an election. This is due to the fact that voters rarely rank all of the available candidates, and they rank a lower percentage of candidates when there are large numbers of them. If all voters ranked all candidates, there would be no exhausted votes. If they ranked a constant proportion of candidates, the rate of exhaustion would not increase with the number of candidates running. Accordingly, the increasing rate of ballot exhaustion is consistent with the idea that ranking large numbers of candidates is confusing for most voters and that confusion only increases as the number of candidates increases.

A common defense by RCV advocates is that voter confusion and the effects of cognitive constraints will diminish over time as voters get used to the system. That conjecture can also be tested on these data. Figure 3 plots the rate of exhausted ballots against the number of times that the jurisdiction has used RCV.

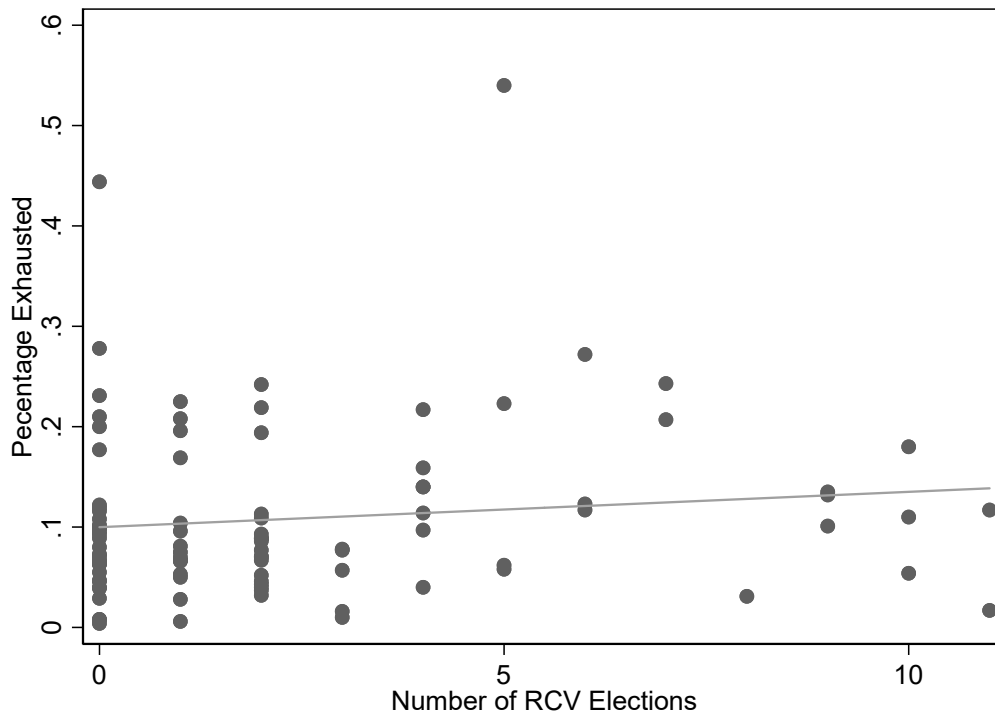


Figure 3: Ballot Exhaustion Over Time

Contrary to the advocacy, there is no empirical evidence that ballot exhaustion rates decline with more experience. Indeed, despite repeated practice with RCV elections, Figure 3 demonstrates that high ballot exhaustion rates do not improve over time. Thus suggesting that the voter confusion discussed above is not based merely on the introduction of a new system but is due to problems inherent in the RCV election system.

To demonstrate the robustness of the bivariate relationships in Figures 2 and 3, I estimate a multivariate regression of the ballot exhaustion rate on the number of candidates and the number of previous RCV elections. I add a few additional control variables such as an indicator for whether it was a mayoral election (the highest profile elections in the dataset) and the natural log of the number of votes (also to capture higher profile elections).⁹

Table 1: Correlates of Ballot Exhaustion	
Variable	Coefficient
Number of Candidates	0.013***
	(0.002)
Number of RCV Elections	0.000
	(0.002)

⁹ See Francis Neely and Jason McDaniel, “Overvoting and the Equality of Voice Under Instant-Runoff Voting in San Francisco.” *California Journal of Politics and Policy* 7(4) (2015).

Mayoral Race	-0.072***
	(0.021)
Ln(votes)	0.011**
	(0.005)
Constant	-0.071
	(0.046)
N	93
R Squared	0.529
Standard errors clustered by jurisdiction in parentheses	

There is a strong relationship between exhausted ballots and the number of candidates running. Each additional candidate in an RCV election adds a 1.3 percentage point increase in exhausted ballots. In contrast, the effect of the number of elections is zero to three decimal places. Thus, RCV advocates are incorrect to claim that RCV performs better over time. Instead, the evidence shows that an increase in election candidates has a direct correlation to exhausted ballots in that election, and this problem remains over time.¹⁰

B. Fully Participating Ballots

Data on the individual vote records in Maine RCV elections can allow for a closer look at the behavior of voters in RCV elections.¹¹ These data contain a record of every vote cast. Under Maine's balloting procedures, voters are asked to provide the candidate that they place in ranks 1 through $n+1$, where n is the number of candidates.¹² A voter may undervote at any rank by leaving that column blank. A voter may overvote by identifying two candidates for a single rank. Nothing precludes a voter from ranking the same candidate at two or more positions. Figure 4 provides an illustration of what the Maine ballot data looks like.

	A	B	C	D	E	F	G	H
1	Cast Vote Record	Precinct	Ballot Style	Rep. to Congress 1st Choice District	Rep. to Congress 2nd Choice District	Rep. to Congress 3rd Choice District	Rep. to Congress 4th Choice District	Rep. to Congress 5th Choice Dis
2		1 Fayette	CAN Ballot Style 130	REP Poliquin, Bruce (5931)	REP Poliquin, Bruce	REP Poliquin, Bruce	undervote	undervote
3		2 Fayette	CAN Ballot Style 130	REP Poliquin, Bruce (5931)	undervote	undervote	undervote	undervote
4		3 Fayette	CAN Ballot Style 130	DEM Golden, Jared F. (5471)	Bond, Tiffany L.	undervote	undervote	undervote
5		4 Fayette	CAN Ballot Style 130	REP Poliquin, Bruce (5931)	DEM Golden, Jared F.	Bond, Tiffany L.	DEM Golden, Jared F.	Hoar, William R.S.
6		6 Fayette	CAN Ballot Style 130	REP Poliquin, Bruce (5931)	undervote	undervote	undervote	undervote

Figure 4: Example of Cast Ballots in Maine 2nd Congressional District Election

The votes in Figure 4 are simply the first five rows of the data, but one can see the large number of anomalies. First, none of these voters successfully ranked all four candidates. Voter 1 voted for Bruce Poliquin in ranks 1 through 3 and then left 4 and 5 blank. Voters 2 and 6 only voted for Poliquin and then left the rest blank. Interestingly, voter 4 chose Jared Golden as her second and fourth ranked candidate. Importantly, none of these voters' ballots was exhausted as each

¹⁰ That mayoral races have lower rates of ballot exhaustion is consistent with voters ranking a higher proportion of candidates in high profile elections, but larger electorates appear to produce more exhausted ballots.

¹¹ These data are available from the Maine Secretary of State, Bureau of Corporations, Elections, and Commissions, <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6> (last visited July 22, 2020).

¹² The additional slot is included for write-in candidates.

ranked one of the candidates that made it to the final round (Poliquin and Golden). But all of the ballots except that of voter 4 could have been exhausted if the balloting had turned out differently. For that reason, the number of exhausted votes generally understates the magnitude of the problems voters have in casting RCV ballots.

To empirically quantify the magnitude of this issue, I define a *fully participating voter* in an RCV election as a voter who ranks at least $n-1$ distinct candidates in an n -candidate election and does not overvote at any of the ranks.¹³ Full participation ensures that the vote cannot be exhausted and therefore is certain to be counted in the final tally, regardless of how the tabulation of votes plays out. I will refer to ballots that are not fully participating as *truncated*.

Aside from reducing the likelihood that a voter's ballot is counted in each round, truncated ballots also negatively impact the outcomes of RCV elections. Recently, D. Marc Kilgour, Jean-Charles Grégoire, and Angèle M. Foley conducted a simulation study of the consequences of truncated ballots in RCV elections.¹⁴ The authors found that ballot truncation is very common and hard to rationalize. But more importantly, the authors demonstrated how some of the supposed salutary properties of RCV fail when voters do not fully participate. First, they find that even small amounts of truncation can alter the identity of the election winner, especially in elections with more than three candidates. Often these distortions disadvantage and result in outcomes that are contrary to the will of the voter whose ballot is truncated.

Second, Kilgour and his colleagues evaluate the quality of the election by assessing whether the election produces a *Condorcet winner*. A Condorcet winner is a candidate that is preferred by a majority of voters in every pairwise comparison with another candidate. Electing such a candidate when one exists is therefore a crucial desiderata for evaluating electoral systems. Yet Kilgour and his colleagues found that ballot truncation reduces the likelihood that the election outcome will produce the Condorcet winner.¹⁵ In other words, Kilgour found that the winner of the RCV election may have been less successful if she had faced another candidate in the final round of voting – a direct contradiction of advocates' claims that no candidate can win a RCV election without majority support.

Finally, the authors noted that the effects of truncation are unpredictable, even for voting theorists such as themselves:

We regret that we cannot give any intuition that might “explain” our simulation results. Compared to other election methods, competitive ranked-choice elections are opaque, in that it is very difficult to predict whether and how small changes in votes will affect the winner. Indeed, that is the very reason that a simulation is necessary to answer our question about the effects of ballot truncation. (p. 216).

¹³ Ranking the last candidate is unnecessary since there can be at most $n-1$ rounds of voting. Similarly, using the last ballot slot is also superfluous unless the voter casts a write-in vote in one of the earlier ranks. That 7.4% of the voters placed a candidate in rank 5 demonstrates a fundamental lack of understanding of how the system works.

¹⁴ D. Marc Kilgour, Jean-Charles Grégoire, and Angèle M. Foley, “The Prevalence and Consequences of Ballot Truncation in Ranked-choice Elections” 184 *Public Choice* 197–218 (2020).

¹⁵ In other words, suppose that a majority of voters prefers A to B and a majority prefers B to C; the authors found that ballot truncation reduces the likelihood that A wins an RCV election.

That is, even with the benefit of their research, Kilgour and his colleagues found that the large numbers of truncated ballots in RCV election ballots lack any strategic rationale.

Using the cast ballot data described above, I can calculate the percentage of Maine's Second Congressional District general election voters in 2018 who met this standard for full participation. Only 36% of voters in this election satisfied the most stringent version of this criteria by using ballot ranks 1-3 to rank three distinct candidates. This low level of voter participation is due to the fact that 60.6% of voters did not use at least one of the first three ranks and another 3.5% repeated the same candidate more than once in the first three ranks. Under Maine voting regulations, a voter may skip a single rank without exhausting her ballot. Therefore, a ballot with up to two non-consecutive skips may also be considered fully participating. But only 37.7% of Maine voters met the less stringent criteria by filling out three rounds of voting with non-consecutive skips, demonstrating that approximately two-thirds of Maine voters in the 2nd CD election were at risk of not having their ballot counted.

As pointed out by Kilgour and his colleagues, there is no strategic reason for a voter to undervote in an RCV election. Instead, the large number of ballots that fail to rank three candidates in rounds 1-3 demonstrates that the problem is inherent to RCV elections. For example, Maine's rules regarding ballot skips are a source of confusion for voters. In addition to the data noted above, 44 Maine voters had their ballots invalidated because they skipped two ranks between an eliminated candidate and an otherwise valid vote for a continuing candidate. Another 307 votes were discarded because the highest ranked candidate appeared in rank 3 or lower on the voter's ballot.

Interestingly, of the 6018 voters who undervoted in the first round of voting, only 5711 marked zero candidates. Thus, the 307 voters whose highest ranked candidate appeared in rank 3 or lower intended to vote in that race but miscast their ballot. While some of these cases may reflect an expressive vote against a candidate by simply ranking him or her last, that pattern accounts for the minority of these cases. Just 135 voters used only the fifth ballot position (including those that cast an overvote in that rank).

Indeed, as shown in Table 2 below, a significant number of Maine voters who participated in the 2nd CD election cast votes that similarly defy any clear strategic or logical reason. This wide variety of incorrect, and even ineffective, balloting demonstrates that ballot-exhaustion, and the risk of ballot-exhaustion due to truncated votes, cannot be attributed to voter choice.

Category of Voter	Number of Ballots	Percent of Total Ballots
Skipped at least one round of voting between candidates (<i>e.g.</i> , Candidate A, blank, Candidate B)	11,569	3.9%
Filled out at least one round but left the first round blank (<i>e.g.</i> , blank, Candidate A, Candidate B)	810	.3%

Ranked the same candidate in non-consecutive rounds (<i>e.g.</i> , Candidate A, Candidate B, Candidate A)	1842	.6%
Ranked one candidate consecutively and also ranked at least one other candidate on the ballot (<i>e.g.</i> , Candidate A, Candidate A, Candidate B)	824	.3%
Ranked (i) only one candidate (ii) more than once but (iii) left at least one round blank (<i>e.g.</i> , Candidate A, Candidate A, blank)	1346	.5%
Overvotes (<i>e.g.</i> more than one candidate at the same ranking)	1994	.7%
Total (Excluding Duplicates Between Categories):	17352	5.9%

To show that the results from Maine’s 2nd CD election are not anomalous, I repeat the exercise for the 2018 Democratic Gubernatorial primary election.¹⁶ In that election, there were seven declared candidates so the ballot allowed for eight ranks. For the ballot data, I calculate that only 35% of the voters fully participated by ranking six distinct candidates (allowing for single skips). Not only did a large number fail to rank six candidates, I also calculate only 50% of voters ranked at least four distinct candidates. While that seems better than the performance in the 2nd CD election, it resulted in a situation in the second round of counting where the margin between the 1st and 2nd candidate and the margin between the 3rd and 4th candidate was less than the number of exhausted votes. Had more voters fully participated in the 2018 Gubernatorial primary, the outcomes could have easily been influenced.¹⁷

Similarly, I repeat the exercise for the 2018 Democratic 2nd Congressional District primary election. In that race, there were four candidates. When accounting for single skips, I find that only 47% of the voters fully participated in the election.

Thus, in each RCV election held in Maine for which I have cast ballot data, less than half of participating voters cast a ballot that ensures their vote would be counted. To demonstrate this point more fully, Table 3 provides a summary calculation of (1) the number of ballots that were not fully participating in the three Maine RCV elections and thus risked exhaustion, (2) the number of ballots that were actually exhausted in each of the three Maine RCV elections, and (3) the number of ballots that were not counted in the 2018 Maine elections.

Table 3: Exhaustion, Votes Not Counted, and Lack of Full Participation			
	2018 2nd CD Election	2018 Congressional Primary	2018 Gubernatorial Primary

¹⁶ I could not analyze voter choice for the 2018 Senate election or the 2018 Congressional primaries in the First Congressional District or the Republican primary in the Second Congressional District because Maine does not report cast ballot data for RCV elections that resolve in the first round.

¹⁷ Similar to the 2nd CD election, a large number of voters (6.6%) used the superfluous eighth rank.

Absolute Number of Ballots Not Reflecting Full Participation	184,276	26,715	86,166
Percent of Ballots Not Reflecting Full Participation	62.3%	52.5%	65.1%
Absolute Number of Exhausted Ballots	8,253	1,747	8,714
Percent of Total Ballots Exhausted	2.7%	3.4%	6.6%
Absolute Number of Ballots Not Counted	14,706	7,381	15,000
Percent of Total Ballots Not Counted	10.5%	14.5%	11.3%

C. Comparing Participation in Maine's RCV with Plurality and Runoff Systems

To demonstrate the risk of disenfranchisement in Maine, it is useful to compare the low voter participation rates in RCV elections with their counterparts in plurality and runoff elections.

In a plurality election, full voter participation is defined as casting one ballot for the race in question.¹⁸ Therefore, the full participation rate is simply the percentage of non-blank ballots. Consequently, the full voter participation rate for the non-RCV 2018 Maine Gubernatorial race was 97.3%, while the full voter participation rates for contested state senate elections that year ranged from 95.5% to 98.2% with an average of 97.3%. That is, in contrast to the 2nd CD election, the average rate of fully participating ballots in the 2018 Maine plurality elections was 97.3%

The comparison to runoff elections is not much better. In a traditional majority runoff election, multiple candidates compete in round 1 and then the top two candidates compete in a runoff election held at a later date. Such elections are held in various locations in the U.S. (especially in the southern states) and is the system France uses to elect its president.

As an initial matter, one concern about majority runoffs is that turnout in the second round may fall. This has often been the case when majority runoffs have been used in U.S. primary elections, but in many cases the drop has been less than the number of exhausted ballots typically

¹⁸ Here I am setting aside the issue that a primary election typically precedes a plurality election so that one might define full participation as casting a ballot in both the primary and general election. But I have also set aside that the Maine RCV general elections are preceded by a primary election.

found in an RCV election. As explained above, the average rate of exhausted ballots in 98 RCV elections that proceeded past the first round of voting is 10.8% of the votes cast.

To take a closer look at this issue, I examined data from U.S. Gubernatorial and Senate primary runoff elections in the United States from 1990 to 2018.¹⁹ The unbracketed numbers of Table 4 report the percentage of those elections where the turnout dropoff was less than 10.8%, which is the average rate of ballot exhaustion in the 98 RCV elections I reviewed.

Table 4: Dropoff Rates in Plurality Runoff Elections		
	Percentage with Dropoff less than 10.8%	Percentage with Turnout Increase
Governors	34.8% {42.9%}	4.3% {7.4%}
Senate	6.7% {12.5%}	6.7% {12.5%}

There are many reasons for low voter participation in a runoff primary election, so the fact that so many runoff elections experienced lower dropoff than 10.8% (the equivalent of a “dropoff” in RCV elections following the first round of voting), and certain runoff elections even had *increased* participation is remarkable.

One of the major reasons for lower participation in the runoff is many of the primaries involve nominating candidates who are very likely to lose the general election. A lack of enthusiasm to turn out to choose the “sacrificial lamb” may drive down voter turnout. Accordingly, the bracketed proportion in Table 4 shows the numbers for the primaries where the winner went on to be victorious in the general election. As the table shows, big dropoffs in voter turnout are much less likely in those elections.

A second issue with majority runoff primary elections is that the second round typically occurs on an irregular date and involves a single election race (rather than multiple races like a first-round primary or general election). There are, however, many majority runoff elections where the second round occurs on the Federal Election Day, which experience a boost in voter turnout due to the alignment of the runoff election with other matters of voter interest. These include the Louisiana “jungle” primary system and the “Top 2” primary systems used in California and Washington State.²⁰ For Louisiana every single gubernatorial runoff from 1990 to 2019 had a *boost* in turnout, including a 12% increase in voter turnout in 2019. In Louisiana, one of the three Senate runoffs had a voter turnout increase of 38%, one had a decline of less than 1%, while the other had 13% drop. In the latest California and Washington State Congressional elections, *every single race* had higher participation in the second round than in the first. In California, the average turnout increase was 92.5%, while the lowest voter turnout increase was 53.2%. In Washington, district level turnout increased at least 58% in every district, with an

¹⁹ These exclude those from Louisiana for reasons discussed below.

²⁰ In the “Top 2” primary system, all candidates from all parties as well as independents appear on the primary ballot. Each voter casts one vote in the primary, and the two leading vote getters move to the general election. The “jungle” primary differs in that there is no second round if a candidate wins a majority of the vote in the primary.

average increase of 78%. Clearly, these elections performed much better than RCV in producing majority winners and having good second-round voter participation.

While majority runoff elections compare favorably to RCV elections with respect to participation in the final round, the comparisons in terms of fully participating ballots are not even close. In a majority runoff, full participation requires casting a ballot in both rounds of the election. Unfortunately, with the available aggregate data, we cannot directly observe whether an individual voter voted in each round. But if we assume that a voter who participates in the low turnout round is likely to participate in the high turnout round, then we can estimate the full participation rates for the majority runoff elections discussed in this section. The estimate is simply the ratio of the turnout from the low turnout round to that of the high turnout round. So for most of the primaries, the full participation rate will be runoff turnout divided by first round turnout. For the “top 2” primaries, it will be primary turnout (the low turnout election) divided by general election turnout (the high turnout election).

Table 5 reports statistics on the full participation rates for various types of the majority runoff elections as well as the plurality Maine state senate elections. One can clearly see that the Maine RCV elections have full participation rates far below the averages for the other type of elections. Indeed, the full participation rates for Maine RCV elections come out near the bottom of the 126 elections reflected in the table.²¹ Only one election scores clearly lower than the 2018 Maine Gubernatorial primary: the 2006 Mississippi Democratic Senate primary, where the winner ultimately lost the general election by almost 30 points.

	Number	Min	Max	Average
Maine State Senate	33	96%	98%	97%
Governors Primaries	23	42%	98%	81%
Senate Primaries	30	29%	89%	62%
Louisiana Jungle	8	72%	99%	91%
California Top 2 ²²	53	32%	53%	65%

²¹ One potential objection to the analysis reported in Table 5 is the assumption that all voters who voted in the low turnout round vote in the higher turnout round. That assumption could be easily relaxed. If I assume that proportion p of the low round voters also voted in the high round, the full participation rate for the majority runoffs would be p times the reported value in Table 5. Therefore, so long as $p > .64$, the RCV elections will still fall below the averages of all of the other types of elections. But p is certainly much larger than that. Based on the 2018 Cooperative Congressional Election Survey, 93% of the respondents who reported voting in a primary had already voted or “definitely” intended to vote in the general election.

²² Comparisons of full participation in IRV and Top 2 elections are not exact as the turnout in the decisive round of voting always increases for the Top 2 elections.

Washington Top 2	10	53%	63%	56%
Maine 2nd CD Election				38%
Maine Congressional Primary				47%
Maine Gubernatorial Primary				35%

In summary, the evidence of this section shows that RCV compares quite unfavorably to majority runoff voting in terms of voter participation and exhaustion. Contrary to the advocacy, the falloff in participation for non-RCV elections is often less than the 10.8% average of ballots that are exhausted in RCV elections. And RCV voters are much less likely to fully participate by ensuring that their ballot will count at all stages of tabulation.

The reasons for this discrepancy are clear. Voters in RCV elections cast ballots in a state of great uncertainty as to which candidate comparisons will be used in later rounds of voting. This leads RCV voters to undervote, leaving their ballots open to the risk of exhaustion in later rounds of voting. On the other hand, majority runoff voters know with certainty which candidates are competing in the runoff. Of course, such voters may choose not to participate in the runoff, but that reflects a much more deliberate choice than the RCV voter who cannot predict the necessity of ranking a certain candidate.

D. Who Truncates Their Ballot and Risks Exhaustion?

Another crucial question for evaluating RCV's propensity to disenfranchise voters by preventing full participation is whether undervoting is a deliberate choice of voters or a reflection of voter confusion related to the complexity of the ballot, the procedures for tabulation, and other characteristics that are inherent to RCV elections.

As noted above, there is no strategic reason for an undervote. We can get some purchase on why a voter would decide to undervote, even if there is no strategic reasons, by identifying what sorts of voters cast less than fully participating ballots that could result in exhausted ballots. Ideally, we would have demographic and other data on each voter that we could match to her ballot. However, ballot secrecy precludes that. So as a second best, I aggregate voting data up to the town level and match it with the demographic data of the town's voters, which I obtained from the Maine voter file.

I focus here on two characteristics that are strongly correlated with RCV undervoting—age and education—as other literature demonstrates that older and less-educated voters tend to undervote in RCV elections or have difficulty understanding the ballot.²³ Figure 5 shows the relationship

²³ André Blais, Maxime Héroux-Legault, Laura Stephenson, William Cross, and Elisabeth Gidengil, "Assessing the Psychological and Mechanical Impact of Electoral Rules: A Quasi-Experiment," 31 *Electoral Studies* 829–37 (2012); Francis Neely, Corey Cook, and Lisel Blash, "An Assessment of Ranked-Choice Voting in the San Francisco 2004 Election Final Report May 2005," Public Research Institute, San. Fran. State Univ. (2006), http://archive.fairvote.org/sfrev/SFSU-PRI_RCV_final_report_June_30.pdf; Jason McDaniel, "Writing the Rules to

between ballot exhaustion and the percentage of voters over 65 for 263 towns in the 2nd CD election that cast at least 200 votes.²⁴ In Figure 5, the area of the circle is proportional to the population of the town. The best fit line weighs larger towns more heavily than smaller towns.²⁵

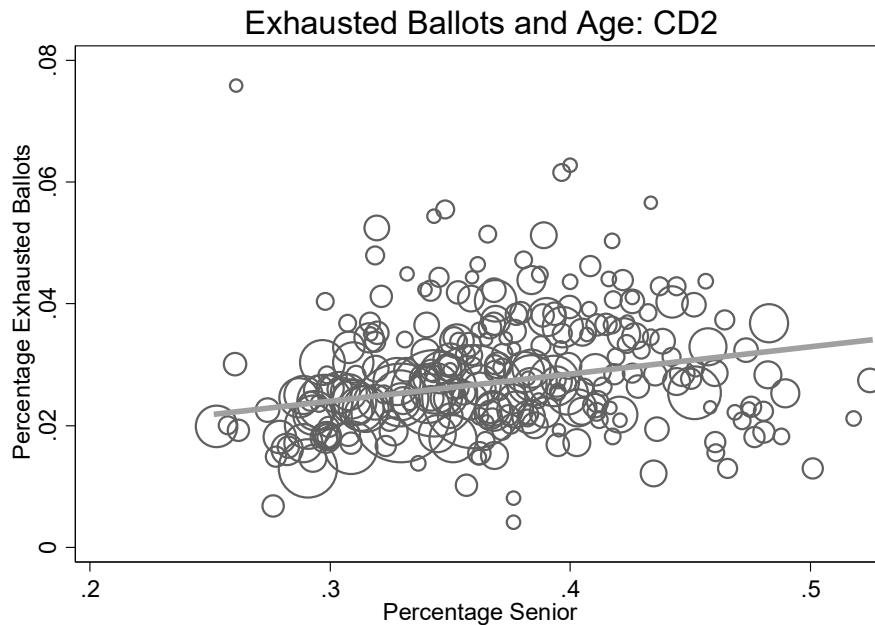


Figure 5: Exhausted Ballots and Age

Figure 5 demonstrates that there is a substantial empirical relationship between the proportion of exhausted ballots and the percentage of elderly voters on the town’s voter roll. The expected difference between the town with the lowest proportion of seniors to the one with the most corresponds to a 1.2 percentage point increase in ballot exhaustion.

Figure 6 shows the relationship between exhausted ballots and the percentage of voters without a college degree. As above, the area of the circle identified in Figure 6 is proportional to the population of the town, and the best fit line weighs larger towns more heavily than smaller towns.

Rank the Candidates: Examining the Impact of Instant-Runoff Voting on Racial Group Turnout in San Francisco Mayoral Elections,” 38 *Journal of Urban Affairs* 387–408 (2016); Todd Donovan, Caroline Tolbert, and Kellen Graey, “Self-Reported Understanding of Ranked-Choice Voting,” 78 *Social Science Quarterly* 973–79 (2019).

