

Report of the Special Committee on Elections to the 2018 Kansas Legislature

CHAIRPERSON: Representative Keith Esau

VICE-CHAIRPERSON: Senator Elaine Bowers

OTHER MEMBERS: Senators Oletha Faust-Goudeau and Steve Fitzgerald; and Representatives Vic Miller, Jack Thimesch, and John Whitmer

STUDY TOPIC

Study and Make Recommendation Regarding Ranked Choice Voting

The Committee is to study, review, and make recommendations regarding the implementation of a ranked choice voting system, in which the winner of the election must receive a majority (not just a plurality) of the votes.

Special Committee on Elections

REPORT

Conclusions and Recommendations

The Committee recommends that no changes be made to Kansas law concerning the implementation of a ranked choice voting system.

Proposed Legislation: None

BACKGROUND

The Legislative Coordinating Council (LCC) directed the Committee to study, review, and make recommendations regarding the implementation of a ranked choice voting system, where the winner of the election must receive a majority (not just a plurality) of the votes.

The Committee was granted one meeting day by the LCC and met on October 26, 2017, at the Statehouse.

COMMITTEE ACTIVITIES

The Committee held an all-day meeting on October 26, 2017. During the meeting, the Committee heard testimony from a variety of interested parties and asked questions of conferees concerning the topic of ranked choice voting. Major topics from the testimony are described below.

How Ranked Choice Voting Works

A staff member of the National Conference of State Legislatures (NCSL) explained the basic principle behind ranked choice voting (RCV) is voters rank all of the candidates for an office on a single ballot. Once the initial first-choice votes are tabulated, if none of the candidates receives a majority (more than 50.0 percent) of the vote, the candidate with the lowest number of votes is eliminated. Another round of vote counting follows, and any ballots selecting the eliminated

candidate as a first choice are now counted based on the voter's second choice candidate. This process is repeated until one candidate receives a majority of the votes. A representative of the Ranked Choice Voting Resource Center (RCVRC) added that ballots are not discarded or "exhausted" unless the voter stops ranking candidates. For example, if a voter selected only a first choice candidate, that ballot would be exhausted after the first round vote tabulation if that first-choice candidate received the lowest number of votes and was eliminated.

Current Uses of RCV

Conferees appearing before the Committee indicated jurisdictions using RCV chose to do so for reasons listed below as potential benefits.

The conferees stated RCV is currently used in 11 cities in the United States, including Oakland and San Francisco, California; Portland, Maine; Cambridge, Massachusetts; and Minneapolis and St. Paul, Minnesota. RCV is also used in certain elections in Australia, India, and Ireland.

Several conferees also noted RCV could be especially helpful for overseas military ballots in runoff elections. Allowing those voters to rank candidates on one ballot ensures their votes are received by election officials within the short time frame of runoff elections. (*Note:* Kansas does not hold runoff elections.)

A representative of FairVote indicated RCV can also be used in elections with more than one

winner, such as city council or board elections, to ensure a majority of votes elect a majority of the open seats.

Potential Benefits of RCV

Conferees generally stated the following benefits of RCV:

- Promoting fairness in elections and election results by ensuring elected officials have the support of the majority of voters;
- Reducing election costs by combining the primary and general election into a single election, eliminating the primary;
- Shortening campaign time by eliminating primary campaigns;
- Increasing voter turnout by eliminating primary elections;
- Eliminating political division caused by the traditional primary election campaign process;
- Providing more choices for voters on election ballots;
- Addressing concerns about fair ballot access for minority party candidates;
- Encouraging civil and positive elections by reducing divisive campaign tactics;
- Forcing candidates, parties, and political action committees (PACs) to engage all voters;
- Making elections more focused on issues than on polling data;
- Empowering voters to express their true preferences without fear of the spoiler effect;

- Providing more accountability and transparency in election results, as tabulation data can be reviewed and sorted easily;
- Ensuring the overseas military ballots are counted;
- Requiring voters go to the polls once and elect a candidate at every election;
- Allowing voters' preferences to be considered, even after their first choice candidate is eliminated;
- Increasing competition in elections;
- Providing more choices for voters, particularly minority party voters;
- Increasing voters' happiness with the choices they make; and
- Empowering people to vote.

