



**I. SUMMARY OF DRAFT LEGISLATION
IMPLEMENTING S.B. 389, A BI-PARTISAN BILL
RELATING TO RANKED CHOICE VOTING**

II. DRAFT LEGISLATION

AN ACT TO ESTABLISH THE USE OF RANKED CHOICE VOTING IN ELECTIONS FOR THE OFFICES OF SENATOR AND REPRESENTATIVE IN CONGRESS, TO GIVE MUNICIPALITIES THE OPTION TO USE RANKED CHOICE VOTING IN SINGLE WINNER MUNICIPAL ELECTIONS, AND TO GIVE POLITICAL PARTIES THE ABILITY TO USE RANKED CHOICE VOTING IN PRESIDENTIAL PREFERENCE PRIMARIES.



SUMMARY OF DRAFT LEGISLATION IMPLEMENTING S.B. 389, A BI-PARTISAN BILL RELATING TO RANKED CHOICE VOTING

Ranked Choice (aka Instant Run-off) Voting is a method of casting and tabulating votes where voters are empowered to rank candidates in order of preference (First Choice, Second Choice, etc.), eliminating the need for run-off elections as a means of assuring that winning candidates are supported by a majority. S.B. 389 is a bi-partisan bill recently introduced in the General Assembly by Senator Catherine A. Osten (S19) and Senator Tony Hwang (S28), a Democrat and a Republican. It has been referred to the Government Administration and Elections Committee of the General Assembly. In contrast to other bills proposing implementation of Ranked Choice Voting (“RCV”), S.B. 389 proposes the introduction of RCV in only three, carefully limited contexts.

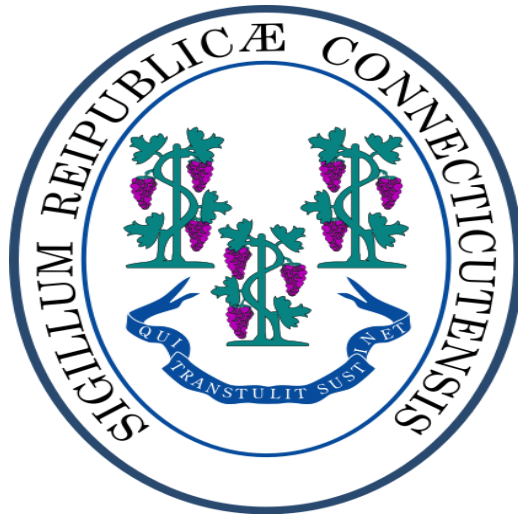
Ct Voters First is a proponent of RCV and of S.B. 389 in particular. To illustrate how S.B. 389 would work, Ct Voters First has drafted legislative language that would implement the proposal contained in S.B. 389. Inspired by [federal legislation](#) co-sponsored by Connecticut Representative Jim Himes and using model legislative language approved by FairVote and other national experts in RCV, the draft implementing legislation would adopt RCV in elections for US Senator and US Representative as proposed by Representative Himes. Second, it would enable political parties to use RCV in their primary elections for US President while leaving the parties free to allocate delegates to their national conventions on whatever basis they deem appropriate. Finally, it would give municipalities the option to use RCV in elections where only one seat is to be filled from the candidates on the ballot. In proposing RCV only in these three limited contexts, the draft legislation mirrors the proposal contained in S.B.389.

S.B. 389 and the implementing legislation we have drafted have been carefully crafted to allow a narrow and focused test of RCV in Connecticut. As envisioned in S.B. 389, the legislation involves (1) only a single primary (once every four years) and leaves the political parties the option, if they wish, to continue to award delegates on the basis of the current single choice voting system, (2) municipal elections only where the office is a single winner election and only where the municipality has affirmatively opted in and (3) only elections for US Congress. Because it involves only these offices and elections, the legislation presents no conceivable issue under the Connecticut constitution and no possible issues for the administration of Connecticut’s Citizens Election Program. And because the municipal option is limited to single winner offices as defined in the legislation, it avoids any possible conflict with Connecticut law providing for minority party representation in multi-member bodies.

