

## **HAVA Committee Testimony**

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The Center for Voting and Democracy is a non-partisan, non-profit organization that promotes fair elections where every vote counts and all voters are represented. On behalf of the Center, I would like to submit the following document for consideration by the HAVA Committee. It expands on the testimony I delivered at the San Francisco hearing on May 8.

### **Executive Summary**

We are at a point in history when at no cost to the voters, the state of California can ensure that all jurisdictions acquiring new voting equipment have the option to use all election methods, including ranked ballots and cumulative voting, currently used in American public elections. Requiring compatibility of new equipment with alternative systems will not cost anything, nor will it reduce the number of vendors bidding for contracts. On the other hand, failing to require compatibility will effectively prevent jurisdictions from adopting these systems until they acquire new voting equipment, which may not occur for another 20 to 30 years.

Interest in alternative systems is growing rapidly in California, so it would be a mistake not to give all jurisdictions the cost-free options to use the electoral system that the jurisdictions judge to be best.

We wish to make the following points about voting equipment and compatibility with ranked ballots and cumulative voting:

1. Interest in alternative voting system such as instant runoff voting and cumulative voting is growing in California and nationwide because these systems address problems perceived with the current systems.
2. Incompatible voting equipment has created insurmountable obstacles to adopting alternative systems.
3. Requiring compatibility with alternative systems will not increase the cost of voting equipment contracts or reduce the number of vendors bidding.
4. Failing to require compatibility will preclude many jurisdictions from even considering alternative systems during the next 20 to 30 years until new equipment is acquired.
5. The HAVA Committee should recommend that all new voting equipment be required to accommodate ranked ballot and cumulative voting.

We expand on each of these points below and provide extensive documentation to support them.

### **Attachments**

1. Federal Election Commission Voting System Standards
2. Evidence of ability of vendors to accommodate ranked ballots and cumulative voting
3. Excerpts from recent testimony prepared for the New York State HAVA Committee
4. Technical requirements of compatibility with ranked ballots and cumulative voting

## **Introduction**

The Help American Vote Act, combined with the Voting Modernization Bond Act (Proposition 41), creates an important opportunity to improve the California electoral process.

In the wake of the Florida 2000 debacle, modernizing voting equipment is the obvious first step to take. New voting equipment can significantly improve the voting process by:

- \* Making it easier to cast a vote as the voter intends through well designed, voter-friendly interfaces;
- \* Preventing invalid votes or allowing voters to correct errors;
- \* Improving access for people with disabilities, non-native English speakers, people with low literacy, and people with limited manual dexterity; and
- \* Increasing public confidence in the integrity of the electoral process.

Many people and organizations are addressing these issues admirably. We wish instead focus on a different but equally important question: ensuring compatibility of new voting equipment with alternative voting systems.

### **1. Interest in alternative systems is growing because they address problems with the current systems**

Interest in alternative electoral systems is growing in California and the nation because these systems address problems perceived in current election methods.

Several California jurisdictions have passed legislation that allows or implements instant runoff voting, several related pieces of state legislation have been introduced, and many California jurisdictions have expressed serious interest in alternative systems.

- \* San Francisco adopted instant runoff voting to increase voter turnout and save the cost of December runoff elections. The city of San Leandro and Santa Clara County have adopted charter amendments that allow the use of instant runoff voting when such technology is available. Oakland voters have passed two charter amendments that allow instant runoff voting for special elections to fill vacancies.
- \* The Santa Rosa Charter Commission recommended cumulative voting for city council to improve the geographic and racial diversity of a city council that has elected no racial minorities and only 2 people from west of highway 101 in the last 40 years.
- \* The Los Angeles city council directed the city clerk to study instant runoff voting, which could save millions of dollars by eliminating the need for municipal runoff elections.
- \* From San Diego to Humboldt County, voters are asking boards of supervisors to consider instant runoff voting because it elects majority winners in a single election, shortens campaigns and elects supervisors when voter turnout is highest.

- \* At the state level, a few years ago, the Speaker of the Assembly, Bob Hertzberg, introduced a bill that would use instant runoff voting for special elections for state legislature and congress. Such a bill would save millions of dollars per year by avoiding a runoff special election.
- \* A bill in the current legislature, AB 1039, would give general law cities the same options that charter cities have: to choose the election method that the city judges best.
- \* In the last few years, instant runoff voting advocates have spearheaded successful campaigns to use instant runoff voting on college campuses at Stanford, UC Davis and UC San Diego. UC Berkeley has used this system for decades.

