

MINUTES

SPECIAL COMMITTEE ON ELECTIONS

October 27, 2017
Room 582-N—Statehouse

Members Present

Representative Keith Esau, Chairperson
Senator Elaine Bowers, Vice-chairperson
Senator Oletha Faust-Goudeau
Representative Vic Miller
Representative Jack Thimesch
Representative John Whitmer

Member Absent

Senator Steve Fitzgerald – Excused

Staff Present

Jill Shelley, Kansas Legislative Research Department
Joanna Dolan, Kansas Legislative Research Department
Katelin Neikirk, Kansas Legislative Research Department
Chuck Reimer, Office of Revisor of Statutes
Mike Heim, Office of Revisor of Statutes
Leslie Wolfe, Legislative Committee Assistant

Conferees

Wendy Underhill, Program Director for Elections and Redistricting, National Conference of State Legislatures
Rob Richie, Executive Director, FairVote
Senator Andre Cushing, Assistant Majority Leader, Maine Senate
Danielle Fox, Legislative Staff, Committee on Veterans and Legal Affairs, Maine Senate
Kyle Bailey, The Committee for Ranked Choice Voting, Maine
Connie Schmidt, Member, Ranked Choice Voting Resource Center
Bryan Caskey, Director of Elections, Kansas Office of the Secretary of State
Richard Pund, Private Citizen
Beth Clarkson, Private Citizen
Steven Davis, Private Citizen
Rob Hodgkinson, Libertarian Party of Kansas

Others Attending

See [attached list](#).

Morning Session

Welcome

The Chairperson called the meeting to order at 9:05 a.m. and thanked those in attendance for coming to the Special Committee on Elections (Committee) to study ranked choice voting (RCV).

Presentations on Ranked Choice Voting

National Conference of State Legislatures

The Chairperson welcomed Wendy Underhill, Program Director for the Elections and Redistricting Program, National Conference of State Legislatures (NCSL). Ms. Underhill presented a PowerPoint presentation on RCV and provided printed copies ([Attachment 1](#)).

Ms. Underhill provided an explanation of RCV: voters rank all candidates on one ballot as either their first choice, second choice, third choice, and so on. If no one candidate gets a majority of first choice votes in the first count, the lowest “vote getter” is eliminated, and the second-choice selection for those ballots is then counted in the next round of counting. This is repeated until one candidate receives more than 50 percent, or a majority, of the votes.

She further explained, in most elections, the requirement is only a plurality, or the highest number of votes. The plurality system has led to the establishment of two dominant parties, with party primaries acting as a first round of elimination, leaving one democrat and one republican on the general election ballot. Often the highest vote getter in the general election also receives a majority of votes, but that is not always the case. Nonpartisan and primary elections often have multiple candidates, and the winner might not receive a majority of votes cast. Even in races between the two major parties, minor parties can play a significant role in traditional elections if they receive 5 percent to 10 percent of the vote, preventing those votes from going to a majority party candidate. This is known as the spoiler effect.

Ms. Underhill stated, in Maine, it has been common for the governor’s race to include three parties, and for none of the candidates to receive a majority of the votes cast. Ms. Underhill suggested it is not a coincidence that Maine has been actively looking at implementing RCV.

Ms. Underhill proposed the fundamental policy question underlying the use of RCV is whether there is an advantage to requiring the winning candidates to receive more than 50 percent of the votes, or whether officeholders who win with a plurality are adequate representatives of the electorate.

Ms. Underhill mentioned several alternatives to traditional elections: approval voting, proportional voting, primary runoffs, and top-two primaries and explained them, as follows:

- Approval voting involves compiling a list of all candidates and having voters select those candidates of whom they approve. The winner or winners of the election would be those with the most approval votes;
- 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;
- Both primary runoffs and top-two primaries are commonly used across the country to ensure candidates win elections with a majority. Specifically, ten states have statutory provisions that require a primary runoff. Those states are clustered primarily in the Southern United States. Vermont also utilizes a runoff election, but only if there is a tie vote in the original primary. Nine other states only use primary runoffs if no candidate received a majority of votes in the primary. In those races with more candidates on the ballot, the winner is less likely to have received 50 percent, so a primary runoff is more likely to be required. The winner of the primary runoff becomes the party nominee and is sent to the general election; and
- Top-two primaries are used in California, Louisiana, Nebraska, and Washington for legislative races. In the first round, all candidates, no matter their party affiliations, are on one ballot. The two candidates who receive the most votes then go on to the general election, regardless of their party affiliations. This system allows two candidates from the same party to go on to the general election.

