

RANKED-CHOICE VOTING: OVERVIEW AND MODEL LEGISLATION

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MARCH 2024

KEY POINTS

- Ranked-choice voting is slow, confusing, and complex.
- RCV violates the one person, one vote doctrine.
- RCV has been banned in five states due to its confusing and controversial outcomes.

“THE BEST ARGUMENT AGAINST RANKED-CHOICE VOTING IS ITS TRACK RECORD. SUPPORTERS ARGUE THAT THE SYSTEM ENSURES MAJORITY RULE, BUT THIS IS A FALSE MAJORITY AND ONLY COMES ABOUT AFTER VOTERS’ LEGAL BALLOTS ARE THROWN IN THE TRASH.”

**~THE FOUNDATION FOR
GOVERNMENT ACCOUNTABILITY
(GREIBROK & MALISA, 2023, P. 10)**

ISSUE

In recent years, ranked-choice voting (RCV), also known as instant runoff voting or preferential voting, has been propped up as a more effective alternative to the traditional method of election employed to select officeholders. In RCV, voters rank candidates for a particular office in order of personal preference. The candidate that receives at least one more vote than 50% of the first-choice ballot wins. However, if no candidate crosses that threshold, then an instant runoff ensues. In the instant runoff, the candidate with the fewest first-choice ballots is eliminated from the race, and the eliminated candidate has their ballots reallocated. If a voter’s first choice gets eliminated, that vote now goes to their second choice. This process repeats itself until a candidate receives at least one more vote than 50% ([Quintero & Ennis, 2023](#)). Texas should ban RCV because it disenfranchises voters through ballot exhaustion and because its structure is in violation of the Texas Election Code.

BALLOT EXHAUSTION

A prominent issue that arises with the RCV procedure is ballot exhaustion. Ballot exhaustion occurs “when a voter overvotes, undervotes, or ranks only candidates that are eliminated from contention” ([Alaska Policy Forum & Maine Policy Institute, 2020, p. 2](#)). For example, “if a voter only ranks two of the five candidates and those two are eliminated in the first and second rounds of tabulation, their choices will not be considered in the remaining rounds of tabulation” ([Von Spakovsky & Adams, 2019, para. 11](#)). A 2015 study reviewed 600,000 ballots in four local-level elections in Washington and California, where both states utilized RCV ([Burnett & Krogan, 2015](#)). The study found that “as a result of ballot exhaustion, the winner in all four of our cases receives less than

a majority of the total votes cast” (p.1). In a separate study, an examination of the “2010 election for San Francisco’s Board of Supervisors in District 10 resulted in 9,608 exhausted ballots whereas the prevailing candidate only received 4,321 votes” ([Alaska Policy Forum & Maine Policy Institute, 2020, p. 7](#)).

More recently, in August 2022, Alaska held a special election for their only congressional seat. According to an article in *The Federalist*, the election ended with the selection of the “first Democrat to hold Alaska’s lone congressional seat since the early 1970s, despite nearly 60% of Alaska voters casting their ballots for a Republican” ([Marshall, 2022, para. 6](#)). In this election, there were two Republican candidates, Sarah Palin and Nick Begich III, and one Democrat candidate, Molly Peltola. The votes for the Republican candidates were split, but more importantly, 11,290 voters only selected one Republican candidate: Begich ([Graham-Squire and McCune, 2022](#)). With Begich eliminated for having the fewest first-choice ballots, the 11,290 ballots that selected him were “exhausted and removed from the election” (p. 2). Had there been a traditional election process, there would have been a primary wherein one Republican candidate would have been nominated for a head-to-head contest. Instead of Republican votes being split with Begich receiving 28.5% and Palin receiving 31.1%, one Republican candidate would have likely received all the Republican votes cast, resulting in 59.6% of the votes in the very first round ([Marshall, 2022, para. 3](#)). In this instance, RCV caused a situation wherein a candidate who would have lost a traditional election by a substantial amount ended up winning, which created an anomaly in a politically consistent state.

SLOW AND INEFFICIENT

RCV is a slow and inefficient system that offers no advantage over the current method of voting. The Foundation for Government Accountability presented the 2021 Democratic mayoral primary in New York City as an example. This race began its first round with Eric Adams ahead of his opponent Maya Wiley, but neither received a majority ([Foundation for Government Accountability, 2023](#)). With no majority,

the election entered an instant runoff that took seven additional rounds and 15 days to complete ([Foundation for Government Accountability, 2023](#)). The original pool of ballots was 942,031 and with each successive round, ballots were exhausted until the final round. 140,202 ballots, or almost 15% of the ballots, were not part of the final count ([Foundation for Government Accountability, 2023](#)). Adams won the primary with 50.4% of the remaining ballots, even though he received only 42.9% of the total votes cast ([Foundation for Government Accountability, 2023](#)). What should have been a simple party primary ended up being an inefficient and time-consuming process that nominated a candidate that was already in the lead, all thanks to RCV.