On the national level, our website, [www.Fairvote.org](http://www.Fairvote.org), lists over 30 bills introduced in state and federal legislatures this year relating to instant runoff voting, cumulative voting and voting equipment compatibility. A bill to allow cumulative voting in local elections in Illinois passed both houses and awaits the governor's signature. Ranked ballot elections have been used for over 50 years in the city of Cambridge (MA), and around 100 cities and school districts are using cumulative and limited voting as a result of voting rights lawsuits.

The 2000 presidential election, in which the winner won less than 50% of the vote in Florida and third party candidates were charged with "spoiling" the election, dramatically increased interest in instant runoff voting, with strong editorials from newspapers such as *USA Today*.

As a reflection of the growing interest in alternative voting systems, many good government and civil rights groups have endorsed the principle of compatibility and are testifying to this effect before HAVA Committee across the country. A few examples include:

- \* Asian American Legal Defense and Education Fund
- \* Brennan Center for Justice at New York University School of Law
- \* CALPIRG
- \* Center for Constitutional Rights
- \* The Century Foundation, which convened the National Commission on Federal Election Reform (Ford-Carter Commission)
- \* The Constitution Project
- \* Citizens for Legitimate Government
- \* Committee for the Study of the American Electorate
- \* Common Cause
- \* Demos: A Network for Ideas & Action
- \* Disabilities Network of New York City
- \* Eastern Paralyzed Veterans Association
- \* Lawyers' Committee for Civil Rights Under Law
- \* National Asian Pacific American Legal Consortium
- \* Puerto Rican Legal Defense and Education Fund
- \* Texans for Public Justice

Members of HAVA Committees in Ohio, Washington, New York, Vermont and South Carolina have expressed interest in including compatibility with alternative voting systems.

Support for instant runoff voting and cumulative voting is growing across California and the nation, and many organizations are promoting compatibility of voting equipment with these systems.

## **2. Voting equipment and election administration often poses insurmountable obstacles to the adoption of new systems**

In Santa Rosa, the registrar of voters testified that the county's equipment could not handle cumulative voting, so if the city wanted to proceed, it would have had to acquire new equipment and run its own elections. This turned out to be financially prohibitive, and the city council voted not to place cumulative voting on the ballot.

In Alameda County, the registrar of voters stated that the county's new equipment could not handle a local instant runoff election consolidated with a countywide election. This has prevented the cities of Oakland, San Leandro and Berkeley from implementing instant runoff voting.

In San Francisco, the voters adopted instant runoff voting by a large margin. It is a legal mandate for this November's election, but the city and its voting equipment vendor still do not have an instant runoff solution that runs on the city's voting equipment. As a result of difficulties in adapting the voting equipment, the city may wind up spending hundreds of thousands of dollars to count ballots by hand.

In New Mexico, legislative interest in instant runoff voting waned after election officials reported that their equipment could not accommodate instant runoff voting. Efforts in Washington and Oregon have also been hampered by incompatible voting equipment as well as local efforts in places including Vancouver (WA), Kalamazoo (MI) and Cincinnati (OH).

## **3. Requiring compatibility with alternative systems will not increase the cost of voting equipment contracts or reduce the number of vendors bidding.**

This assertion is based on multiple sources of information.

- \* Federal regulations that require vendors to state whether or not their equipment is compatible with ranked ballots and cumulative voting: Attachment 1 is an excerpt from the Federal Election Commission's Voting System Standards released in April 2002. These standards recognize that many electoral arrangements are used in the United States, and they require vendors to state whether or not their equipment can handle particular options and if so, how it handles them.

The options include cumulative voting and ranked order voting. These regulations obviously give vendors the incentive to respond in the affirmative, to avoid losing business to a competitor who offers more options. The federal certification process

includes testing all options that vendors provide, which means that vendors need to develop these options and have them tested by Independent Testing Authorities *before* they even apply for California certification.

