

Suggestions For Improving Oregon Senate Bill 791

As currently written, Oregon Senate Bill 791 has weaknesses that will cause unfair election results, unnecessary delays in vote counting, higher voter-education costs, and widespread voter frustration. These suggested changes will improve Section 3 to eliminate these weaknesses.

The specific wording suggestions for Section 3 appear below the category descriptions. For each suggested change, the relevant category name appears in square brackets.

Category Descriptions

These category descriptions explain why the suggested provisions are needed.

Convoluting Sentence

Currently paragraph “(A)” is convoluted, and covers too many concepts within a single sentence. Currently it says: *The candidate with the fewest votes in each round in which no candidate receives a majority of the votes cast in that round is defeated, and the votes cast in the successive rounds shall be retabulated among the nondefeated candidates until one candidate receives a majority of the votes cast in that round.* The suggested wording splits up these concepts into multiple sentences in multiple locations.

Flexible Ballot Marking

Because Oregon voters vote by mail — without assistance from poll workers or software-controlled equipment — it's important that election workers and outreach educators understand how some special kinds of ballot marks are interpreted. These interpretations ensure that the only excuse for a "spoiled" ballot is when it's not clear whether an oval is marked or not marked. Very importantly, the provisions in this category will greatly reduce the cost of educating voters how to mark ranked ballots. Without these provisions some clerks in small election offices are likely to unintentionally disqualify enough ballots to change the results of multiple elections.

Multiple Candidates Ranked At The Same Preference Level

The provisions in this category clarify how to count ballots on which a voter marks more than one candidate at the same ranking level. These provisions fit within the category named *Flexible Ballot*

Marking and offer the same advantages, but this category is named separately because it involves a significant change in tabulation.

Batch Elimination

This provision makes it possible for official election results to be reported on election night. Ranked ballots collect more data compared to currently used single-choice ballots, so more data must be transferred. In addition, the ranked choice voting tabulation method is not "precinct summable," which means the unique marking patterns on all the ballots must be transferred to the central counting location before the currently described tabulation process can begin. Yet another increase in data will occur because important elections will have more candidates, which will happen because ranked ballots basically eliminate "spoiler" candidates. Batch elimination provides a fair way to dramatically reduce how much election data must be transferred on election night.

Safety Net

This provision provides a *safety net* that prevents the kind of failure that occurred in the 2009 mayoral election in Burlington, Vermont. Without this provision Oregon voters will mistakenly conclude that ranked ballots do not work, and then this election reform will be at risk of getting repealed as happened in Burlington. This provision checks for a candidate who would lose against every other candidate if that candidate competed with the other candidates one at a time, and eliminates that candidate if that situation exists. When such an obviously unpopular candidate is not present, then it is reasonable to assume that the candidate who has the fewest transferred votes deserves to be eliminated. Failures to elect the most popular candidate are likely to be tolerated in *primary* elections and *nonpartisan* elections, but not *general* elections. As happened in Burlington, electing the wrong winner in a general election means the winner is from an unexpectedly different political party.

Write-In Candidates

The current wording does not explain how to handle write-in candidates when using ranked ballots. This provision ensures that election clerks handle write-in candidates in a way that ensures fairness for write-in candidates, the other candidates, and all the voters. (This provision assumes the provisions in the category *Multiple Candidates Ranked At The Same Preference Level* are also adopted.)

Number Of Ranking Levels

A limit on the number of ranking levels is needed to ensure that an election with 20 candidates does not have 20 ranking levels. As mentioned above in *Batch Elimination*, the number of candidates will increase when ranked ballots are used. If this increase seems unlikely, recall that the 2016 Republican presidential primary election had 17 candidates, and the ballot for the special election that Arnold Schwarzenegger won to become governor of California had 135 candidates. This provision suggests, but does not require, a default limit of five ranking levels. A local jurisdiction is

allowed to specify a higher or lower limit. A maximum of five levels is suggested because it's familiar to movie fans and Amazon customers.

Published Counts

This provision reduces how much tabulation data must be published after the election. The published information includes summary counts that enable voters to confirm that the winner was more popular than their favorite candidate. Without this provision some clerks in small election offices will fear the huge increase in data that comes from using ranked ballots.

Suggested Wording Changes

[All of these suggested changes apply to **Section 3** of Oregon Senate Bill 791. The first four paragraphs remain unchanged.]

[Suggested additions use **bold** style, and deletions use ~~strike-through~~ style.]

(1) **[no change]** When a nomination for or an election to an office is determined by ranked choice voting, the winner of the nomination or election shall be determined in the manner set forth in this section.