The draft legislation also addresses two implementation issues. First, it recognizes that Connecticut’s voting infrastructure cannot now accommodate RCV. Accordingly, the effective date provisions of the draft legislation expressly authorize the Secretary of the State to delay implementation if the Secretary concludes that, despite diligent efforts, implementation is not possible.

Second, the draft legislation takes express account of the fact that ballot design issues complicate implementation of RCV in general elections (as opposed to primaries) because Connecticut law predicates party recognition status on electoral performance in general elections and also authorizes so-called “fusion voting,” allowing a single candidate to appear as the candidate of more than one political party. Importantly this complication does not exist with respect to use of RCV in presidential preference primaries which present no party recognition or fusion voting issues and where the ballot is simple and straightforward and involves only a single race. With respect to the federal elections and any municipal elections addressed in the legislation where this ballot design question is involved, the effective date provisions authorize the Secretary of the State to delay implementation of RCV if the Secretary and the majority of a Task Force established for this purpose certify that RCV cannot be implemented consistent with Connecticut’s party recognition and fusion voting laws.

ILLUSTRATIVE DRAFT OF LEGISLATIVE LANGUAGE TO IMPLEMENT S.B. 389



SENATE BILL No. 389
HOUSE BILL No. ____

[January 2023 General Session, Public Act No. _____]

AN ACT TO ESTABLISH THE USE OF RANKED CHOICE VOTING IN ELECTIONS FOR THE OFFICES OF SENATOR AND REPRESENTATIVE IN CONGRESS, TO GIVE POLITICAL PARTIES THE ABILITY TO USE RANKED CHOICE VOTING IN PRESIDENTIAL PREFERENCE PRIMARIES AND TO GIVE MUNICIPALITIES THE OPTION TO USE RANKED CHOICE VOTING IN SINGLE WINNER MUNICIPAL ELECTIONS

SECTION 1. Section 9-173 of general statutes is repealed and the following is substituted in lieu thereof.

9-173 [Plurality] Vote Required for Election

(a)

(1) In the election of Governor, Lieutenant Governor, Secretary of State, Treasurer, Comptroller and Attorney General, the person having the greatest number of votes for each of said offices, respectively, shall be declared elected. If no person has a plurality for any of said offices, the General Assembly shall choose such officer.

(2) In the election for senator in Congress and in elections of representatives in Congress, the person receiving the greatest number of votes for such office shall be declared elected. The greatest number of votes shall be determined using the ranked choice voting system of casting and tabulating votes described in subsections (b)-(e) of this Section [but, if no person

has a plurality of the votes for such office]. If there is a tie in the greatest number of votes for Senator in Congress, the Governor may make a temporary appointment of a senator in Congress to serve for the ensuing two years unless the General Assembly directs a special election for a senator in Congress, to be held during said period, to fill the vacancy occasioned by such failure to elect. In the event neither the Governor nor the General Assembly exercise such powers, any tie shall be broken as provided in subsection (e) of this Section.

(3) In all elections of [representatives in Congress,] state senators, state representatives and judges of probate, the person having the greatest number of votes shall be declared elected.

(4) Unless otherwise provided by law, in all municipal elections a plurality of votes cast shall be sufficient to elect except that the municipality, by municipal charter or ordinance, may adopt the ranked choice voting system of casting and tabulating votes described in subsections (b)-(e) of this Section for single winner municipal elections to determine which candidate has received the greatest number of votes and thereby been elected.

(b) Ranked Choice Voting. Ranked choice voting (also known as instant run-off voting) is a system of casting and tabulating votes under which each voter shall rank candidates for the office in the order of the voter's preference and the winning candidate is elected, in accordance with subsections (c) through (e) of this section.