- \* Requests for Proposals (RFPs) in Santa Clara County and Mendocino County that require ranked ballot compatibility: Both Mendocino and Santa Clara Counties included ranked ballot compatibility in their Requests for Proposals. All of the major vendors are pursuing or did pursue the contracts. In Santa Clara County, the three largest vendors all conducted pilot projects and two of them demonstrated their ranked ballot interface.
- \* Statement by Santa Clara County Registrar Jesse Durazo after completing a competitive bidding process to acquire voting equipment that can handle instant runoff voting: At the May 8<sup>th</sup> hearing, I asked Santa Clara County Registrar Jesse Durazo whether including the ranked ballot requirement increased the price of the voting equipment or reduced the number of companies bidding on the project, he unhesitatingly responded, “No.” When I asked him whether including a ranked ballot requirement for all new equipment in California would increase the cost or reduce the number of vendors, the answer was the same.
- \* Vendors’ bids on contracts in foreign countries that use ranked ballots: In addition to bidding on RFPs in Mendocino County and Santa Clara County, several of these vendors have bid on contracts in Ireland, which uses ranked ballot voting for its elections.
- \* Survey responses from vendors and conversations with them about their ability to handle ranked ballots and cumulative voting: Many of the vendors have responded to a survey by the Center for Voting and Democracy and stated that their equipment can handle ranked ballot voting and cumulative voting, and in personal conversations with me, all of the major vendors have told me that if a jurisdiction wants ranked ballot compatibility, the vendor can and will provide it.
- \* Vendors’ willingness to accommodate their customers’ demands: Finally, a bidding process with multiple vendors competing gives all competitors incentive to provide maximum options at minimum cost. In Santa Clara County, the county decided to conduct a pilot project with voter-verifiable paper receipts. All three finalists stated a willingness to add a mechanism for paper receipts at no additional cost to the county. The evidence I have presented suggests that the same phenomenon would occur with ranked ballot compatibility: vendors will compete with each other to provide the option at no additional cost.

#### **4. Failing to require compatibility will preclude many jurisdictions from even considering alternative systems during the next 20 to 30 years until new equipment is acquired.**

If compatibility with ranked ballots and cumulative voting is not required in new equipment, the winner of the contract will not have any incentive to include this feature. If in the future, the county or a city wishes to use instant runoff voting or cumulative voting, the incumbent vendor,

not facing any competitive pressure, can and probably would raise the price dramatically to adapt their equipment.

In San Francisco, before the voters passed instant runoff voting, the vendor asserted that they could handle instant runoff voting at a very modest cost. After the voters changed the charter, the price increased dramatically, and it has taken much longer than anyone expected to prepare the voting equipment. It's possible that the vendor will be unable to deliver a technological solution in time for the November election.

According to election officials in another state, after acquiring a statewide touchscreen system, some leaders became interested in using instant runoff voting in a statewide election. The incumbent vendor assured the customer that they could do it but said that it might cost \$1 million and take 6 to 12 months. State officials privately told us that it would have been much easier to include ranked ballot compatibility from the beginning of the RFP process.

If you wait, the cost of using these systems goes up and generally becomes prohibitively expensive. That would mean jurisdictions may have to wait until the next generation of voting equipment is acquired, which might take another 20 to 30 years.

**5. The HAVA Committee should recommend that all new voting equipment be required to accommodate ranked ballot and cumulative voting.**

This simply requires that California only acquire new voting equipment for which the vendor has responded in the affirmative to the Voting System Standards, Volume 1, Section 2.2.8.2. m. and n.

**Conclusion**

We are facing a great opportunity to improve California elections. Please make the most of this opportunity by requiring that all new voting equipment be compatible with ranked ballots and cumulative voting.

If I can provide any more information about these issues, please don't hesitate to contact me.

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**Attachments**

1. Federal Election Commission Voting System Standards
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## Attachment 1

### Federal Election Commission Voting System Standards

Adopted April 30, 2002

<http://www.fec.gov/pages/vssfina/vss.html>

Volume I

2.2.8.2 Voting Variations

There are significant variations among the election laws of the 50 states with respect to permissible ballot contents, voting options, and the associated ballot counting logic. The TDP accompanying the system shall specifically identify which of the following items *can* and *cannot* be supported by the system, as well as *how* the system can implement the items supported:

- a. Closed primaries;
- b. Open primaries;
- c. Partisan offices;
- d. Non-partisan offices;
- e. Write-in voting;
- f. Primary presidential delegation nominations;
- g. Ballot rotation;
- h. Straight party voting;
- i. Cross-party endorsement;
- j. Split precincts;
- k. Vote for N of M;
- l. Recall issues, with options;
- m. Cumulative voting;**
- n. Ranked order voting; and**
- o. Provisional or challenged ballots.