²⁴ The criterion that a town cast 200 votes is designed to ensure that we have less noisy estimates of the undervoting rate and of the demographic composition of the voters. None of the conclusions would be altered if the threshold were dropped to 50 votes.

²⁵ Larger towns provide more information about the behavior of individual voters and less random variation. Thus, it is generally considered a best practice to weigh observations based on population.

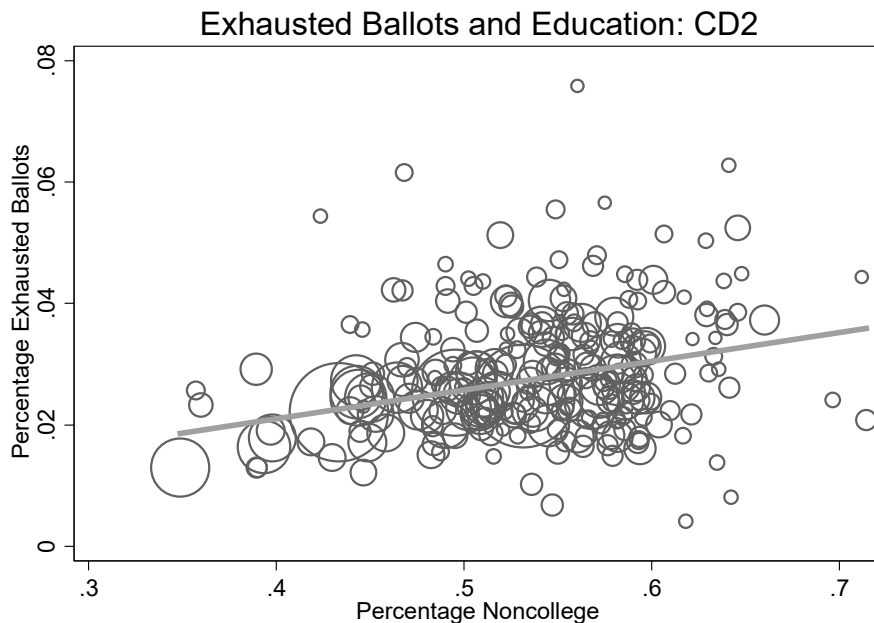


Figure 6: Exhausted Ballots and Education

Here too we find a strong empirical relationship. In expectation, the least-educated town produces 1.7 percentage points more exhausted ballots than the most-educated town.

The relationships between voter age and voter education and undervotes is even stronger if we look at the percentages of truncated ballots (Figures 7 and 8).

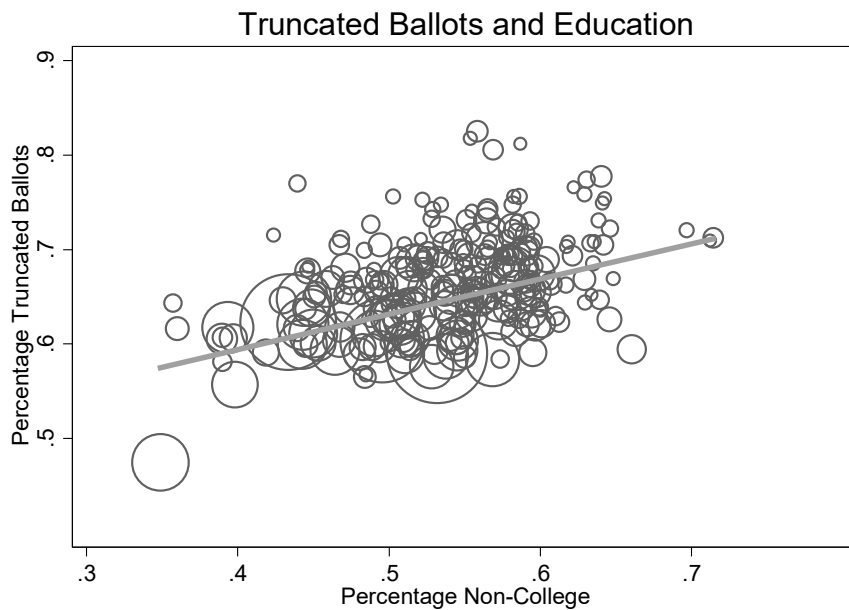


Figure 7: Truncated Ballots and Education

Figure 7, which shows the bivariate relations between education and ballot truncation, shows that in the least-educated town truncates ballots at a 14 percentage point greater rate than the most-educated town.

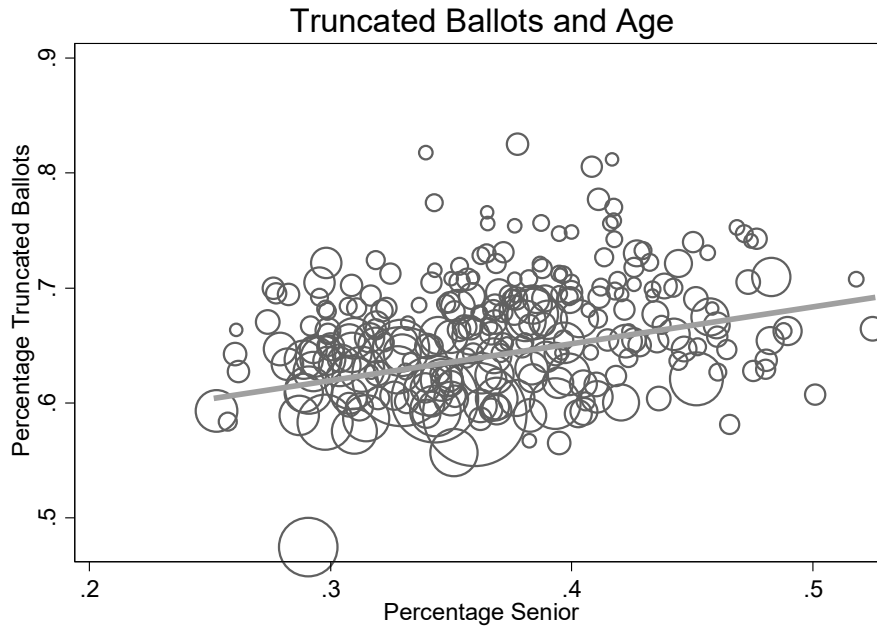


Figure 8: Truncated Ballots and Age

Figure 8, which shows the bivariate relations between age and ballot truncation, shows that the town with the most senior voters truncates ballots at an almost 9 percentage greater rate than the town with the least senior voters. To examine these relationships further, I conduct a multivariate regression analysis of exhausted ballots as well as truncated ballots and total undervoting, including skipping the election entirely. I also control for the percentage of a town’s voters that have no party affiliation since they are more likely to have supported one of the independent candidates leading to exhausted ballots. The results are reported in Table 6.

Table 6: Maine Second Congressional District General Election 2018			
	% Truncated Ballots	% Exhausted	All Undervotes
% Non-College	0.364***	0.038***	0.069***
	(0.061)	(0.006)	(0.013)
% Over 65	0.291***	0.051***	0.088***
	(0.077)	(0.012)	(0.022)
% Unaffiliated voters	-0.016	0.036**	0.048
	(0.085)	(0.013)	(0.029)
Intercept	0.351***	-0.022	-0.034
	(0.036)	(0.005)	(0.009)
N	263	263	263

R Squared	0.335	0.249	0.206
Standard errors clustered by county in parentheses			

Note that older and less-educated towns show higher levels of truncated and exhausted ballots as well as total undervotes. To make these results more concrete, I will focus on the impact of increasing the percentage of seniors and non-college voters by 10 percentage points. A 10 percentage point increase in seniors increases truncated ballots by 2.9 percentage points, exhausted ballots by .5 percentage points, and all undervoting by .9 percentage points. Similarly, a 10 percentage point increase in the non-college population increases truncation by 3.6 percentage points, exhausted ballots by .4 percentage points, and all undervoting by .7 percentage points.

The presence of unaffiliated voters is associated only with higher levels of exhausted ballots, but not with truncation or total undervoting.

The analysis can be replicated for the 2018 Gubernatorial primary. But because the primary was open only to Democratic voters, I use the percentage of Democratic voters who are over 65 or lack a college degree. I also conducted separate analyses for all truncated ballots and for those voters who ranked fewer than 4 candidates. These results are reported in Table 7.

	% Truncated	% Fewer than 4	Exhausted Votes	All Undervotes
% Non-College	-0.246***	0.240***	0.125***	0.238***
	(0.067)	(0.088)	(0.043)	(0.032)
% Over 65	0.223***	0.296***	-0.013	0.063
	(0.042)	(0.051)	(0.078)	(0.080)
Intercept	0.678***	0.282***	0.015	-0.023
	(0.035)	(0.040)	(0.043)	(0.038)
N	157	157	157	157
R Squared	0.260	0.272	0.067	0.187
Standard errors clustered by county in parentheses				

These results also show the correlation between voter age, education, and undervoting. Towns with high numbers of non-college Democratic voters tend to have fewer ballots that rank six candidates, and more that rank fewer than four candidates. Those towns have more exhausted votes and higher rates of total undervoting. A 10 percentage point increase in the proportion of non-college voters increases the rate of exhausted votes by 1.3 percentage points and total undervoting by 2.4 percentage points.

Towns where Democratic voters skew older also have more truncated ballots and more ballots ranking fewer than four candidates. A ten percentage point increase in seniors leads to a 2.2 percentage point increase in the number of truncated ballots and a 3 percentage point increase in the number of ballots failing to rank at least four candidates.

Similarly, the analysis can be replicated for the 2018 Congressional primary as reported in Table 8.²⁶ These results are very consistent with those for the general elections in that there are positive correlations between the percentage of non-college and senior voters. But because the sample is much noisier due to lower turnout in the primary, some of the coefficients do not reach statistical significance.

Table 8: Maine Second Congressional District Democratic Primary 2018			
	% Truncated Ballots	% Exhausted	All Undervotes
% Non-College	0.274*** (0.086)	0.032 (0.053)	0.360*** (0.068)
% Over 65	0.142*** (0.041)	0.053* (0.040)	0.089 (0.057)
Intercept	0.344*** (0.033)	-0.009 (0.025)	-0.071 (0.042)
N	214	214	214
R Squared	0.131	0.045	0.262
Standard errors clustered by county in parentheses			

The analysis from the primary election data, however, should not be compared directly to that of general elections due to the nature of primaries and the individuals who choose to vote in them. On the whole, primary voters tend to be much more interested and engaged in politics, than general election voters.²⁷ So it is remarkable that even among the most politically engaged segments of the electorate, we are seeing high levels of vote truncation and exhaustion and that it is correlated with the age and education profiles of the town. Moreover, in primary elections, there are no partisan reasons for truncation (e.g. a Republican who does not want to rank a Democrat) as all candidates are in the same party.

So, in my view, the fact that even primary voters register high levels of undervoting that is correlated with voter age and education, is further proof of the dangers inherent in RCV elections.

II. LOW FULL-PARTICIPATION RATES IN MAINE CANNOT BE EXPLAINED BY VOTER CHOICE OR EXPRESSION

The numbers detailed above demonstrate that RCV elections suffer from fatal internal flaws. Not only do the high numbers of exhausted ballots fail to decrease over time, those risks significantly *increase* for voters over the age of 65 and for voters who did not graduate from

²⁶ Because primary turnout is lower, I included all towns that had 75 votes or more.

²⁷ See John Sides, Chris Tausanovitch, Lynn Va vreck, and Christopher Warshaw, “On the representativeness of primary electorates,” 50 *British Journal of Political Science* 677–85 (2020).

college. This is particularly troubling in Maine where approximately 60% of Maine’s population is over the age of 45—with approximately 23% at age 65 or older—and less than 30% of the population completed a college degree.²⁸

One possible objection to a focus on full participation is that voters might reasonably choose not to rank candidates that they deem unlikely to advance beyond the first round of tabulation. Thus, the argument goes, exhaustion and truncation is merely a product of voter *expression* rather than voter confusion. But, it is unlikely that most voters can make such election-advancement forecasts with any certainty. Indeed, even voting for a major-party candidate in a partisan RCV election is not sufficient to ensure that a voter’s ballot is not exhausted. For example, had Independent candidate Angus King failed to obtain a majority in the 2018 Maine Senate election, any voter who ranked only the Democratic candidate would have exhausted her ballot. Moreover, as demonstrated above, the full participation rate in Maine’s RCV elections was substantially lower than in traditional plurality and runoff elections, and demographic data demonstrates a strong correlation between ballot exhaustion and truncation (*i.e.*, failure to fully participate) and voter age and education.

Examining the data, it becomes clear that the complexity of the RCV system leads to voter confusion, which prevents voters from fully participating.

III. THE PURPORTED BENEFITS OF RCV ARE NON-EXISTENT

A. Effects on Smaller Parties

One purported benefit of RCV is that it helps smaller parties. Australia provides an excellent test of the extent to which RCV can increase the likelihood that small parties can win legislative elections. Since the early 1900s, Australia has used RCV with single member districts for its lower chamber of parliament. Those elections have traditionally been dominated by two blocs—the Labor Party and a coalition of center-right parties—the Liberal and National parties and some affiliated state parties. The coalition generally avoids running candidates against each other in lower house elections. But the upper house is elected using a ranked-choice system for large multimember districts. This multimember system does allow for the election of many small party legislators. This fact helps us to clearly identify the effects of RCV on small party representation as there is an ample “supply” of small parties that could win seats if the electoral system permitted it. So consider the 2019 elections. In that election only 6 of 151 seats were won by candidates outside the major party blocs. In the Senate, the proportion of smaller party winners was only five times as large (14 of 76 seats). This suggests that the single-member RCV system such as that used in Maine penalized those smaller parties that were viable for Senate seats. These low numbers for small party representation fall far short of the riches promised.

Of course, one might argue that the lower house outcomes compare favorably to those under a plurality voting system. Indeed, those numbers are better than the U.S. where only two independent serve in the Senate (Angus King and Bernie Sanders) and the House’s only independent (Justin Amash) was elected as a Republican. But there are many legislatures world-

²⁸ *Electorate Profile: Maine*, U.S. Census Bureau (Feb. 29, 2016), https://www.census.gov/library/visualizations/2016/comm/electorate-profiles/cb16-tps34_voting_maine.html.

wide where small parties have achieved substantial representation under simple plurality rule. For example, in the British parliament, 75 out of 650 seats are held by parties other than Labor and the Conservatives.²⁹ In Canada, smaller parties and independents won 61 out of 338 seats.³⁰

In summary, after reviewing the outcomes in the democracies most similar to the U.S., it does not seem that RCV is either a sufficient or necessary condition for the success of small parties.

B. Effects on Turnout and Engagement

Advocates of RCV also argue that the system is likely to encourage greater participation among voters for two reasons. First, the RCV system purportedly encourages more candidates to run for office, providing a wider variety of choices to voters. Second, advocates contend that RCV will dampen incentives for the sorts of negative campaigning that turns voters away from politics. The argument is that candidates will refrain from attacking opponents if they expect to need high rankings from that opponent's supporters. The critics of RCV, however, argue that the complexity of the ballot and the tabulation procedures have the opposite effect of discouraging electoral participation.

On the question of turnout, the empirical literature supports the critical view that RCV elections discourage voter participation. Jason McDaniel finds that turnout dropped in San Francisco mayoral elections following the adopting of RCV, especially among minority groups.³¹ In a study of several RCV cities matched against comparable plurality cities, David Kimball and Joseph Anthony find a 4 percentage point drop in turnout associated with RCV, although the estimate is not statistically significant on its own.³² In a more recent study, McDonald finds a statistically significant five percentage point drop due to the introduction of RCV in municipal elections relative to similar cities that maintain plurality electoral systems. While there is disagreement about the magnitude and statistical reliability of the estimated declines in voter turnout, I am not aware of any study that finds a boost in turnout associated with switching to RCV from plurality voting.

Because the Maine general election ballot includes both races that use RCV and those that use plurality rule, I cannot assess the impact of RCV adoption in Maine using the methodologies of the previously mentioned studies that look at the total number of ballots cast before and after adoption of RCV. So I will look at the issue of *total undervoting* (leaving the ballot blank for a specific race or exhaustion of that ballot) in RCV contests versus that in plurality contests. If RCV generated greater enthusiasm among voters we would expect to see far less total undervoting in RCV elections. A complication, however, is that the RCV ballots were used in the more high profile election where we would naturally expect more voter interest and

²⁹ If one were to focus only on England to eliminate the effects of regional parties, smaller parties won 8 out of 533 seats.

³⁰ If one were to ignore Quebec and the effects of Bloc Quebecois, small parties and independents won 29 out of 260 seats.

³¹ 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 *Journal of Urban Affairs* 387–408 (2016).

³² David C. Kimball and Joseph Anthony, "Voter Participation with Ranked Choice Voting in the United States," Presented at the Annual Meeting of the American Political Science Association, Philadelphia, PA (2016).

engagement. Nevertheless, I find that several down-ballot, non-RCV races had lower percentages of total undervotes compared with RCV races.

In 2018, the two most high-profile elections in Maine were the Senate and Governor’s race. The Senate election, which utilized an RCV ballot, was skipped by 1.8% of the Election Day voters. The Governor’s race (non-RCV) had 2.3% blank ballots. While this may appear as an advantage for RCV, as we will see, the difference between total undervoting for RCV elections and plurality down-ballot races is not substantively different. In the 2nd CD election in Maine, 2.2% of voters failed to register any vote at all, while in the Maine 2018 First Congressional District general election (“1st CD election”), 2.3% skipped voting. Based on data acquired from the Maine Secretary of State website, at least 25% of competitive state senate elections had lower rates of total undervoting, despite the fact that state legislative races tend to be lower profile than congressional elections (See Figure 9 and Table 9), and many of the state senate elections were not as competitive as the Congressional races.

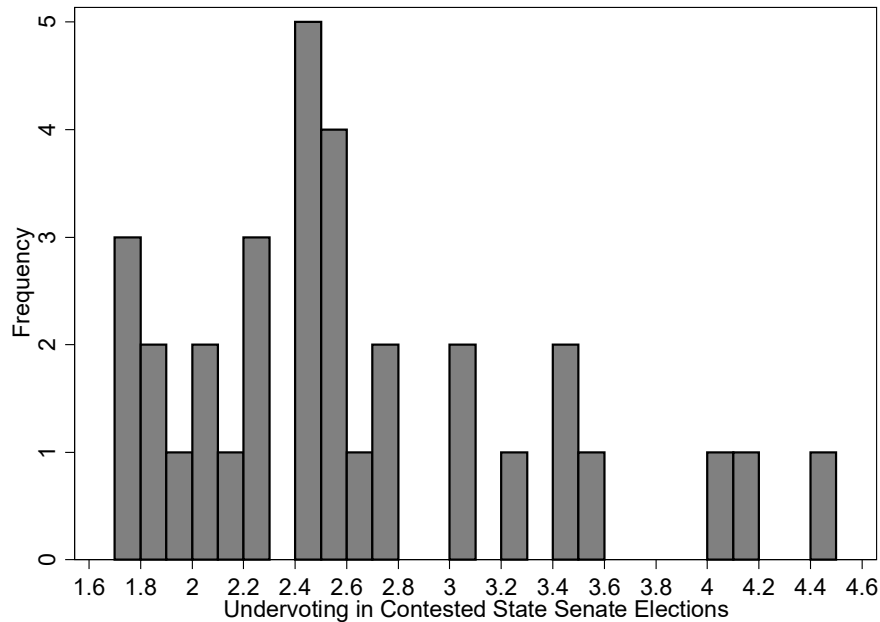


Figure 9: Rates of Total Undervoting in Contested State Senate Elections

Even in Maine’s plurality races that are less popular, less funded, and less advertised, the rate of total undervoting is not significantly different than the rates of total undervoting in the RCV elections.

If I focus on the 14 state senate races with less than a 20-point margin, the performance in the Congressional races looks even less impressive. (See Figure 10)

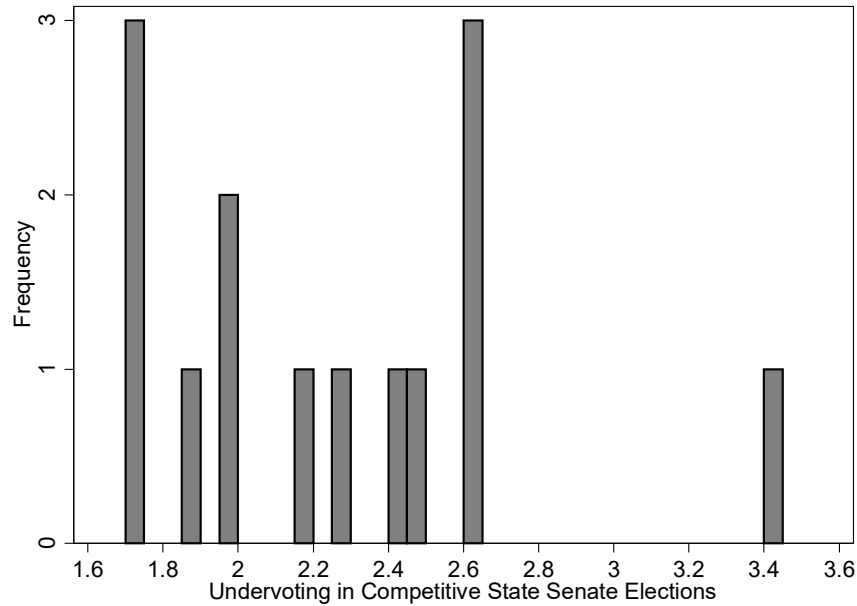


Figure 10: Total Undervoting in Competitive State Senate Elections

In Figure 10, approximately eight of the fourteen most-contested state senate races in Maine, which were on the ballot at the same time as the hotly contested and well-publicized RCV elections, had lower rates of total undervoting.

Election	% Blank Ballots	% of Contested State Senate Districts with lower total undervoting	% of Competitive State Senate Districts with lower total undervoting
Senate	1.80%	9%	21%
Governor	2.38%	36%	64%
1st CD election	2.26%	27%	50%
2nd CD election	2.18%	24%	43%

In summary, the rates of total undervoting in the RCV elections does not appear to be substantively different than those of the lower-profile plurality state senate elections. Accordingly, there is little empirical evidence that Maine voters are more interested and engaged under the RCV system.

C. The Spoiler Effect

Another major argument in favor of RCV is that it purports to eliminate the possibility of a third-party spoiler who throws the election to the candidate who is less preferred by a majority of voters. To illustrate suppose there are three candidates A, B, and C, and a majority of the voters prefer A to B. Despite the fact that a majority prefers A, A might lose if enough voters vote for C in the first round to give B a plurality. RCV, however, purports to solve this problem by eliminating the least popular candidate in round 1 (in this case C) and transferring that candidate's votes to the voters' second-choice candidates. Since A is preferred by a majority to B, A should win.

But RCV creates a different type of spoiler effect. Again suppose there are three candidates: A, B, and C. Moreover, assume that A would beat C in a candidate election but B would beat A. Thus, whether A wins the election depends on whether she faces B or C. To see how this generates a possible spoiler effect under RCV, suppose that $\#A > \#B > \#C$ in the first round (where $\#A$ is the number of votes received by candidate A). Subsequently, C would be eliminated and B would beat A in the second round. But were this the case, some of A's supporters could improve A's chances of winning by voting for C in the first round to help ensure a more favorable second round. Party A would want to transfer enough support to move C into the second position, but not so much that A falls out of the first position. Such a transfer of support is feasible only if $\#A + \#C > \#B$.

Voting theorists generally refer to this scenario as reflecting the *non-monotonicity* of the RCV system. The terminology reflects the fact that increasing the votes for a particular candidate can make that candidate more likely to lose. This outcome would be the case in the example above if $\#A > \#C > \#B$ initially but enough C voters switched to A to allow B into the second round. Logically, *non-monotonicity* also implies that a party can increase its likelihood of winning by *losing* votes, as in the original example where A does better by shedding votes to C.

The non-monotonicity criticism of RCV usually focuses on abstract and hard-to-measure concepts like "voter welfare." But it has more tangible and observable implications as well. Note the many ways in which one of the parties/candidates in the above example can manipulate the outcome of an election due to this principle:

1. Candidate A could ask some of her supporters to vote C in round 1;
2. Candidate A could provide financial and other resources to candidate C;
3. Candidate A could run attack ads on B designed to appeal to C voters;
4. Candidate A could recruit candidate C to run; and
5. Candidate B could bribe candidate C not to run.

Thus, non-monotonicity opens up a number of possible avenues for electoral manipulation. It is an empirical question, however, as to how prevalent the RCV spoiler effect is relative to the plurality spoiler effect. A direct assessment is difficult in that it requires data on voters' true

preferences and their ranked-choice ballots. While data on full ranked-choice ballots is available for a handful of RCV elections, data on voters' true preferences are generally not available.

For this reason, scholars often use simulated elections to predict the frequency in which RCV elections demonstrate non-monotonic outcomes. One such effort is that of Joseph Ornstein and Robert Norman (2014), who calculate a lower bound estimate that 15% of competitive RCV elections result in monotonicity failures.³³

Despite the fact that direct empirical verification of non-monotonicity is difficult to obtain, real world data can be used to identify elections where non-monotonicity was at least possible. Recall that a necessary condition for non-monotonicity in a three-candidate election is that $\#A + \#C > \#B$. Using the dataset on 98 RCV elections described above, I am able to verify whether this condition held for 93 of those contests.³⁴ I found that the necessary condition held in 27 of these elections (29%). That is, in 29% of the RCV elections that progressed beyond the first round, the spoiler effect described above ($\#A + \#C > \#B$) was demonstrated. Thus, the opportunities for the electoral manipulations described above are far from rare.

D. Non-Majority Winners

Another important claim of RCV advocates is that the system purportedly ensures that the winner obtains a majority of the votes cast. This claim is incorrect empirically as ballot exhaustion means that the number of valid ballots used to determine the winner is actually far less than the number of votes cast. This fact was demonstrated in Maine's first RCV general election in 2018 when Jared Golden beat Bruce Poliquin in the 2nd CD election with only 49.2 percent of the ballots cast.

Using the data on 98 RCV elections nationwide, I can compute the percentage of times that the winner failed to obtain a majority of the ballots cast. Such was the outcome in over 60% of those elections (60 of 98). Non-majority winners occur almost 80% of the time in those RCV elections with five or more candidates. Thus, RCV cannot be trusted to ensure that the candidate with majority support wins an election, and it generally fails to accomplish one of the key tasks it was designed to perform.

CONCLUSION

Despite the growing interest in electoral reforms that replace plurality and majority runoff elections with RCV, the evidence of its costs is substantial—particularly in Maine—and there is scarcely any empirical evidence that any of the purported benefits have come to fruition.

Representative democracy is a balancing act. At one end is the concern that the electoral machinery should provide voters with an ample set of choices as to who will govern in their name. But on the other end is the concern that voting procedures not be so complex, confusing,

³³ Joseph T. Ornstein and Robert Z. Norman, "Frequency of Monotonicity Failure under Instant Runoff Voting: Estimates Based on a Spatial Model of Elections." 161 *Public Choice* 1–9 (2014).

