

Ohio SB 63 - Testimony opposing a ban on Ranked Choice Voting - by Dan Zavon

Chair Roegner, Vice Chair Gavarone, Ranking Member Blackshear and members of the General Government Committee:

Thank you for the opportunity to submit written testimony in strong opposition to SB 63. I have been studying and educating citizens about Ranked Choice Voting for 34 years.

Ranked Choice Voting has the potential to **save money, reduce or eliminate gerrymandering, increase bipartisan legislating**, and lead to a **more fair and representative democracy**. It gives voters the freedom to vote for their true first choice without fear that their vote will help the candidate they like least, and it gives candidates the freedom to run without fear of being a "spoiler".

Ranked Choice Voting is a positive and nonpartisan electoral reform that strengthens democracy and fair representation. It implements the will of the voters better than plurality elections, especially when multiple candidates split the votes from a particular part of the political spectrum. **There is no good reason to prohibit Ranked Choice Voting at any level - federal, state or local.**

Majority rule is fundamental to democracy. It is better to have elected officials who have received a majority rather than a minority of the votes.

SB 63 would continue to allow candidates to win with less than a majority (as happens in our current plurality elections without runoffs).

Ranked Choice Voting (Instant Runoff Voting) is simply a *better, faster, and cheaper* way to determine a majority winner. RCV is *better* because winners have the support of a majority, not just a plurality, of the voters. (The traditional way to get to a majority winner is a runoff election weeks later, almost always with much lower turnout than the initial election.) RCV is *faster* than a traditional runoff because it is an instant runoff election. It is *cheaper* because it saves the cost of a separate runoff election. Ranked Choice Voting also avoids the drastic drop-off in turnout that almost always happens with traditional runoff elections.

SB 63 is an **unconstitutional overreach** of state authority in violation of municipal powers of home rule. The state legislature can pre-empt municipal legislation in almost any area of law they wish to occupy **EXCEPT** anything related to **local self-government**. There is nothing more central to self-government than how a municipality elects its representatives and other officials, so this is clearly an area in which the **state legislature has no authority**. Coercing municipalities by threatening them with severe financial penalties if they decide to use Ranked Choice Voting effectively negates their Constitutional right to home rule.

The **Ohio Constitution** states:

Article XVIII, Section 3 | Municipal powers of local self-government

Subject to the requirements of Section 1 of Article V of this constitution,

municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

Article XVIII, Section 7 | Home rule; municipal charter

Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder **all powers of local self-government**.

From relevant **Ohio Supreme Court** decisions:

State, ex rel. Evans, v. Moore 69 Ohio State.2d 88 (1982), 431 N.E.2d 311

p. 90 "A city may not regulate activities outside its borders, and **the state may not restrict the exercise of the powers of self-government within a city.**"

City of Canton v. State of Ohio (2002) 95 Ohio St.3d 149, 766 N.E.2d 963

p. 151 "**A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.**"

Twinsburg v. State Employee Relations Bd. (1988), 39 Ohio St. 3d 1, 20, 539 N.E.2d 103.

The first step in a home-rule analysis is to determine "whether the matter in question involves an exercise of local self-government or an exercise of local police power. If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because **the constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction.**"

Even if the state legislature has authority to legislate on issues of voting in statewide and federal elections, **SB 63 still should be rejected because Ranked Choice Voting is a good thing, not a bad thing.** The Council of State Governments analysis of RCV concluded: "As state and local governments continue to reconsider how best to run their elections with an eye toward issues like election security, trust in democracy, and voter access, ranked choice voting is one tool they are considering and often adopting. There are certainly many things to consider when evaluating whether to use ranked voting. **Given its popularity with many voters and advantages over other systems of voting, ranked choice voting is worth a closer look.**" *

Opponents of Ranked Choice Voting exhibit a **profound misunderstanding** of what RCV is and how it works to accurately reflect the intent of the voters. This has led to many **false claims against Ranked Choice Voting**. Some examples:

Claim: Ranked Choice Voting would violate Ohio's 1-person 1-vote system

Response: **FALSE** Ranked Choice Voting is entirely consistent with 1-person 1-vote. **Each voter has one vote.** A traditional runoff does not violate one person, one-vote, even though those who participate are voting a second time to help determine a majority winner, while those not participating in the runoff have voted only once. It is each voter's choice whether to participate in the runoff - all have an equal chance to do so. Ranked Choice Voting is simply a faster (and cheaper) way to conduct a runoff, and every voter has an equal opportunity to rank as many or as few candidates as they wish.

Claim: Ranked Choice Voting "undermines integrity of elections in Ohio."

Response: **FALSE** This claim regarding election integrity is not supported by any evidence. In fact, **RCV improves election integrity** by guaranteeing a majority winner and incentivizing honest rather than strategic voting. The fact that some state legislatures have banned RCV is not evidence of an RCV problem with election integrity. All or most of the 10 state legislatures which have banned RCV are controlled by the same political party. RCV is a nonpartisan system, but those controlling some state legislatures seem to fear that fairer elections might threaten the lock on power they have gained through partisan gerrymandering of legislative districts. Fair elections will reduce the power of those who have unfairly rigged the system for their own electoral advantage.

