

Voters to decide on ranked-choice voting, non-citizen voting questions

Ceilidh Kern :: 10/10/2024

On Nov. 5, Missouri voters will have the opportunity to cast their vote on an amendment seeking to ban ranked-choice voting and non-citizen voting.

According to Missouri State Sen. Ben Brown, who sponsored the bill that became Amendment 7, the amendment is meant to improve the public's confidence in the election system, which he said is currently "at an all-time low."

However, others, such as Travis Crum -- an associate professor of law at Washington University in St. Louis -- say the amendment utilizes a hot-button issue to "ram through" limitations on the power of local governments.

Ranked-choice voting

Rather than selecting one candidate per race, ranked-choice voting involves ordering candidates from most to least favorite.

If no candidate receives more than 50 percent of the vote in the first round, the candidate with the fewest votes is eliminated, and the votes for that candidate then go to voters' second choices. This process repeats until a candidate receives more than 50 percent of votes.

While ranked-choice voting has been implemented in cities and states across the country, there are currently no municipalities in Missouri using a ranked-choice voting system, according to Larry Bradley, a ranked-choice voting advocate.

Missouri State Sen. Ben Brown, who sponsored the bill that put Amendment 7 on the November ballot, said it is the experiences of other governments with ranked-choice voting that made banning the practice a "priority" of his legislative term.

"This is supported by real-world examples really everywhere that it's been enacted up to this point," Brown said. "A study in Maine revealed that, since their passage of ranked choice voting, 60 percent of victors in ranked-choice voting elections did not actually receive a majority of the total number of votes cast, which underscores this creation of an artificial majority."

"You have this phenomenon commonly referred to as 'trash ballots,' where if you don't follow the often-convoluted instructions to a T, or if the candidate who you feel represents your values doesn't make it through successive rounds, then you essentially don't have a say in who the final victor is," he added.

Brown said that "with ranked-choice voting, every vote doesn't count, which means that every voice doesn't count."

However, according to Bradley, "The American courts have held for a couple of decades that ranked-choice voting is in compliance with one man, one vote."

"That's because everyone's vote only counts for one candidate at a time," he said.

Bradley said the current system of voting already disenfranchises people.

"It creates the spoiler scenario, which is to say there's the candidate you're totally opposed to, the candidate that you would normally favor but aren't really satisfied with, and the new candidate that you think would do a better job than either one," he said. "But you know that, through bitter experience, if you take your vote to the one you want to vote for, you're possibly enabling the candidate you're most opposed to to win."

"Ranked-choice voting takes that away," he added. "You can vote for who you want to vote for without fear that you're enabling the one you're most opposed to to win."

He said this issue can be seen in action in Missouri's prior elections.

"(In this year's primary) for lieutenant governor, there were only 7,452 votes that separated the top two candidates for lieutenant governor on the Republican side, and that's out of 669,100 votes cast," he said. "There were 235,262 votes for candidates other than Mr. (David) Wasinger and Mr. (Lincoln) Hough. But those 235,000 voters were unable to weigh in (on the top two candidates)."

"My opponents are going to say ranked-choice voting disenfranchises people," he added. "Well, the ballot we used today just disenfranchised 235,262 voters."

Crum said the argument about "one person, one vote" in the context of ranked-choice voting misses the meaning of the principle, which had to do with malapportionment.

"Malapportionment is when one district sends two members to the state senate and a neighboring district also elects two members to the state senate, but they have vast disparities in population across the districts," Crum said. "Ranked-choice voting is not impacting that at all."

"Ranked-choice voting is saying that, when you go to the polls, you should not necessarily be confined within the binary choice of two candidates, because in a first-past-the-post, territorial-based system, you almost always have just two dominant parties that are running for an election," he added. "The way to get out of that problem without moving away from geographic-based representation is to say, 'We're going to change some mechanisms to vote.'"

Crum said ranked-choice voting has been implemented in many areas with the goal of reducing political polarization.

"In our current system, you oftentimes have a primary election a few weeks or a few months before the general election, and the turnout in primary elections is generally much lower than in general elections," he

said. "So when you have candidates with party positions selected by voters in a primary, it's the fringes of both parties that show up the most, the motivated voters who turn out."

"Those elections probably aren't capturing the center of the political spectrum," he added. "So what ranked-choice voting is trying to do is move things more towards the center and avoid some of the harms that occur when we have political party primaries occurring in highly gerrymandered districts or otherwise uncompetitive places."

Bradley said he suspects this is why legislators moved to ban ranked-choice voting.