³⁴ For elections with more than three candidates, I examined whether the condition held in the round where there were only three candidates remaining. It is of course possible that the conditions for non-monotonicity held at earlier rounds, so my estimate is conservative.

and opaque as to deprive voters of the ability to exercise those choices in an informed and meaningful way. That is exactly what is happening with RCV, and what occurred in Maine in 2018. While RCV aspires to expand voter choice, the empirical evidence that it has done so is nearly non-existent, and is clearly not enough to balance its substantial burden on meaningful and informed choice.



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Appendix A:

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Academic Affiliations

Susan Dod Brown Professor of Politics and Public Affairs, Princeton University, 2007-present.

Research associate, National Bureau of Economic Research, 2012 – present. (Research fellow, 2006-2012).

Professor of Politics and Public Affairs, Princeton University, 2003 – 2007.

Fellow, Center for the Advanced Study in the Behavioral Sciences, 2004-2005.

Associate professor of Politics and Public Affairs (with tenure), Princeton University, 2001-2003.

Associate professor of Political Science (with tenure), Columbia University, 2000-2001.

Robert Eckles Swain National Fellow, Hoover Institution, Stanford University 1999-2000.

Assistant professor of Political Science, Columbia University, 1996-2000.

Assistant professor, School of Business Administration, University of Southern California, 1993-1996.

Instructor, Graduate School of Industrial Administration, Carnegie Mellon University, 1993.

Administrative Positions and University Service

Director, Data Intensive Social Science Initiative (2019 - current)

Chair, Student Appeal Panel (2019-2020)

Chair, Department of Politics (2011 - 2018)

Associate Dean, School of Public and International Affairs (2005-2011).

Acting Dean, School of Public and International Affairs (2007-2008).

Member, Council for the Princeton University Community Executive Committee (2015-2018)

Member, Princeton University Faculty Committee on Policy, (2015-2016)

Executive committee, Julis-Rabinowitz Center for Finance and Public Policy (2011 – 2015)

Executive committee, Center for the Study of Democratic Politics (2003 – 2019)

Elected member, Princeton University Committee on Appointments and Advancements (C/3) 2009-2010.

Co-Chair, School of Public and International Affairs Undergraduate Curriculum Reform (2010-2011).

Chair, Resources Committee, Council of the Princeton University Community (2007 - 2008).

Faculty Chair, PhD Program, School of Public and International Affairs, 2002-2004.

Director, Graduate Program in Political Economy, 2001-2004.

Member, Task Force on the Changing Nature of Government Service (chaired by Paul Volcker and Anne-Marie Slaughter)

Berman Prize in the Humanities selection committee

Honors, Awards, and Grants

2016 Franklin L. Burdette/Pi Sigma Alpha Award for best paper presented at American Political Science Association meetings.

Best Paper Award, APSA Legislative Politics Section (2016)

Distinguished Visiting Scholar, Political Economy Group, Stanford Graduate School of Business (2016)

Best Paper Award, APSA State and Local Politics Section (2015)

Fellow, School of Social Sciences, Institute for Advanced Study (2014-2015).

University of Chicago Harris School, Visiting Fellow in Policy Entrepreneurship (2013)

Princeton University President's Lecture Series, 2010.

Member, American Academy of Arts and Sciences (elected 2010)

Fellow, Center for the Advanced Study in the Behavioral Sciences, 2004-2005.

Robert Eckles Swain National Fellow, Hoover Institution 1999-2000.

Patrick J. Fett Award for the best paper on the scientific study of Congress and the Presidency at the 1998 Midwest Political Science Association Meetings.

John M. Olin Fellowship in Political Economy (1990-1993)

Phi Beta Kappa (1990)

Council for Humanities and Social Sciences, Columbia University, 1996-97 (\$6,000)
National Science Foundation Grant, 1995-96 (\$87,500)
Institute for Social and Economic Theory and Research, Columbia University (\$10,000)
Russell Sage Foundation “Polarization, Inequality, and Public Policy in the American States,” 2002-2003 (\$97,000)
National Science Foundation “The Ideological Mapping of American Legislatures” (\$300,000)
Russell Sage Foundation “The Political Economy of the State Pension Crisis” (\$111,000)
John and Laura Arnold Foundation “Polarization, Partisanship and Electoral Reform in the American States” (\$154,000)

Education

Ph.D. Political Economy. Carnegie Mellon University, Pittsburgh, PA. 1993.
M.S. Political Economy. Carnegie Mellon University, Pittsburgh, PA. 1992.
A.B. Economics with Honors. University of Chicago, Chicago, IL. 1990.

Books

Political Bubbles: Financial Crises and the Failure of American Democracy (with Keith Poole and Howard Rosenthal). 2013. Princeton University Press.

Reviews: *The New Republic*

Political Game Theory (with Adam Meirowitz). 2006. Cambridge University Press.

Polarized America: The Dance of Political Ideology and Unequal Riches (with Keith T. Poole and Howard Rosenthal). Second edition. 2016. MIT Press.

First edition, 2006.

Named an “Outstanding Academic Title” by *Choice* in 2007.

Critics Roundtables: 2005 APSA, 2006 MPSA

Reviews: *American Prospect*, *Perspectives on Politics*, *Chicago Tribune*, *American Review of Politics*, *Economic History Net*, *Independent Review*, *The Week*, *Journal of Economic Issues*, *Journal of Sociology and Social Welfare*, *The Independent Review*, *Political Science Quarterly*

Can America Govern Itself? Co-edited with France Lee. 2019. Cambridge University Press.

Polarization: What Everyone Needs to Know. 2019. Oxford University Press.

Other Monographs

The Realignment of National Politics and the Income Distribution (with Keith T. Poole and Howard Rosenthal). 1997. American Enterprise Institute Studies on Understanding Economic Inequality.

Journal Articles

- [22] “Geography, Uncertainty, and Polarization” (with Jonathan Rodden Boris Shor, Chris Tausanovitch, and Chris Warshaw) 2018. *Political Science Research and Methods*
- [21] “Regulation and Self-Regulation of a Complex Industry.” 2017. *Journal of Politics* 79(4):1220-1235.
- [20] “A Primary Cause of Partisanship? Nomination Systems and Legislator Ideology” (with Eric McGhee, Seth Masket, Boris Shor, and Steven Rogers). 2014. *American Journal of Political Science* 58(2):337-351. (co-winner of the 2015 State Politics and Policy Best Journal Article Award)
- [19] “The Ideological Mapping of American Legislatures” (with Boris Shor). 2011 *American Political Science Review* 105(3):530-551.
- [18] “A Bridge to Somewhere: Mapping State and Congressional Ideology on a Cross-Institutional Common Space” (with Boris Shor and Christopher Berry). 2010. *Legislative Studies Quarterly* 35(3): 417-448.
- [17] “Does Gerrymandering Cause Polarization?” (with Keith Poole and Howard Rosenthal) 2009. *American Journal of Political Science* 53(3):666-680.
- [16] “Presidential Vetoes in the Early Republic: Changing Constitutional Norms or Electoral Reform.” 2009. *Journal of Politics* 71(2): 369-384.
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- [14] “The Appointments Dilemma.” 2004. *American Journal of Political Science* 48(3): 413-428.
- [13] “Political Resource Allocation: The Benefits and Costs of Voter Initiatives,” (with John G. Matsusaka). 2001. *Journal of Law, Economics, and Organization*. 17(2): 413-448.
- [12] “The Hunt for Party Discipline” (with Keith Poole and Howard Rosenthal). 2001. *American Political Science Review*. 95(3):673-687.
- [11] “Cabinet Decision Rules and Political Uncertainty in Parliamentary Bargaining” (with John Huber). 2001. *American Political Science Review*. 95(2):345-360.
- [10] “The Politics of Blame: Bargaining before an Audience” (with Timothy Groseclose) 2000. *American Journal of Political Science*. 45(1):100-119.
- [9] “The Time to Give: PAC Motivations and Electoral Timing” (with Lawrence Rothenberg). 2000. *Political Analysis*. 8(3):230-259.

- [8] “Coalitional Maintenance: Politicians, Parties, and Organized Groups” (with Lawrence Rothenberg). 2000. *American Politics Quarterly*, 28(3):291-308.
- [7] “Proposal Rights, Veto Rights, and Political Bargaining.” 2000. *American Journal of Political Science*, 44(3):506-522.
- [6] “Presidential Pork: Executive Veto Power and Distributive Politics.” 2000. *American Political Science Review*, 94(1):117-129.
- [5] “Advice and Consent: Senate Response to Executive Branch Nominations 1885-1996” (with Rose Razaghian). 1999. *American Journal of Political Science*, 43(3):1122-43.
- [4] “An Empirical Spatial Model of Congressional Campaigns” (with Keith T. Poole). 1998. *Political Analysis*, 7(1):1-30.
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Book Chapters and Invited Contributions

- [32] “Learning From Each Other: Causal Inference and American Political Development” (with Jeffery A. Jenkins and Charles Stewart) *Public Choice*
- [31] “The Political Obstacles to Tackling Economic Inequality in the United States” In Dani Rodrik and Olivier Blanchard eds. *Combating Inequality*, MIT Press. (forthcoming)
- [30] “Polarization and the Changing American Constitutional System: The Case of Federalism” forthcoming in Eric Patashnik and Wendy Schiller eds. *The Dynamics of American Democracy: Partisan Polarization, Political Competition and Government Performance* University of Kansas.
- [29] “Anxieties of American Democracy,” (with Frances Lee). In Frances Lee and Nolan McCarty *Can America Govern Itself?* Cambridge University Press.
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- [26] “On the Theory of Parties” (with Eric Schickler). 2018. *Annual Review of Political Science* 21(1):175-193.
- [25] “Pivotal Politics, Political Polarization, and Policy Predictability.” 2018. *Journal of Politics* (Symposium) 80(3)
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- [23] “Polarization, Congressional Dysfunction, and Constitutional Change.” *Indiana Law Review*. 2016. 50(1): 224-245.
- [22] “Congressional Polarization and Its Connection to Income Inequality: An Update.” (with Adam Bonica, Keith Poole, and Howard Rosenthal). In James Thurber and Antoine Yoshinaka *American Gridlock: The Sources, Character, and Impact of Political Polarization*, 2015 Cambridge University Press.
- [21] “Regular Order in Appropriations: Does It Matter?” in *Congress and Policymaking in the 21st Century* eds. Eric Patashnik and Jeffery Jenkins, 2015 Cambridge University Press.
- [20] “Reducing Polarization: Some Facts for Reformers” *The University of Chicago Legal Forum* 2015: 243-278.
- [19] “Democracy in America, 2014” (with Didi Kuo) *Global Policy Journal* 6(S1):49-55
- [18] “The Causes and Consequences of Polarization” (with Michael Barber) in *Solutions to Polarization in America* eds. Nathaniel Persily. Cambridge University Press, 2015.
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- [15] “Income Inequality and Participation” *The Democracy Papers* Social Science Research Council <http://thedemocracypapers.ssrc.org/income-inequality-and-participation/>
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- [2] Review of Keith L. Dougherty *Collective Action under the Articles of Confederation*, 2002. *Political Science Quarterly* 117(1):173-174.
- [1] Review of Patricia Heidotting Conley *Presidential Mandates: How Elections Shape the National Agenda*. 2001. *Presidential Studies Quarterly*, p. 747-749.

White Papers and Policy Reports

Chair and lead author. “Political System Subcommittee Report” in Stigler Center Committee on Digital Platforms Report, July 2019.

Chair and lead author, Appropriation Reform Subcommittee American Political Science Association Task Force on Congressional Reform.

Opinion Pieces

“Grading the Cromnibus” *Washington Post Monkey Cage Blog* December 12, 2014

“Will Loretta Lynch End Too Big To Jail” *Washington Post Monkey Cage Blog* November 13, 2014

“Five Things the Goldman Tapes Teach Us About Financial Regulation” *Washington Post Monkey Cage Blog* September 30, 2014

“What We Know and Don’t Know about Our Polarized Politics” *Washington Post Monkey Cage Blog* January 8, 2014

“The Politics of Bad Apples” *Washington Post Monkey Cage Blog* October 24, 2013

“Hate Our Polarized Politics? Why You Can’t Blame Gerrymandering.” *Washington Post* October 26, 2012. http://articles.washingtonpost.com/2012-10-26/opinions/35500270_1_polarization-districts-independent-voters

“The Price of Principle” *Huffington Post* July 20, 2010. (with Keith Poole, Thomas Romer, and Howard Rosenthal).

“McCain for President?: A Liberal Conservative Oscillation Cements His Maverick Reputation.” *San Diego Union Tribune* August 31, 2008 (with Keith Poole and Howard Rosenthal)

http://www.signonsandiego.com/uniontrib/20080831/news_lz1e31mccarty.html

“Obama for President?: Moderate and independent voters still must be convinced” *San Diego Union Tribune* August 24, 2008 (with Keith Poole and Howard Rosenthal)

http://www.signonsandiego.com/uniontrib/20080824/news_lz1e24obama.html

“Neither Candidate Likely to Reduce Rancor” *Politico*, July 24, 2008 (with Keith Poole and Howard Rosenthal) <http://www.politico.com/news/stories/0708/12013.html>

Blog: <http://nolanmccarty.com>

Occasional contributor: <http://themonkeycage.org>

Other Work in Progress

“Unequal Incomes, Ideology and Gridlock: How Rising Inequality Increases Political Polarization” with Boris Shor and John Voorhies. (Winner of the 2016 Franklin L. Burdette/Pi Sigma Alpha Award by the American Political Science Association and Best Paper Awards from the APSA Legislative and State and Local Politics sections.)

“Agenda Control Under Uncertainty” (with Steven Callander)

“The Evolution from a Democratic to Republican South” (with Steven Rogers)

“Congressional Dysfunction and Bureaucratic Capacity.” (with Alex Bolton and Sara Kerovsky).

“Polarization and the American Constitution.”

Courses Taught

Doctoral Level

Congressional Politics. Princeton University.

Bureaucratic Politics. Princeton University.

Analysis of American Political Institutions. Princeton University.

Democratic Processes. Columbia University

Political Methodology Sequence. Columbia University

Colloquium on Political Organizations and Interest Groups. Columbia University

Research Controversies in American Politics. Columbia University

Mathematics for Political Science. Columbia University

The Politics of Inequality in the U.S. and Western Europe. Princeton University

Game Theory and Political Theory. Columbia University

Formal Theory I. Princeton University.

Master's Level

Legislative Politics. Princeton University. (Spring 2003)
Advanced Econometrics and Public Policy. (Spring 2003)
Business, Government, and Society. University of Southern California
Business and Its Nonmarket Environment. University of Southern California

Undergraduate

Democracy. Princeton University.
Democracy and Constitutional Engineering. Columbia University Summer Program in
Tunis and Istanbul.
Polarized America: Polarization, Inequality and the Future of American Politics.
Princeton University.
American Politics. Princeton University.
The Development of American Political Institutions. Princeton University.
The Politics of Reform. Columbia University
Decline of the American Party System? Columbia University
Introduction to American Government and Politics. Columbia University
Public Finance. Carnegie Mellon University

Professional Activities

Conference Participation

American Economic Association (2002)
American Political Science Association (various years)
Can Madison's Constitution Survive Polarized Parties?, UC Berkeley (2016)
Challenges in Political Economy, Harvard University (2002)
Comparative Political Economy Workshop, Harvard (2006)
Designing Democratic Institutions, LSE (2008)
Eric M. Mindich Encounter with Authors, Center for Basic Research in the Social
Sciences, Harvard University (2005) (for *Polarized America*)
Encounter with the Authors, Center for Basic Research in the Social Sciences, Harvard
University (1999) (participant)
Emory University Conference on Institutions and Law-Making (2013)
European Political Science Association (2011-2013)
History and Congress Conference, Columbia University (2001,2002)
History and Congress Conference, Berkeley (2010)
History and Congress Conference, Brown University (2011)
History and Congress Conference, Stanford University (1999,2004)
History and Congress Conference, University of Georgia (2012)
Impact of Direct Democracy, University of Southern California and University of
California at Irvine (2005)
IGIER/PIER Conference on Political Economics, University of Pennsylvania (2002)
Macro-Politics of Congress, University of Colorado (2001)

Midwest Political Science Association (various years)
National Bureau of Economic Research Summer Institute (2011)
Northeastern Political Science Association (2002)
Policy History Conference (2012)
Political Accountability Conference, Princeton University (2002)
Political Institutions and Economic Policy, Harvard University (2002, 2012)
Political Institutions and Economic Policy, Princeton University (2013)
Public Choice World Congress Plenary Speaker (2012)
Public Choice Society (various years)
Priorat Workshop on Theoretical Political Science (2013)
Russell Sage Social Dimensions of Inequality Conference (2003)
Social Science History Association (1998)
Society for Political Methodology Summer Meetings (1997-1999)
Southern California Political Economy Association (1995)
Standing Group on Political Economy of the ECPR (2009)
Stanford Institute of Theoretical Economics (1995)
State of the Parties: 1996 and Beyond, Ray C. Bliss Institute for Applied Politics (1997)
University of George Elections Conference (2008, 2012)
Transformations of American Politics, Harvard University (2003,2004)
W. Allen Wallis Political Economy Conference, Rochester University (1996,2002)

Invited Workshops

Academia Sinica (Taiwan) (2013)
Bowling Green State University (2019)
California Institute of Technology, Department of Humanities and Social Sciences (1992)
Center for the Advance Study in the Behavioral Sciences (2005)
Columbia University, Department of Political Science (1994, 1996, 2009)
Columbia University Law School, Administration in the Age of Polarization (2015)
ETH/ Zurich Risk Center Conference on Economic, Political, and Social Bubbles (2015)
Harvard University, Department of Government (1998)
Harvard University, Center for American Political Studies (2006)
Hoover Institution, Stanford University (2000, 2005)
Instituto Tecnológico Autónomo de México (2002)
London School of Economics and Political Science (2009)
Michigan State University, Department of Political Science (2002)
New York University, Department of Politics (1998, 2001)
New York University, School of Law (2002, 2016)
Northwestern University, Department of Political Science (2003)
Northwestern University, Managerial Economics and Decision Sciences (2010,2019)
Nuffield College, Oxford University (2009)
Ohio State University (1993, 2007)
Princeton University (1992, 1998, 2000)
Stanford University Political Science (2005,2016)
Stanford University Graduate School of Business (1992,1994,1995,1999, 2016)

Stanford University Law School (2005)
Universidad Extranada de Bogota (2000)
University of California at Berkeley, Department of Political Science (2000,2004)
University of California at Berkeley, Goldman School (2007)
University of California at Davis (2016)
University of California at Los Angeles, Department of Political Science (1995,1999)
University of California at San Diego, Department of Political Science (2000)
University of Chicago, Department of Political Science (2005)
University of Chicago, Becker Friedman Institute, The Price of Policy Uncertainty (2015)
University of Chicago, Harris School (2013,2019)
University of Essex, Department of Government (2009)
University of Essex, Political Economy (2009)
University of Georgia (2010)
University of Kentucky, Department of Political Science (2000)
University of Michigan (2016)
University of Minnesota, Department of Political Science (2006)
University of Oregon, Department of Political Science (1996)
University of Pittsburgh, Department of Political Science (2007)
University of Rochester, Department of Political Science (1995,1996,1998,1999)
University of Southern California, Marshall School of Business (1993, 2000)
Washington University, Department of Political Science (1999)
Yale University, Department Political Science (1992, 2002)
Yale University School of Management (1993)

Referee Service

Academic Press, American Economic Review, American Journal of Political Science, American Political Science Review, American Politics Quarterly, American Sociological Review, Berkeley Electronic Press, British Journal of Political Science, Business and Politics, Cambridge University Press, Columbia University Press, Comparative Political Studies, Economic Inquiry, Economics and Politics, Electoral Studies, European Economic Review, European Journal of Political Research, Governance, International Studies Quarterly, Journal of Economic Theory, Journal of Law and Economics, Journal of Law Economics and Organization, Journal of Institutional and Theoretical Economics, Journal of Political Economy, Journal of Politics, Journal of Public Economics, Journal of Public Economic Theory, Journal of Human Capital, Journal of Theoretical Politics, Legislative Studies Quarterly, MIT Press, National Science Foundation, Oxford University Press, Party Politics, Political Analysis, Political Behavior, Political Research Quarterly, Political Science Quarterly, Princeton University Press, Public Administration Review, Public Choice, Rand Journal of Economics, Review of Economics and Statistics, Russell Sage Foundation Press, Social Choice and Welfare, Social Problems, University of Chicago Press, University of Michigan Press, World Politics.

Outside Professional Activities

Member of Methodology committee, SocialScienceOne
Chair, Appropriations Reform Subcommittee, APSA Panel on Congressional Reform
Chair, Working Group on the Politics of Social Media Platforms, Stigler Center, University of Chicago

Founding Editor-in-Chief, *Quarterly Journal of Political Science* (2005-2014)
Co-Chair, Anxieties of Democracy, Institutions Working Group, Social Science Research Council.

Steering committee, Anxieties of Democracy Program, Social Science Research Council.
Steering committee, SSRC/Deutsche Forschungsgemeinschaft program on Democracy.

Council member, *Midwest Political Science Association* (2009-2012)

Editorial committee, *Annual Review of Political Science*

Executive committee, Section on Political Economy, American Political Science Association (2004-2007)

Chair, U.S. Subcommittee of APSA Taskforce on Political Negotiation.

Program co-chair, 2005 Midwest Political Science Association Meetings.

Editorial board, *Political Science Research and Methods*

Editorial Board, *American Journal of Political Science*

Editorial Board, *Legislative Studies Quarterly*

Section Head, Political Economy, American Political Science Association Conference, 2002.

Instructor, *Political Game Theory*, European Consortium of Political Research Summer School, Ljubljana, Slovenia (2009 and 2010)

Instructor, National Science Foundation Program on Empirical Implications of Theoretical Models, University of Michigan (2006)

Instructor, National Science Foundation Program on Empirical Implications of Theoretical Models, Harvard University (2002)

Instructor, National Science Foundation Program on Empirical Implications of Theoretical Models, Washington University, St. Louis (2004, 2006)

Section Head, Parties and Interest Groups, Midwest Political Science Association, 2003.

Co-Leader, American Political Science Association MENA Workshop, Cairo Egypt, 2014.

Legal Consulting

Expert (written affidavits, court testimony) *Romo v. Detzner* 2012-CA-000412 (Fla. Cir. Ct., Leon County); Rebutted expert testimony challenging the legality of Florida congressional districting maps.

Expert (written affidavits) *NAACP v. Husted* Case 2:14-CV-404 (US District Court for the Southern District Ohio Eastern Division); Rebutted expert testimony concerning the impact of changes in early in-person voting procedures in Ohio.

Expert (written affidavits) *League of Women Voters of Florida, et al. v. Detzner, et al.*, Case No. 2012-CA-002842; Rebutted expert testimony challenging the legality of Florida state senate districting maps.

Expert (written affidavits, court testimony) *Ohio Democratic Party et al v. Husted et al.* Case 2:15-CV-1802 (US District Court for the Southern District Ohio Eastern Division); Rebutted expert testimony concerning the impact of changes in early in-person voting procedures in Ohio.

Expert (written affidavits) *One Wisconsin Institute, Inc. et al. v. Nichol, et al* Case:15-CV-324 (US District Court for the Western District of Wisconsin).; Rebutted expert testimony concerning the impact of changes in election administration in Wisconsin.

Expert (written affidavits, court testimony) *The Northeast Ohio Coalition for the Homeless, et al. vs. Jon Husted, et al.* Case 2:06-CV-00896. (US District Court for the Southern District Ohio Eastern Division). Rebutted expert testimony that changes to identification requirements on absentee and provisional ballots in Ohio have disproportionately reduced opportunities for minority voters to participate in elections.

Expert (written affidavits, court testimony) *League of Women Voters of PA et al., v. The Commonwealth of Pennsylvania et al.*, Civ. No. 261 MD 2017 (Commonwealth Court of Pennsylvania). Congressional districting litigation.

Expert (written affidavits, court testimony) *Agre et al. v. Wolf et al.*, Case 17-CV-4392 (United States District Court for the Eastern District of Pennsylvania). Congressional districting litigation.

Professional Memberships

American Political Science Association
Midwest Political Science Association
European Political Science Association

Appendix B: Description of Data Sources

1. Data from 98 Municipal RCV Elections

This dataset originated from the appendix of a report by the Maine Heritage Policy Center. The report is available at <https://mainepolicy.org/project/false-majority/>. To ensure the quality of the data, I consulted all of the original sources, but found no discrepancies. The online election results for five cases, however, were no longer available. These include three elections from Aspen, Colorado and two from Burlington, VT. The results of my analysis would not change if those cases were dropped. I updated the data by adding two elections in San Francisco from 2019. I am not aware of any other RCV elections that have occurred since the report for which ballot data is available. I supplemented these data in two ways. First, I tabulated the number of candidates (exclusive of write-ins). Second, I verified whether a non-monotonicity outcome was possible for the tabulation round with three candidates.

2. Cast Ballot Data from 2018 Maine 2nd Congressional District, Democratic Congressional Primary, and Democratic Gubernatorial Primary

Data on the cast ballots for the 2018 Maine elections is available from the Maine Secretary of State, Bureau of Corporations, Elections, and Commissions at <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6>. I wrote computer code to determine which ballots were exhausted and truncated. I then created aggregate percentage of exhausted and truncated ballots for each town.

3. Maine Voter file for 2018 Election

Counsel was able to obtain the Maine voter registration file containing the records of the voters who participated in the 2018 general election. The data was provided by The Data Trust <https://thedatatrust.com/>. The Data Trust merged the voter file with commercial data from Acxiom (<https://www.acxiom.com/>) on the education level of each voter. I was able to use this data plus the dates of birth provided in the voter file to generate age and education profiles for each of Maine's towns. I then matched these data to the aggregated cast ballot data. This data is available upon request from counsel.

4. Data on 2018 Maine State Senate Elections

Data on election returns for the 2018 Maine state senate elections is available from the Maine Secretary of State, Bureau of Corporations, Elections, and Commissions at <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6>.

5. Data on 2018 Congressional Elections in California and Washington

Data on California and Washington primary and general elections was obtained from the elections administration websites of each state. *See* <https://results.vote.wa.gov/results/20180807/Federal.html>;
<https://results.vote.wa.gov/results/20181106/Federal.html>;
<https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/statewide-direct->

[primary-june-5-2018/statement-vote/](https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/general-election-november-6-2018/statement-vote/); <https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/general-election-november-6-2018/statement-vote/>.

6. Data on Majority Runoff Primaries

The data from 1990 to 2002 was drawn from Engstrom, Richard L., and Richard N. Engstrom. 2008. "The majority vote rule and runoff primaries in the United States." *Electoral Studies* 27(3):407-416. The data were updated through the present using election returns reported online.