Ms. Underhill noted Louisiana and Nebraska have been using a system called the “Cajun Primary” for many decades. In California and Washington, the top-two primary was adopted through a citizens’ initiative. Last year, South Dakota tried to implement a top-two primary through a citizens’ initiative and the measure was rejected by the citizens.

FairVote

The Chairperson welcomed Rob Richie, Executive Director, FairVote. Mr. Richie stated RCV is currently used in 11 cities, and several others are looking at implementing RCV. He continued by stating RCV is used to:

- Promote fairness in elections and election results by ensuring elected officials have the support of the majority of voters;
- Reduce election costs by combining the primary and general election into a single election, eliminating the primary;
- Shorten campaign time, because candidates do not have to run in primary elections;

- Provide more choices for voters on election ballots;
- Address concerns about fair ballot access for minority party candidates; and
- Encourage civil and positive elections by eliminating divisive campaign tactics.

Mr. Richie stated RCV can also be used in elections with more than one winner, such as city council or elections of boards, and still ensures a majority of votes elect a majority of seats. He noted that cities using RCV are generally happy with the process, and no cities that have implemented RCV have attempted to eliminate RCV in the last ten years.

Mr. Richie also addressed some concerns about RCV. He noted there can be some difficulty in understanding RCV ballots and also some lack of understanding of controversial or surprising outcomes, where a less-favored candidate wins an election. He also noted that ballot error can increase slightly, but not significantly, since traditional voting methods also have a significant amount of ballot error. Mr. Richie stated the use of RCV has not shown substantial increases in voter turnout when compared to general election turnout; however, it also has not shown decreased turnout. Mr. Richie again pointed out that RCV eliminates primary elections, which historically have very low voter turnout. He explained the RCV initial costs may increase slightly because of the need for new ballot designs and new technology to implement the system, but then would see savings. In one city that looked at eliminating RCV, returning to a traditional election method was estimated to cost an additional \$4 million.

Mr. Richie presented an example of an official RCV official ballot from Santa Fe, New Mexico ([Attachment 2](#)).

Responding to questions from the Committee, Mr. Richie stated write-in candidates were allowed on RCV ballots. He stated most voters take advantage of the opportunity to rank candidates, and RCV has not been shown to generally increase voting time or increase voting fatigue. Specifically, he stated 85 percent of voters will rank more than one candidate. He indicated RCV could be added to primaries without impacting the two party system. Mr. Richie told the Committee that implementing RCV in a way that could impact the two party system is a policy question.

In response to another question, Mr. Richie addressed concerns that RCV violates the one person, one vote requirement of the *U.S. Constitution* by pointing out that a ballot never counts for more than one person at a time, and noted that courts across the nation had upheld this finding. He explained that “gaming the system” to try and get a particular candidate elected is even more difficult with RCV than in traditional elections, because, to accomplish this, someone would have to know how every person ranked every one of the candidates. He clarified that RCV does not eliminate all negative information from political campaigns. What RCV would reduce is negative campaigning, such as attack ads.

Finally, Mr. Richie defined a Condorcet winner as the candidate who would defeat all other candidates running in a one-on-one race. He asserted these candidates win RCV elections in the majority of cases.

Afternoon Session

Senate Assistant Majority Leader, Maine

The Chairperson welcomed Senator Andre Cushing, Assistant Majority Leader for the Maine Senate. Senator Cushing provided background by saying Maine has not elected a Governor with a majority vote since the late 1990s and noted Maine's average voter turnout is high at 60 percent to 65 percent of registered voters.

Danielle Fox, Legislative Staff for Maine Senate, provided legislative history of RCV in Maine, beginning in 2001. Studies were done regarding a number of issues, including voting by mail, open primary voting, and top-two primaries, as well as RCV. Ms. Fox stated, between 2003 and 2012, there was growing support for RCV and more detailed RCV legislation was considered during this time. 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 how a tie vote would be handled under RCV.

Senator Cushing provided an overview of Maine's recent attempt to implement RCV ([Attachment 3](#)).