(c) Ballot Design. The ballots used in an election involving a system of ranked choice voting shall be approved by the Secretary of the State. The Secretary shall prescribe the type of ballot to be used, the instructions to appear, the layout and the orientation of any ballot printed for use in any regular election or primary involving ranked choice voting. The ballot or portion of the ballot involving the use of ranked choice voting shall meet each of the following requirements:

(1) The ballot shall be simple and easy to understand, in a form to be prescribed by the Secretary of the State and, in the case of a municipal election, in a form to be prescribed by the Secretary of the State in consultation with the municipality.

(2) The ballot shall include all qualified candidates for the election. If feasible, the ballot shall permit voters to rank every candidate in the election. If it is not feasible for the ballot to permit voters to rank every candidate, the Secretary of the State or the municipality by municipal charter or ordinance, may limit the number of candidates who may be ranked on the ballot to not fewer than six.

(3) The ballot shall include such instructions as the Secretary of the State, in consultation with the municipality in the case of a municipal election, considers necessary to enable each voter to rank candidates and successfully cast the ballot under the system.

(d) Tabulation Process. Each ballot shall count as one vote for the highest-ranked active candidate on that ballot.

(1) **Tabulation Rounds.** Tabulation shall proceed in rounds with each round proceeding sequentially as follows:

(A) If two or fewer active candidates remain, the candidate with the greatest number of votes is elected and tabulation is complete.

(B) If more than two active candidates remain, the active candidate with the fewest votes is defeated, votes for the defeated candidate are transferred to each ballot's next-ranked active candidate, and a new round begins with subparagraph A.

(2) **Inactive Ballots.** In any round of tabulation of ballots under paragraph (1), an inactive ballot does not count for any candidate.

(3) **Use of Batch Elimination.** With respect to any elimination round carried out under subsection (d), the Secretary of the State or the Secretary's lawful designee or the municipality in the case of a municipal election may use batch elimination to treat multiple candidates as defeated candidates for purposes of the tabulation described in subsection (d)(1). An active candidate is in the elimination batch if it is mathematically impossible for that candidate to be a winning candidate in the election for any of the following reasons:

(A) The candidate could never win because the candidate's current vote total plus all votes that could possibly be transferred to the candidate in future rounds would not be enough to equal or surpass the active candidate with the next higher current vote total.

(B) The candidate has a lower current vote total than an active candidate who is described in subparagraph (A).

(e) **Treatment of Ties Between Candidates.** If a tie occurs between candidates with the fewest number of votes at any point in the tabulation of ballots under subsection (d) and the tabulation cannot proceed until the tie is resolved, the tie shall be decided by lot in accordance with rules promulgated by the Secretary of the State under subsection (h) and the candidate chosen by lot shall be defeated. A tie in the greatest number of votes for senator in Congress that is not resolved in the manner authorized in subsection (a)(2), any tie in the greatest number of votes for representative in Congress or any tie in the greatest number of votes for any municipal election conducted using ranked choice voting as authorized under subsection (a)(4) shall be determined as provided by applicable law including Section 9-332.

(f) **Determination of Votes Cast for Purposes of Political Party Ballot Access and Recognition.** For all statutory and constitutional provisions pertaining to obtaining, retaining and enjoying the rights and privileges of political party status and/or a party or candidate's right to ballot access, the number of the votes cast for a candidate shall be determined solely on the basis of the initial round of tabulation of votes in the election, and shall not take into account any additional round of tabulation under this section.

(g) Definitions. For purposes of this section, the following definitions apply:

(1) Active Candidate. The term ‘active candidate’ means, with respect to a round of tabulation under subsection (d), a candidate who is not yet a defeated candidate during the tabulation of votes under such subsection.

(2) Inactive Ballot. The term “inactive ballot” means, with respect to a round of tabulation under section (d), a ballot that does not count for any candidate for any of the following reasons: (A) it is a ballot that does not contain any active candidates and is not an undervote, (B) it is a ballot on which the voter ranked more than one candidate at the highest order of preference, or (C) it is a ballot which has reached two or more skipped rankings.