Claim: "Ranked Choice Voting forces voters to rank candidates in order of preference."

Response: **FALSE** **Ranked Choice Voting does not force anyone** to rank any candidates. Voters can decide to rank 0, 1, 2, 3 or more candidates, just as voters always have the choice whether to participate in a primary election, a general election, and/or a possible runoff election. They can decide to participate in 0, 1, 2, or all 3 of these elections.

Claim: "The only way to achieve this 50% + 1 result is to toss out valid ballots through a ranking system."

Response: **FALSE** A candidate receiving a majority of first choice rankings is elected without any runoff. Absent such a majority, the instant runoff feature of RCV is the way a majority winner is determined. The candidate with the fewest first choice rankings is eliminated, but ballots listing that candidate first are not "tossed out" or "wasted." Instead, they count for each voter's second ranked choice. It is our current system (without runoff elections) which "tosses out" all votes other than those cast for the leader of the first and

only round of voting. When there are more than two candidates, the winner may have less than half of the total vote, while a majority of votes (all those cast for the multiple losers) can well be seen as “thrown out” or wasted since they had no impact on the election results.

In a Ranked Choice Voting election, **every ballot always counts for the voter’s highest ranked candidate who is still in the running** (i.e., has not been eliminated). That is exactly what happens in a traditional runoff election, where a voter’s first choice may no longer be on the ballot, so everyone votes for their favorite candidate who *is* still on the ballot. The **ranking** system, far from causing ballots to be thrown away, **prevents wasted votes** by allowing a backup choice to receive a vote if the voter’s favorite can’t win.

Claim: “In this system voters are given an ultimatum: Vote for candidates you dislike or risk having your ballot ‘tossed out.’”

Response: **FALSE** **Voters never have to rank any candidate they dislike.**

They simply rank the ones they do like in order of their preference. If there are seven candidates, and the voter has a preference among three of them, but does not have a preference among the other four, that voter is free to rank only their favored three in order of preference. If all three are eliminated, that voter has not been disenfranchised any more than voters in our current system are disenfranchised by voting for a losing candidate.

Claim: “Results of ranked choice voting often contradict voter intent. In Maine 2018 Congressional race, the Republican candidate received the most votes but lost the election.”

Response: **FALSE** That Republican candidate had less than a majority, despite having the most first choice rankings. The instant runoff added more votes to another candidate who thereby became the only candidate receiving a majority of the votes. The candidate with the most votes won (duh! - majority rule).

Claim: “In Alaska’s 2022 special election, Republican candidates collectively earned 60% of the vote, but the Democrat won due to ranked-choice tabulation.”

Response: **FALSE** This implies that a Republican should have won, but the Democrat won because a majority was required, not because RCV was used to determine that majority. Sarah Palin urged *her* voters **not** to rank any other candidate (not even the other Republican, Begich) as second choice. Many Begich (Republican) voters ranked Democrat Peltola second choice, resulting in her majority win, since Palin was disliked even by many Republicans. The ballots were cast according to the voters’ listed preferences of individual candidates, regardless of party affiliation.

There is **nothing nefarious about the first round leader failing to win in the final round** of a Ranked Choice Voting count. That also happens in a traditional runoff, where the final winner might have come in second in the general election. The suggestion that the leader in the first round is unfairly robbed if they are not

ahead in the final round makes no sense. If the leading candidate (but without a majority) in the general election were automatically entitled to win a traditional runoff (or the final round of RCV vote counting), there would be no point in having a runoff election. The whole point of having a runoff (traditional or RCV) is to determine a majority winner. There is no winner until that majority is achieved.
First-past-the-post is fine, as long as "the post" is 50% plus one.

Claim: The experience of five Ohio cities which used Ranked Choice Voting in the 20th century was "a failed experiment."

Response: **FALSE** **RCV was repealed not because it didn't work but because it did work.** It gave substantial minorities their fair share of representation on city councils for the first time. Powerful interests didn't want that fair representation, and led the repeal efforts, often using racist fear tactics.

What are proponents of SB 63 afraid of? Fair representation? Majority rule? What's wrong with better, faster and cheaper? Ranked Choice Voting should be encouraged, not banned.

Respect the voters. Respect home rule. Reject SB 63.

Dan Zavon 4020 Rose Hill Ave Cincinnati OH 45229 danzavon@gmail.com

* *Ranked Choice Voting: What, Where, Why and Why Not*, by Jennifer Horton and Dr. Dakota Thomas, posted on the Ohio Legislature website related to HB 684 (the RCV ban proposed in the last session). Under the heading "The Future of Ranked Choice Voting in the U.S."