

MEMORANDUM

To: Honorable members of the Senate and House State, Veterans and Military Affairs committees
From: The Colorado Secretary of State, Elections Division
RE: HB 08-1378
Date: February 15, 2011

Introduction

In accordance with provisions of the Voter Choice Act (HB 08-1378), specifically section 1-7-1002(3), C.R.S., the Colorado Secretary of State submits this report to the state, veterans, and military affairs committees of the House of Representatives and the Senate regarding the following:

- a) An assessment of all elections conducted using ranked voting methods by local governments in accordance with the Voter Choice Act and by home rule cities or cities and counties in accordance with their charters from August 5, 2008, through the general election of November 2010;
- b) Recommendations for changes to statutes, rules, and local voting procedures that would be required to implement ranked voting as a permanent alternative election method for state, federal, and local special and general elections;
- c) An inventory of available election equipment necessary for conducting elections using ranked voting methods, including the costs associated with the equipment; and
- d) Any recommendations made by the designated election officials of local governments that conducted an election using a ranked voting method.¹

A. Assessment of all elections conducted using ranked voting methods by local governments in accordance with the Voter Choice Act and by home rule cities or cities and counties in accordance with their charters from August 5, 2008, through the general election of November 2010.

Aspen, Colorado

The City of Aspen is the first and only Colorado jurisdiction to conduct an election using ranked voting methods. On September 4, 2007, the Aspen City Council adopted Ordinance No. 38, Series of 2007. The ordinance amended sections 2.7 and 3.2 of the Aspen City Home Rule Charter to require the City Council to adopt and implement instant runoff voting (IRV) procedures for the election of Mayor and Council members and also required that council members be elected by majority vote.²

In November 2007, Aspen voters approved a charter amendment to have instant runoff voting in order to elect the Mayor and two Council persons both in one election and by a majority vote. Consequently, the May 5, 2009, Aspen regular municipal election was conducted using an instant runoff voting method.

Prior to the election, the Aspen City Clerk and other interested parties requested guidance and opinions from our office regarding the method and plans for the election. However, because the Colorado Secretary of State does not have any authority over elections conducted by home rule municipalities, our office was only able to provide information relating to elections conducted in accordance with Title 1 of the Colorado Revised Statutes. Furthermore, in accordance with section 1-45-116, Colorado Revised

¹ House Bill 08-1378, codified as section 1-7-1002(3), C.R.S.

² Aspen City Clerk's Office, *Instant Runoff Voting Procedures Manual*. March 2009. See: www.aspenpitkin.com/Portals/0/docs/City/clerk/archives/cc.ord.003-09sec.pdf

Statutes, any home rule municipality may adopt ordinances or charter provisions with respect to its local elections that are more stringent than any of the provisions contained in Title 1. The requirements of article XXVIII of the state constitution and of Title 1 do not apply to home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by article XXVIII and Title 1. Therefore, the State had very limited interaction with Aspen election officials and primarily relied on news, other public information sources, and written comments from interested parties and organizations to assess the election.

While the City of Aspen has verbally expressed that the election felt like a success, the first use of ranked voting methods in Colorado resulted in some controversy and conflicting opinions. Ranked voting proponents and opponents made equally passionate arguments as to why the election was both a success and a failure. Aspen City Council placed a measure on the November 2, 2010, ballot asking voters if they wanted to repeal IRV and return to the traditional June runoff election used before instant runoff voting was adopted. The referred measure was approved by the voters, and IRV was repealed for future elections.

Conflicting viewpoints and arguments relating to ranked voting in general makes assessing the Aspen election difficult. Furthermore, the City Council's adoption of a tabulation methodology that has never been employed in the United States precludes comparison to other jurisdictions in the nation that have implemented ranked voting method elections. Specifically, the Aspen City Council adopted the True Method,³ which employed a batch elimination process, a two-round method of IRV, to select winning candidates. Under the new method, if no candidate receives a majority, five of the nine city council candidates who received the fewest first place votes would be eliminated and a normal IRV process would commence for the remaining candidates.⁴

From December 15, 2010, through January 14, 2011, in preparation for this report and to gain additional insight into the election, Colorado Secretary of State staff solicited written comments from interested parties and organizations regarding the Aspen 2009 election and general use of ranked voting methods in Colorado. Our office received several written comments, copies of which are available online at the Secretary of State website at www.sos.state.co.us/pubs/elections/rankedVoting/rankedVoting.html.

