Instant Runoff Voting (IRV) in a Nutshell
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I. Introduction.

A. My disclaimer
   1. Op-ed in *Star Tribune* asserting the constitutionality of IRV
   2. Op-ed with former Senator Durenburger Duluth paper arguing in favor of IRV.

B. Four issues
   1. What is IRV?
   2. What are the reasons for IRV (pro/con)
   3. Legal issues
   4. Status of the Minneapolis case/St. Paul ballot initiative

II. What is IRV?

A. "Instant runoff voting eliminates the need for primary elections by allowing voters to rank, in order of preference, multiple candidates on a single ballot." *quoting Minnesota Voters Alliance v. City of Minneapolis* (see below).

B. The concept is simple: It's like ordering in a restaurant
   1. Ranking of my favorite foods in a restaurant
      a. If I do not get my first pick then I get my second choice
      b. I still only eat one dinner
   2. We rank items all the time

C. With IRV, I rank my choices and if no one gets a majority vote then the weakest candidate drops off and those who voted for her as their first choice have their votes transferred to their second choice.
   1. I still only get one choice counted.

D. IRV goes back to nineteenth century (City of Hopkins, Minnesota had it at one time)

E. Used around the world and in several cities in the United States.

III. What are the reasons for IRV?

A. Pro
   1. Ensures winning candidate gets majority support
   2. Addresses "wasted vote" or spoiler problem
   3. Helps third parties
   4. Eliminate runoffs (saves money)
   5. Would reduce chances of recounts/contests (?)

B. Con
   1. Violates one person, one vote
   2. Contrary to state precedent (*Brown v. Smallwood*)
   3. Too confusing
   4. Produces perverse results (monotonicity)

a. The claim is that IRV is non-monotonic–that is–a voter can theoretically hurt her first choice by voting for that candidate.

IV. IRV Status

A. Minneapolis

1. On November 6, 2006 voters in Minneapolis adopted a charter amendment establishing IRV for its city elections commencing as early as 2009.
2. The Minnesota Voters Alliance (MVA) challenged the federal and state constitutionality of IRV in Hennepin County Court as violating the one person, one vote principle, and secondarily, as claiming that the City lacked the home rule authority to enact IRV.
3. On January 13, 2009, Hennepin County Court granted summary judgment in favor of the City of Minneapolis, ruling that IRV did not violate the one person, one vote principle and that the City had the home rule authority to enact IRV.
4. The Minnesota Supreme Court has accepted the case for expedited review with oral arguments scheduled for May, 2009.

B. St. Paul

1. In 2008 voters submitted a sufficient number of signatures on petition to place IRV on the ballot. City Attorney John Choi advised City Council that IRV might be unconstitutional and he advised holding off on placing the charter amendment on ballot until the legal challenges in the Minneapolis case resolved.

V. Minneapolis Legal Challenge

A. *Minnesota Voters Alliance v. City of Minneapolis*, ___ N.W. 2d. ___ (D.Ct. 2009) (January 13, 2009).

1. MVA sought declaratory judgment declaring Minneapolis Charter Amendment establishing IRV to be in violation of the United States and Minnesota Constitutions.
2. Secondary challenge that City lacked home rule authority to adopt IRV.

VI. Legal Issues: Is IRV constitutional?: The One Person, One Vote Challenge

A. In *Minnesota Voters Alliance v. City of Minneapolis*, __ N.W. 2d. __ (D.Ct. 2009) (January 13, 2009) the Court (Judge McGunnigle) upheld the Minneapolis charter amendment.

B. Standard of review

1. This is a facial challenge and facial challenges are disfavored and require a showing of unconstitutionality under all circumstances. *Crawford v. Marion County Election Board*, 128 S.Ct. 1610 (2008).
2. While voting is a fundamental right and normally must be examined under strict scrutiny, the Court noted that under, *Burdick v. Takushi*, 504 U.S. 428 (1992), not regulations will be examined under this level of analysis. Instead,

only regulations that severely burden the right to vote will be examined under strict scrutiny. Regulations found not to impose a severe burden must be examined under a more flexible standard that assesses the character and magnitude of the government's interest against the burden on the voter.

a. City interests
   (1) Respect the democratic process or will of people who voted for IRV
   (2) Save money
   (3) Produce higher voter turnout

b. Burden on Voters' rights
   (1) None asserted by plaintiffs beyond assertion that IRV is unconstitutional.

3. Court decides strict scrutiny not appropriate and therefore uses the more flexible standard of analysis under *Burdick*.