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ROBERT HAGOPIAN,
16 Hagopian Ct.
Madison, ME 04950

DUANE R. LANDER,
P.O. Box 1113
Greenville, ME 04441

STERLING B. ROBINSON, and
1330 Atlantic Highway
Warren, ME 04864

JAMES T. TRUDEL,
616 Fuller Rd.
Hermon, ME 04401

Plaintiffs,

v.

Case No. _____

MATTHEW DUNLAP, in his official capacity as
Secretary of State of Maine,
148 State House Station
Augusta, Maine 04333-0148

AARON FREY, in his official capacity as
Attorney General of Maine,
6 State House Station
Augusta, ME 04333

JANET MILLS, in her official capacity as
Governor of Maine,
#1 State House Station
Augusta, ME 04333

Defendants.

**DECLARATION OF ROBERT HAGOPIAN IN SUPPORT OF PLAINTIFFS’
COMPLAINT AND MOTION FOR A PRELIMINARY INJUNCTION**

I, Robert Hagopian, hereby declare as follows under the penalty of perjury.

1. The following statements are based on my personal knowledge, and if called to testify I could swear competently thereto.

2. I am 73 years old and of sound mind.

3. I am a citizen of the United States and of the State of Maine.

4. I reside at 16 Hagopian Ct., Madison, ME 04950 in Somerset County.

5. I am a former eighth grade science teacher and currently run my own business, an indoor firing range.

6. I received an undergraduate degree from William Penn University in 1969. I received a Master's in education from the University of Southern Maine in the early 1980's.

7. I am an eligible Maine voter and am duly registered as a Republican to vote in Maine's federal elections.

8. I voted in the 2018 election for Maine's Second Congressional Election ("2018 Congressional Election").

9. In the 2018 Congressional Election, I cast my ballot for Bruce Poliquin in the first round, followed by each of the other candidates in the subsequent rounds. I ranked Jared Golden last.

10. I completed my ballot in this manner to ensure that my vote was counted and to put additional candidates between my first choice, Bruce Poliquin, and my last choice, Jared Golden.

11. Bruce Poliquin was the only candidate I truly supported.

12. I did not wish to express support for the other candidates because they stood for principles that violated my political convictions.

13. However, I understood that if Bruce Poliquin was eliminated, my ballot would be discarded if I did not vote in additional rounds.

14. Accordingly, I voted for candidates other than Bruce Poliquin to ensure that my ballot was counted and to prevent Jared Golden from being elected.

15. Were it not for ranked-choice voting, I would not have supported candidates other than Bruce Poliquin.

16. I plan to vote in Maine's 2020 Senate election ("2020 Senatorial Election").

17. In the 2020 Senatorial Election, I once again want to ensure that my vote will be counted.

18. I therefore plan to rank Susan Collins first, followed by the independent candidates, followed last by Sara Gideon.

19. I do not support Sara Gideon or the independent candidates. However, I will rank them on my ballot to ensure that it is counted.

20. As a result, I will have to once again violate my political convictions in order to ensure that my vote is counted.

21. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Robert Hagopian
Robert Hagopian

July 21, 2020
Date

EXHIBIT C

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

ROBERT HAGOPIAN,
16 Hagopian Ct.
Madison, ME 04950

DUANE R. LANDER,
P.O. Box 1113
Greenville, ME 04441

STERLING B. ROBINSON, and
1330 Atlantic Highway
Warren, ME 04864

JAMES T. TRUDEL,
616 Fuller Rd.
Hermon, ME 04401

Plaintiffs,

v.

MATTHEW DUNLAP, in his official capacity as
Secretary of State of Maine,
148 State House Station
Augusta, Maine 04333-0148

AARON FREY, in his official capacity as
Attorney General of Maine,
6 State House Station
Augusta, ME 04333

JANET MILLS, in her official capacity as
Governor of Maine,
#1 State House Station
Augusta, ME 04333

Defendants.

Case No. _____

**DECLARATION OF DUANE R. LANDER IN SUPPORT OF PLAINTIFFS’
COMPLAINT AND MOTION FOR A PRELIMINARY INJUNCTION**

I, Duane R. Lander, hereby declare as follows under the penalty of perjury.

1. The following statements are based on my personal knowledge, and if called to testify I could swear competently thereto.

2. I am 79 years old and of sound mind.

3. I am a citizen of the United States and of the State of Maine.

4. I reside at 12 Rail Lane, Harford's Point Twp., Maine, 04441, and my mailing address is P.O. Box 1113, Greenville, ME 04441 in Piscataquis County.

5. I am a United States Army veteran and retired engineer. I attended classes at the University of Maine, and I graduated from the Wentworth Institute of Technology in Massachusetts in 1963. I graduated from the Army School of Engineers in 1964, and I graduated from Bryant and Stratton Business School in Massachusetts in 1968.

6. I am an eligible Maine voter and am duly registered to vote in Maine's federal election.

7. I actively participate in Republican Party politics in my county. I have served as the Chairman for the Piscataquis County Republican Committee on several occasions. I served as a member of the Maine House of Representatives from 1984-1986. I was also a delegate on behalf of the State of Maine to the Republican National Conventions in 1992 and 1996.

8. I voted in the 2018 election for Maine's Second Congressional Election ("2018 Congressional Election").

9. I was very confused about the way the ranked-choice voting system works.

10. In the 2018 Congressional Election, I cast my ballot for Bruce Poliquin in each round. In other words, I filled in the "circle" for Poliquin 4 times. I did not want to vote for any other candidate.

11. My understanding was that I needed to fill in each circle for Poliquin to ensure that my vote was counted. I understood that if I only filled in the first circle for Poliquin, my vote would not be counted. I know many people that voted this way, and my understanding was that their votes were not counted.

12. I did not understand how votes for other candidates would be counted. I certainly did not understand that Poliquin could receive the highest number of votes in the first round and lose in the second round. I still do not understand how votes for other candidates could be recounted as votes for the eventual winner, Jared Golden. The significance of a vote for another candidate was never explained to me prior to my vote.

13. Since the 2018 Congressional Election, I have attempted to better understand ranked-choice voting. Among other things, I have had multiple conversations with experts in ranked-choice voting.

14. I plan to vote in Maine's 2020 Senate election ("2020 Senatorial Election").

15. Now that Sara Gideon will be the Democratic nominee for Senate, I plan to vote for Susan Collins in the 2020 Senatorial Election.

16. Based on my current understanding of ranked-choice voting, in order to ensure that my vote is counted, I still understand that I must fill in the "circle" for Susan Collins for each round, which I plan to do.

17. I do not want to vote for Ms. Gideon or any of the other independent candidates. I also want to ensure that my vote is counted.

18. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Duane R. Lander

Duane R. Lander

July 20, 2020

Date

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ROBERT HAGOPIAN,
16 Hagopian Ct.
Madison, ME 04950

DUANE R. LANDER,
P.O. Box 1113
Greenville, ME 04441

STERLING B. ROBINSON, and
1330 Atlantic Highway
Warren, ME 04864

JAMES T. TRUDEL,
616 Fuller Rd.
Hermon, ME 04401

Plaintiffs,

v.

Case No. _____

MATTHEW DUNLAP, in his official capacity as
Secretary of State of Maine,
148 State House Station
Augusta, Maine 04333-0148

AARON FREY, in his official capacity as
Attorney General of Maine,
6 State House Station
Augusta, ME 04333

JANET MILLS, in her official capacity as
Governor of Maine,
#1 State House Station
Augusta, ME 04333

Defendants.

**DECLARATION OF STERLING B. ROBINSON IN SUPPORT OF PLAINTIFFS’
COMPLAINT AND MOTION FOR A PRELIMINARY INJUNCTION**

I, Sterling Robinson, hereby declare as follows under the penalty of perjury.

1. The following statements are based on my personal knowledge, and if called to testify I could swear competently thereto.

2. I am 72 years old and of sound mind.
3. I am a citizen of the United States and of the State of Maine.
4. I reside at 1330 Atlantic Highway, Warren, ME 04864 in Knox county.
5. I am an eighth-generation Maine resident, and I currently reside in a home built by my family, which is one of the only remaining original homes that was built on the Waldo Patent land grant.
6. I am retired, but I was previously employed in a number of different positions, including as a tractor trailer driver and an office manager and personal assistant to a listed artist.
7. I attended several years of post-secondary education at the University of Maine in 1967 to 1968. I participated in the Continuing Education Division and did not receive an undergraduate degree.
8. I am an eligible Maine voter and am duly registered as a Republican to vote in Maine's federal elections.
9. I voted in the 2018 election for Maine's Second Congressional Election ("2018 Congressional Election").
10. In the 2018 Congressional Election, I cast my ballot for Bruce Poliquin in the first round, but I did not fill out a vote for the remaining rounds of voting.
11. I completed my ballot in this manner, because after researching the ranked-choice voting options, I was under the mistaken impression that it was not necessary to fill out additional rounds of the ballot to ensure that my ballot would not be exhausted.
12. I was confused regarding the actions necessary to ensure that my vote was counted in each round of ranked-choice voting.

13. I did not understand the significance of ranking other candidates on the ballot in the 2018 Congressional Election. In particular, I did not understand that the failure to rank additional candidates risked having my ballot exhausted.

14. Had I understood the significance of ranking other candidates, I would have done so in the 2018 Congressional Election.

15. I plan to vote in Maine's 2020 Senate election ("2020 Senatorial Election").

16. In the 2020 Senatorial Election, I will be voting for Susan Collins as in the first round, but I intend to rank the other Senate candidates in the remaining rounds to ensure that my ballot is fully counted.

17. My goal is ultimately to ensure that my vote is counted.

18. However, I still do not understand how to rank the candidates to both ensure that my preferred candidate is in the best position to win while ensuring that my ballot will not be exhausted.

19. I do not know where or how to research strategic ranked-choice voting, and I am concerned that in attempting to ensure my ballot is counted, I could unknowingly undermine my voting interests.

20. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Sterling B. Robinson
Sterling B. Robinson

July 22, 2020
Date

EXHIBIT E

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

ROBERT HAGOPIAN,
16 Hagopian Ct.
Madison, ME 04950

DUANE R. LANDER,
P.O. Box 1113
Greenville, ME 04441

STERLING B. ROBINSON, and
1330 Atlantic Highway
Warren, ME 04864

JAMES T. TRUDEL,
616 Fuller Rd.
Hermon, ME 04401

Plaintiffs,

v.

MATTHEW DUNLAP, in his official capacity as
Secretary of State of Maine,
148 State House Station
Augusta, Maine 04333-0148

AARON FREY, in his official capacity as
Attorney General of Maine,
6 State House Station
Augusta, ME 04333

JANET MILLS, in her official capacity as
Governor of Maine,
#1 State House Station
Augusta, ME 04333

Defendants.

Case No. _____

**DECLARATION OF JAMES T. TRUDEL IN SUPPORT OF PLAINTIFFS’
COMPLAINT AND MOTION FOR A PRELIMINARY INJUNCTION**

I, James T. Trudel, hereby declare as follows under the penalty of perjury.

1. The following statements are based on my personal knowledge, and if called to testify I could swear competently thereto.

2. I am 73 years old and of sound mind.

3. I am a citizen of the United States and of the State of Maine.

4. I reside at 616 Fuller Rd, Hermon, ME 04401 in Penobscot County.

5. I am a retired Lieutenant Colonel of the Maine Air National Guard and former electrical engineer.

6. I received a Bachelor of Science in Electrical Engineering Technology from the University of Maine in Orono in 1984.

7. I am an eligible Maine voter and am duly registered as an Independent to vote in Maine's federal elections.

8. I voted in the 2018 election for Maine's Second Congressional Election ("2018 Congressional Election").

9. In the 2018 Congressional Election, I cast my ballot for Bruce Poliquin in the first round, followed by each of the other candidates in the subsequent rounds. I ranked Jared Golden last.

10. I completed my ballot in this manner to ensure that my vote was counted and to put additional candidates between my first choice, Bruce Poliquin, and my last choice, Jared Golden.

11. Bruce Poliquin was the only candidate I truly supported.

12. I did not wish to express support for the other candidates because they stood for principles that violated my political convictions.

13. However, I understood that if Bruce Poliquin was eliminated, my ballot would be discarded if I did not vote in additional rounds.

14. Accordingly, I voted for candidates other than Bruce Poliquin to ensure that my ballot was counted and to prevent Jared Golden from being elected.

15. Were it not for ranked-choice voting, I would not have supported candidates other than Bruce Poliquin.

16. I plan to vote in Maine's 2020 Senate election ("2020 Senatorial Election").

17. In the 2020 Senatorial Election, I once again want to ensure that my vote will be counted.

18. I therefore plan to rank Susan Collins first, followed by the independent candidates, followed last by Sara Gideon.

19. I do not support Sara Gideon or the independent candidates. However, I will rank them on my ballot to ensure that it is counted.

20. As a result, I will have to once again violate my political convictions in order to ensure that my vote is counted.

21. I declare under penalty of perjury that the foregoing is true and correct.

/s/ James T. Trudel
James T. Trudel

July 21, 2020
Date

**Expert Report of Nolan McCarty, Ph.D.
Professor of Politics and Public Affairs at Princeton University**

***Hagopian, et al. v. Dunlap, et al.,*
U.S. District Court for the District of Maine**

July 22, 2020

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EXPERT QUALIFICATIONS

I am the Susan Dod Brown Professor of Politics and Public Affairs at Princeton University and currently the Director of the Princeton Data-Driven Social Science Initiative. I recently concluded my service as Chair of the Department of Politics at Princeton University, and I was formerly the associate dean at the School of Public and International Affairs at Princeton University. I specialize in U.S. politics, democratic political institutions, and political game theory, with a research focus on political polarization and ideology and statistical voting analysis. I studied ranked-choice voting (“RCV”) in preparation for publication of my book, “Polarization: What Everyone Needs to Know,” which was published in July 2019 and includes a discussion of RCV.

I received my Ph.D. and M.S. in Political Economy from Carnegie Mellon University and my A.B. in Economics with Honors from the University of Chicago. I have taught graduate-level courses (Ph.D.) in game theory and political theory, American political institutions and a variety of political and methodology classes at Princeton University and Columbia University. I have also taught courses in business, legislative politics, and advanced econometrics at the master’s level at Princeton University and the University of Southern California. Additional information about my professional experience as a political scientist and economist, including prior expert testimony, publications, and affiliations, can be found in my curriculum vitae, attached as Appendix A.

I have been asked by attorneys for Plaintiffs to examine the effects of RCV on voter participation in the State of Maine, and how participation in RCV systems in Maine and elsewhere compares to plurality and runoff systems. I have also been asked to evaluate the purported benefits of RCV identified by RCV supporters.

In order to perform this analysis, I have reviewed data from 98 municipal RCV elections, cast-ballot data from the 2018 Maine Second Congressional District general election (“2nd CD election”), 2018 Maine Democratic Congressional primary election (“Congressional primary”), and the Democratic Gubernatorial primary election (“Gubernatorial primary”), voter registration and commercial records for Maine voters who participated in the 2018 general election (“Maine voter file”), election-return data from the 2018 Maine state senate elections, data on the 2018 Congressional elections in California and Washington, and data on majority runoff elections. A description of the data sources relied upon for this report is attached as Appendix B. My analysis is guided by my training and experience as a political scientist and economist, including my work with statistical voter analysis and RCV.¹

I am being compensated for my time in preparing a report and preparing or providing any testimony. My billing rate is \$400 for services performed in connection with this matter. In addition, I will be reimbursed for all reasonable out-of-pocket expenses incurred in connection with my analyses and testimony in this case. My compensation is not dependent on the outcome of this matter or the opinions expressed.

¹ My conclusions stated herein are based upon my review of the information available to me at this time. I reserve the right to alter, amend, or supplement these conclusions based upon further study or based upon the availability of additional information, including the Maine July 2020 primary election data.

SUMMARY OF FINDINGS AND ANALYSIS

The following is a report of my empirical findings and analysis, which demonstrates:

1. RCV resulted in a substantially lower “full participation” rate in Maine in 2018 as compared to plurality and runoff systems, where “full participation” means casting a ballot that could not be exhausted and thus is guaranteed to count toward the final outcome. This is particularly true in jurisdictions like Maine with more elderly and less-educated voters.
2. These results, as well as the high number of ballots cast that lack any clear rational explanation, demonstrate that the low “full participation” rate in Maine cannot be explained by deliberate voter choice alone. Indeed, the results demonstrate that voter confusion causes many voters not to fully participate. The inherent complexities of the system are preventing voters from fully participating and thus effectively disenfranchising large numbers of voters.
3. The purported benefits of RCV have not manifested in jurisdictions where RCV has been utilized over long periods of time.

As I outline in my report, an RCV system comes with a significant number of vices, many of which manifested themselves in the 2018 Maine elections.² Chief among them is that the system provides many significant impediments to full participation of the voters who choose to cast ballots. Central to this issue is the phenomenon of *exhausted* ballots. In an RCV election, ballots may become unusable in later rounds of tabulation when the voter has failed to rank any of the candidates that remain in contention. When such a ballot is cast aside after the first round of voting for this reason, it is said to be exhausted, and it is no longer counted for purposes of determining the “majority” winner. The academic literature and the analyses in my report demonstrate that ballot exhaustion is pervasive in RCV elections, sometimes leading to the discarding of over 20% of the ballots during the final round of tabulation. It also appears to be persistent, as rates of exhaustion do not decline over time. Jurisdictions that have used RCV for decades suffer from ballot exhaustion at similar rates as new adopters of the voting system.

The direct reason why ballot exhaustion is so pervasive is that voters rarely rank a sufficient number of candidates. Whenever a voter does not rank all of the candidates, she runs the risk of having her ballot exhausted. Unfortunately, because of the uncertainties in the level of support for various candidates, a voter may have a difficult time predicting whether or not her ballot will be exhausted. Moreover, the academic literature and my analysis of the 2018 Maine elections suggest a high likelihood that older and less-educated voters are most likely to vote an incomplete ballot, and thus, are most likely to submit an exhausted, uncounted ballot. These findings are troubling in that scholarly work has established that such incomplete (or *truncated*)

² I use the term “2018 Maine elections” to include the 2nd CD election, Congressional primary, and Gubernatorial primary. These are the only RCV elections to have taken place in Maine with reported data on individual ballots at the time I conducted my analysis. The state does not report data on individual ballots for RCV elections that are resolved in the first round of tabulation.

ballots can affect election outcomes in ways that are not transparent to voters and may work against their interests.

In addition, full participation in RCV is low compared to plurality and runoff elections. In plurality elections, full voter participation is the rule, and there are relatively few voters who fail to achieve full participation if they choose to vote at all. Even in a runoff election—which requires voters to choose to and make efforts to vote on two separate occasions and typically take place in primary elections that receive lower voter turnout in general—the percentage of exhausted ballots in an RCV election is not substantively different from a runoff election. But, in states where the majority runoff election occurs on the Federal Election Day, voter turnout actually *increases*, demonstrating a better performance than RCV in producing majority winners and better second-round voter participation.

These results demonstrate that the low full-participation rate in Maine cannot be explained by voter choice or expression alone. As demonstrated by the analysis below, the lack of full voter participation in Maine is due to problems inherent to RCV elections. The complexities of the system are causing voter confusion that is preventing many voters from fully participating.

Finally, as I outline in this report, the purported virtues of RCV are not realized by adoption:

1. There is little evidence that RCV improves the fortunes of smaller parties. Comparisons of legislative election outcomes in Australia, where RCV has been used since the 1920s with other Anglophone democracies, reveal that RCV does not encourage small party electoral success.
2. Similarly, there is little evidence that RCV boosts turnout or voter engagement. In fact, the academic debate on this point is consistent that voter turnout declines with the use of RCV. Original analyses demonstrate that Maine voters were no more attracted to voting in RCV elections than the plurality elections on the same ballot.
3. RCV does not eliminate “spoiler effects” or opportunities for manipulation. Instead, RCV changes the nature of the opportunities for strategic behavior and manipulation.
4. RCV does not guarantee that the winner receives a majority of the vote. In fact, the winner of an RCV election that goes beyond the first round fails to obtain support from a majority of voters most of the time.

BACKGROUND

The use of RCV has gained traction over the past several years. In such systems, voters are asked to rank a set of candidates, and those rankings are then used to determine the election winners. An RCV system generally works as follows:

- Voters are asked to rank the candidates. In some systems, they can rank all of the candidates while others ask only that the voters rank up to a certain number of candidates.

- The first rank votes are counted. If any candidate receives a majority of the first rank votes, she is declared a winner. If there is no majority winner, the last place candidate, as well as any additional candidates that have been mathematically eliminated, are dropped.
- The votes are recounted using the first ranked votes of the remaining candidates and the second ranked votes of those who supported one of the eliminated candidates.
- If a candidate obtains a majority on this round, she is the winner. If not, the process continues until there is a winner.

Maine's RCV system generally follows these principles. *See generally* Me. Rev. Stat. tit. 21-A, § 723-A. In general, if no candidate receives more than 50% of the first-choice votes based on election returns, the RCV count proceeds to successive rounds of voting. "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. . . . In the final round, when only 2 continuing candidates remain, the candidate with the most votes in that round is the winning candidate." 29-250-535 Code Me. R. § 4.2(A).

Advocates of RCV tout many virtues. RCV, advocates contend, improves the electoral fortunes of small parties and independent candidates. By encouraging a larger set of candidates to contest office, advocates argue that voters are provided with more choice, which in turn should result in greater voter turnout and engagement. RCV elections also purportedly eliminate the possibility of spoiler candidates who siphon off too many votes from the most popular major candidate. Finally, RCV elections are said to be more legitimate because the winner has earned the support of a majority of the electorate.

Officials and RCV interest groups in Maine have made similar arguments. The Committee for Ranked Choice Voting in Maine, for example, asserts that

[RCV] gives more choice and more voice to voters. With RCV, you have the freedom to vote for the candidate you like best without worrying that you will help to elect the candidate you like least. Ranked Choice Voting eliminates vote-splitting and ensures that candidates who are opposed by a majority of voters can never win.³

The same group has also contended that RCV in Maine increases voter participation in democratic elections, reduces negative campaigning, results in greater choice for voters, and restores "majority rule."⁴

³ The Committee for Ranked Choice Voting, <http://www.rcvmaine.com/> (last visited July 19, 2020).

⁴ *See e.g.*, The Committee for Ranked Choice Voting, *FAQ: What are the benefits of voting with a ranked choice ballot?*, http://www.rcvmaine.com/what_are_the_benefits_of_voting_with_a_ranked_choice_ballot (last visited July 19, 2020) (listing as benefits of RCV: "restores majority rule," "eliminates vote splitting," "more voice for voters," "more choice for voters," and "reduces incentives for negative campaigning" (capitalization altered)).

Were these virtues demonstrable, it might be difficult to argue against the advocates of RCV. Unfortunately, however, RCV imposes substantial costs. Most important, it results in substantial disenfranchisement of voters, as demonstrated in the 2018 Maine elections. Moreover, the electoral history of RCV as practiced in U.S. municipalities, other national legislatures, and the 2018 Maine elections fails to provide much evidence at all that the purported benefits of RCV have materialized.

ANALYSIS

I. RCV RESULTED IN A SIGNIFICANT NUMBER OF MAINE VOTERS NOT FULLY PARTICIPATING IN THE 2018 MAINE ELECTIONS

A. Exhausted Ballots in RCV Elections

A major problem observed in RCV elections is that increasing numbers of ballots cease to be relevant to the outcome of the election as the vote tabulation proceeds. In an RCV election, a ballot may become *exhausted* if the voter has not ranked a currently viable candidate. For example, if a voter ranks only one candidate and that candidate is eliminated in round 1, that voter contributed nothing to the second round voting tabulations, because an exhausted vote is no longer counted for purposes of determining the “majority” winner.⁵ Specifically, a voter’s ballot may be exhausted if any of the following occur:

1. She has ranked only candidates who are no longer viable;
2. She has *overvoted* by selecting more than one viable candidate for highest rank of her viable candidates; or
3. She *undervotes* by skipping columns or rankings.⁶

My use of the term “exhausted ballot” is slightly narrower than as defined under Maine law. Under Maine law, a ballot can be “exhausted” even in the first round of voting if a voter leaves their ballot blank or overvotes in the first round. By contrast, I use the term “exhausted ballot” to refer to only ballots that are exhausted after the first round of tabulation—*i.e.*, ballots that successfully ranked at least one candidate before being exhausted. I use the term “total undervotes” or “all undervotes” to refer to both exhausted ballots—as defined herein—and ballots that are left blank in the first round of tabulation. Lastly, I use the term “ballots not counted” to refer to all ballots that are not tabulated in the final round. This term is slightly broader than “total undervotes” because it also includes first-found overvotes. In other words, “ballots not counted” is synonymous with Maine’s statutory definition of “exhausted ballots.”

⁵ See 29-250-535 Code Me. R. § 4.2(A).

⁶ Under Maine regulations, an undervote occurs only if two or more rankings are skipped. See 29-250-535 Code Me. R. § 4.2(B)(2)–(3).

Previous research has shown that high numbers of exhausted ballots are a pervasive phenomenon in RCV elections.⁷

To supplement these results and provide some additional empirical evidence concerning the prevalence of exhausted votes, I conducted a statistical analysis of a data set of 98 RCV general elections held in the U.S. from 2006 to 2019. These elections are restricted to those conducted under RCV rules and required more than a single round to determine the winner. Thus, they exclude those for which a candidate received a majority on the first round of balloting.

Figure 1 below provides the frequency distribution of the percentage of ballots that were exhausted during the RCV counting process for the 98 elections in the first dataset.⁸ Clearly, large numbers of exhausted ballots are the norm. The most typical RCV election (a circumstance that arose more than ten times in the dataset) is one where 8% of the ballots are not counted in the final round. On average, 10.8% of votes cast in an RCV election are considered exhausted. But a large number of elections had ballot exhaustion rates of 20% and higher. Indeed, 15 of the 98 RCV elections resulted in more than 20% of cast ballots being exhausted.

