

1 Lowell Finley, SBN 104414
2 LAW OFFICES OF LOWELL FINLEY
3 1604 SOLANO AVENUE
4 BERKELEY, CALIFORNIA 94707-2109
5 TEL: 510-290-8823
6 FAX: 510-526-5424

7 Attorney for Plaintiffs and Petitioners

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

10 CENTER FOR VOTING AND
11 DEMOCRACY; CALIFORNIA
12 CONGRESS OF SENIORS; SAN
13 FRANCISCO LABOR COUNCIL, AFL-
14 CIO; CALIFORNIA PUBLIC INTEREST
15 RESEARCH GROUP; CHINESE
16 PROGRESSIVE ASSOCIATION;
17 ENRIQUE ASIS; GWENN CRAIG;
18 ARTHUR CHANG; TRACY BAXTER,

19 Plaintiffs and Petitioners,

20 v.

21 JOHN ARNTZ, Director of Elections, City
22 and County of San Francisco; ALIX
23 ROSENTHAL, President of the San
24 Francisco Elections Commission;
25 MICHAEL MENDELSON, ROBERT
26 KENEALY, THOMAS SCHULTZ,
27 RICHARD SHADOIAN, BRENDA
28 STOWERS, ARNOLD TOWNSEND, San
Francisco Elections Commissioners; SAN
FRANCISCO DEPARTMENT OF
ELECTIONS; SAN FRANCISCO
ELECTIONS COMMISSION,,

Defendants and Respondents.

CASE NO. CPF-03-503431

DECLARATION OF ROBERT RICHIE IN
SUPPORT OF PETITION FOR WRIT OF
MANDATE

DEPARTMENT: 301

JUDGE: Hon. James L. Warren

DATE: August 20, 2003

TIME: 9:30 a.m.

I, Robert Richie, declare as follows:

1. I am executive director of the Center for Voting and Democracy, a non-profit organization that researches the impact of electoral systems on voter turnout and representation. I

1 have directed the Center since its founding in 1992. In that capacity I have demonstrated my
2 general expertise in electoral systems and my particular expertise in ranked-choice voting
3 methods.

4 2. In 1994 I made a presentation on different voting methods to the full Voting Section of
5 the U. S. Department of Justice. In 1999 I joined with two representatives of the Asian American
6 Legal Defense and Education Fund in a meeting with Bill Lann Lee, head of the civil rights
7 division of the Department of Justice, and several of his staff members. We discussed New York
8 City's attempt to replace its ranked-choice election method administered on paper ballots for
9 community school board elections with a different voting method that could be counted on
10 voting machines. Our evidence contributed to the Department of Justice's decision to deny
11 preclearance to the proposed change based on Section Five of the Voting Rights Act. (The
12 Department denies less than 1% of applications for preclearance.)

13 3. I have made presentations on different voting methods to committees of: the National
14 Conference on State Legislators (in 1994, 1995 and 2002); the National Black Caucus of State
15 Legislators (in 1998, 1999 and 2000); and the National Association of County Officials (in
16 1994). Several Members of Congress have sought my advice for statutory language on legislation
17 about ranked-choice voting methods. In 2002 my presentation on election methods to the Federal
18 Election Commission contributed to its decision to amend its voting system standards to require
19 election equipment vendors to provide information about their equipment's capacity to administer
20 ranked-choice systems.

21 4. I have been invited to speak about electoral systems to a range of commissions, panels
22 and legislative committees, including: the Texas Commission on Judicial Efficiency; the annual
23 convention of the American Political Science Association; state legislative committees in Alaska,
24 Florida, North Carolina, Vermont, Virginia and Washington; and charter commissions in Nassau
25 County (NY), Miami Beach (FL), Cincinnati (OH), Austin (TX) and Detroit (MI). Several of
26 these presentations focused on ranked-choice systems, including an hour-long presentation about
27 instant runoff voting in March 2003 to the Florida Senate's committee on elections.