Rob Richie, the Executive Director of FairVote, a non-profit and non-partisan organization that advocates on a national level for instant ranked voting, submitted written comments including an opinion relating to concerns raised about the multi-seat form of instant ranked voting developed in Aspen. He believed the True Method was defensible, and in his experience most closely replicates the prior multi-seat runoff system. But he stated that he believes jurisdictions using a ranked voting system for multi-seat elections should as their first choice implement the choice voting method of proportional voting and as their second choice use numbered positions with one seat elected for each position.⁵

Additional written comments demonstrated that depending on selection of any specific instant ranked voting tabulation algorithm, the same set of ballots could have resulted in multiple differing answers.⁶

³ This method was named after Jim True, of the city attorney's office, who presented the tabulation option.

⁴ Hedge, Aaron. *Unlocking IRV in Aspen*. The Aspen Times Weekly. October 3, 2010. See: <http://www.aspentimes.com/article/20101003/ASPENWEEKLY/101009972>

⁵ Full comments available online at http://www.sos.state.co.us/pubs/elections/rankedVoting/files/RVM_RobRichie_011411.pdf

⁶ Marks, Douglas. *IRV, Why the Counting Method Matters?* See exhibit A of written comments submitted by Marilyn Marks available at http://www.sos.state.co.us/pubs/elections/rankedVoting/files/RVM_MarilynMarks_011411.pdf

Secretary of State staff contacted and provided the Aspen City Clerk's Office several opportunities to submit written comments for inclusion in this report. To-date, our office has not received any written comments or recommendations from this jurisdiction. But considering the written comments received and the immediate repeal of instant runoff voting in Aspen, implementing ranked voting methods may not be a viable option for Colorado elections.

Basalt, Colorado

The city of Basalt, Colorado, adopted instant runoff voting in 2002 for mayoral elections in which there are at least three candidates. The city is prepared to run instant runoff elections, but no more than two candidates filed for the mayor's office in the 2004 and 2008 elections.

Basalt Home Rule Charter, Section 2.8, Instant Runoff Voting for Mayor:

For election of the Mayor, if more than two (2) candidates are running for that office, the Town shall use a procedure for instant runoff voting. The ballot shall provide a means for voters to rank all of the candidates for Mayor in order of preference. If any candidate receives a majority of all first-choice votes cast, then that individual shall be elected as Mayor. If no candidate receives a majority of first-choice votes, then the candidate receiving the fewest first-choice votes shall be declared defeated. For each ballot that listed the defeated candidate as a first choice, the second choice shall then be counted as a first choice for that ballot. If one candidate has still not received a majority of first-choice votes, then the candidate with the next-fewest first-choice votes shall be declared defeated, and the ballots for that candidate shall again be recounted based on the next choice in order on such ballots. This process shall continue until one candidate has received the majority of votes cast and counted as provided herein, and that person shall be elected Mayor.⁷

Telluride, Colorado

On November 4, 2008, voters in the town of Telluride, Colorado, passed an ordinance to adopt IRV for the next three mayoral elections, starting in November 2011.⁸ The language of the town ballot question follows:

- 1) The People of the Town of Telluride hereby call for the Town Clerk of Telluride to implement Instant Runoff Voting (IRV) for the office of Mayor for the next Mayoral Election.
- 2) IRV calls for voters to rank their preferences (i.e., first, second, third, etc.) with the ballots then counted. If no single candidate receives a majority of the votes cast by all eligible voters in the first round (i.e., more votes than all other candidates combined), the lowest vote getter is eliminated. The votes are then recalculated for the remaining candidates. When there are only two candidates remaining, a majority winner can be declared. If there is a tie at any point in the process, the Town Charter rules apply.
- 3) This initiated ordinance will expire after three (3) mayoral elections unless otherwise adopted by the Town.

Fort Collins, Colorado

A petition drive succeeded in gathering enough signatures to place on the April 2011 municipal ballot an initiative to amend the Fort Collins city code to allow ranked voting elections.⁹ On April 5, 2011, Fort

⁷ Basalt Home Rule Charter, Article II, Section 2.8. See http://www.colocode.com/basalt/basalt_00a.pdf

⁸ Town of Telluride, Ballot Issues and Questions (Question 202). See http://www.telluride-co.gov/docs/ballot_issues_and_questions_nov_4_2008.pdf

⁹ Whaley, Monte. "Ranked" Voting Push Revived in Fort Collins. The Denver Post. November 27, 2010. See: http://www.denverpost.com/news/ci_16719992

Collins voters will be asked to decide whether city elections should be conducted using ranked voting methods. If the initiative passes, the city may use instant runoff voting for the 2013 municipal election.¹⁰

B. Recommendations for changes to statutes, rules, and local voting procedures that would be required to implement ranked voting as a permanent alternative election method for state, federal, and local special and general elections.

Given only one Colorado home rule jurisdiction has conducted an election using a ranked voting method, it would be premature to make recommendations for changes to statutes, rules, and local voting procedures. Moreover, as stated in Part A above, the Aspen City Council adopted a novel tabulation methodology that presents challenges in assessing that election with regards to provisions of the Voter Choice Act.