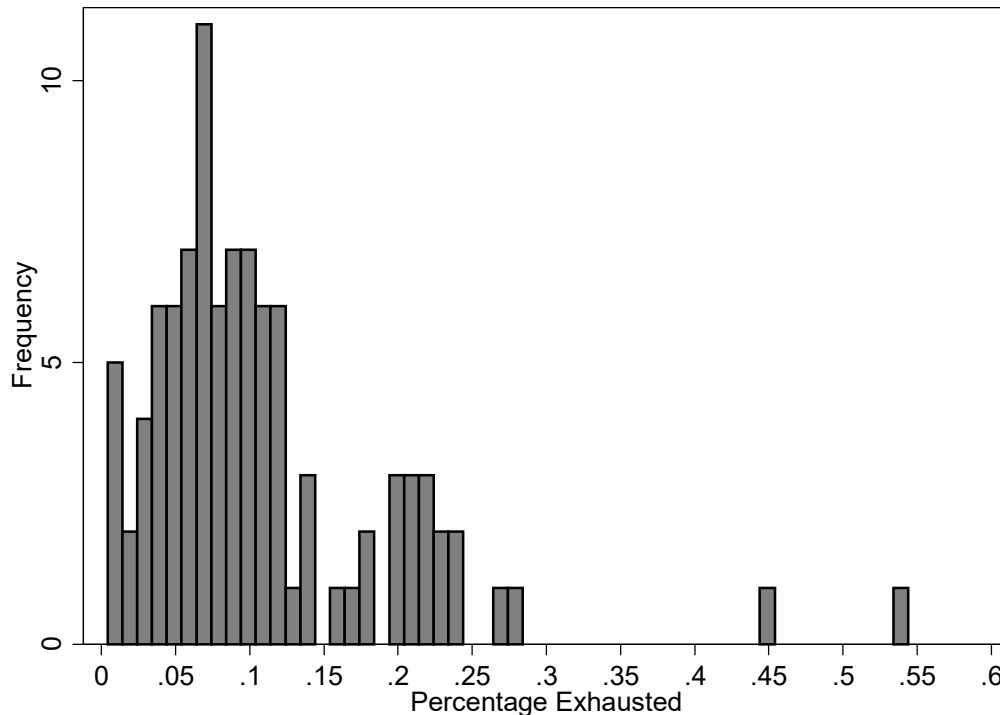


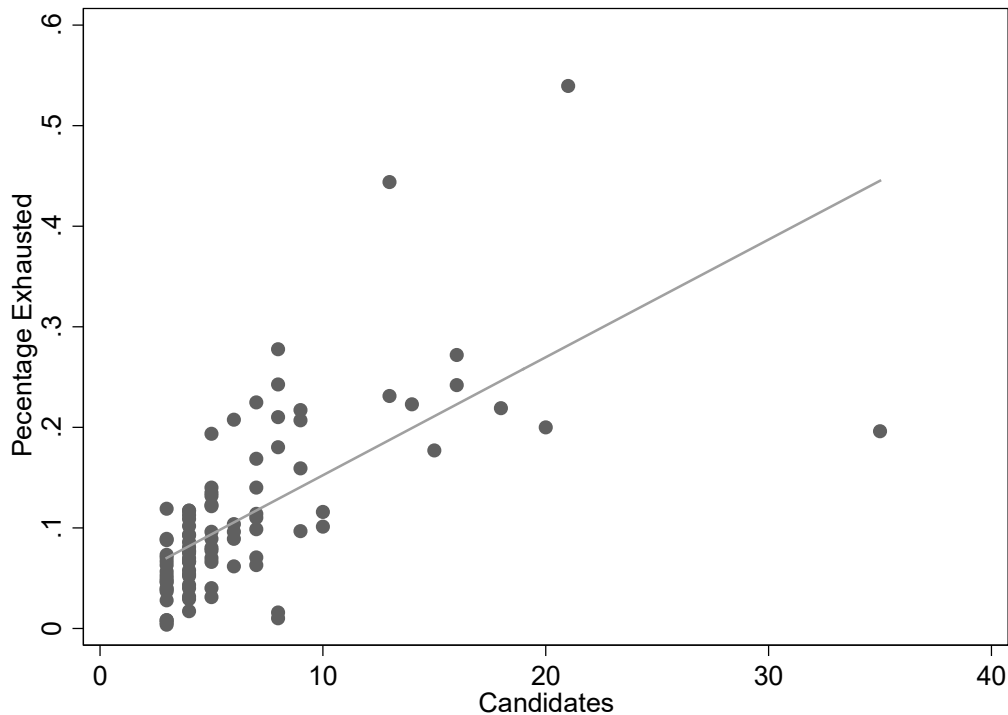
Figure 1: Exhausted Ballots for 98 RCV Elections

The number of exhausted votes across these elections depends on several factors, the most important of which is the number of candidates in the election. Figure 2 shows the relationship

⁷ See Craig M. Burnett and Vladimir Kogan, “Ballot (and Voter) ‘Exhaustion’ Under Instant Runoff: an Examination of Four Ranked-Choice Elections,” *Electoral Studies* 37, 41–49 (2015); Francis Neely and Jason McDaniel, “Overvoting and the Equality of Voice Under Instant-Runoff Voting in San Francisco,” *California Journal of Politics and Policy* 7(4) (2015).

⁸ As noted above, exhausted ballots exclude the over- and undervotes from the first round.

between ballot exhaustion and the number of candidates where the line shows the best linear relationship.



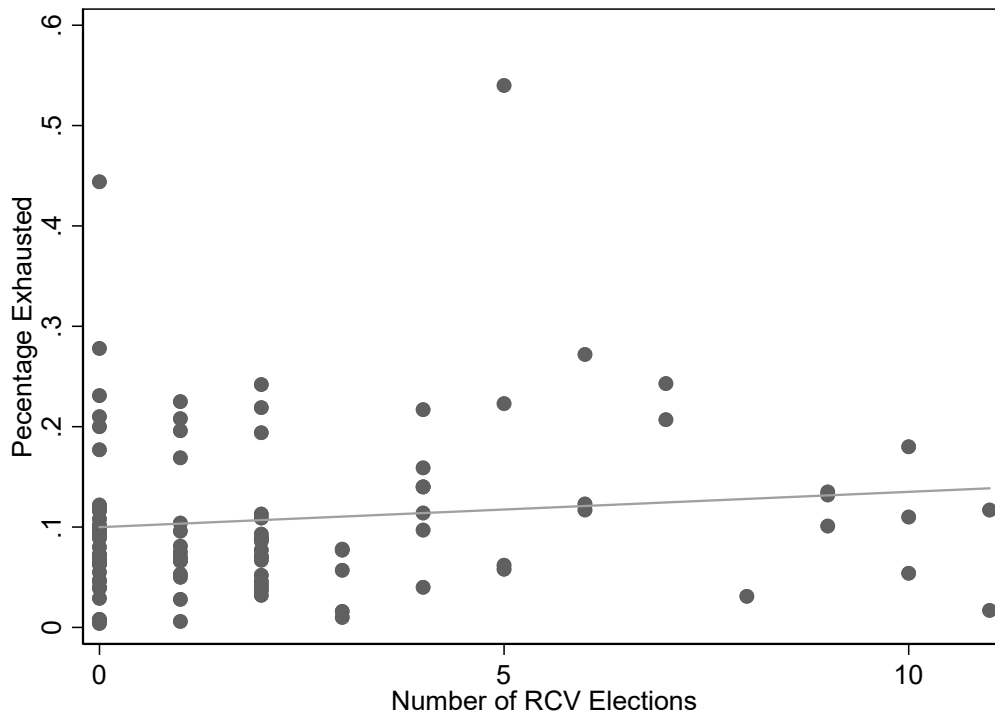


Figure 3: Ballot Exhaustion Over Time

Contrary to the advocacy, there is no empirical evidence that ballot exhaustion rates decline with more experience. Indeed, despite repeated practice with RCV elections, Figure 3 demonstrates that high ballot exhaustion rates do not improve over time. Thus suggesting that the voter confusion discussed above is not based merely on the introduction of a new system but is due to problems inherent in the RCV election system.

To demonstrate the robustness of the bivariate relationships in Figures 2 and 3, I estimate a multivariate regression of the ballot exhaustion rate on the number of candidates and the number of previous RCV elections. I add a few additional control variables such as an indicator for whether it was a mayoral election (the highest profile elections in the dataset) and the natural log of the number of votes (also to capture higher profile elections).⁹

Table 1: Correlates of Ballot Exhaustion	
Variable	Coefficient
Number of Candidates	0.013***
	(0.002)
Number of RCV Elections	0.000
	(0.002)

⁹ See Francis Neely and Jason McDaniel, “Overvoting and the Equality of Voice Under Instant-Runoff Voting in San Francisco.” *California Journal of Politics and Policy* 7(4)(2015).

Mayoral Race	-0.072***
	(0.021)
Ln(votes)	0.011**
	(0.005)
Constant	-0.071
	(0.046)
N	93
R Squared	0.529
Standard errors clustered by jurisdiction in parentheses	

There is a strong relationship between exhausted ballots and the number of candidates running. Each additional candidate in an RCV election adds a 1.3 percentage point increase in exhausted ballots. In contrast, the effect of the number of elections is zero to three decimal places. Thus, RCV advocates are incorrect to claim that RCV performs better over time. Instead, the evidence shows that an increase in election candidates has a direct correlation to exhausted ballots in that election, and this problem remains over time.¹⁰

B. Fully Participating Ballots

Data on the individual vote records in Maine RCV elections can allow for a closer look at the behavior of voters in RCV elections.¹¹ These data contain a record of every vote cast. Under Maine's balloting procedures, voters are asked to provide the candidate that they place in ranks 1 through $n+1$, where n is the number of candidates.¹² A voter may undervote at any rank by leaving that column blank. A voter may overvote by identifying two candidates for a single rank. Nothing precludes a voter from ranking the same candidate at two or more positions. Figure 4 provides an illustration of what the Maine ballot data looks like.

	A	B	C	D	E	F	G	H
1	Cast Vote Record	Precinct	Ballot Style	Rep. to Congress 1st Choice District	Rep. to Congress 2nd Choice District	Rep. to Congress 3rd Choice District	Rep. to Congress 4th Choice District	Rep. to Congress 5th Choice Dis
2		1 Fayette	CAN Ballot Style 130	REP Poliquin, Bruce (5931)	REP Poliquin, Bruce	REP Poliquin, Bruce	undervote	undervote
3		2 Fayette	CAN Ballot Style 130	REP Poliquin, Bruce (5931)	undervote	undervote	undervote	undervote
4		3 Fayette	CAN Ballot Style 130	DEM Golden, Jared F. (5471)	Bond, Tiffany L.	undervote	undervote	undervote
5		4 Fayette	CAN Ballot Style 130	REP Poliquin, Bruce (5931)	DEM Golden, Jared F.	Bond, Tiffany L.	DEM Golden, Jared F.	Hoar, William R.S.
6		6 Fayette	CAN Ballot Style 130	REP Poliquin, Bruce (5931)	undervote	undervote	undervote	undervote

Figure 4: Example of Cast Ballots in Maine 2nd Congressional District Election

The votes in Figure 4 are simply the first five rows of the data, but one can see the large number of anomalies. First, none of these voters successfully ranked all four candidates. Voter 1 voted for Bruce Poliquin in ranks 1 through 3 and then left 4 and 5 blank. Voters 2 and 6 only voted for Poliquin and then left the rest blank. Interestingly, voter 4 chose Jared Golden as her second and fourth ranked candidate. Importantly, none of these voters' ballots was exhausted as each

¹⁰ That mayoral races have lower rates of ballot exhaustion is consistent with voters ranking a higher proportion of candidates in high profile elections, but larger electorates appear to produce more exhausted ballots.

¹¹ These data are available from the Maine Secretary of State, Bureau of Corporations, Elections, and Commissions, <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6> (last visited July 22, 2020).

¹² The additional slot is included for write-in candidates.

ranked one of the candidates that made it to the final round (Poliquin and Golden). But all of the ballots except that of voter 4 could have been exhausted if the balloting had turned out differently. For that reason, the number of exhausted votes generally understates the magnitude of the problems voters have in casting RCV ballots.

To empirically quantify the magnitude of this issue, I define a *fully participating voter* in an RCV election as a voter who ranks at least $n-1$ distinct candidates in an n -candidate election and does not overvote at any of the ranks.¹³ Full participation ensures that the vote cannot be exhausted and therefore is certain to be counted in the final tally, regardless of how the tabulation of votes plays out. I will refer to ballots that are not fully participating as *truncated*.

Aside from reducing the likelihood that a voter's ballot is counted in each round, truncated ballots also negatively impact the outcomes of RCV elections. Recently, D. Marc Kilgour, Jean-Charles Grégoire, and Angèle M. Foley conducted a simulation study of the consequences of truncated ballots in RCV elections.¹⁴ The authors found that ballot truncation is very common and hard to rationalize. But more importantly, the authors demonstrated how some of the supposed salutary properties of RCV fail when voters do not fully participate. First, they find that even small amounts of truncation can alter the identity of the election winner, especially in elections with more than three candidates. Often these distortions disadvantage and result in outcomes that are contrary to the will of the voter whose ballot is truncated.

Second, Kilgour and his colleagues evaluate the quality of the election by assessing whether the election produces a *Condorcet winner*. A Condorcet winner is a candidate that is preferred by a majority of voters in every pairwise comparison with another candidate. Electing such a candidate when one exists is therefore a crucial desiderata for evaluating electoral systems. Yet Kilgour and his colleagues found that ballot truncation reduces the likelihood that the election outcome will produce the Condorcet winner.¹⁵ In other words, Kilgour found that the winner of the RCV election may have been less successful if she had faced another candidate in the final round of voting – a direct contradiction of advocates' claims that no candidate can win a RCV election without majority support.

Finally, the authors noted that the effects of truncation are unpredictable, even for voting theorists such as themselves:

We regret that we cannot give any intuition that might “explain” our simulation results. Compared to other election methods, competitive ranked-choice elections are opaque, in that it is very difficult to predict whether and how small changes in votes will affect the winner. Indeed, that is the very reason that a simulation is necessary to answer our question about the effects of ballot truncation. (p. 216).

¹³ Ranking the last candidate is unnecessary since there can be at most $n-1$ rounds of voting. Similarly, using the last ballot slot is also superfluous unless the voter casts a write-in vote in one of the earlier ranks. That 7.4% of the voters placed a candidate in rank 5 demonstrates a fundamental lack of understanding of how the system works.

¹⁴ D. Marc Kilgour, Jean-Charles Grégoire, and Angèle M. Foley, “The Prevalence and Consequences of Ballot Truncation in Ranked-choice Elections” 184 *Public Choice* 197–218 (2020).

¹⁵ In other words, suppose that a majority of voters prefers A to B and a majority prefers B to C; the authors found that ballot truncation reduces the likelihood that A wins an RCV election.

That is, even with the benefit of their research, Kilgour and his colleagues found that the large numbers of truncated ballots in RCV election ballots lack any strategic rationale.

Using the cast ballot data described above, I can calculate the percentage of Maine's Second Congressional District general election voters in 2018 who met this standard for full participation. Only 36% of voters in this election satisfied the most stringent version of this criteria by using ballot ranks 1-3 to rank three distinct candidates. This low level of voter participation is due to the fact that 60.6% of voters did not use at least one of the first three ranks and another 3.5% repeated the same candidate more than once in the first three ranks. Under Maine voting regulations, a voter may skip a single rank without exhausting her ballot. Therefore, a ballot with up to two non-consecutive skips may also be considered fully participating. But only 37.7% of Maine voters met the less stringent criteria by filling out three rounds of voting with non-consecutive skips, demonstrating that approximately two-thirds of Maine voters in the 2nd CD election were at risk of not having their ballot counted.

As pointed out by Kilgour and his colleagues, there is no strategic reason for a voter to undervote in an RCV election. Instead, the large number of ballots that fail to rank three candidates in rounds 1-3 demonstrates that the problem is inherent to RCV elections. For example, Maine's rules regarding ballot skips are a source of confusion for voters. In addition to the data noted above, 44 Maine voters had their ballots invalidated because they skipped two ranks between an eliminated candidate and an otherwise valid vote for a continuing candidate. Another 307 votes were discarded because the highest ranked candidate appeared in rank 3 or lower on the voter's ballot.

Interestingly, of the 6018 voters who undervoted in the first round of voting, only 5711 marked zero candidates. Thus, the 307 voters whose highest ranked candidate appeared in rank 3 or lower intended to vote in that race but miscast their ballot. While some of these cases may reflect an expressive vote against a candidate by simply ranking him or her last, that pattern accounts for the minority of these cases. Just 135 voters used only the fifth ballot position (including those that cast an overvote in that rank).

Indeed, as shown in Table 2 below, a significant number of Maine voters who participated in the 2nd CD election cast votes that similarly defy any clear strategic or logical reason. This wide variety of incorrect, and even ineffective, balloting demonstrates that ballot-exhaustion, and the risk of ballot-exhaustion due to truncated votes, cannot be attributed to voter choice.

Category of Voter	Number of Ballots	Percent of Total Ballots
Skipped at least one round of voting between candidates (<i>e.g.</i> , Candidate A, blank, Candidate B)	11,569	3.9%
Filled out at least one round but left the first round blank (<i>e.g.</i> , blank, Candidate A, Candidate B)	810	.3%

Ranked the same candidate in non-consecutive rounds (<i>e.g.</i> , Candidate A, Candidate B, Candidate A)	1842	.6%
Ranked one candidate consecutively and also ranked at least one other candidate on the ballot (<i>e.g.</i> , Candidate A, Candidate A, Candidate B)	824	.3%
Ranked (i) only one candidate (ii) more than once but (iii) left at least one round blank (<i>e.g.</i> , Candidate A, Candidate A, blank)	1346	.5%
Overvotes (<i>e.g.</i> more than one candidate at the same ranking)	1994	.7%
Total (Excluding Duplicates Between Categories):	17352	5.9%

To show that the results from Maine's 2nd CD election are not anomalous, I repeat the exercise for the 2018 Democratic Gubernatorial primary election.¹⁶ In that election, there were seven declared candidates so the ballot allowed for eight ranks. For the ballot data, I calculate that only 35% of the voters fully participated by ranking six distinct candidates (allowing for single skips). Not only did a large number fail to rank six candidates, I also calculate only 50% of voters ranked at least four distinct candidates. While that seems better than the performance in the 2nd CD election, it resulted in a situation in the second round of counting where the margin between the 1st and 2nd candidate and the margin between the 3rd and 4th candidate was less than the number of exhausted votes. Had more voters fully participated in the 2018 Gubernatorial primary, the outcomes could have easily been influenced.¹⁷

Similarly, I repeat the exercise for the 2018 Democratic 2nd Congressional District primary election. In that race, there were four candidates. When accounting for single skips, I find that only 47% of the voters fully participated in the election.

Thus, in each RCV election held in Maine for which I have cast ballot data, less than half of participating voters cast a ballot that ensures their vote would be counted. To demonstrate this point more fully, Table 3 provides a summary calculation of (1) the number of ballots that were not fully participating in the three Maine RCV elections and thus risked exhaustion, (2) the number of ballots that were actually exhausted in each of the three Maine RCV elections, and (3) the number of ballots that were not counted in the 2018 Maine elections.

Table 3: Exhaustion, Votes Not Counted, and Lack of Full Participation			
	2018 2nd CD Election	2018 Congressional Primary	2018 Gubernatorial Primary

¹⁶ I could not analyze voter choice for the 2018 Senate election or the 2018 Congressional primaries in the First Congressional District or the Republican primary in the Second Congressional District because Maine does not report cast ballot data for RCV elections that resolve in the first round.

¹⁷ Similar to the 2nd CD election, a large number of voters (6.6%) used the superfluous eighth rank.

Absolute Number of Ballots Not Reflecting Full Participation	184,276	26,715	86,166
Percent of Ballots Not Reflecting Full Participation	62.3%	52.5%	65.1%
Absolute Number of Exhausted Ballots	8,253	1,747	8,714
Percent of Total Ballots Exhausted	2.7%	3.4%	6.6%
Absolute Number of Ballots Not Counted	14,706	7,381	15,000
Percent of Total Ballots Not Counted	10.5%	14.5%	11.3%

C. Comparing Participation in Maine's RCV with Plurality and Runoff Systems

To demonstrate the risk of disenfranchisement in Maine, it is useful to compare the low voter participation rates in RCV elections with their counterparts in plurality and runoff elections.

In a plurality election, full voter participation is defined as casting one ballot for the race in question.¹⁸ Therefore, the full participation rate is simply the percentage of non-blank ballots. Consequently, the full voter participation rate for the non-RCV 2018 Maine Gubernatorial race was 97.3%, while the full voter participation rates for contested state senate elections that year ranged from 95.5% to 98.2% with an average of 97.3%. That is, in contrast to the 2nd CD election, the average rate of fully participating ballots in the 2018 Maine plurality elections was 97.3%

The comparison to runoff elections is not much better. In a traditional majority runoff election, multiple candidates compete in round 1 and then the top two candidates compete in a runoff election held at a later date. Such elections are held in various locations in the U.S. (especially in the southern states) and is the system France uses to elect its president.

As an initial matter, one concern about majority runoffs is that turnout in the second round may fall. This has often been the case when majority runoffs have been used in U.S. primary elections, but in many cases the drop has been less than the number of exhausted ballots typically

¹⁸ Here I am setting aside the issue that a primary election typically precedes a plurality election so that one might define full participation as casting a ballot in both the primary and general election. But I have also set aside that the Maine RCV general elections are preceded by a primary election.

found in an RCV election. As explained above, the average rate of exhausted ballots in 98 RCV elections that proceeded past the first round of voting is 10.8% of the votes cast.

To take a closer look at this issue, I examined data from U.S. Gubernatorial and Senate primary runoff elections in the United States from 1990 to 2018.¹⁹ The unbracketed numbers of Table 4 report the percentage of those elections where the turnout dropoff was less than 10.8%, which is the average rate of ballot exhaustion in the 98 RCV elections I reviewed.

Table 4: Dropoff Rates in Plurality Runoff Elections		
	Percentage with Dropoff less than 10.8%	Percentage with Turnout Increase
Governors	34.8% {42.9%}	4.3% {7.4%}
Senate	6.7% {12.5%}	6.7% {12.5%}

There are many reasons for low voter participation in a runoff primary election, so the fact that so many runoff elections experienced lower dropoff than 10.8% (the equivalent of a “dropoff” in RCV elections following the first round of voting), and certain runoff elections even had *increased* participation is remarkable.

One of the major reasons for lower participation in the runoff is many of the primaries involve nominating candidates who are very likely to lose the general election. A lack of enthusiasm to turn out to choose the “sacrificial lamb” may drive down voter turnout. Accordingly, the bracketed proportion in Table 4 shows the numbers for the primaries where the winner went on to be victorious in the general election. As the table shows, big dropoffs in voter turnout are much less likely in those elections.

A second issue with majority runoff primary elections is that the second round typically occurs on an irregular date and involves a single election race (rather than multiple races like a first-round primary or general election). There are, however, many majority runoff elections where the second round occurs on the Federal Election Day, which experience a boost in voter turnout due to the alignment of the runoff election with other matters of voter interest. These include the Louisiana “jungle” primary system and the “Top 2” primary systems used in California and Washington State.²⁰ For Louisiana every single gubernatorial runoff from 1990 to 2019 had a *boost* in turnout, including a 12% increase in voter turnout in 2019. In Louisiana, one of the three Senate runoffs had a voter turnout increase of 38%, one had a decline of less than 1%, while the other had 13% drop. In the latest California and Washington State Congressional elections, *every single race* had higher participation in the second round than in the first. In California, the average turnout increase was 92.5%, while the lowest voter turnout increase was 53.2%. In Washington, district level turnout increased at least 58% in every district, with an

¹⁹ These exclude those from Louisiana for reasons discussed below.

²⁰ In the “Top 2” primary system, all candidates from all parties as well as independents appear on the primary ballot. Each voter casts one vote in the primary, and the two leading vote getters move to the general election. The “jungle” primary differs in that there is no second round if a candidate wins a majority of the vote in the primary.

average increase of 78%. Clearly, these elections performed much better than RCV in producing majority winners and having good second-round voter participation.

While majority runoff elections compare favorably to RCV elections with respect to participation in the final round, the comparisons in terms of fully participating ballots are not even close. In a majority runoff, full participation requires casting a ballot in both rounds of the election. Unfortunately, with the available aggregate data, we cannot directly observe whether an individual voter voted in each round. But if we assume that a voter who participates in the low turnout round is likely to participate in the high turnout round, then we can estimate the full participation rates for the majority runoff elections discussed in this section. The estimate is simply the ratio of the turnout from the low turnout round to that of the high turnout round. So for most of the primaries, the full participation rate will be runoff turnout divided by first round turnout. For the “top 2” primaries, it will be primary turnout (the low turnout election) divided by general election turnout (the high turnout election).

Table 5 reports statistics on the full participation rates for various types of the majority runoff elections as well as the plurality Maine state senate elections. One can clearly see that the Maine RCV elections have full participation rates far below the averages for the other type of elections. Indeed, the full participation rates for Maine RCV elections come out near the bottom of the 126 elections reflected in the table.²¹ Only one election scores clearly lower than the 2018 Maine Gubernatorial primary: the 2006 Mississippi Democratic Senate primary, where the winner ultimately lost the general election by almost 30 points.

	Number	Min	Max	Average
Maine State Senate	33	96%	98%	97%
Governors Primaries	23	42%	98%	81%
Senate Primaries	30	29%	89%	62%
Louisiana Jungle	8	72%	99%	91%
California Top 2 ²²	53	32%	53%	65%

²¹ One potential objection to the analysis reported in Table 5 is the assumption that all voters who voted in the low turnout round vote in the higher turnout round. That assumption could be easily relaxed. If I assume that proportion p of the low round voters also voted in the high round, the full participation rate for the majority runoffs would be p times the reported value in Table 5. Therefore, so long as $p > .64$, the RCV elections will still fall below the averages of all of the other types of elections. But p is certainly much larger than that. Based on the 2018 Cooperative Congressional Election Survey, 93% of the respondents who reported voting in a primary had already voted or “definitely” intended to vote in the general election.

²² Comparisons of full participation in IRV and Top 2 elections are not exact as the turnout in the decisive round of voting always increases for the Top 2 elections.

Washington Top 2	10	53%	63%	56%
Maine 2nd CD Election				38%
Maine Congressional Primary				47%
Maine Gubernatorial Primary				35%

In summary, the evidence of this section shows that RCV compares quite unfavorably to majority runoff voting in terms of voter participation and exhaustion. Contrary to the advocacy, the falloff in participation for non-RCV elections is often less than the 10.8% average of ballots that are exhausted in RCV elections. And RCV voters are much less likely to fully participate by ensuring that their ballot will count at all stages of tabulation.

The reasons for this discrepancy are clear. Voters in RCV elections cast ballots in a state of great uncertainty as to which candidate comparisons will be used in later rounds of voting. This leads RCV voters to undervote, leaving their ballots open to the risk of exhaustion in later rounds of voting. On the other hand, majority runoff voters know with certainty which candidates are competing in the runoff. Of course, such voters may choose not to participate in the runoff, but that reflects a much more deliberate choice than the RCV voter who cannot predict the necessity of ranking a certain candidate.

D. Who Truncates Their Ballot and Risks Exhaustion?

Another crucial question for evaluating RCV's propensity to disenfranchise voters by preventing full participation is whether undervoting is a deliberate choice of voters or a reflection of voter confusion related to the complexity of the ballot, the procedures for tabulation, and other characteristics that are inherent to RCV elections.

As noted above, there is no strategic reason for an undervote. We can get some purchase on why a voter would decide to undervote, even if there is no strategic reasons, by identifying what sorts of voters cast less than fully participating ballots that could result in exhausted ballots. Ideally, we would have demographic and other data on each voter that we could match to her ballot. However, ballot secrecy precludes that. So as a second best, I aggregate voting data up to the town level and match it with the demographic data of the town's voters, which I obtained from the Maine voter file.