(a) **[no change]** The ballot shall provide the elector the option to rank the candidates for the nomination for or election to the office in order of choice.

(b) **[no change]** If a candidate receives a majority of the first choice votes cast for the nomination for or election to the office, that candidate is nominated or elected.

(c) **[no change]** If no candidate receives a majority of the first choice votes cast for the nomination for or election to the office, the voter tally system or counting board shall conduct successive rounds of an instant runoff retabulation in which:

(A) **[Convolutd Sentence]** ~~The candidate with the fewest votes~~ [I]n each round in which no candidate receives a majority of the votes cast in that round **one candidate** is defeated, and the votes cast in the successive rounds shall be retabulated among the nondefeated candidates until one candidate receives a majority of the votes cast in that round.

(B) **[position changed]** In each round, each elector's ballot shall count as a single vote for whichever candidate, if any, the elector has ranked highest who has not been defeated in a prior round.

(C) [Multiple Candidates Ranked At The Same Preference Level] If an elector ranks more than one candidate at the same ranking level, and if during tabulation two or three or four of these candidates are nondefeated candidates and the ballot's higher-ranked candidates have been defeated, then these nondefeated equal-ranked candidates shall split this ballot's single vote to receive equal fractional or decimal amounts that add up to no more than one count per ballot. The Secretary of State shall determine how to handle ballots on which there are more than four nondefeated candidates at the same ranking level.

(D) [position changed] After the first round, a majority is determined as at least one more than 50 percent of the votes cast for a candidate of the remaining candidates in ~~that a particular~~ round.

(E) [Safety Net] If there is a round in which a candidate would lose every one-on-one comparison against every nondefeated candidate, then this candidate is designated as a “pairwise losing candidate” and this candidate is defeated during the round in which this case occurs.

(F) [Convolutd Sentence] If the current round does not have a pairwise losing candidate then [t]he candidate with the fewest votes ~~in each round in which no candidate receives a majority of the votes cast in that round~~ is defeated.

(G) [Safety Net] The losing candidate in a one-on-one comparison is the candidate for whom the number of ballots that rank this candidate lower than the other candidate is larger than the number of ballots that indicate the opposite preference between these two candidates.

(H) [Batch Elimination] At the start of tabulation, if preliminary counting information indicates that one or more candidates are clearly not popular according to criteria previously approved by the Secretary of State, and if the results will not change by defeating all these unpopular candidates together, then these unpopular candidates can be defeated together in the first retabulation round.

(d) [Flexible Ballot Marking] If an elector votes by marking a printed ballot in a way that can be interpreted in more than one way, then the marks shall be interpreted in the following ways:

(A) [Flexible Ballot Marking] If an elector does not mark a ranking level for a candidate, the ballot is tabulated as if the elector ranked each unranked candidate at the lowest ranking level.

(B) [Flexible Ballot Marking] If an elector marks more than one ranking level for the same candidate, the highest (most-preferred) of the marked ranking levels is used.

(C) [Multiple Candidates Ranked At The Same Preference Level] [Safety Net] When doing a one-on-one comparison, if an elector has marked both candidates at the same ranking level, this elector's ballot is not counted in this one-on-one comparison.

(e) **[Number Of Ranking Levels]** The number of ranking levels cannot exceed the number of candidates and cannot exceed the numeric limit that is specified for that jurisdiction. If not otherwise specified a limit of five ranking levels is used.

(f) **[Write-In Candidates]** An elector may include no more than one write-in candidate among that elector's ranked choices for each nomination or each election. During tabulation when a ballot contains the name of a write-in candidate, all the ballots on which the write-in candidate's name is not written are interpreted as if that write-in candidate is at the lowest ranking level.

(g) **[Published Counts]** After the election results have been certified the Secretary of State shall publish (make available to the public) all the counts that were used during the retabulation rounds and also publish the pairwise comparison counts for the candidates who are popular enough to have any possibility of winning. "Pairwise comparison counts" means the count of ballots that support the first candidate in a pair over the second candidate in that pair and the count of ballots that support the second candidate over the first candidate in that same pair. When a tabulated vote count is not an integer, the published vote count is rounded down to the nearest integer.

(2) The Secretary of State may adopt **additional** rules necessary for the implementation of this section.

Questions?

These suggestions were written by **Richard Fobes**, who is "the VoteFair guy" and the subject-matter expert for the Ranked Choice Oregon ballot initiative. You can reach Richard through the contact info at the bottom of the RankedChoiceOregon.org website.