Senator Cushing stated there are two ways to consider RCV legislation in Maine. Either 10 percent of all registered voters who voted during the previous statewide election must sign a petition, which is submitted to the Secretary of State, forcing the Legislature to consider RCV, or the Legislature can send the issue directly to the voters as a ballot question.

Senator Cushing noted RCV was implemented by the voters during the previous 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 provides that statewide officials can be elected by a plurality of votes. A Special Session was held in October 2017, where a bill delaying implementation of RCV until 2021 was passed by the Legislature. The Senator indicated this will allow time for proponents to submit testimony in favor of a proposal to amend the *Maine Constitution* 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 legislation passed in October 2017, the original law will be repealed.

Senator Cushing explained some concerns about using RCV. He stated due to the compressed time line, voters might change their mind about a candidate after casting their votes and there would be no chance to change the vote. When there are separate primary and general elections, voters get to look at candidates twice and could possibly adjust their votes in response to new information or opinions. He noted implementation of RCV in Maine could present a challenge, as some smaller cities use paper ballots, which would need to be counted by hand. The current optical scan machines are not designed for RCV and there would be a cost associated with updating those machines and obtaining new software to tabulate RCV ballots. He also noted the need to educate election clerks and poll workers on how to help voters navigate the new system. Finally, he expressed his opinion that RCV could potentially increase voting time and depress voter turnout.

Based on Maine's experience in attempting to implement RCV, Senator Cushing advised the Committee to look closely at the state constitution and statutes to assess the likelihood the

implementation of RCV would result in litigation. Senator Cushing also suggested, if Kansas chose to implement RCV, any implementation date should be delayed to allow needed flexibility for constitutional or legal issues that might arise.

Responding to the Committee's questions, Senator Cushing stated Portland, Maine, which currently uses RCV, had to spend \$30,000 on voting equipment and software when the city first implemented RCV.

Staff of the Office of Revisor of Statutes, responding to a question from the Committee, stated no language was found in the *Kansas Constitution* indicating anything to prevent RCV in Kansas. However, there could always be other constitutional or legal issues that would need to be addressed if RCV was pursued by the State.

Presentation on Ranked Choice Voting

Kyle Bailey, The Committee for Ranked Choice Voting, presented more information about RCV in Maine ([Attachment 4](#)). Mr. Bailey noted the constitutional questions discussed by Senator Cushing pertained to only three types of elections: general elections for House, Senate, and Governor. He stated Maine frequently has four or more candidates running for a single office and, because of this, there is a long history in Maine of leaders who are not elected with a majority of votes and elections that are defined by the spoiler effect.

Mr. Bailey stated, in 2008, the League of Women Voters in Maine looked for solutions and ultimately endorsed RCV. More recently, a grassroots movement presented a petition concerning RCV to the people of Maine in 2014, and 40,000 signatures were collected. There was a successful attempt to adopt RCV by statewide referendum in 2016. Maine law allows for a people's veto that would allow voters to decide if they want to overturn the 2017 delay and repeal legislation and put the 2016 law passed by referendum back in place. If the people's veto is successful, RCV will be back on the ballot in June of 2018.

Mr. Bailey stated one of the benefits of RCV is candidates, parties, and PACs have to engage all voters. With RCV, candidates think twice about skipping an opponents house because even if they are not voters' first choice, they want to be their second choice. He emphasized that RCV also makes elections more about discussing issues, rather than focusing on polling data. He also mentioned that RCV does not result in as much political division as the campaign process for traditional primary elections. In his opinion, RCV empowers voters to be able to express their true preferences without fear of the spoiler effect. He noted that RCV also provides more accountability in elections, as results can be reviewed and sorted easily. Finally, he indicated the benefits of RCV for military overseas ballots in states that use runoff elections. Alabama, Arkansas, Illinois, Louisiana, and Mississippi all use RCV for their overseas runoff ballots, as getting two ballots to these voters is difficult in the short time frame of a runoff election.

Responding to questions, Mr. Bailey stated 90 percent of votes are tabulated through a machine and the other 10 percent are counted by hand. Hand counts are done in smaller localities where the population is 1,000 or less. On election night, the clerks only report the first-choice selections. If tabulation of first round votes results in one candidate receiving a majority of votes, then the race is over and that candidate wins. If no candidate receives a majority of votes, then a second round of counting begins. State police transport the ballots to the central counting facility. The election clerk maintains a copy as well. The ballots are then retabulated at

the central facility. The process to determine a winner, if multiple rounds of tabulation are required, takes about two days.