1 5. In 1994 I wrote a report commissioned by Cambridge, Massachusetts about its
2 ranked-choice elections for city council and school board and prospective different methods of
3 counting ballots. In 1996 I coordinated a project funded by the Rockefeller Brothers Fund on
4 voter education about the ranked-choice voting system used for New York City's community
5 school board elections.

6 6. I have been a panelist at national conferences of many organizations, including the
7 Joint Center for Political and Economic Studies, the Voting Integrity Project and the NAACP
8 LDEF, and spoke about instant runoff voting at the 2000 Lincoln Day Dinners in Juneau and
9 Anchorage, Alaska.

10 7. I am a frequent source for print, radio and television journalists and have published
11 commentary about electoral systems in such publications as New York Times, Washington Post,
12 Wall Street Journal, Roll Call, Nation, National Civic Review, Boston Review, Christian Science
13 Monitor and Legal Times. My writings have appeared in seven books and in the Federal Election
14 Commission Journal of Election Administration.

15 8. I understand that election officials in San Francisco are expressing concern about
16 possible difficulties of conducting a hand-count of paper ballots in an instant runoff voting
17 election. My experience contradicts these concerns. In both 1998 and 2002, for example, our
18 organization joined with the American Political Science Association (APSA) Section on
19 Representation and Electoral Systems in organization "short courses" on ranked-choice systems
20 during the annual APSA convention. In 2002, one of the speakers at our short course was
21 Michael Gallagher. Professor Gallagher is Associate Professor of Political Science at Trinity
22 College in the University of Dublin, former president of the Political Studies Association of
23 Ireland and author or editor of nine books and more than 35 scholarly articles
24 (www.politics.tcd.ie/Staff/Michael.Gallagher). Professor Gallagher discussed the ranked-choice
25 voting methods used to elect the Irish parliament and system of instant runoff voting used to elect
26 the President of Ireland.

1 9. In his presentation Professor Gallagher included information about the 1997
2 presidential election in the Republic of Ireland, held using instant runoff voting. He explained
3 that more than 1.2 million votes were cast in this election on October 30, 1997. The ballot-count
4 started at 9 am on October 31 and was finished by the evening. In other words, election results
5 for this hand-counted IRV election were produced in a single day. As I verified on the website of
6 the Republic of Ireland's Department of Environment, Heritage and Local Government (see
7 [www.environ.ie/DOEI/DOEIPol.nsf/0/588f0ce7a372f8c480256b7c0042de9d/\\$FILE](http://www.environ.ie/DOEI/DOEIPol.nsf/0/588f0ce7a372f8c480256b7c0042de9d/$FILE/president_elections.pdf)
8 [E/president_elections.pdf](http://www.environ.ie/DOEI/DOEIPol.nsf/0/588f0ce7a372f8c480256b7c0042de9d/$FILE/president_elections.pdf)), the statistics for this election were as follows:

- 9 • 1,279,688 total votes cast
- 10 • Of these ballots, only 9,852 ballots were invalid (0.8% of ballots cast)
- 11 • After the first-choice count, two candidates were well ahead of the remaining three
12 candidates. Using the same provision for speeding the ballot-count as found in the San
13 Francisco charter, these three candidates were eliminated simultaneously because their
14 total vote was less than the vote of the second-place candidate.
- 15 • There were 323,410 ballots cast for the eliminated candidates. After these ballots were
16 counted for whichever of the two remaining candidates was ranked next on the ballot, a
17 majority winner was determined.

18 10. The ballot count took place within the Republic of Ireland's 41
19 constituencies/legislative districts. Each ballot box is opened and the number of ballot papers
20 checked against a return furnished by the presiding officer (known in California as "the
21 canvass"). The papers are sorted according to the first preferences shown on them and the
22 number of first preference votes recorded for each candidate is notified to the presidential
23 returning officer. If no candidate reaches the victory threshold of fifty per cent of the valid votes
24 plus one, the presidential returning officer directs the local returning officers to exclude the
25 lowest candidate, count his/her votes in accordance with the next preference shown on them and
26 notify the presidential returning officer of the result. (As in San Francisco, the two or more
27 lowest candidates can be excluded together where the sum of their votes is less than the votes of
28

1 the next lowest candidate.) The process of excluding candidates and counting their votes
2 continues until one of the candidates has sufficient votes to secure election. Each candidate is
3 entitled to be represented at the counting of the votes and may demand a partial or complete
4 recount of all the ballot papers.