## Attachment 2

### Evidence of ability of vendors to accommodate ranked ballots and cumulative voting

A few state HAVA Commissions that are considering requiring ranked ballot compatibility in new equipment

Ohio  
Vermont

Washington  
New York

Vendors that are currently running US ranked ballot elections

Diebold: Cambridge MA, precinct-based optical scan  
ES&S: San Francisco CA, precinct-based and central optical scan

Vendors that submitted bids for Irish DRE contract, 2001

Diebold  
Unilect  
Sequoia  
ES&S

Vendors that self-reported an ability to handle ranked ballots, based on a survey by the Center for Voting and Democracy (<http://www.fairvote.org/administration/survey.htm>)

ES&S  
Hart Intercivic (eSlate – in development in 2001)  
Shoup  
Unilect  
VoteHere

Finalists for the Santa Clara County contract, which requires IRV-ready equipment when the county requests it

ES&S  
Sequoia  
Diebold

Statement by a county registrar who acquired compatible equipment

The Santa Clara County Registrar, Jesse Durazo, stated that including ranked ballot compatibility did not increase the cost of their contract nor did it reduce the number of vendors who submitted bids.

### Attachment 3

#### Excerpts from recent testimony prepared for the New York State HAVA Committee

##### The Century Foundation

Abrams, Robert, Fried Arthur et al. *The Help America Vote Act: Impact and Potential for New York*. The Century Foundation, [www.tcf.org](http://www.tcf.org).

Excerpt from ages 44-45:

“In addition to meeting these HAVA requirements, the new voting equipment should have software that can accommodate instant runoff voting and cumulative voting, in case the Legislature votes to use this method in some or all elections. Instant runoff voting is a ranked-choice voting system that allows voters to rank candidates in order of choice, ensuring a winning candidate will receive an absolute majority of votes rather than a simple plurality. Legislation to conduct primaries and local elections through instant runoff voting has been introduced in the New York State Legislature (A4481, S4683 and A4482). In cumulative voting, voters cast as many votes as there are seats and can put multiple votes for one or more candidates.”

##### New York State Citizens’ Coalition on HAVA Implementation

Testimony of The New York State Citizens’ Coalition on HAVA Implementation  
April 4, 2003

The New York State Citizens’ Coalition on HAVA Implementation is an ad hoc and diverse coalition of Good Government, Voting Rights, Racial Justice, Disability Rights, and Language Rights organizations and academics who are concerned about the way in which New York implements the Help America Vote Act (HAVA.) We are committed to protecting voting rights and improving the electoral process in New York. The Coalition includes the Asian American Legal Defense & Education Fund (AALDF), the Brennan Center for Justice, Citizens Union, Common Cause/NY, DEMOS, Disabilities Network of New York City, Eastern Paralyzed Veterans Association, New York Immigration Coalition, New York Lawyers for the Public Interest, the New York Public Interest Research Group, (NYPIRG), People for the American Way, and several other organizations.

Excerpt from page 7:

“*New machines should be versatile enough to meet New York’s diverse needs.* New machines should be ‘system ready’ to handle a wide-range of elections like Instant Run-Off Voting and Cumulative Voting.”

## **Attachment 4**

### **Technical requirements of compatibility with ranked ballots and cumulative voting**

The simplest way to ensure compatibility is to require that vendors reply in the affirmative to the relevant voting system standards and be prepared to provide the solution upon the demand of the election officials.

There are three technical components of ranked ballot voting. First, voters rank candidates in order of choice by indicating their 1<sup>st</sup>, 2<sup>nd</sup> choice, 3<sup>rd</sup> choice and so on. Second, the voting equipment either prevents voters from casting an invalid vote (overvote, skipped ranking, listing the same candidate more than once) or notifies voters of errors and allows the voter to correct the errors. Third, the voting equipment stores ballot images of each voter's rankings rather than sub-totals for each ballot position. The output of the voting equipment is a data file that contains an anonymous record of each voter's 1<sup>st</sup> choice, 2<sup>nd</sup> choice and so on.

For cumulative voting, the ballot must allow voters to cast a number of votes up to the number of seats and to give 1 or more votes to 1 or more candidates. The voting equipment must either prevent voters from casting an invalid vote (overvote) or notify voters of errors and allows the voter to correct the errors. The voting equipment has to keep track of the total number of votes received by each candidate.