I focus here on two characteristics that are strongly correlated with RCV undervoting—age and education—as other literature demonstrates that older and less-educated voters tend to undervote in RCV elections or have difficulty understanding the ballot.²³ Figure 5 shows the relationship

²³ André Blais, Maxime Héroux-Legault, Laura Stephenson, William Cross, and Elisabeth Gidengil, "Assessing the Psychological and Mechanical Impact of Electoral Rules: A Quasi-Experiment," 31 *Electoral Studies* 829–37 (2012); Francis Neely, Corey Cook, and Lisel Blash, "An Assessment of Ranked-Choice Voting in the San Francisco 2004 Election Final Report May 2005," Public Research Institute, San. Fran. State Univ. (2006), http://archive.fairvote.org/sfrev/SFSU-PRI_RCV_final_report_June_30.pdf; Jason McDaniel, "Writing the Rules to

between ballot exhaustion and the percentage of voters over 65 for 263 towns in the 2nd CD election that cast at least 200 votes.²⁴ In Figure 5, the area of the circle is proportional to the population of the town. The best fit line weighs larger towns more heavily than smaller towns.²⁵

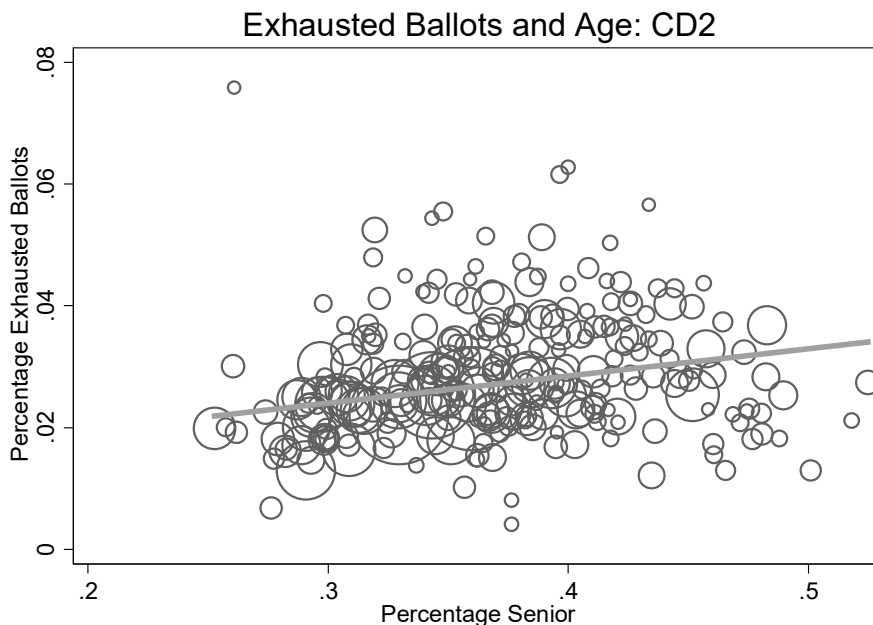


Figure 5: Exhausted Ballots and Age

Figure 5 demonstrates that there is a substantial empirical relationship between the proportion of exhausted ballots and the percentage of elderly voters on the town’s voter roll. The expected difference between the town with the lowest proportion of seniors to the one with the most corresponds to a 1.2 percentage point increase in ballot exhaustion.

Figure 6 shows the relationship between exhausted ballots and the percentage of voters without a college degree. As above, the area of the circle identified in Figure 6 is proportional to the population of the town, and the best fit line weighs larger towns more heavily than smaller towns.

Rank the Candidates: Examining the Impact of Instant-Runoff Voting on Racial Group Turnout in San Francisco Mayoral Elections,” 38 *Journal of Urban Affairs* 387–408 (2016); Todd Donovan, Caroline Tolbert, and Kellen Graey, “Self-Reported Understanding of Ranked-Choice Voting,” 78 *Social Science Quarterly* 973–79 (2019).

²⁴ The criterion that a town cast 200 votes is designed to ensure that we have less noisy estimates of the undervoting rate and of the demographic composition of the voters. None of the conclusions would be altered if the threshold were dropped to 50 votes.

²⁵ Larger towns provide more information about the behavior of individual voters and less random variation. Thus, it is generally considered a best practice to weigh observations based on population.

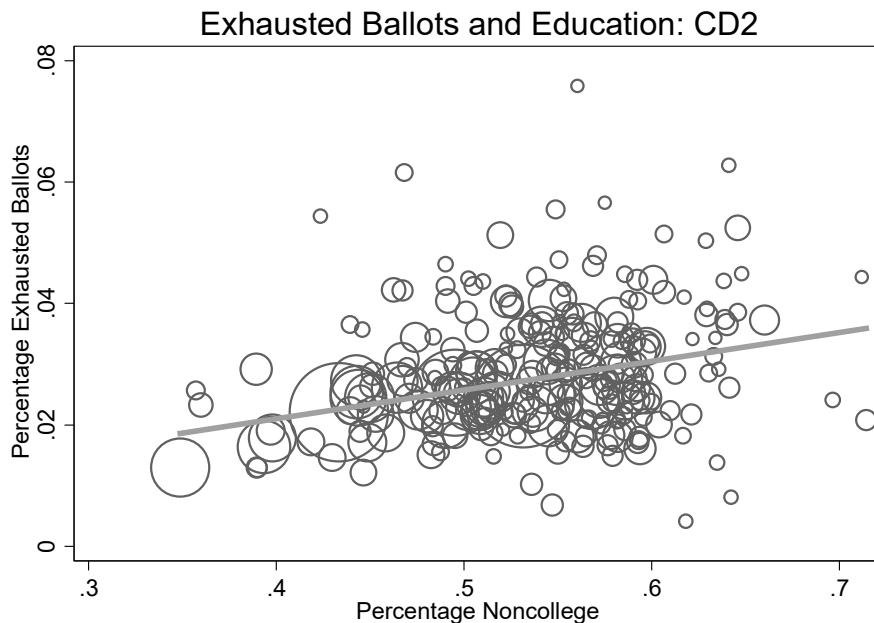


Figure 6: Exhausted Ballots and Education

Here too we find a strong empirical relationship. In expectation, the least-educated town produces 1.7 percentage points more exhausted ballots than the most-educated town.

The relationships between voter age and voter education and undervotes is even stronger if we look at the percentages of truncated ballots (Figures 7 and 8).

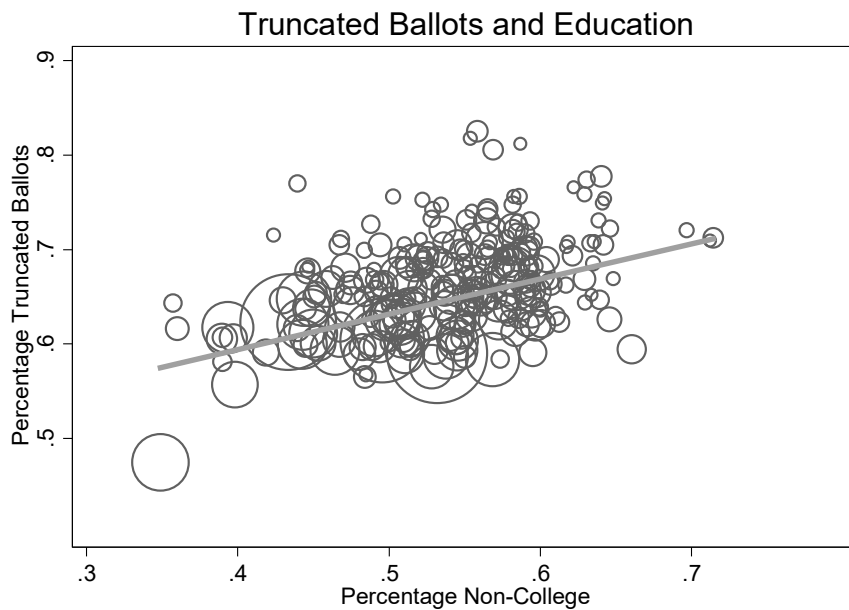


Figure 7: Truncated Ballots and Education

Figure 7, which shows the bivariate relations between education and ballot truncation, shows that in the least-educated town truncates ballots at a 14 percentage point greater rate than the most-educated town.

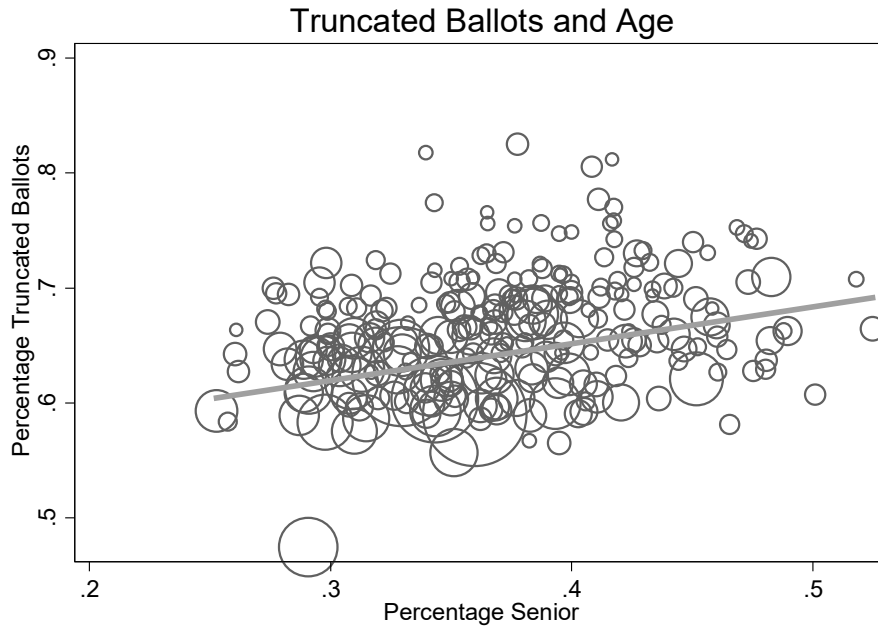


Figure 8: Truncated Ballots and Age

Figure 8, which shows the bivariate relations between age and ballot truncation, shows that the town with the most senior voters truncates ballots at an almost 9 percentage greater rate than the town with the least senior voters. To examine these relationships further, I conduct a multivariate regression analysis of exhausted ballots as well as truncated ballots and total undervoting, including skipping the election entirely. I also control for the percentage of a town’s voters that have no party affiliation since they are more likely to have supported one of the independent candidates leading to exhausted ballots. The results are reported in Table 6.

Table 6: Maine Second Congressional District General Election 2018			
	% Truncated Ballots	% Exhausted	All Undervotes
% Non-College	0.364***	0.038***	0.069***
	(0.061)	(0.006)	(0.013)
% Over 65	0.291***	0.051***	0.088***
	(0.077)	(0.012)	(0.022)
% Unaffiliated voters	-0.016	0.036**	0.048
	(0.085)	(0.013)	(0.029)
Intercept	0.351***	-0.022	-0.034
	(0.036)	(0.005)	(0.009)
N	263	263	263

R Squared	0.335	0.249	0.206
Standard errors clustered by county in parentheses			

Note that older and less-educated towns show higher levels of truncated and exhausted ballots as well as total undervotes. To make these results more concrete, I will focus on the impact of increasing the percentage of seniors and non-college voters by 10 percentage points. A 10 percentage point increase in seniors increases truncated ballots by 2.9 percentage points, exhausted ballots by .5 percentage points, and all undervoting by .9 percentage points. Similarly, a 10 percentage point increase in the non-college population increases truncation by 3.6 percentage points, exhausted ballots by .4 percentage points, and all undervoting by .7 percentage points.

The presence of unaffiliated voters is associated only with higher levels of exhausted ballots, but not with truncation or total undervoting.

The analysis can be replicated for the 2018 Gubernatorial primary. But because the primary was open only to Democratic voters, I use the percentage of Democratic voters who are over 65 or lack a college degree. I also conducted separate analyses for all truncated ballots and for those voters who ranked fewer than 4 candidates. These results are reported in Table 7.

	% Truncated	% Fewer than 4	Exhausted Votes	All Undervotes
% Non-College	-0.246*** (0.067)	0.240*** (0.088)	0.125*** (0.043)	0.238*** (0.032)
% Over 65	0.223*** (0.042)	0.296*** (0.051)	-0.013 (0.078)	0.063 (0.080)
Intercept	0.678*** (0.035)	0.282*** (0.040)	0.015 (0.043)	-0.023 (0.038)
N	157	157	157	157
R Squared	0.260	0.272	0.067	0.187
Standard errors clustered by county in parentheses				

These results also show the correlation between voter age, education, and undervoting. Towns with high numbers of non-college Democratic voters tend to have fewer ballots that rank six candidates, and more that rank fewer than four candidates. Those towns have more exhausted votes and higher rates of total undervoting. A 10 percentage point increase in the proportion of non-college voters increases the rate of exhausted votes by 1.3 percentage points and total undervoting by 2.4 percentage points.

Towns where Democratic voters skew older also have more truncated ballots and more ballots ranking fewer than four candidates. A ten percentage point increase in seniors leads to a 2.2 percentage point increase in the number of truncated ballots and a 3 percentage point increase in the number of ballots failing to rank at least four candidates.

Similarly, the analysis can be replicated for the 2018 Congressional primary as reported in Table 8.²⁶ These results are very consistent with those for the general elections in that there are positive correlations between the percentage of non-college and senior voters. But because the sample is much noisier due to lower turnout in the primary, some of the coefficients do not reach statistical significance.

Table 8: Maine Second Congressional District Democratic Primary 2018			
	% Truncated Ballots	% Exhausted	All Undervotes
% Non-College	0.274*** (0.086)	0.032 (0.053)	0.360*** (0.068)
% Over 65	0.142*** (0.041)	0.053* (0.040)	0.089 (0.057)
Intercept	0.344*** (0.033)	-0.009 (0.025)	-0.071 (0.042)
N	214	214	214
R Squared	0.131	0.045	0.262
Standard errors clustered by county in parentheses			

The analysis from the primary election data, however, should not be compared directly to that of general elections due to the nature of primaries and the individuals who choose to vote in them. On the whole, primary voters tend to be much more interested and engaged in politics, than general election voters.²⁷ So it is remarkable that even among the most politically engaged segments of the electorate, we are seeing high levels of vote truncation and exhaustion and that it is correlated with the age and education profiles of the town. Moreover, in primary elections, there are no partisan reasons for truncation (e.g. a Republican who does not want to rank a Democrat) as all candidates are in the same party.

So, in my view, the fact that even primary voters register high levels of undervoting that is correlated with voter age and education, is further proof of the dangers inherent in RCV elections.

II. LOW FULL-PARTICIPATION RATES IN MAINE CANNOT BE EXPLAINED BY VOTER CHOICE OR EXPRESSION

The numbers detailed above demonstrate that RCV elections suffer from fatal internal flaws. Not only do the high numbers of exhausted ballots fail to decrease over time, those risks significantly *increase* for voters over the age of 65 and for voters who did not graduate from

²⁶ Because primary turnout is lower, I included all towns that had 75 votes or more.

²⁷ See John Sides, Chris Tausanovitch, Lynn Va vreck, and Christopher Warshaw, “On the representativeness of primary electorates,” 50 *British Journal of Political Science* 677–85 (2020).

college. This is particularly troubling in Maine where approximately 60% of Maine’s population is over the age of 45—with approximately 23% at age 65 or older—and less than 30% of the population completed a college degree.²⁸

One possible objection to a focus on full participation is that voters might reasonably choose not to rank candidates that they deem unlikely to advance beyond the first round of tabulation. Thus, the argument goes, exhaustion and truncation is merely a product of voter *expression* rather than voter confusion. But, it is unlikely that most voters can make such election-advancement forecasts with any certainty. Indeed, even voting for a major-party candidate in a partisan RCV election is not sufficient to ensure that a voter’s ballot is not exhausted. For example, had Independent candidate Angus King failed to obtain a majority in the 2018 Maine Senate election, any voter who ranked only the Democratic candidate would have exhausted her ballot. Moreover, as demonstrated above, the full participation rate in Maine’s RCV elections was substantially lower than in traditional plurality and runoff elections, and demographic data demonstrates a strong correlation between ballot exhaustion and truncation (*i.e.*, failure to fully participate) and voter age and education.

Examining the data, it becomes clear that the complexity of the RCV system leads to voter confusion, which prevents voters from fully participating.

III. THE PURPORTED BENEFITS OF RCV ARE NON-EXISTENT

A. Effects on Smaller Parties

One purported benefit of RCV is that it helps smaller parties. Australia provides an excellent test of the extent to which RCV can increase the likelihood that small parties can win legislative elections. Since the early 1900s, Australia has used RCV with single member districts for its lower chamber of parliament. Those elections have traditionally been dominated by two blocs—the Labor Party and a coalition of center-right parties—the Liberal and National parties and some affiliated state parties. The coalition generally avoids running candidates against each other in lower house elections. But the upper house is elected using a ranked-choice system for large multimember districts. This multimember system does allow for the election of many small party legislators. This fact helps us to clearly identify the effects of RCV on small party representation as there is an ample “supply” of small parties that could win seats if the electoral system permitted it. So consider the 2019 elections. In that election only 6 of 151 seats were won by candidates outside the major party blocs. In the Senate, the proportion of smaller party winners was only five times as large (14 of 76 seats). This suggests that the single-member RCV system such as that used in Maine penalized those smaller parties that were viable for Senate seats. These low numbers for small party representation fall far short of the riches promised.

Of course, one might argue that the lower house outcomes compare favorably to those under a plurality voting system. Indeed, those numbers are better than the U.S. where only two independent serve in the Senate (Angus King and Bernie Sanders) and the House’s only independent (Justin Amash) was elected as a Republican. But there are many legislatures world-

²⁸ *Electorate Profile: Maine*, U.S. Census Bureau (Feb. 29, 2016), https://www.census.gov/library/visualizations/2016/comm/electorate-profiles/cb16-tps34_voting_maine.html.

wide where small parties have achieved substantial representation under simple plurality rule. For example, in the British parliament, 75 out of 650 seats are held by parties other than Labor and the Conservatives.²⁹ In Canada, smaller parties and independents won 61 out of 338 seats.³⁰

In summary, after reviewing the outcomes in the democracies most similar to the U.S., it does not seem that RCV is either a sufficient or necessary condition for the success of small parties.

B. Effects on Turnout and Engagement

Advocates of RCV also argue that the system is likely to encourage greater participation among voters for two reasons. First, the RCV system purportedly encourages more candidates to run for office, providing a wider variety of choices to voters. Second, advocates contend that RCV will dampen incentives for the sorts of negative campaigning that turns voters away from politics. The argument is that candidates will refrain from attacking opponents if they expect to need high rankings from that opponent's supporters. The critics of RCV, however, argue that the complexity of the ballot and the tabulation procedures have the opposite effect of discouraging electoral participation.

On the question of turnout, the empirical literature supports the critical view that RCV elections discourage voter participation. Jason McDaniel finds that turnout dropped in San Francisco mayoral elections following the adopting of RCV, especially among minority groups.³¹ In a study of several RCV cities matched against comparable plurality cities, David Kimball and Joseph Anthony find a 4 percentage point drop in turnout associated with RCV, although the estimate is not statistically significant on its own.³² In a more recent study, McDonald finds a statistically significant five percentage point drop due to the introduction of RCV in municipal elections relative to similar cities that maintain plurality electoral systems. While there is disagreement about the magnitude and statistical reliability of the estimated declines in voter turnout, I am not aware of any study that finds a boost in turnout associated with switching to RCV from plurality voting.

Because the Maine general election ballot includes both races that use RCV and those that use plurality rule, I cannot assess the impact of RCV adoption in Maine using the methodologies of the previously mentioned studies that look at the total number of ballots cast before and after adoption of RCV. So I will look at the issue of *total undervoting* (leaving the ballot blank for a specific race or exhaustion of that ballot) in RCV contests versus that in plurality contests. If RCV generated greater enthusiasm among voters we would expect to see far less total undervoting in RCV elections. A complication, however, is that the RCV ballots were used in the more high profile election where we would naturally expect more voter interest and

²⁹ If one were to focus only on England to eliminate the effects of regional parties, smaller parties won 8 out of 533 seats.

³⁰ If one were to ignore Quebec and the effects of Bloc Quebecois, small parties and independents won 29 out of 260 seats.

³¹ 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 *Journal of Urban Affairs* 387–408 (2016).

³² David C. Kimball and Joseph Anthony, "Voter Participation with Ranked Choice Voting in the United States," Presented at the Annual Meeting of the American Political Science Association, Philadelphia, PA (2016).

engagement. Nevertheless, I find that several down-ballot, non-RCV races had lower percentages of total undervotes compared with RCV races.

In 2018, the two most high-profile elections in Maine were the Senate and Governor’s race. The Senate election, which utilized an RCV ballot, was skipped by 1.8% of the Election Day voters. The Governor’s race (non-RCV) had 2.3% blank ballots. While this may appear as an advantage for RCV, as we will see, the difference between total undervoting for RCV elections and plurality down-ballot races is not substantively different. In the 2nd CD election in Maine, 2.2% of voters failed to register any vote at all, while in the Maine 2018 First Congressional District general election (“1st CD election”), 2.3% skipped voting. Based on data acquired from the Maine Secretary of State website, at least 25% of competitive state senate elections had lower rates of total undervoting, despite the fact that state legislative races tend to be lower profile than congressional elections (See Figure 9 and Table 9), and many of the state senate elections were not as competitive as the Congressional races.

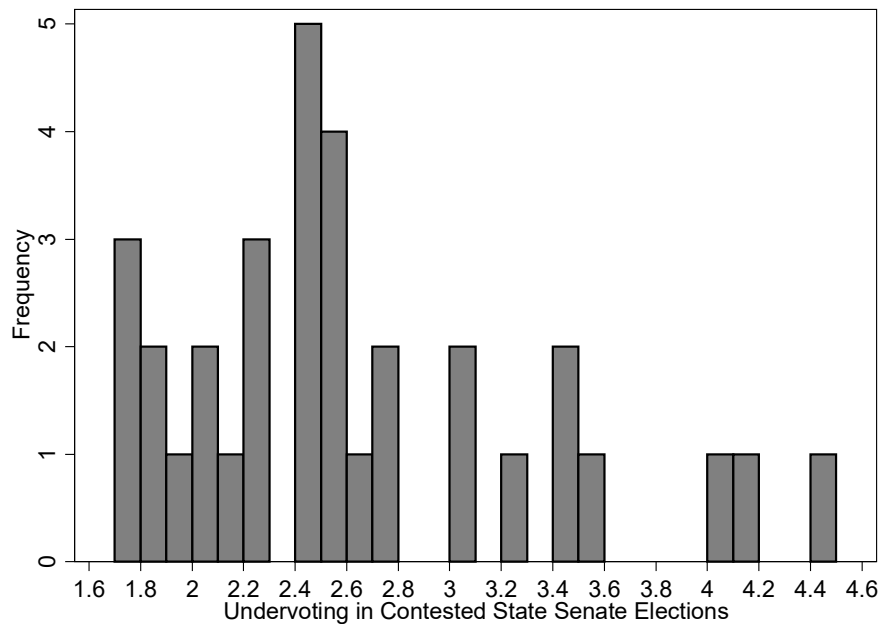


Figure 9: Rates of Total Undervoting in Contested State Senate Elections

Even in Maine’s plurality races that are less popular, less funded, and less advertised, the rate of total undervoting is not significantly different than the rates of total undervoting in the RCV elections.

If I focus on the 14 state senate races with less than a 20-point margin, the performance in the Congressional races looks even less impressive. (See Figure 10)

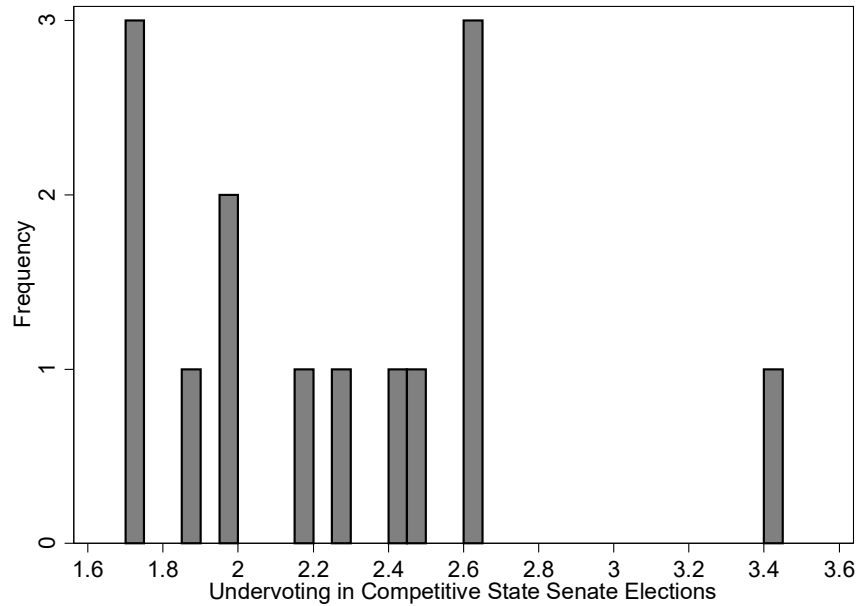


Figure 10: Total Undervoting in Competitive State Senate Elections

In Figure 10, approximately eight of the fourteen most-contested state senate races in Maine, which were on the ballot at the same time as the hotly contested and well-publicized RCV elections, had lower rates of total undervoting.

Election	% Blank Ballots	% of Contested State Senate Districts with lower total undervoting	% of Competitive State Senate Districts with lower total undervoting
Senate	1.80%	9%	21%
Governor	2.38%	36%	64%
1st CD election	2.26%	27%	50%
2nd CD election	2.18%	24%	43%

In summary, the rates of total undervoting in the RCV elections does not appear to be substantively different than those of the lower-profile plurality state senate elections. Accordingly, there is little empirical evidence that Maine voters are more interested and engaged under the RCV system.

C. The Spoiler Effect

Another major argument in favor of RCV is that it purports to eliminate the possibility of a third-party spoiler who throws the election to the candidate who is less preferred by a majority of voters. To illustrate suppose there are three candidates A, B, and C, and a majority of the voters prefer A to B. Despite the fact that a majority prefers A, A might lose if enough voters vote for C in the first round to give B a plurality. RCV, however, purports to solve this problem by eliminating the least popular candidate in round 1 (in this case C) and transferring that candidate's votes to the voters' second-choice candidates. Since A is preferred by a majority to B, A should win.

But RCV creates a different type of spoiler effect. Again suppose there are three candidates: A, B, and C. Moreover, assume that A would beat C in a candidate election but B would beat A. Thus, whether A wins the election depends on whether she faces B or C. To see how this generates a possible spoiler effect under RCV, suppose that $\#A > \#B > \#C$ in the first round (where $\#A$ is the number of votes received by candidate A). Subsequently, C would be eliminated and B would beat A in the second round. But were this the case, some of A's supporters could improve A's chances of winning by voting for C in the first round to help ensure a more favorable second round. Party A would want to transfer enough support to move C into the second position, but not so much that A falls out of the first position. Such a transfer of support is feasible only if $\#A + \#C > \#B$.