Presentation on Ranked Choice Voting

Connie Schmidt, member, Ranked Choice Voting Resource Center, provided information regarding how to implement RCV and administer elections using the method, based on her experience helping implement RCV in Minneapolis, Minnesota, in 2009 ([Attachment 5](#)). Ms. Schmidt stated several steps to secure a successful RCV in Kansas, which include:

- Review of state and local election law, making sure language is written broadly to allow flexibility;
- Assess current voting systems and ballot design to ensure election results can be quickly and accurately tabulated;
- Assess whether voting machines can produce cast vote records, which are crucial to successful implementation of RCV;
- Create a plan for tabulating RCV results;
- Design a ballot that is easy to understand; and
- Propose a method of and funding for voter education and outreach.

Ms. Schmidt noted several election machine vendors are now including RCV tabulation capabilities in the software on their machines.

She stated the benefits of RCV for Kansas would include:

- The elimination of expensive primary elections, particularly municipal primaries;
- A reduction in the expense of managing a primary election, including advance voting, postage, printing, and poll worker training;
- An increase in voter turnout by eliminating primary elections;
- Voters would only go to the polls once and would elect officials at every election;
- A voter's preferences would still be considered, even after the voter's first choice candidate is eliminated; and
- Negative campaigning would be reduced because candidates would focus more about their campaign than other candidates.

Ms. Schmidt indicated the challenges of implementing RCV include obtaining voting equipment and software that can handle the RCV process.

Responding to questions from the Committee, Ms. Schmidt explained RCV can use paper ballots or electronic voting machines and the general voting process would be the same; only the ballot design would be different.

Ms. Schmidt responded to a question on the mathematical elimination of candidates by explaining that the number of times a candidate was voted on in the first, second, and subsequent rounds of the ballot tabulation is counted. If the candidate's total number of votes did not equal over 50 percent, then they would be mathematically eliminated. Responding to a question about tabulating votes in districts that cross county lines, Ms. Schmidt stated the county with the largest number of residents would be set up as a lead county, and if no candidate received a majority of votes, the ballots would be transported to the lead county for further tabulation.

Bryan Caskey, Director of Elections, Office of the Secretary of State, provided clarification that under Kansas law no county ever tabulates another county's ballots for national or state office. Under current law, ballots do not cross county lines.

Public Comment

Richard Pund, a private citizen, ([Attachment 6](#)) indicated his belief that RCV would: increase competition in elections; provide more choice for voters, particularly minority party voters; and would establish a broader base of support for officials elected with a majority of votes.

Beth Clarkson, a private citizen, ([Attachment 7](#)) stated she supports RCV, but only if combined with secure and transparent vote-counting processes. She expressed concern about audits of ballots and voting machine accuracy.

Steven Davis, a private citizen, ([Attachment 8](#)) indicated RCV has some benefits, including increasing voter turnout, providing voters with more choices, and increasing voter's happiness with the choices they make. He also expressed several concerns about RCV, stating RCV is complicated; does not provide immediate results if additional rounds of tabulation are required; increases the chance of tie votes, resulting in litigation; and increases the chances of spoiled ballots, ballot mistakes, and incomplete ballots. He also expressed concern that RCV would increase the amount of time it takes a voter to cast a vote, creating longer lines and discouraging other voters. Finally, he stated that RCV would make determining voter intent, as required by Kansas law, more difficult.

Rob Hodgkinson, representing the Libertarian Party of Kansas, expressed his opinion that RCV increases voter participation, empowers people to vote, gives a platform to candidates with the best ideas, and moderates negative campaigns. He also stated RCV gives elected officials a chance to lead because they are elected by a majority of voters.

The ACLU submitted written-only testimony ([Attachment 9](#)).

Staff responded to a question from the Committee by stating cities could already implement RCV under current law, but counties could not. Under their home rule authority, cities can pass charter ordinances establishing their own election procedures.

Representative Miller moved to report the Committee has no recommendation for change of the Kansas statues. Representative Whitmer second. The motion carried.

The Committee adjourned.

Prepared by Rebecca Cole and Joanna Dolan

Edited by Joanna Dolan

Approved by the Committee on

February 19, 2018

(Date)