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Re: Municipal Control of Elections in Florida
Date: 2/28/2018

Questions Presented

Can municipalities in Florida adopt their own methods of election (such as ranked choice voting) for municipal elections? What does the City of Sarasota need to implement ranked choice voting (RCV) for their local elections?

Short Answer

Yes, municipalities can adopt their own methods of election. Municipalities in Florida have broad home rule powers granted to them by state law, including the power to define local election methods. This is somewhat limited by § 100.3605, which states that municipalities are governed by state election code by default, but can pass laws conflicting with state election code provided that those provisions of state election code do not apply specifically to municipalities.

The City of Sarasota needs to have its election machines certified by the state for RCV elections, and needs to adopt a local ballot design law and a local recount procedure law in order to implement RCV elections.

Discussion

Municipalities in Florida are granted broad home rule powers by the State Constitution and by State Statute. Fla. Const. Art. VIII, § 2(b); Fla. Stat. § 166.021(1). This includes the power to define “the manner of election” for elected officers in that municipality, provided that such change is approved by referendum of the electors in that municipality. Fla. Stat. §§ 166.021(4); 166.031.

This power is somewhat limited by Florida election law. First, Florida election law includes a preemption section, which states: “All matters set forth in chapters 97-105 are preempted to the state, except as otherwise specifically authorized by state or federal law. **The conduct of municipal elections shall be governed by s. 100.3605.**” Fla. Stat. § 97.0115 (emphasis added). In other words, all elections in the State (state elections, federal elections, county elections, special district elections) are governed by state law, except municipal elections. Municipal elections, instead, are governed by § 100.3605, which states:

- (1) The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality’s election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.

Fla. Stat. § 100.3605(1). That subsection is made up of three parts:

1. A default provision applying state election law to municipalities;

2. An opt-out provision allowing municipalities to define their own election laws via local charter or ordinance, or with the allowance of a state-level special act;
3. A conflicts provision, which prohibits municipalities from defining their own local election law if there exists state-level election law specifically applying to municipal elections. This requires a state statute to mention municipal elections by name (including by mention of “local elections” or some other epithet for municipal elections.)

So, in order to be allowed to adopt an election method for local elections, the State of Florida must not have conflicting election methods for municipalities in state law. There is no state-level election law applying election methods specifically to municipalities, except for recall provisions. *See* Fla. Stat. §§ 100.031, 100.061, 100.111, 100.3605 (laying out general rules for general, primary, and vacancy elections, and granting power to municipalities); *but see* § 100.361 (defining recall procedures for municipalities). Municipalities, then, are permitted to adopt their own election methods for electing local representatives.

While municipalities can adopt their own local election methods, provisions of state law applying to the administration of elections may either apply by default or explicitly apply to municipal elections and act as a temporary barrier to ranked choice voting implementation. The state ballot design statute and regulation applies by default to municipal elections, and does not lay out provisions for designing ranked choice voting ballots. Fla. Stat. § 101.151; Fla. Regs. § 1S-2.032. Sarasota will need to pass a local ordinance opting out of this ballot design law in order to design their RCV ballots.

The State’s recount regulation applies specifically to municipal elections. Fla. Regs. § 1S-2.031(2). The regulation is primarily focused on handling ballots and not the actual conduct of the recount. *See id.* This does mean, however, that the City of Sarasota likely needs to pass an ordinance defining additional recount procedures required by RCV, being careful to not conflict with any of the provisions in the regulation, in order to comply with it and § 100.3605.

State law requires all ballots to be counted at the precinct level. § 101.5606(14). Ranked choice voting ballots can be counted at a precinct level – machines can scan each ballot and produce a report of all first, second, third, and later choices of all ballots scanned. The full election cannot be tabulated until ballots are centralized. Florida election law provides for centralization of ballots. § 101.5614(3).

Florida voting system certification laws do not specifically apply to municipalities. Fla. Stat. § 101.015; 101.5607(1)(a); *see also* § 1S-5.001 (regulations defining voting system testing). Sarasota, however, uses County voting machines, which must be certified under those certification laws. Fla. Stat. § 101.015. In order to use those machines in Sarasota elections, and to activate the two year implementation requirement in Sarasota’s RCV law, the State needs to develop RCV certification testing standards and test/certify Sarasota’s voting machines to those standards.

Finally, Florida’s constitution includes a plurality provision, which applies to general elections. Fla. Const. art. VI, § 1. While plurality provisions are not inherently an obstacle for ranked choice voting elections, they have served as a barrier in the past. General elections are defined as even-year, November elections. Fla. Const. art. VI, § 5. This exempts Sarasota’s odd-

year, April elections from the plurality requirement. Additionally, municipal elections are set out separately from most other forms of election in the state. Fla. Const. art. VI, § 6.

Conclusion

Municipalities in Florida are permitted to adopt their own election methods for the election of municipal officers. Depending on the method chosen, they may need to pass local ordinances to work with or around state election administration laws. Sarasota, which adopted a charter amendment in 2007 authorizing the use of ranked choice voting in the city, could implement RCV once it passes local RCV implementation ordinances and has its voting machines certified for RCV by the state.