Voting theorists generally refer to this scenario as reflecting the *non-monotonicity* of the RCV system. The terminology reflects the fact that increasing the votes for a particular candidate can make that candidate more likely to lose. This outcome would be the case in the example above if $\#A > \#C > \#B$ initially but enough C voters switched to A to allow B into the second round. Logically, *non-monotonicity* also implies that a party can increase its likelihood of winning by *losing* votes, as in the original example where A does better by shedding votes to C.

The non-monotonicity criticism of RCV usually focuses on abstract and hard-to-measure concepts like "voter welfare." But it has more tangible and observable implications as well. Note the many ways in which one of the parties/candidates in the above example can manipulate the outcome of an election due to this principle:

1. Candidate A could ask some of her supporters to vote C in round 1;
2. Candidate A could provide financial and other resources to candidate C;
3. Candidate A could run attack ads on B designed to appeal to C voters;
4. Candidate A could recruit candidate C to run; and
5. Candidate B could bribe candidate C not to run.

Thus, non-monotonicity opens up a number of possible avenues for electoral manipulation. It is an empirical question, however, as to how prevalent the RCV spoiler effect is relative to the plurality spoiler effect. A direct assessment is difficult in that it requires data on voters' true

preferences and their ranked-choice ballots. While data on full ranked-choice ballots is available for a handful of RCV elections, data on voters' true preferences are generally not available.

For this reason, scholars often use simulated elections to predict the frequency in which RCV elections demonstrate non-monotonic outcomes. One such effort is that of Joseph Ornstein and Robert Norman (2014), who calculate a lower bound estimate that 15% of competitive RCV elections result in monotonicity failures.³³

Despite the fact that direct empirical verification of non-monotonicity is difficult to obtain, real world data can be used to identify elections where non-monotonicity was at least possible. Recall that a necessary condition for non-monotonicity in a three-candidate election is that $\#A + \#C > \#B$. Using the dataset on 98 RCV elections described above, I am able to verify whether this condition held for 93 of those contests.³⁴ I found that the necessary condition held in 27 of these elections (29%). That is, in 29% of the RCV elections that progressed beyond the first round, the spoiler effect described above ($\#A + \#C > \#B$) was demonstrated. Thus, the opportunities for the electoral manipulations described above are far from rare.

D. Non-Majority Winners

Another important claim of RCV advocates is that the system purportedly ensures that the winner obtains a majority of the votes cast. This claim is incorrect empirically as ballot exhaustion means that the number of valid ballots used to determine the winner is actually far less than the number of votes cast. This fact was demonstrated in Maine's first RCV general election in 2018 when Jared Golden beat Bruce Poliquin in the 2nd CD election with only 49.2 percent of the ballots cast.

Using the data on 98 RCV elections nationwide, I can compute the percentage of times that the winner failed to obtain a majority of the ballots cast. Such was the outcome in over 60% of those elections (60 of 98). Non-majority winners occur almost 80% of the time in those RCV elections with five or more candidates. Thus, RCV cannot be trusted to ensure that the candidate with majority support wins an election, and it generally fails to accomplish one of the key tasks it was designed to perform.

CONCLUSION

Despite the growing interest in electoral reforms that replace plurality and majority runoff elections with RCV, the evidence of its costs is substantial—particularly in Maine—and there is scarcely any empirical evidence that any of the purported benefits have come to fruition.

Representative democracy is a balancing act. At one end is the concern that the electoral machinery should provide voters with an ample set of choices as to who will govern in their name. But on the other end is the concern that voting procedures not be so complex, confusing,

³³ Joseph T. Ornstein and Robert Z. Norman, "Frequency of Monotonicity Failure under Instant Runoff Voting: Estimates Based on a Spatial Model of Elections." 161 *Public Choice* 1–9 (2014).

³⁴ For elections with more than three candidates, I examined whether the condition held in the round where there were only three candidates remaining. It is of course possible that the conditions for non-monotonicity held at earlier rounds, so my estimate is conservative.

and opaque as to deprive voters of the ability to exercise those choices in an informed and meaningful way. That is exactly what is happening with RCV, and what occurred in Maine in 2018. While RCV aspires to expand voter choice, the empirical evidence that it has done so is nearly non-existent, and is clearly not enough to balance its substantial burden on meaningful and informed choice.



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Appendix A:

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Susan Dod Brown Professor of Politics and Public Affairs, Princeton University, 2007-present.

Research associate, National Bureau of Economic Research, 2012 – present. (Research fellow, 2006-2012).

Professor of Politics and Public Affairs, Princeton University, 2003 – 2007.

Fellow, Center for the Advanced Study in the Behavioral Sciences, 2004-2005.

Associate professor of Politics and Public Affairs (with tenure), Princeton University, 2001-2003.

Associate professor of Political Science (with tenure), Columbia University, 2000-2001.

Robert Eckles Swain National Fellow, Hoover Institution, Stanford University 1999-2000.

Assistant professor of Political Science, Columbia University, 1996-2000.

Assistant professor, School of Business Administration, University of Southern California, 1993-1996.

Instructor, Graduate School of Industrial Administration, Carnegie Mellon University, 1993.

Administrative Positions and University Service

Director, Data Intensive Social Science Initiative (2019 - current)

Chair, Student Appeal Panel (2019-2020)

Chair, Department of Politics (2011 - 2018)

Associate Dean, School of Public and International Affairs (2005-2011).

Acting Dean, School of Public and International Affairs (2007-2008).

Member, Council for the Princeton University Community Executive Committee (2015-2018)

Member, Princeton University Faculty Committee on Policy, (2015-2016)

Executive committee, Julis-Rabinowitz Center for Finance and Public Policy (2011 – 2015)

Executive committee, Center for the Study of Democratic Politics (2003 – 2019)

Elected member, Princeton University Committee on Appointments and Advancements (C/3) 2009-2010.

Co-Chair, School of Public and International Affairs Undergraduate Curriculum Reform (2010-2011).

Chair, Resources Committee, Council of the Princeton University Community (2007 - 2008).

Faculty Chair, PhD Program, School of Public and International Affairs, 2002-2004.

Director, Graduate Program in Political Economy, 2001-2004.

Member, Task Force on the Changing Nature of Government Service (chaired by Paul Volcker and Anne-Marie Slaughter)

Berman Prize in the Humanities selection committee

Honors, Awards, and Grants

2016 Franklin L. Burdette/Pi Sigma Alpha Award for best paper presented at American Political Science Association meetings.

Best Paper Award, APSA Legislative Politics Section (2016)

Distinguished Visiting Scholar, Political Economy Group, Stanford Graduate School of Business (2016)

Best Paper Award, APSA State and Local Politics Section (2015)

Fellow, School of Social Sciences, Institute for Advanced Study (2014-2015).

University of Chicago Harris School, Visiting Fellow in Policy Entrepreneurship (2013)

Princeton University President's Lecture Series, 2010.

Member, American Academy of Arts and Sciences (elected 2010)

Fellow, Center for the Advanced Study in the Behavioral Sciences, 2004-2005.

Robert Eckles Swain National Fellow, Hoover Institution 1999-2000.

Patrick J. Fett Award for the best paper on the scientific study of Congress and the Presidency at the 1998 Midwest Political Science Association Meetings.

John M. Olin Fellowship in Political Economy (1990-1993)

Phi Beta Kappa (1990)

Council for Humanities and Social Sciences, Columbia University, 1996-97 (\$6,000)
National Science Foundation Grant, 1995-96 (\$87,500)
Institute for Social and Economic Theory and Research, Columbia University (\$10,000)
Russell Sage Foundation “Polarization, Inequality, and Public Policy in the American States,” 2002-2003 (\$97,000)
National Science Foundation “The Ideological Mapping of American Legislatures” (\$300,000)
Russell Sage Foundation “The Political Economy of the State Pension Crisis” (\$111,000)
John and Laura Arnold Foundation “Polarization, Partisanship and Electoral Reform in the American States” (\$154,000)

Education

Ph.D. Political Economy. Carnegie Mellon University, Pittsburgh, PA. 1993.
M.S. Political Economy. Carnegie Mellon University, Pittsburgh, PA. 1992.
A.B. Economics with Honors. University of Chicago, Chicago, IL. 1990.

Books

Political Bubbles: Financial Crises and the Failure of American Democracy (with Keith Poole and Howard Rosenthal). 2013. Princeton University Press.

Reviews: *The New Republic*

Political Game Theory (with Adam Meirowitz). 2006. Cambridge University Press.

Polarized America: The Dance of Political Ideology and Unequal Riches (with Keith T. Poole and Howard Rosenthal). Second edition. 2016. MIT Press.

First edition, 2006.

Named an “Outstanding Academic Title” by *Choice* in 2007.

Critics Roundtables: 2005 APSA, 2006 MPSA

Reviews: *American Prospect*, *Perspectives on Politics*, *Chicago Tribune*, *American Review of Politics*, *Economic History Net*, *Independent Review*, *The Week*, *Journal of Economic Issues*, *Journal of Sociology and Social Welfare*, *The Independent Review*, *Political Science Quarterly*

Can America Govern Itself? Co-edited with France Lee. 2019. Cambridge University Press.

Polarization: What Everyone Needs to Know. 2019. Oxford University Press.

Other Monographs

The Realignment of National Politics and the Income Distribution (with Keith T. Poole and Howard Rosenthal). 1997. American Enterprise Institute Studies on Understanding Economic Inequality.

Journal Articles

- [22] “Geography, Uncertainty, and Polarization” (with Jonathan Rodden Boris Shor, Chris Tausanovitch, and Chris Warshaw) 2018. *Political Science Research and Methods*
- [21] “Regulation and Self-Regulation of a Complex Industry.” 2017. *Journal of Politics* 79(4):1220-1235.
- [20] “A Primary Cause of Partisanship? Nomination Systems and Legislator Ideology” (with Eric McGhee, Seth Masket, Boris Shor, and Steven Rogers). 2014. *American Journal of Political Science* 58(2):337-351. (co-winner of the 2015 State Politics and Policy Best Journal Article Award)
- [19] “The Ideological Mapping of American Legislatures” (with Boris Shor). 2011 *American Political Science Review* 105(3):530-551.
- [18] “A Bridge to Somewhere: Mapping State and Congressional Ideology on a Cross-Institutional Common Space” (with Boris Shor and Christopher Berry). 2010. *Legislative Studies Quarterly* 35(3): 417-448.
- [17] “Does Gerrymandering Cause Polarization?” (with Keith Poole and Howard Rosenthal) 2009. *American Journal of Political Science* 53(3):666-680.
- [16] “Presidential Vetoes in the Early Republic: Changing Constitutional Norms or Electoral Reform.” 2009. *Journal of Politics* 71(2): 369-384.
- [15] “Bureaucratic Capacity, Delegation, and Political Reform” (with John Huber). 2004. *American Political Science Review* 98(3): 481-494.
- [14] “The Appointments Dilemma.” 2004. *American Journal of Political Science* 48(3): 413-428.
- [13] “Political Resource Allocation: The Benefits and Costs of Voter Initiatives,” (with John G. Matsusaka). 2001. *Journal of Law, Economics, and Organization*. 17(2): 413-448.
- [12] “The Hunt for Party Discipline” (with Keith Poole and Howard Rosenthal). 2001. *American Political Science Review*. 95(3):673-687.
- [11] “Cabinet Decision Rules and Political Uncertainty in Parliamentary Bargaining” (with John Huber). 2001. *American Political Science Review*. 95(2):345-360.
- [10] “The Politics of Blame: Bargaining before an Audience” (with Timothy Groseclose) 2000. *American Journal of Political Science*. 45(1):100-119.
- [9] “The Time to Give: PAC Motivations and Electoral Timing” (with Lawrence Rothenberg). 2000. *Political Analysis*. 8(3):230-259.

- [8] “Coalitional Maintenance: Politicians, Parties, and Organized Groups” (with Lawrence Rothenberg). 2000. *American Politics Quarterly*, 28(3):291-308.
- [7] “Proposal Rights, Veto Rights, and Political Bargaining.” 2000. *American Journal of Political Science*, 44(3):506-522.
- [6] “Presidential Pork: Executive Veto Power and Distributive Politics.” 2000. *American Political Science Review*, 94(1):117-129.
- [5] “Advice and Consent: Senate Response to Executive Branch Nominations 1885-1996” (with Rose Razaghian). 1999. *American Journal of Political Science*, 43(3):1122-43.
- [4] “An Empirical Spatial Model of Congressional Campaigns” (with Keith T. Poole). 1998. *Political Analysis*, 7(1):1-30.
- [3] “Presidential Reputation and the Veto.” 1997. *Economics and Politics*, 9(1):1-26.
- [2] “Commitment and the Campaign Contribution Contract” (with Lawrence Rothenberg). 1996. *American Journal of Political Science*, 40(3): 872-904.
- [1] “Veto Power and Legislation: An Empirical Analysis of Executive-Legislative Bargaining from 1961-1986” (with Keith T. Poole). 1995. *Journal of Law, Economics, & Organization*, 11(2):282-312.

Book Chapters and Invited Contributions

- [32] “Learning From Each Other: Causal Inference and American Political Development” (with Jeffery A. Jenkins and Charles Stewart) *Public Choice*
- [31] “The Political Obstacles to Tackling Economic Inequality in the United States” In Dani Rodrik and Olivier Blanchard eds. *Combating Inequality*, MIT Press. (forthcoming)
- [30] “Polarization and the Changing American Constitutional System: The Case of Federalism” forthcoming in Eric Patashnik and Wendy Schiller eds. *The Dynamics of American Democracy: Partisan Polarization, Political Competition and Government Performance* University of Kansas.
- [29] “Anxieties of American Democracy,” (with Frances Lee). In Frances Lee and Nolan McCarty *Can America Govern Itself?* Cambridge University Press.
- [28] “Polarization and the Changing Constitutional System.” In Frances Lee and Nolan McCarty *Can America Govern Itself?* Cambridge University Press.
- [27] “Anxieties of American Democracy,” (with Frances Lee). In Frances Lee and Nolan McCarty *Can America Govern Itself?* Cambridge University Press.

- [26] “On the Theory of Parties” (with Eric Schickler). 2018. *Annual Review of Political Science* 21(1):175-193.
- [25] “Pivotal Politics, Political Polarization, and Policy Predictability.” 2018. *Journal of Politics* (Symposium) 80(3)
- [24] “In Defense of DW-NOMINATE.” *Studies in American Political Development*. 2016. 30(2):172-184.
- [23] “Polarization, Congressional Dysfunction, and Constitutional Change.” *Indiana Law Review*. 2016. 50(1): 224-245.
- [22] “Congressional Polarization and Its Connection to Income Inequality: An Update.” (with Adam Bonica, Keith Poole, and Howard Rosenthal). In James Thurber and Antoine Yoshinaka *American Gridlock: The Sources, Character, and Impact of Political Polarization*, 2015 Cambridge University Press.
- [21] “Regular Order in Appropriations: Does It Matter?” in *Congress and Policymaking in the 21st Century* eds. Eric Patashnik and Jeffery Jenkins, 2015 Cambridge University Press.
- [20] “Reducing Polarization: Some Facts for Reformers” *The University of Chicago Legal Forum* 2015: 243-278.
- [19] “Democracy in America, 2014” (with Didi Kuo) *Global Policy Journal* 6(S1):49-55
- [18] “The Causes and Consequences of Polarization” (with Michael Barber) in *Solutions to Polarization in America* eds. Nathaniel Persily. Cambridge University Press, 2015.
- [17] “Reducing Polarization by Making Parties Stronger” in *Solutions to Polarization in America* eds. Nathaniel Persily. Cambridge University Press, 2015.
- [16] “Anxieties about Congress.” *The Democracy Papers* Social Science Research Council <http://thedemocracypapers.ssrc.org/anxieties-about-congress/>
- [15] “Income Inequality and Participation” *The Democracy Papers* Social Science Research Council <http://thedemocracypapers.ssrc.org/income-inequality-and-participation/>
- [14] “The Causes and Consequences of Polarization” (with Michael Barber) in *Political Negotiation a Handbook* eds. Cathie Jo Martin and Jane Mansbridge. Brookings Institution Press, 2015.
- [13] “Why Hasn’t Democracy Slowed Rising Inequality?” (with Adam Bonica, Keith Poole, and Howard Rosenthal). 2013. *Journal of Economic Perspectives*. 27(3): 103-24.
German translation: “Warum Hat die Demokratie den Anstieg der Ungleichheit nicht verlangsamt? In *Berliner Debatte Initial* 2015.
- [12] “Complexity, Capacity, and Capture” in *Preventing Capture* eds. Daniel Carpenter, Steven Croley, and David Moss. Cambridge University Press, 2013.

- [11] “The Political Economy of Immigration Incorporation into the Welfare State” in *Outsiders No More? Models of Immigrant Political Incorporation* eds. Jacqueline Chattopadhyay, Claudine Gay, Jennifer Hochschild, Michael Jones-Correa, Oxford University Press, 2013.
- [10] “Political Fortunes: On Finance and Its Regulation” (with Keith Poole, Thomas Romer, and Howard Rosenthal). 2010. *Daedalus* Fall: 61-73.
- [9] “Measuring Legislative Preferences.” *Oxford Handbook of Congress* eds. Eric Schickler and Frances Lee. 2011.
- [8] “The Politics of the Pop: the U.S. Response to the Financial Crisis and the Great Recession” In *Coping with Crisis: Governmental Responses to the Great Recession* eds. Nancy Bermeo and Jonas Pontusson. 2012.
- [7] “The Political Economy of Inequality and Redistribution” (with Jonas Pontusson). 2009. Brian Nolan, Weimar Salverda, and Tim Smeeding eds. *Handbook of Economic Inequality*. Oxford University Press.
- [6] “The Policy Consequences of Political Polarization.” 2007. Paul Pierson and Theda Skocpol eds. *The Transformation of the American Polity* Princeton University Press.
- [5] “Does Bicameralism Matter?” (with Michael Cutrone). 2006. Donald Wittman and Barry Weingast eds. *Handbook of Political Economy*.
- [4] “Models of Vetoes and Veto Bargaining,” (with Charles Cameron). 2005. *Annual Review of Political Science* 7:409-435.
- [3] “Bureaucratic Capacity and Legislative Output,” (with John Huber). 2006. *The Macropolitics of Congress*. eds. E. Scott Adler and John Lapinski.
- [2] “Hitting the Ground Running: The Timing of Presidential Appointments in Transition,” (with Rose Razaghian) in *Presidential Power: Forging the Presidency for the 21st Century*. eds. Martha Joynt Kumar, Robert Y. Shapiro, and Lawrence R. Jacobs. New York: Columbia University Press.
- [1] “Congress and the Territorial Expansion of the United States” (with Keith Poole and Howard Rosenthal) in *New Directions in Studying the History of the U.S. Congress*. eds. David Brady and Mathew McCubbins. Stanford: Stanford University Press.

Reviews and Comments

- [10] “The Political Roots of Inequality.” *The American Interest*. 2013. Summer (May/June):68-74.
- [9] Review of Cass Sunstein *Going To Extremes: How Like Minds Unite and Divide*. 2011. *Political Science Quarterly*. 126(2):328-329.
- [8] “The Limits of Electoral and Legislative Reform in Addressing Polarization.” 2011. *University of California Law Review* 99:359-372.

- [7] Review of Benjamin Page and Lawrence Jacobs *Class Wars: What Americans Really Think About Economic Inequality*. 2010. *The Forum* 8(2): article 10
- [6] Review of Sean Theriault *Party Polarization in Congress*. 2009. *Political Science Quarterly* 124(3):551-552.
- [5] Review of Barbara Sinclair *Party Wars: Polarization and the Politics of National Policymaking*. 2007. *Political Science Quarterly* 122(1):159-150.
- [4] “Congressional Studies and Political Economy” *The Political Economist* Volume XIII, Issue 3 Fall 2006.
- [3] Comment on Melissa Cully Anderson and Nathaniel Persily “Regulating Democracy Through Democracy: The Use of Direct Legislation in Election Law Reform.” 2005. *University of Southern California Law Review* 78(4):1035-1040.
- [2] Review of Keith L. Dougherty *Collective Action under the Articles of Confederation*, 2002. *Political Science Quarterly* 117(1):173-174.
- [1] Review of Patricia Heidotting Conley *Presidential Mandates: How Elections Shape the National Agenda*. 2001. *Presidential Studies Quarterly*, p. 747-749.

White Papers and Policy Reports

Chair and lead author. “Political System Subcommittee Report” in Stigler Center Committee on Digital Platforms Report, July 2019.

Chair and lead author, Appropriation Reform Subcommittee American Political Science Association Task Force on Congressional Reform.

Opinion Pieces

“Grading the Cromnibus” *Washington Post Monkey Cage Blog* December 12, 2014

“Will Loretta Lynch End Too Big To Jail” *Washington Post Monkey Cage Blog* November 13, 2014

“Five Things the Goldman Tapes Teach Us About Financial Regulation” *Washington Post Monkey Cage Blog* September 30, 2014

“What We Know and Don’t Know about Our Polarized Politics” *Washington Post Monkey Cage Blog* January 8, 2014

“The Politics of Bad Apples” *Washington Post Monkey Cage Blog* October 24, 2013

“Hate Our Polarized Politics? Why You Can’t Blame Gerrymandering.” *Washington Post* October 26, 2012. http://articles.washingtonpost.com/2012-10-26/opinions/35500270_1_polarization-districts-independent-voters

“The Price of Principle” *Huffington Post* July 20, 2010. (with Keith Poole, Thomas Romer, and Howard Rosenthal).

“McCain for President?: A Liberal Conservative Oscillation Cements His Maverick Reputation.” *San Diego Union Tribune* August 31, 2008 (with Keith Poole and Howard Rosenthal)

http://www.signonsandiego.com/uniontrib/20080831/news_lz1e31mccarty.html

“Obama for President?: Moderate and independent voters still must be convinced” *San Diego Union Tribune* August 24, 2008 (with Keith Poole and Howard Rosenthal)

http://www.signonsandiego.com/uniontrib/20080824/news_lz1e24obama.html

“Neither Candidate Likely to Reduce Rancor” *Politico*, July 24, 2008 (with Keith Poole and Howard Rosenthal) <http://www.politico.com/news/stories/0708/12013.html>

Blog: <http://nolanmccarty.com>

Occasional contributor: <http://themonkeycage.org>

Other Work in Progress

“Unequal Incomes, Ideology and Gridlock: How Rising Inequality Increases Political Polarization” with Boris Shor and John Voorhies. (Winner of the 2016 Franklin L. Burdette/Pi Sigma Alpha Award by the American Political Science Association and Best Paper Awards from the APSA Legislative and State and Local Politics sections.)

“Agenda Control Under Uncertainty” (with Steven Callander)

“The Evolution from a Democratic to Republican South” (with Steven Rogers)

“Congressional Dysfunction and Bureaucratic Capacity.” (with Alex Bolton and Sara Kerovsky).

“Polarization and the American Constitution.”

Courses Taught

Doctoral Level

Congressional Politics. Princeton University.

Bureaucratic Politics. Princeton University.

Analysis of American Political Institutions. Princeton University.

Democratic Processes. Columbia University

Political Methodology Sequence. Columbia University

Colloquium on Political Organizations and Interest Groups. Columbia University

Research Controversies in American Politics. Columbia University

Mathematics for Political Science. Columbia University

The Politics of Inequality in the U.S. and Western Europe. Princeton University

Game Theory and Political Theory. Columbia University

Formal Theory I. Princeton University.

Master's Level

Legislative Politics. Princeton University. (Spring 2003)
Advanced Econometrics and Public Policy. (Spring 2003)
Business, Government, and Society. University of Southern California
Business and Its Nonmarket Environment. University of Southern California

Undergraduate

Democracy. Princeton University.
Democracy and Constitutional Engineering. Columbia University Summer Program in
Tunis and Istanbul.
Polarized America: Polarization, Inequality and the Future of American Politics.
Princeton University.
American Politics. Princeton University.
The Development of American Political Institutions. Princeton University.
The Politics of Reform. Columbia University
Decline of the American Party System? Columbia University
Introduction to American Government and Politics. Columbia University
Public Finance. Carnegie Mellon University

Professional Activities

Conference Participation

American Economic Association (2002)
American Political Science Association (various years)
Can Madison's Constitution Survive Polarized Parties?, UC Berkeley (2016)
Challenges in Political Economy, Harvard University (2002)
Comparative Political Economy Workshop, Harvard (2006)
Designing Democratic Institutions, LSE (2008)
Eric M. Mindich Encounter with Authors, Center for Basic Research in the Social
Sciences, Harvard University (2005) (for *Polarized America*)
Encounter with the Authors, Center for Basic Research in the Social Sciences, Harvard
University (1999) (participant)
Emory University Conference on Institutions and Law-Making (2013)
European Political Science Association (2011-2013)
History and Congress Conference, Columbia University (2001,2002)
History and Congress Conference, Berkeley (2010)
History and Congress Conference, Brown University (2011)
History and Congress Conference, Stanford University (1999,2004)
History and Congress Conference, University of Georgia (2012)
Impact of Direct Democracy, University of Southern California and University of
California at Irvine (2005)
IGIER/PIER Conference on Political Economics, University of Pennsylvania (2002)
Macro-Politics of Congress, University of Colorado (2001)

Midwest Political Science Association (various years)
National Bureau of Economic Research Summer Institute (2011)
Northeastern Political Science Association (2002)
Policy History Conference (2012)
Political Accountability Conference, Princeton University (2002)
Political Institutions and Economic Policy, Harvard University (2002, 2012)
Political Institutions and Economic Policy, Princeton University (2013)
Public Choice World Congress Plenary Speaker (2012)
Public Choice Society (various years)
Priorat Workshop on Theoretical Political Science (2013)
Russell Sage Social Dimensions of Inequality Conference (2003)
Social Science History Association (1998)
Society for Political Methodology Summer Meetings (1997-1999)
Southern California Political Economy Association (1995)
Standing Group on Political Economy of the ECPR (2009)
Stanford Institute of Theoretical Economics (1995)
State of the Parties: 1996 and Beyond, Ray C. Bliss Institute for Applied Politics (1997)
University of George Elections Conference (2008, 2012)
Transformations of American Politics, Harvard University (2003,2004)
W. Allen Wallis Political Economy Conference, Rochester University (1996,2002)

Invited Workshops

Academia Sinica (Taiwan) (2013)
Bowling Green State University (2019)
California Institute of Technology, Department of Humanities and Social Sciences (1992)
Center for the Advance Study in the Behavioral Sciences (2005)
Columbia University, Department of Political Science (1994, 1996, 2009)
Columbia University Law School, Administration in the Age of Polarization (2015)
ETH/ Zurich Risk Center Conference on Economic, Political, and Social Bubbles (2015)
Harvard University, Department of Government (1998)
Harvard University, Center for American Political Studies (2006)
Hoover Institution, Stanford University (2000, 2005)
Instituto Tecnológico Autónomo de México (2002)
London School of Economics and Political Science (2009)
Michigan State University, Department of Political Science (2002)
New York University, Department of Politics (1998, 2001)
New York University, School of Law (2002, 2016)
Northwestern University, Department of Political Science (2003)
Northwestern University, Managerial Economics and Decision Sciences (2010,2019)
Nuffield College, Oxford University (2009)
Ohio State University (1993, 2007)
Princeton University (1992, 1998, 2000)
Stanford University Political Science (2005,2016)
Stanford University Graduate School of Business (1992,1994,1995,1999, 2016)

Stanford University Law School (2005)
Universidad Extranada de Bogota (2000)
University of California at Berkeley, Department of Political Science (2000,2004)
University of California at Berkeley, Goldman School (2007)
University of California at Davis (2016)
University of California at Los Angeles, Department of Political Science (1995,1999)
University of California at San Diego, Department of Political Science (2000)
University of Chicago, Department of Political Science (2005)
University of Chicago, Becker Friedman Institute, The Price of Policy Uncertainty (2015)
University of Chicago, Harris School (2013,2019)
University of Essex, Department of Government (2009)
University of Essex, Political Economy (2009)
University of Georgia (2010)
University of Kentucky, Department of Political Science (2000)
University of Michigan (2016)
University of Minnesota, Department of Political Science (2006)
University of Oregon, Department of Political Science (1996)
University of Pittsburgh, Department of Political Science (2007)
University of Rochester, Department of Political Science (1995,1996,1998,1999)
University of Southern California, Marshall School of Business (1993, 2000)
Washington University, Department of Political Science (1999)
Yale University, Department Political Science (1992, 2002)
Yale University School of Management (1993)

Referee Service

Academic Press, American Economic Review, American Journal of Political Science, American Political Science Review, American Politics Quarterly, American Sociological Review, Berkeley Electronic Press, British Journal of Political Science, Business and Politics, Cambridge University Press, Columbia University Press, Comparative Political Studies, Economic Inquiry, Economics and Politics, Electoral Studies, European Economic Review, European Journal of Political Research, Governance, International Studies Quarterly, Journal of Economic Theory, Journal of Law and Economics, Journal of Law Economics and Organization, Journal of Institutional and Theoretical Economics, Journal of Political Economy, Journal of Politics, Journal of Public Economics, Journal of Public Economic Theory, Journal of Human Capital, Journal of Theoretical Politics, Legislative Studies Quarterly, MIT Press, National Science Foundation, Oxford University Press, Party Politics, Political Analysis, Political Behavior, Political Research Quarterly, Political Science Quarterly, Princeton University Press, Public Administration Review, Public Choice, Rand Journal of Economics, Review of Economics and Statistics, Russell Sage Foundation Press, Social Choice and Welfare, Social Problems, University of Chicago Press, University of Michigan Press, World Politics.