C. It does not violate either the U.S. or Minnesota Constitutions

1. Rejects the First Amendment claim that it unconstitutionally violates right of freedom of association.

2. It does not violate the Equal Protection clause under either the federal or state constitutions.

a. IRV is confused with a very different voting system (Bucklin method) the Minnesota Supreme Court declared unconstitutional about a century ago in *Brown v. Smallwood,* 153 N.W. 953 (1915)

b. In *Brown*, Duluth allowed voters to cast multiple votes.
   (1) 12,000 voters produced 18,000 votes
   (2) This system clearly violated what had come to be known as the "one person, one vote" standard.

c. In IRV, one person still gets one vote counted.
   (1) 12,000 voters produce 12,000 votes counted

d. Monotonicity is a remote hypothetical issue and even if it occurs it affects all voters equally and therefore not an equal protection violation.
   (1) Plaintiffs have failed to produce an holding declaring a voting system unconstitutional based on monotonicity.
   (2) Voting systems do not have to be flawless to be constitutional.

D. Even if *Brown v. Smallwood* still precedent, it is no longer good law.

1. Bucklin and IRV different

2. Reapportionment cases and one person, one vote, decisions have rendered *Brown* inapplicable

3. Michigan and Massachusetts have upheld IRV against one person, one vote challenges.

VII. Legal Issues: Do cities have home rule authority to adopt IRV?

A. Yes, it has the authority to enact IRV.

B. The issue here is whether Minneapolis is preempted by state law from placing IRV on the ballot even though it has home rule authority?

C. Does *Minn. Stat*. § 205.02 implicitly preempt St. Paul from adopting IRV?
   1. A broad reading of it might suggest yes but this is an incorrect reading.
   2. "*Minn. Stat*. § 205.02 states that the provisions of Minnesota Election Law shall apply to municipal elections *so far as practical*."
      a. This language suggests that the legislature recognized that the law was not absolute.
      b. DS: In effect, no preemption.
   3. A proper reading of *Minn. Stat*. § 205.02 in conjunction with home rule authority suggests that St. Paul has home rule authority to enact IRV.
      a. Home rule authority means that when in doubt, ambiguity sides in favor of a local government's authority to act.

D. Court also notes other jurisdictions have upheld IRV on constitutional grounds.

VIII. Where/What Next for IRV?

A. Minnesota Supreme Court review of the *MVA* case
   1. MVA challenges IRV only on constitutional grounds
   2. Does not challenge on home rule authority issues
      a. Plaintiffs hang hat on *Brown v. Smallwood* and the Monotonicity issue.

B. 2009 Minneapolis elections

C. St. Paul Ballot initiative

Instant-runoff voting is destined to succeed
Here's why challenges to it based on a 1915 court case will fail.

By David Schultz

http://www.startribune.com/commentary/story/1453058.html

October 1, 2007

Is instant-runoff voting unconstitutional? Not according to a recent letter by Minnesota Attorney General Lori Swanson. A recent article in this paper misinterpreted her letter -- all Swanson did was to provide reasonable legal advice to Secretary of State Mark Ritchie regarding potential lawsuits challenging instant runoff. But even if her letter had determined that the process was unconstitutional, there are three basic reasons to conclude why challenges to it based on an antiquated court case will fail.

First, the 1915 case was not about instant-runoff voting. It was about a law that effectively gave Duluth citizens two votes in some situations, a clear violation of both the Minnesota and United States constitutions. The concern of that decision was based on what the courts now call the "one person, one vote" standard. Instant runoff does not violate this standard because it does not give anyone two votes. It merely allows voters to rank their preferred candidates.

Second, the 1915 decision, whatever validity it may have once had, has been undermined and surpassed by more than years of election law and voting-rights cases. U.S. Supreme Court cases such as Reynolds vs. Sims and Baker vs. Carr refer to the dilution of voting power as a result of district lines being drawn without a balance of population. This is not the issue in instant-runoff voting.

Reynolds and Baker set the precedent for the "one person, one vote" standard in voting-rights cases. Their logic and holdings do not prevent establishment of instant-runoff voting. Each voter has the same voting power as any other, regardless of where that person lives. Voters may rank their voting preferences, but all votes are weighted equally. Nothing here either contracts or expands anyone's voting power, and no dilution or double-counting of votes exists.

More importantly, other election law cases have effectively overruled the logic of the 1915 Minnesota case. Even if laws allowing individuals to rank their candidates were considered unconstitutional at one time, a series of cases since the passage of the federal Voting Rights Act in 1965 have upheld numerous laws to make it easier for people to have their preferences counted. These rulings, seeking to guarantee voting rights for minorities, have rendered obsolete the 1915 decision and mandate that state and local governments develop voting mechanisms that enhance voter choice.

Finally, since 1915, American democracy has matured. The political process now seeks to provide more choices than it once did, as evidenced by numerous court decisions that have made it possible for third-party candidates such as Jesse Ventura to run for office. The courts, mindful of voters' demands for more options, have properly responded by interpreting election laws to empower and not limit options on election day.

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