Overall, ranked choice ballots can be counted by several methods, which can result in differing outcomes.¹¹ As stated in Part A of this report, the Secretary of State solicited and received written comments relating to ranked voting methods. Some comments demonstrate that depending on selection of any specific instant ranked voting tabulation algorithm, the same set of ballots may result in differing outcomes.¹² Other comments offered that ranked voting in general presents challenges relating to voting equipment, audit procedures, and may lead to increased costs to jurisdictions. Citing these issues, some commentators specifically request the repeal of the Voter Choice Act.

As noted in written comments, there may also be constitutional concerns with respect to implementing ranked voting in elections for state officers. In summary, Colorado Constitution, Article IV, Section 3, states that whichever candidate receives the highest number of votes cast for certain offices is elected. Ranking, in essence casting a vote for multiple candidates at a time, appears to conflict with this provision.

Considering that only one home rule jurisdiction has conducted an election using ranked choice voting, the differing methods available for tabulation, and the strong opinions represented in the written comments submitted to our office, there is insufficient evidence to support any conclusions or recommendations regarding uniform implementation of ranked choice voting. Until additional jurisdictions express an interest in and/or conduct elections using ranked voting methods that would allow further assessment of such use, this office must defer making any recommendations or changes to statutes, regulations, or voting procedures required to implement ranked voting in Colorado. Moreover, this office cannot recommend extending ranked voting procedures to state or federal elections until a uniform approach and tabulation method is developed, and voting equipment is certified for ranked voting use and available to counties who may wish to consider implementation of ranked voting. Moreover, it appears there is a potential constitutional barrier to implementing ranked voting in elections for state officers.

¹⁰ Rampy, Justin. *Ranked Voting Makes it onto For Collins' Ballot in Spring*. The Rocky Mountain Collegian. December 6, 2010. See: http://www.collegian.com/index.php/article/2010/12/120610_voting

¹¹ Dopp, Kathy. "Realities Mar Instant Runoff Voting: 18 Flaws and 4 Benefits," National Election Data Archive, 2008, page 2. See <http://electionarchive.org/ucvAnalysis/US/RCV-IRV/InstantRunoffVotingFlaws.pdf>.

¹² Marks, Douglas. *IRV, Why the Counting Method Matters?* See exhibit A of written comments submitted by Marilyn Marks available at http://www.sos.state.co.us/pubs/elections/rankedVoting/files/RVM_MarilynMarks_011411.pdf

C. An inventory of available election equipment necessary for conducting elections using ranked voting methods, including the costs associated with the equipment

With regards to state elections, relevant Colorado state statutes and/or rules require that voting systems be tested and certified for use. Currently, there are no state or federally certified voting systems that can tally elections conducted using a ranked voting method.

The City of Aspen hired TrueBallot, Inc. to develop software to tabulate the city's ranked voting election. This software was not certified or reviewed by any governmental agency.¹³ Regarding costs, Aspen city council meeting notes anticipated transition costs including voter education efforts and additional costs for computer tabulation to conduct the 2009 election. Currently, the Secretary of State is unaware of the exact accounting of the election and preparation costs.

Nancy Amick, the Rio Blanco County Clerk and Recorder, provided written comment regarding equipment. She stated that she verified with her current vendor that the county's equipment is not capable of counting ranked voting ballots. Additionally, this is not a scheduled upgrade for the future as the vendor noted that, to its knowledge; entities who had utilized ranked voting abandoned that option and reverted back to standard voting. Clerk Amick also provided a rough estimate to replace current equipment would be in excess of \$275,000.¹⁴

D. Any recommendations made by the designated election officials of local governments that conducted an election using a ranked voting method

As stated in Part A, the Colorado Secretary of State solicited written comments from interested parties and organizations, including the Aspen City Clerk and Recorder's Office. Unfortunately, our office has not received any written comments or recommendations from the only jurisdiction to conduct an election using ranked voting methods.

Conclusion

At this point, Colorado voters do not appear to be clamoring or interested in moving forward with any forms of instant runoff voting. There does seem to be some movement in that direction in the City of Fort Collins, but voters there will have the final say later this spring. Though this option only exists for non-partisan municipal elections in Colorado, other jurisdictions throughout the country have had some success using IRV in partisan municipal elections. But the number of governments using instant runoff voting remains limited.

As other municipalities consider pursuing this option, the Colorado Secretary of State's office will be available as a resource in an advisory role and will continue to provide any support allowed under the state statutes.

¹³ Hedge, Aaron. *Unlocking IRV in Aspen*. The Aspen Times Weekly. October 3, 2010. See: <http://www.aspentimes.com/article/20101003/ASPENWEEKLY/101009972>

¹⁴ Full comments available at http://www.sos.state.co.us/pubs/elections/rankedVoting/files/RVM_NancyAmick_122810.pdf