(3) Single Winner Municipal Election. The term “single winner municipal election” is an election where only one seat is to be filled from a single set of candidates on the ballot and where Sections 9-167a, 9-188, 9-190 and 9-199 are inapplicable.

(4) Undervote. The term “undervote” means a ballot that does not contain any candidates at any ranking in a particular contest. An undervote does not count as an active or inactive ballot in any round of tabulation.

(5) Winning Candidate. The term ‘winning candidate’ means a candidate who was elected to office under the tabulation process at any time during the tabulation of ballots.

(h) Rulemaking Authority. The Secretary of the State shall have the authority to promulgate whatever rules are necessary to implement this section.

SECTION 2. Section 9-473 of general statutes is repealed and the following is substituted in lieu thereof.

9-473 Notification by party chairmen of delegates allotted

The Secretary of the State shall establish a process and timeline for the chairman of each party to provide notice under this section. Not later than the deadline established by the secretary [Not later than the fourteenth day before the day of the primary], the chairman of each party shall certify in writing to the secretary the number of delegates to which such party is entitled pursuant to its rules. If such rules provide that such delegates are to be chosen from districts, the chairman shall also certify the number of delegates allocated to each district and the number to be selected at large, if any. Such rules may prescribe a ranked choice voting tabulation method such as that described in Section 9-173(d) and (1) prescribe a formula for the allocation of delegates to candidates based upon the percentages of the total votes [cast for] received in any round of ranked choice voting tabulation by such candidates at the primary, or (2) require all delegates shall be allocated to the candidate receiving the greatest number of votes in any round of ranked choice voting tabulation notwithstanding such candidate's percentage of the total votes cast for

all candidates. If such rules prescribe a formula for the allocation of delegates to candidates based upon the percentages of the total votes [cast for] received in any round of a ranked choice voting tabulation by such candidates at the primary, the chairman shall also certify such formula and all information necessary for the application of such formula to the results of the primary. The chairman shall furnish to the secretary, upon request, a written interpretation or explanation of any ranked choice voting tabulation method prescribed and any application of such formula.

SECTION 3. Section 9-476 of general statutes is repealed and the following is substituted in lieu thereof.

9-476 Conduct of primary

Except as otherwise provided in this chapter or as necessary to implement ranked choice voting, the provisions of chapter 145 and chapter 153 concerning absentee voting at primaries, conduct of primaries and return and tabulation of the vote at such primaries shall apply as nearly as practicable and in the manner prescribed by the Secretary of the State, to a presidential preference primary. A presidential preference primary under this chapter shall be administered using a ranked choice voting ballot that meets the criteria prescribed in Section 9-173(c). The Secretary of the State shall promulgate rules to conduct the tabulation and publish preliminary and final results (including any round by round results) as prescribed by the chairman of each party for each presidential preference primary. Such rules shall accord with any reasonable procedures that the chairman of each party has requested in writing pursuant to Section 9-473 so long as the procedures requested by the chairman of a party are compatible with use of ranked choice voting ballots and capable of being conducted with the state's vote tally systems and voting machines. The primary officials of each party for each polling place shall be as specified in section 9-436, except that (1) the appointment of assistant registrars of voters and absentee ballot counters shall be permitted but not required, (2) the minimum number of official checkers shall be one, (3) the minimum number of voting tabulator tenders shall be one for each two voting tabulators in use, (4) if two parties are holding primaries and the registrars of voters of such parties so agree, such registrars of voters may jointly appoint (A) one moderator of both primaries and (B) one enrolled member of either party to serve as head moderator of both primaries, (5) notwithstanding any reduction in the number of primary officials as permitted by this section, any duty required of primary officials by the general statutes may be performed by one or more primary officials, at the direction of the registrar of voters of the party of such officials, and (6) the registrar of voters shall have the sole power to appoint such officials. In making such appointments the registrar shall attempt, to the extent practicable, to provide representation for each candidate at each polling place. The provisions of section 9-436a shall apply to each candidate whose name appears on the ballot, except that each such candidate, through such candidate's authorized or known representative, may submit to the registrar of voters the name of one designee as candidate checker for each polling place, and the registrar of voters shall appoint such designee as candidate checker for such candidate. Notwithstanding the provisions of section 9-438, the polls shall be open for voting at the primary between the hours of six o'clock a.m. and eight o'clock p.m. The moderator or head moderator of the primary in each town shall prepare duplicate head moderator returns in the manner provided by section