Outside Professional Activities

Member of Methodology committee, SocialScienceOne
Chair, Appropriations Reform Subcommittee, APSA Panel on Congressional Reform
Chair, Working Group on the Politics of Social Media Platforms, Stigler Center, University of Chicago
Founding Editor-in-Chief, *Quarterly Journal of Political Science* (2005-2014)
Co-Chair, Anxieties of Democracy, Institutions Working Group, Social Science Research Council.
Steering committee, Anxieties of Democracy Program, Social Science Research Council.
Steering committee, SSRC/Deutsche Forschungsgemeinschaft program on Democracy.
Council member, *Midwest Political Science Association* (2009-2012)
Editorial committee, *Annual Review of Political Science*
Executive committee, Section on Political Economy, American Political Science Association (2004-2007)
Chair, U.S. Subcommittee of APSA Taskforce on Political Negotiation.
Program co-chair, 2005 Midwest Political Science Association Meetings.
Editorial board, *Political Science Research and Methods*
Editorial Board, *American Journal of Political Science*
Editorial Board, *Legislative Studies Quarterly*
Section Head, Political Economy, American Political Science Association Conference, 2002.
Instructor, *Political Game Theory*, European Consortium of Political Research Summer School, Ljubljana, Slovenia (2009 and 2010)
Instructor, National Science Foundation Program on Empirical Implications of Theoretical Models, University of Michigan (2006)
Instructor, National Science Foundation Program on Empirical Implications of Theoretical Models, Harvard University (2002)
Instructor, National Science Foundation Program on Empirical Implications of Theoretical Models, Washington University, St. Louis (2004, 2006)
Section Head, Parties and Interest Groups, Midwest Political Science Association, 2003.
Co-Leader, American Political Science Association MENA Workshop, Cairo Egypt, 2014.

Legal Consulting

Expert (written affidavits, court testimony) *Romo v. Detzner* 2012-CA-000412 (Fla. Cir. Ct., Leon County); Rebutted expert testimony challenging the legality of Florida congressional districting maps.
Expert (written affidavits) *NAACP v. Husted* Case 2:14-CV-404 (US District Court for the Southern District Ohio Eastern Division); Rebutted expert testimony concerning the impact of changes in early in-person voting procedures in Ohio.

Expert (written affidavits) *League of Women Voters of Florida, et al. v. Detzner, et al.*, Case No. 2012-CA-002842; Rebutted expert testimony challenging the legality of Florida state senate districting maps.

Expert (written affidavits, court testimony) *Ohio Democratic Party et al v. Husted et al.* Case 2:15-CV-1802 (US District Court for the Southern District Ohio Eastern Division); Rebutted expert testimony concerning the impact of changes in early in-person voting procedures in Ohio.

Expert (written affidavits) *One Wisconsin Institute, Inc. et al. v. Nichol, et al* Case:15-CV-324 (US District Court for the Western District of Wisconsin).; Rebutted expert testimony concerning the impact of changes in election administration in Wisconsin.

Expert (written affidavits, court testimony) *The Northeast Ohio Coalition for the Homeless, et al. vs. Jon Husted, et al.* Case 2:06-CV-00896. (US District Court for the Southern District Ohio Eastern Division). Rebutted expert testimony that changes to identification requirements on absentee and provisional ballots in Ohio have disproportionately reduced opportunities for minority voters to participate in elections.

Expert (written affidavits, court testimony) *League of Women Voters of PA et al., v. The Commonwealth of Pennsylvania et al.*, Civ. No. 261 MD 2017 (Commonwealth Court of Pennsylvania). Congressional districting litigation.

Expert (written affidavits, court testimony) *Agre et al. v. Wolf et al.*, Case 17-CV-4392 (United States District Court for the Eastern District of Pennsylvania). Congressional districting litigation.

Professional Memberships

American Political Science Association
Midwest Political Science Association
European Political Science Association

Appendix B: Description of Data Sources

1. Data from 98 Municipal RCV Elections

This dataset originated from the appendix of a report by the Maine Heritage Policy Center. The report is available at <https://mainepolicy.org/project/false-majority/>. To ensure the quality of the data, I consulted all of the original sources, but found no discrepancies. The online election results for five cases, however, were no longer available. These include three elections from Aspen, Colorado and two from Burlington, VT. The results of my analysis would not change if those cases were dropped. I updated the data by adding two elections in San Francisco from 2019. I am not aware of any other RCV elections that have occurred since the report for which ballot data is available. I supplemented these data in two ways. First, I tabulated the number of candidates (exclusive of write-ins). Second, I verified whether a non-monotonicity outcome was possible for the tabulation round with three candidates.

2. Cast Ballot Data from 2018 Maine 2nd Congressional District, Democratic Congressional Primary, and Democratic Gubernatorial Primary

Data on the cast ballots for the 2018 Maine elections is available from the Maine Secretary of State, Bureau of Corporations, Elections, and Commissions at <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6>. I wrote computer code to determine which ballots were exhausted and truncated. I then created aggregate percentage of exhausted and truncated ballots for each town.

3. Maine Voter file for 2018 Election

Counsel was able to obtain the Maine voter registration file containing the records of the voters who participated in the 2018 general election. The data was provided by The Data Trust <https://thedatatrust.com/>. The Data Trust merged the voter file with commercial data from Acxiom (<https://www.acxiom.com/>) on the education level of each voter. I was able to use this data plus the dates of birth provided in the voter file to generate age and education profiles for each of Maine's towns. I then matched these data to the aggregated cast ballot data. This data is available upon request from counsel.

4. Data on 2018 Maine State Senate Elections

Data on election returns for the 2018 Maine state senate elections is available from the Maine Secretary of State, Bureau of Corporations, Elections, and Commissions at <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6>.

5. Data on 2018 Congressional Elections in California and Washington

Data on California and Washington primary and general elections was obtained from the elections administration websites of each state. See <https://results.vote.wa.gov/results/20180807/Federal.html>; <https://results.vote.wa.gov/results/20181106/Federal.html>; <https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/statewide-direct->

[primary-june-5-2018/statement-vote/](https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/general-election-november-6-2018/statement-vote/); <https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/general-election-november-6-2018/statement-vote/>.

6. Data on Majority Runoff Primaries

The data from 1990 to 2002 was drawn from Engstrom, Richard L., and Richard N. Engstrom. 2008. "The majority vote rule and runoff primaries in the United States." *Electoral Studies* 27(3):407-416. The data were updated through the present using election returns reported online.

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 10:42:50 PM

From: [REDACTED] on behalf of Mary Kirchhof [REDACTED]
Sent: Sunday, July 26, 2020 9:51 PM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Mary Kirchhof
5919 Wyngate Ln Minnetonka, MN 55345-6556
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Charter Commission Oversteps Its Authority with RCV - Voter Suppression Underway in Minnetonka
Date: Wednesday, August 5, 2020 10:51:18 PM
Importance: High

From: Mary Pat Blake [REDACTED]
Sent: Monday, July 27, 2020 1:52 PM
To: John Northrup; Karen Anderson; Brad Wiersum; David Larson; Terry Schneider; LuAnn Tolliver; Linnea Sodergren; Dick Allendorf; John Cheleen
Cc: Kissy Coakley; Brian Kirk; Bradley Schaeppi; Susan Carter; Deborah Calvert; Rebecca Schack; Geralyn Barone; Corrine Heine
Subject: Charter Commission Oversteps Its Authority with RCV - Voter Suppression Underway in Minnetonka

Dear Charter Commission, City Council, and City Staff,

The Charter Commission is overstepping its authority in its proposed extension to further study Ranked Choice Voting. The Charter Commission has already studied RCV and it has already extended its work to almost a year. Their work is done. Further extension is capricious. Further extension is against the norms of Minnetonka. Voter suppression is the result, as voters are denied the right to vote on RCV in the November 2020 election, even as Minnetonka Memos have featured RCV in a cover story in August and raised expectations of a November 2020 ballot vote.

If the Charter Commission succeeds in its proposed “extension of 90 days to study RCV further,” this action will push out the timeframe for a City Council vote on putting RCV on the November ballot. It will be too late for the City Council to vote RCV onto the November 2020 ballot, since the ballot language has to be given to the County in August.

So the Charter Commission, a group of unelected people, are preventing the elected representatives on City Council from taking its vote on RCV in August as the City Council had planned to do. That’s wrong.

The voters of Minnetonka have told the city it is in favor of RCV by a margin of 3 to 1 in favor. 66% of respondents to the city’s 2020 survey of a large, randomly selected group of 400 Minnetonka homes said they favor Ranked Choice Voting. Charter Commission and City Council, you have the clear voice of the people here from your own city survey.

A review of the Charter Commission meeting on July 21, 2020 will show the Commission was ready to take its vote on RCV, but was stopped by a group of Commissioners who are intentionally stalling the Commission’s vote and searching for reasons why they should extend the study, to back-fill their story so it doesn’t seem as bad as it really is: [voter suppression in Minnetonka](#). I respectfully ask the City Council and Staff to watch this 7/21/20 Charter Commission meeting.

The voter suppression is at the hands of the Charter Commission.

November 2020 will be a big year with a high voter turnout for a Presidential election. It's a great time to learn how extensive the voter support for RCV is in Minnetonka.

But it's not going to happen unless someone stands up on the Charter Commission this week on Tuesday night and says, "Stop. We must take the Charter Commission vote on RVC now. Our work is done here. Send this issue back to the City Council so the City Council can do its job for the people."

The optics of this situation are incredibly bad.

Please do the right thing for the people, Charter Commission. The majority of people in Minnetonka have already expressed they favor RCV. If the Charter Commission can't do the right thing, maybe the City Council can step in and persuade you.

Thank you,
Mary Pat Blake

14800 Wychewood Road
Minnetonka, MN 55345

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Oppose Ranked Choice Voting
Date: Wednesday, August 5, 2020 2:57:32 PM

From: [REDACTED] on
behalf of Nancy Gooch [REDACTED]
Sent: Thursday, July 23, 2020 2:26 PM
To: Brian Kirk
Subject: Oppose Ranked Choice Voting

Thank you for opposing RCV. I would guess that at least 60% of Minnetonka voters don't understand this complicated system of voting. Although I pride myself in being an informed voter, I can't imagine having to get to know the qualifications of a long list of candidates in order to rank them in order of preference. I'm also concerned that there is misinformation out there promoting RCV.

One person, one vote! That's the democratic way.

Thanks for your service to our community.
Nancy Gooch

Sincerely,
Nancy Gooch
5998 Chasewood Pkwy Apt 204 Minnetonka, MN 55343-4369
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 10:36:56 PM

From: [REDACTED] on behalf of
Noelle Cirisan [REDACTED]
Sent: Sunday, July 26, 2020 12:49 PM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Noelle Cirisan
18746 Clear View Ter Minnetonka, MN 55345-6083
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 3:26:34 PM

From: [REDACTED] on behalf of
Pamela Malley [REDACTED]
Sent: Friday, July 24, 2020 11:13 AM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Pamela Malley
14501 Atrium Way Apt 227 Minnetonka, MN 55345-4757
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: RCV, Charter Commission & Democracy Derailment
Date: Wednesday, August 5, 2020 2:46:31 PM

From: paula ramaley [REDACTED]
Sent: Thursday, July 23, 2020 9:18 AM
To: Brad Wiersum; Dick Allendorf; Karen Anderson; John Cheleen; David Larson; John Northrup; Terry Schneider; Linnea Sodergren; LuAnn Tolliver
Cc: Brad Schaeppi; Susan Carter; Deborah Calvert; Brian Kirk; Kissy Coakley; Rebecca Schack
Subject: RCV, Charter Commission & Democracy Derailment

Mayor Wiersom and Commission Members:

News has reached me that the Charter Commission is planning to vote for a 90-day delay of its decision on placing Ranked Choice Voting on the ballot for this November's election - effectively eliminating any chance for it to be included due to administrative/logistical reasons (ballot printing deadline). This despite:

- The Commission has already had 9 months to review the issue.
- Overwhelming public support and far more reasoned/reasonable arguments presented in favor of RCV at the July 14 Charter Commission meeting.
- The City's own survey data showing that an overwhelming majority of residents would favor RCV.

Given this, some may well see such Commission (in)action as a cynical tactic to deny voters the opportunity to decide an important issue in a high-attention, high turnout year - perhaps in hopes that in 2021 the issue will be derailed, dissipate, or at least there will likely be far lower voter turnout and attention to it in an off-year and (hopefully) post-pandemic election.

Mayor, I understand that some, perhaps even most Commission members do not favor RCV. That, however, does not justify denying (through delay) the democratic process of having elected City Council members - not unelected officials - make the decision of whether to place RCV (or any other major issue) on the ballot, especially in the presence of the factors noted above. Therefore, I urge you and the Commission to do the right thing: allow the City Council to vote on this issue. If a majority votes to place RCV on the ballot, then present the facts, make your case and let the people decide in November. If they do not, then it will have been decided in an open, democratic process and constituent-voters will have recourse at the ballot box.

This issue will be covered in a new online newsletter/update that has been organized by and for reasonable, progressive-leaning residents that reaches people throughout Minnetonka. I am therefore including all council members as well as you and the commission in this communication.

Thank you for your service and consideration.

--

Paula Ramaley

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 10:18:25 PM

From: [REDACTED]
[REDACTED] on behalf of Rickey Brown
[REDACTED]

Sent: Friday, July 24, 2020 7:58 PM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Rickey Brown
12600 Marion Ln W Minnetonka, MN 55305-1378
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Please support RCV. No more delays/studying. It is proven to be good for democracy.
Date: Wednesday, August 5, 2020 2:56:09 PM

From: [REDACTED] on behalf of
SALLY MACUT [REDACTED]
Sent: Thursday, July 23, 2020 1:56 PM
To: Brian Kirk
Subject: Please support RCV. No more delays/studying. It is proven to be good for democracy.

Dear Council Member Brian Kirk,

I am asking you to support Rank Choice Voting on the ballot in November.

Any delay by the Charter Commission (who is a non-elected body) is a move by a few people with an agenda other than that of our citizens. No further study or delay is needed. It has been proven to work well elsewhere. I previously lived in Mpls and Rank choice Voting was a spectacular success. And it is supported by the majority here. Just put it on the ballot. As citizens, we want our voice heard in the democratic process

Thanks for your consideration.
Sally Macut

3259 Eldorado Trail E,
Minnetonka

[REDACTED]

Sincerely,
SALLY MACUT
3259 Eldorado Trl E Minnetonka, MN 55305-3667

[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Move forward with Ranked Choice Voting
Date: Wednesday, August 5, 2020 11:27:04 PM

From: Sandra Brandt [REDACTED]
Sent: Thursday, July 30, 2020 8:04 AM
To: Brian Kirk
Subject: Move forward with Ranked Choice Voting

I support Ranked Choice Voting and I hope you will vote to put it on the November ballot and give the largest number of residents a chance to help make this decision.

The Minnetonka annual survey shows residents are supportive of RCV, 3-to-1, and the community is ready for the ballot measure!

Thank you for your leadership on this issue.

Regards,
Sandra Brandt
15609 Randall Ln
Minnetonka, MN 55345

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Rank Choice Voting
Date: Wednesday, August 5, 2020 10:20:56 PM

From: Sandy Jambeck [REDACTED]
Sent: Friday, July 24, 2020 9:23 PM
To: Brad Wiersum; Dick Allendorf; Karen Anderson; John Cheleen; David Larson; John Northrup; Terry Schneider; Linnea Sodergren; LuAnn Tolliver
Cc: Corrine Heine; Geralyn Barone; Rebecca Schack; Kissy Coakley; Brian Kirk; Bradley Schaeppi; Deborah Calvert; Susan Carter
Subject: Rank Choice Voting

Charter Commission Members:

I was very disheartened that the Charter Commission has chosen to use a loophole to avoid putting Ranked Choice Voting on the ballot this fall. By doing this you have demonstrated that you are not listening to and are unaccountable to the citizens of Minnetonka. It also shows you are operating in secrecy as opposed to being transparent. You are an unelected body and you are trying to wield power to influence an election. Mayor Wiersum, it is especially egregious for you as you are the sitting mayor and also on the Commission. You have an unfair influence on both groups. As you will be up for re-election next year I would expect that you would not like to have this kind of manipulation on your record. This commission has had nearly a year to study RCV You've had many meetings and speakers both for and against. You do not need to wait another 90 days, which only serves to keep RCV off the ballot in 2020. The people of Minnetonka have been surveyed and have expressed an interest in it. Let the people vote.

As a voter you can express your opinion and vote your conscience, just like the rest of us. To keep it off the ballot for the general election is dishonorable. Most residents would be surprised to learn that this Commission is made up of former mayors and elected officials who perhaps are not willing to give up power and wield it in secret. I knew of someone who wanted to be on the commission and was told there were no openings. And then a few months later Dick Allendorf shows up at a meeting as a new member. It appears that this opening was never publicized in any way and there was no chance for anyone else to apply for the job. This is not how to involve the citizens of this community. It basically means that only the "good old boys and girls" with similar beliefs are allowed to participate. This commission then does not in any way represent the community. We need new ideas and people to be involved in government. Minnetonka used to be considered progressive and on the cutting edge. In my opinion this is no longer true. Mayor Wiersum, at a meeting that I attended, you were telling the story of a conversation that you had with Sen. David Durenberger. He was telling you that Republicans could and should be progressive. You indicated that you agreed with him. What I am seeing is the exact opposite. Change is very difficult and yet change is the one thing we can count on in every aspect of our lives.

You have studied RCV longer than any other government group. You know what you personally want. It is unacceptable that you have decided that because you don't like it that you are not going to put it to a public vote on the ballot in November. This is not democracy. It is abuse of power and trying to control something that is not in your jurisdiction.

Let the people of Minnetonka vote. You are a body that advises. Say yes or no but don't shelve it and do the dishonorable thing. This is the future of voting for a variety of obvious reasons. It will happen and it would be great if you would get on board and embrace the change.

Respectfully,
Sandy Jambeck

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Support RCV
Date: Wednesday, August 5, 2020 3:40:20 PM

From: Sgrimes [REDACTED]
Sent: Friday, July 24, 2020 3:46 PM
To: Brian Kirk
Subject: Fwd: Support RCV

Brian,
I am forwarding a copy of the email I sent today to the Charter Commission and the mayor. I hope you will actively support putting the referendum on the November ballot. Thank you.
Sharon Grimes
14301 Stewart Ln, #201
[REDACTED]
Sent from my iPad

Begin forwarded message:

From: Sgrimes [REDACTED]
Date: July 24, 2020 at 3:40:53 PM CDT
To: cheine@minnetonkamn.gov
Cc: bwiersum@minnetonkamn.gov
Subject: **Support RCV**

Please allow the voters to decide in November whether or not they want Ranked Choice Voting. Support already strongly favors it. Minnetonka residents support it by a 3 to 1 margin. Speakers at the City Council meeting (when the council voted unanimously to forward the issue to the Charter Commotion) waited patiently through the meeting until about 10:30 to speak in support. Only two people opposed it, and their reasons were either incorrect or misleading. RCV will save money and will result in more voters having a say in who represents them.

Please do not ignore the overwhelming support of residents who favor this issue. And please do not let personal opinions influence the decision to move forward with a referendum vote. In these divisive times, democratic representation and wide voter participation is more important than ever. Respectfully and with hope,

Sharon Grimes
14301 Stewart Ln, #201
Minnetonka 55345
[REDACTED]
Sent from my iPad

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 3:20:21 PM

From: [REDACTED] on
behalf of Stephanie Carlson Ventura [REDACTED]
Sent: Friday, July 24, 2020 10:34 AM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Stephanie Carlson Ventura
15400 Wing Lake Dr Minnetonka, MN 55345-5645
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Ranked Choice Voting
Date: Wednesday, August 5, 2020 11:45:37 PM

From: Steven & Lynn [REDACTED]
Sent: Monday, August 3, 2020 6:00 PM
To: Brad Wiersum; calvert@minnetonkamn.gov; Susan Carter; Brian Kirk
Subject: Ranked Choice Voting

Representatives and residents of Minnetonka ,

Please reject the concept of "Ranked Choice Voting" on our behalf.

Thanks ,

Steve & Lynn Wolf
14194 Glen Lake Drive
Minnetonka, MN 55345
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Please Move Forward on Ranked Choice Voting
Date: Wednesday, August 5, 2020 2:49:41 PM

From: [REDACTED] on behalf of
Terry Mulhern [REDACTED]
Sent: Thursday, July 23, 2020 9:33 AM
To: Brian Kirk
Subject: Please Move Forward on Ranked Choice Voting

Dear Council Member Brian Kirk,

.Ranked choice voting is a common sense more effective method of electing public servants which most represent the will of the electorate. Please re-consider this option for improving the electoral process.

Sincerely,
Terry Mulhern
5900 Stoneybrook Dr Minnetonka, MN 55345-6435
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Please Retain our Ranked Choice Voting
Date: Wednesday, August 5, 2020 2:44:48 PM

From: [REDACTED]
on behalf of Tim Solomonson [REDACTED]
Sent: Thursday, July 23, 2020 8:36 AM
To: Brian Kirk
Subject: Please Retain our Ranked Choice Voting

Dear Council Member Brian Kirk,

.Rank choice voting gives the best reflection of voter intent and maximizes the flexibility we deserve in selecting our elected officials.

Sincerely,
Tim Solomonson
11911 Hilloway Rd W Hopkins, MN 55305-2513
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 11:13:14 PM

From: [REDACTED]
on behalf of Timothy Carroll [REDACTED]
Sent: Monday, July 27, 2020 8:31 PM
To: Brian Kirk
Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Timothy Carroll
14110 Minnehaha Pl Wayzata, MN 55391-2515
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: I'm a Minnetonka voter who would like to weigh in
Date: Wednesday, August 5, 2020 3:46:10 PM

From: [REDACTED] on
behalf of Tommy Morsman [REDACTED]
Sent: Friday, July 24, 2020 5:46 PM
To: Brian Kirk
Subject: I'm a Minnetonka voter who would like to weigh in

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Tommy Morsman
3305 Hazelwood W Wayzata, MN 55391-2555
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Let Minnetonka Voters Decide!
Date: Wednesday, August 5, 2020 11:29:20 PM

From: [REDACTED]
[REDACTED] on behalf of Wendell Ellis
[REDACTED]

Sent: Thursday, July 30, 2020 9:51 AM

To: Brian Kirk

Subject: Let Minnetonka Voters Decide!

Dear Council Member Brian Kirk,

Don't delay on Ranked Choice Voting! Please let Minnetonka voters decide whether to adopt RCV in the November election when voter turnout is highest and most representative of our city.

Sincerely,
Wendell Ellis
12000 Marion Ln W Apt 1201 Minnetonka, MN 55305-1302
[REDACTED]

From: [McKaia Ryberg](#)
To: [McKaia Ryberg](#)
Subject: FW: Minnetonka: in support of Ranked Choice Voting!
Date: Wednesday, August 5, 2020 3:47:43 PM

From: Wendy Holdman [REDACTED]

Sent: Friday, July 24, 2020 5:56 PM

To: Brad Wiersum; Deborah Calvert; Susan Carter; Brian Kirk; Rebecca Schack; Bradley Schaeppi; Kissy Coakley; Corrine Heine; Dick Allendorf; Karen Anderson; John Cheleen; David Larson; John Northrup; Terry Schneider; Linnea Sodergren; LuAnn Tolliver

Subject: Minnetonka: in support of Ranked Choice Voting!

Dear Minnetonka City Mayor, City Council Members, and Charter Commission Members,

I am writing to you today because I wholeheartedly support Ranked Choice Voting in Minnetonka. I believe it will help diversify our city (and our world!).

RCV is a legal, efficient, practical way to ensure that candidates with more than 50% of the vote get elected to office. It's used in many other communities (Bloomington and Rochester for example are working on it now too – SLP already has it). It eliminates the fear of voting for your favorite candidate because that vote may mean nothing and may even put your least favorite candidate in office. It eliminates the need to vote for the lesser of two evils. It eliminates the feeling that your voice meant nothing if your candidate didn't win. It means candidates can lobby voters as a second choice. It is easy to understand. It will mean an increase in voter turnout. It will enable our voting system to be more democratic. It eliminates the need for a Primary Election, saving the city money they could invest in something else.

Please put Ranked Choice Voting on the November ballot to allow the fine people in this city a voice on this important measure. I strongly believe that we the people should be able to vote on it.

With respect,
Wendy Holdman

Wendy Holdman
3416 Meadow Lane
Minnetonka, MN 55345

[REDACTED]