"If we had ranked-choice voting in Missouri, the probability is that more people would come out to vote, because they'd have more choices to vote for, and the sponsors of this bill are terribly worried that that would happen, because not only would they have to convince more people to vote for them, but they'd have to get a majority of that vote to win," he said.

"This is an admission by these people that they don't think that if they had to get a majority of the vote that their ideas are strong enough to do that," he added.

Crum said the experiences of candidates in states with ranked-choice voting -- including Alaska -- have alarmed political parties elsewhere.

"(Alaska) is what really turned some Republicans against ranked-choice voting, because what happened is you had Mary Peltola, who's a Democrat and Alaska's current representative, and two Republicans in the race," Crum said. "Enough Republicans were so turned off by (Sarah) Palin that Peltola got through, and that has fueled some of this cynicism about ranked-choice voting."

"But you had three different candidates that were across the spectrum presented to voters, and they were able to choose their candidate," he added.

As to how effective ranked-choice voting has been at reducing polarization or improving voter turnout, "We're relatively early on with many of these experiments," Crum said.

Although no municipalities in Missouri have implemented ranked-choice voting, Bradley said he and other advocates of the practice were working to get a question about implementing the system in Kansas City on the local ballot for April of next year.

St. Louis City utilizes a similar -- but still significantly different -- system called approval voting, in which voters can "approve" as many candidates for a race as they would like, and the candidate with the most approvals wins.

Because this system is already in place, even if Amendment 7 passes, St. Louis will be able to keep its system. However, Crum said he fears that what some consider a "selling point" of the policy could actually harm St. Louis in the long run.

"I think that's been a selling point by some of the advocates who are pushing for this reform, to say, 'Look, we're not trying to destroy what's happening in St. Louis,' and that's as true as far as it goes," he said. "But the way it's worded, the way that I read it, is that if St. Louis were to say that it wanted to experiment with something different than what it currently has, it couldn't do it.

"So grandfathering it in locks it in so that this particular system that exists right now."

Non-citizen voting

The other piece of Amendment 7 revolves around banning non-citizen voting in Missouri. The topic became particularly controversial during the belabored initiative petition reform process of the last legislative session, an effort that ultimately failed.

However, Brown said that listening to the "lengthy" filibusters on the issue provided him with "an opportunity to hear the arguments being made against this, and it gave me an opportunity to really do my homework and address those" concerns in his own legislation.

The controversy surrounding this issue revolves around whether the Missouri constitution already bans non-citizens from voting and, if so, whether this question is just being used as "ballot candy" to incentivize voters to vote a particular way on the other parts of the amendment.

Under the Missouri constitution, "All citizens of the United States ... over the age of 18 who are residents of this state and of the political subdivision in which they offer to vote are entitled to vote at all elections by the people."

While opponents of the amendment argue this language already prohibits non-citizens from voting, Brown said he's seen states with similarly worded constitutions allow non-citizens to vote.

"For instance, Article 2, Section 2 of the California Constitution states that United States citizens who are 18 years of age or older and are residents in the state may vote. The constitutional language that dictates who can vote in Missouri and California is nearly identical," Brown said.

"The reason why this is important to point out is because, on Aug. 8, 2023, the California Court of Appeals ruled that non-citizen voting that had been allowed in San Francisco was actually constitutional under their state law," he added. "The judge ruled that San Francisco could expand the electorate to include non-citizens, because, in their words, the language of California's constitution does not prohibit local legislation which extends the ability to vote to non-citizens."

His issue, Brown said, lies with the fact that while Missouri's constitution may not "expressly allow non-citizens to vote," "it also does nothing to prohibit it."

Bradley said he does not find it likely that non-citizen voting is or will soon become a major problem in Missouri.

"The majority of the county clerks and other election authorities in Missouri are Republicans," he said. "Do you think they're easing up and letting non-citizens register to vote?"

Brown acknowledged that, to his knowledge, there has not been significant non-citizen voting in Missouri, but he wanted to include the provision in his bill to be "proactive."

Crum said that when considering the "specter" of non-citizen voting in Missouri, it's important to keep in mind that Missouri and California's judiciaries are very different.

"There are two different things you'd need (to get non-citizen voting in Missouri). One is that you need a municipality to actually do it here first. You need St. Louis or Kansas City or Springfield or one of the more liberal bastions to move first and try to franchise non-citizens," he said. "Then you would probably see a lawsuit about whether or not it could actually be done under the Missouri state constitution.

"To me, I think it is less likely that you're going to see attempts to franchise non-citizens by localities here in Missouri, and the state court system is going to be less receptive to that argument than the California court system."