9-440, but notwithstanding the provisions of said section, the moderator or head moderator may electronically transmit such returns not later than eleven fifty-nine o'clock p.m. on primary day, provided a hard copy is mailed to the Secretary of the State not later than two o'clock p.m. of the day following the primary or shall hand deliver one of such returns to either the Secretary or the state police by two o'clock p.m. of the day following the primary. Any moderator or head moderator, as the case may be, who fails to deliver such returns to either the Secretary or the state police by such time shall pay a late filing fee of fifty dollars.

SECTION 4. Severability. If any provision of this Act or the application of any provision of this Act to any person or circumstance, is held to be unconstitutional, the remainder of this Act, and the application of the provisions to any person or circumstance, shall survive and not be affected by the holding. If a conflict arises between this Act and any other provision of law, the policies and purposes of this Act shall govern.

SECTION 5. Effective Date.

(a) This Act and the amendments made by this Act shall become effective immediately, and except as provided in subsections (b)-(d), shall apply with respect to presidential preference primaries held on or after March 1, 2024, to general elections for senator and representative in Congress held on or after November 1, 2024 and, as may be provided by any municipality by ordinance or municipal charter, to single winner municipal elections held on or after May 1, 2025.

(b) The March 1, 2024 effective date for presidential preference primaries may be extended to May 1, 2025 if the Secretary of the State certifies in a writing made public on or before March 1, 2024 that the Secretary of the State has used best efforts to implement the provisions of this Act and the amendments made by this Act in time for the 2024 presidential preference primary and that the provisions of this Act and the amendments made by this Act cannot be implemented in time for the 2024 presidential preference primary.

(c) The November 1, 2024 effective date for general elections for senator and representative in Congress may be extended to May 1, 2025 if the Secretary of the State certifies in a writing made public on or before November 1, 2024 that the Secretary of the State has used best efforts to implement the provisions of this Act and the amendments made by this Act in time for the November 2024 elections and that the provisions of this Act and the amendments made by this Act cannot be implemented in time for the November 2024 elections for senator and representative in Congress.

(d) On or before September 1 2023, the Secretary of the State shall appoint a five person panel of experts consisting of (1) the Secretary of the State or the Secretary's designee, who shall be designated chair of the panel, (2) one member who shall be a member of the Connecticut bar with expertise in Connecticut election law, (3) the Director of the Connecticut Center for Voting Technology Research or the Director's designee, (4) one member who shall be an information

technology professional with expertise in Connecticut election administration and (5) one member who shall have experience and expertise in the introduction, implementation and use of ranked choice voting in other jurisdictions. In the event a majority of the five person panel of experts and the Secretary of the State certify in a written report made public by the Secretary of the State prior to May 1, 2025 that it is not feasible to implement this Act and the amendments made by this Act in a manner that is consistent with the provisions of this Chapter relating to the recognition, rights and/or privileges of political parties and their candidates including, but not limited to, Section 9-372(6) and Section 9-453t, the effective date of this Act shall be extended until May 1, 2027 with respect to the general elections covered by the certification.

Statement of Purpose:

To establish the use of ranked-choice in elections for the offices of senator and representative in Congress, to give municipalities the authority, by municipal charter or ordinance, to use ranked choice voting in single winner municipal elections, and to give political parties the ability to use ranked choice voting in presidential preference primaries.