Potential Challenges of RCV

Conferees generally stated the following challenges for RCV:

- There can be some difficulty in understanding RCV ballots;
- There can be a lack of understanding of controversial or surprising outcomes, where a less-favored candidate wins an election;
- Due to the compressed timeline of RCV, voters might change their minds about a candidate after casting their votes, in response to new information or opinions;
- Most voting machines are not currently equipped with software to process RCV ballots and there would be a cost to update voting infrastructure to be compatible with RCV;

- There would be a cost to election clerks and poll workers to help voters with a new voting system;
- RCV could potentially increase voting time and depress voter turnout;
- RCV is more complex than traditional voting methods;
- Voters would not immediately know the results of elections if multiple rounds of tabulation were required;
- RCV increases the chance of tie votes, resulting in litigation;
- RCV increases the chances of spoiled ballots, ballot mistakes, and incomplete ballots, but ballot errors have not been found to increase significantly with RCV; and
- RCV could make determining voter intent more difficult.

Maine's 2017 Attempt to Implement RCV

Several conferees provided information about RCV in Maine.

Maine has a history of multiple candidates running for a single office and electing officials with only a plurality of votes, and, as a result, the State has considered the topic of RCV for many years. The first bill on RCV was introduced in 2001 and similar legislation has been introduced almost every biennium since. Between 2003 and 2012, support for RCV grew, and more detailed RCV legislation was proposed and considered. In 2008, the League of Women Voters in Maine looked at ways to handle the large number of candidates running for single offices and ultimately endorsed RCV. More recently, a grassroots movement presented a petition to enact RCV to the voters in 2014, and 40,000 signatures were collected.

RCV was implemented by the voters during the 2016 Legislative Session, receiving 53 percent

of the vote. Constitutional issues were raised, and the Maine Supreme Court offered an opinion stating RCV was not in compliance with the *Maine Constitution*, which specifically states statewide officials can be elected by a plurality of votes. More recently, questions have arisen concerning constitutional provisions requiring votes to be counted publicly in the district where they were cast, and other questions about what happens in the event of a tie vote.

A Special Session was held in October 2017, where a bill delaying implementation of RCV until 2021 was passed by the Legislature. This was to allow time for consideration of a constitutional amendment to allow RCV. In Maine, constitutional amendments are allowed only through legislative initiative, not by petition. If the Legislature fails to pass a constitutional amendment, then, according to the October 2017 legislation, the original law will be repealed.

Alternatives to RCV

The NCSL staff member explained, and other conferees discussed, four alternative voting methods: approval voting, proportional voting, primary runoff elections, and top-two primaries.

Approval Voting

Approval voting involves compiling a list of all candidates and having voters select those candidates of which they approve. The winner or winners of the election would be those with the most approval votes.

Proportional Voting

Proportional voting uses multi-member districts, and elects several people, rather than a single individual, to represent each district. Seats in these multi-member districts are divided among the parties according to the proportion of votes received by the various parties or groups running candidates. There are several variations of proportional representation, but none is widely used in the United States.

Primary Runoff Elections

Primary runoff elections are a second primary election held when none of the candidates in the

first primary election receives a majority of votes. Ten states use primary runoff elections. The details and format of these elections varies widely from state to state.

Top-two Primaries

In top-two primaries, all of the candidates, no matter their party affiliation, are listed on a single ballot. The two candidates who receive the most votes then go on to the general election, regardless of their party affiliation. This system would allow two candidates from the same party to go on to the general election.

CONCLUSIONS AND RECOMMENDATIONS

The Committee members noted no changes to law would be needed to allow municipalities to implement RCV for their non-partisan elections.

Following discussion, the Committee recommended no changes be made to Kansas law concerning the implementation of a ranked choice voting system.