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Being listed first on ballot has advantages

By Jim Adamsjadams@courier-journal.com

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For decades in Kentucky, the decision about which candidate's name goes first on ballots in most general election partisan races has come down to one question: Which party carried the state in the previous presidential election?

After Bill Clinton won Kentucky in 1992, for example, Democratic candidates got the top line in most of the races, until 2000, when George W. Bush won the state, and Republicans took the honors.

In the most recent election this month — as a result of Bush's 2004 win in Kentucky — Republicans were first and Democrats second on ballots in all 120 Kentucky counties.

Kentucky is one of at least 18 states that decide "ballot order" based on past election results, but some experts — and some candidates — say it may be unfair and should be changed.

Democrat Scott Alexander of Hazard, for example, believes ballot position may have been an unfair deciding factor in his razor-thin loss Nov. 7 in a battle for a seat in the state House.

Having ended up just 40 votes behind incumbent Republican Brandon Smith, out of 13,918 votes cast, Alexander pointed out that he would have won if just 21 Smith voters had voted for him instead.

"I definitely think it (ballot position) made 21 votes of difference," he said.

Smith disagreed, arguing that name recognition and personal contact with voters are far bigger factors. "You don't order the first thing off the menu," he said.

But Jon A. Krosnick, a professor of communication, political science and psychology at Stanford University in Palo Alto, Calif., thinks Alexander has a strong argument.

"He should absolutely go to court," said Krosnick, who has emerged nationally as a critic of election systems like those in Kentucky. "As far as I'm concerned, it's the only way these laws are going to get changed — through legal efforts."

Across the country, politicians, social scientists and others are debating the role of ballot order and the "primacy effect" — the idea that someone faced with a choice from among a group of items is inclined, even if only slightly, to select the first one offered.

Three months ago, for example, the New Hampshire Supreme Court considered the primacy effect and concluded that a state statute giving first ballot position to candidates of the party that earned the most votes in the last election violated a section of the state's constitution that gives every resident "an equal right to be elected into office."

Kentucky's constitution has a similar section that declares, "All elections shall be free and equal."

In the New Hampshire case, the state's secretary of state, William Gardner, testified that "studies showed that the primacy effect can confer as much as a six to ten percent advantage upon candidates whose names appear on lists as long as twelve candidates."

In a Nov. 4 New York Times piece, Krosnick wrote that "candidates listed first on the ballot get about two percentage points more votes on average than they would have if they had been listed later (flipping a 49 to 51 defeat into a 51 to 49 victory)."

In one study of Ohio elections, Krosnick found a ballot order effect in about half the races studied.

And a study that Krosnick and two colleagues published in 2004 even suggested that ballot order may have decided the 2000 presidential election.

Examining results in three states that rotate candidates' names on ballots — California, North Dakota and Ohio — they found President Bush won more votes in all three states when he was listed first on the ballot than when he was listed last.

If that same "primacy effect" carried over to Florida — where Bush was first on all ballots under a state law tied to previous election results — the margin probably was sufficient to have given him the win there and, as a result, the presidency, the academics concluded.

"In that light, it seems all the more important for states to remove the bias in name ordering prevalent around the country so that Americans can have full confidence in the outcomes of its electoral contests," Krosnick and his colleagues wrote.

A different group of academics has argued that evidence of the frequency and the extent of the primacy effect is "muddled."

But even those skeptics — including Richard L. Hasen, a professor at Loyola Law School in Los Angeles who specializes in election law — do not dispute that the effect exists to some degree.

Asked last week what he thinks of Kentucky's procedure tying ballot order to the last presidential election, Hasen said: "If I were sitting in the Kentucky legislature, I would not vote for that rule. But if I were sitting as a judge and was asked to strike it down, I'm not sure what I would do."

But Hasen and two other professors who have studied ballot order — Krosnick and R. Michael Alvarez, a professor of political science at California Institute of Technology in Pasadena, Calif. — said in recent interviews that they believe the best ballot-ordering systems are those that select candidates at random, and rotate their names on ballots.

Krosnick said he believes the optimum system is in Ohio, which rotates candidates' names from

precinct to precinct, so that all candidates will be listed first in roughly an equal number of precincts. Seven states currently rotate candidates' names in some fashion.

Election review

To examine whether ballot order may have played a part in the recent election in Kentucky, The Courier-Journal reviewed the Nov. 7 returns in the state's 50 contested judicial races for seats at the Circuit Court level or higher — nonpartisan races in which ballot placement is decided at random, under a different state statute.

The newspaper found that:

- Candidates in the first ballot position won at a higher rate than those in the second position. Thirty-four candidates who held the first position won. Only 15 candidates who held the second position won, and one who held a fourth position won. That's a "win" rate of 68 percent among those listed first on the judicial ballots, compared with 32 percent for the "down-ballot" candidates.
- Incumbents who had first-place ballot positions fared even better. Of the 18 incumbents who drew first-place positions, 15 won and only three lost, a "win" rate of 83 percent. Of the 12 incumbents who drew second spots on the ballot, five won and seven lost, a "win" rate of 42 percent, nearly half that of the candidates who were first on the ballot.

The newspaper presented those results to Krosnick, who concluded that they were statistically significant. "... Most likely, you have identified a real difference that is due to the effect of name order," he said.

Hopkins Circuit Judge Susan Wesley McClure may have felt some of the effect.

She drew the second ballot position in the race to retain her seat in Madisonville in Western Kentucky — a draw she said concerned her the minute she learned of it. She said she even tried to lead voters to her name on the ballot by circulating literature that said, "Vote '2' keep Judge McClure."

But, she said, "No one really understood what that meant. 'Why are you using the number 2?' "

She lost by less than 5 percentage points to James C. Brantley.

"You can never get inside the mind of the voter and find out what is their basis for voting for someone, the real basis for it," McClure said. But, "I would think rotation (of candidates' names on ballots) ... would give you a better equalization of any benefit that ballot placement would have."

Hasen and Alvarez said they believe ballot order is less of a factor when voters are given other "cues" on which to base their decision — such as party affiliation or incumbency.

"I'm skeptical that ballot order matters in certain kinds of elections, especially general elections where there are party labels," Hasen said.

But in nonpartisan races about which there has been little media coverage and the voter is unlikely to know much about the candidates, ballot order might become more important, the professors said.

"In those kinds of races, the research has shown ... that these kinds of primacy effects can actually be operative and sometimes can be profound," Alvarez said.

Reporter Jim Adams can be reached at (502) 582-4199.

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