INCOMPATIBILITY WITH TEXAS LAW

RCV contradicts the Texas Election Code by its very structure. Even with these contradictions, attempts have been made to actualize RCV in Texas. In 2021, the people of Austin voted in favor of adopting RCV as their method of election, but the secretary of state blocked its implementation based on a 2003 Attorney General Opinion from then-attorney general Greg Abbott. In Opinion GA-0025, Abbott explained what provisions of the Texas Election Code prohibit RCV. Abbott first establishes that even though home-rule cities have broad authority over their charters and ordinances, the “city charter must comport with state law, which requires election by a majority” ([Letter from Attorney General Greg Abbott to Representative Uresti, 2003, p. 3](#)). He then explains that a majority, as interpreted by the courts, means “more than half of the original votes, as cast and not re-assigned by the voter’s secondary or tertiary intent.” (p. 3). Finally, Abbott cites again the Texas Election Code, which states, “in the event of a plurality vote in a home-rule municipality, the appropriate official must order a runoff election” (p. 4). This means that the “instant runoff” part of RCV is preempted by the statutory runoff requirements. There is nothing in the code that would “prescribe that a runoff be held simultaneously with the main election” (p. 4). Because a home-rule charter cannot supersede the runoff requirement, Abbott concludes

that “state law conflicts irreconcilably with, and thereby preempts, instant runoff voting” (p. 5). These findings have been adequate for the time being; however, it is critical that the Texas Legislature codify those rulings so that there is unmistakable clarity as to what political subdivisions may and may not do with respect to elections.

RCV is a system that offers no advantage over the current process and even threatens to unleash a host of harm. RCV is a system that disenfranchises voters

and irreconcilably conflicts with the Texas Election Code. To maintain the doctrine of fair elections, RCV should be banned statewide.

RECOMMENDATION

The 89th Texas Legislature should enact legislation banning political subdivisions from implementing RCV-like election systems, and instead strengthen the existing “one person, one vote” system that is uniform today.

MODEL LEGISLATION

By: _____

H/S.B. No. ____

A BILL TO BE ENTITLED AN ACT

relating to the determination of a majority vote in certain elections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 2, Election Code, is amended by adding Section 2.0215 to read as follows:

Sec. 2.0215. DETERMINATION OF MAJORITY VOTE. (a) In this section, “preferential voting system” means a voting system which permits a voter to rank each candidate through a numerical designation from the candidate the voter favors most to the candidate the voter favors least.

(b) In an election requiring a majority vote to be elected to a public office, a candidate must receive more than half of the votes as originally cast. A majority may not be determined by using a preferential voting system to reassign votes.

SECTION 2. Section 2.022(b), Election Code, is amended to read as follows:

(b) Sections 2.0215, 2.023, 2.025, and 2.028 supersede a law outside this subchapter to the extent of any conflict.

SECTION 3. This Act takes effect September 1, 2025.

(1) the sharing of a driveway with another lot; or

(2) permitting fees equivalent to the permitting fees charged for the development of a lot the use of which is restricted to a single-family residence.

Sec. 211.055. NO EFFECT ON OTHER ZONING AUTHORITY. This subchapter does not prohibit a municipality from imposing restrictions that are applicable to all similarly situated lots or subdivisions, including requiring all subdivisions or all small lots to fully mitigate stormwater runoff.

Sec. 211.056. NO EFFECT ON HOMEOWNERS’ ASSOCIATIONS AND OTHER PRIVATE AGREEMENTS. This subchapter does not prohibit property owners from enforcing rules or deed restrictions imposed by a homeowners’ association or by other private agreement.

SECTION 2. This Act takes effect September 1, 2023.

REFERENCES

- Alaska Policy Forum & Maine Policy Institute. (2020). *The failed experiment of ranked-choice voting: A case study of Maine and analysis of 96 other jurisdictions*. <https://alaskapolicyforum.org/wp-content/uploads/2020-10-APF-Ranked-Choice-Voting-Report.pdf>
- Burnett, C. M., and Kogan, V. (2015). Ballot (and voter) “exhaustion” under instant runoff voting: An examination of four ranked-choice elections. *Electoral Studies*, 37, 41-49. <http://doi.org/10.1016/j.electstud.2014.11.006>
- Graham-Squire, A., & McCune, D. (2022). *A mathematical analysis of the 2022 Alaska special election for US House*. Cornell University. <https://arxiv.org/pdf/2209.04764.pdf>
- Greibrook, M., & Malisa, M. (2023, October 31). *Ranked-choice voting: A partisan plot to engineer election results*. Foundation for Government Accountability. <https://thefga.org/wp-content/uploads/2023/10/553184068-rcv-2-0-paper-10-31-23.pdf>
- Letter from Attorney General Greg Abbott to Representative Uresti. (2003, March 4). <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2003/ga0025.pdf>
- Marshall, V. (2022, September 1). *Sarah Palin should blame Lisa Murkowski for her special election loss*. The Federalist. <https://thefederalist.com/2022/09/01/sarah-palin-should-blame-lisa-murkowski-for-her-special-election-loss/>
- Quintero, J., & Ennis, S. (2023). *The case against ranked-choice voting*. Texas Public Policy Foundation. www.texaspolicy.com/wp-content/uploads/2023/03/2023-03-GftP-Case-Against-RankChoice-Voting-Quintero.pdf
- Von Spakovsky, H., & Adams, J. (2019, August 23) *Ranked choice voting is a bad choice*. The Heritage Foundation. <https://www.heritage.org/election-integrity/report/ranked-choice-voting-bad-choice>
- Welhouse, A. (2023, May 15). *These states are banning ranked-choice voting. Yours should, too*. Foundation for Government Accountability. <https://thefga.org/blog/these-states-are-banning-ranked-choice-voting-yours-should-too/>