5 11. I verified Professor Gallagher's information about the ballot-count being completed in
6 one day, as a Reuters news article was written the day after the election reporting the final results.

7 12. In addition, I consulted on the question of the feasibility of a hand-count in San
8 Francisco with Douglas Kellner, a long-time commissioner of the Board of Elections in New York
9 City as its Manhattan representative. For more than two decades, New York City has used a
10 ranked ballot electoral method for its community school board elections. I was in close
11 communication with Mr. Kellner in 1999 as the City prepared to count ranked-choice ballots for
12 its 32 separate elections for its Community School Boards. Mr. Kellner was very involved in
13 ensuring a fair ballot-count process citywide and in directly organizing ballot-counts in
14 Community School Boards in Manhattan. He also was directly involved as an election
15 commissioner in school board elections in 1996 and in 1993, when more than 400,000 votes
16 were cast.

17 13. I should stress that these local school board elections had two features that made them
18 far more complicated than a citywide instant runoff voting election in San Francisco. First, there
19 were 32 separate election contests, each electing nine candidates for a total of 288 school board
20 members. Second, the ranked-choice method was the choice voting form of proportional
21 representation that involves far more handling of ballots than instant runoff voting and far more
22 candidates.

23 14. Mr. Kellner explained that based on his extensive experience, a team of three or four
24 ballot-counters (as potentially required in San Francisco) would easily be able to count five
25 ballots a minute, with an experienced team more likely to count ten ballots a minute.

26 15. I have read the declaration of Mischelle Townsend, and Ms. Townsend stated that
27 "studies have consistently demonstrated there is at least a 3% error rate in any hand-counting
28

1 procedure. Ballots which are tallied by automated procedures are significantly more accurate and
2 timely in completion." This is false. In fact, the famous CalTech-MIT study on voting systems
3 published in July 2001 in the wake of the 2000 electoral meltdown concluded "hand-counted and
4 optically scanned paper have had the lowest rates of unmarked, uncounted and spoiled ballots in
5 presidential, Senate and governor elections over the last 12 years." See the report "Voting – What
6 Is, What Could Be," www.vote.caltech.edu/Reports/july01/fast_facts.pdf. Another study of
7 Massachusetts voter error rates reached a similar conclusion, with error rates on hand-counted
8 paper ballots well below 1% for the last three presidential elections. See
9 www.vote.caltech.edu/Reports/VotinginMass.pdf. A more recent study called "Voting
10 Technology and Uncounted Votes in the United States" concluded that "in presidential elections,
11 traditional paper ballots produce the lowest rates of uncounted votes (i.e. "residual votes"), and
12 that "paper ballots turn out to be the champion in presidential ballots." See
13 http://www.vote.caltech.edu/Reports/residual_vote.pdf.

14 16. In addition, hand-counted ranked ballots using paper ballots have resulted in
15 extremely low rates of ballot spoilage, attesting to the ease of use for voters. When Ann Arbor,
16 Michigan used instant runoff voting on traditional paper ballots in 1975, just a few months after
17 its adoption by voters in November 1974, voter error declined sharply, from 2.3% to 1.2%. Voter
18 error in New York's local school board elections using ranked paper ballots and a hand count has
19 been less than the error rate in the city for balloting in the presidential election using voting
20 equipment. Internationally, instant runoff voting is used to elect the president of Ireland and a
21 similar ranked choice system is used to elect the parliament of Malta. See
22 http://www.idea.int/vt/region_view.cfm?CountryCode=IE. In both elections, a paper ranked
23 ballot is hand-counted, and the rate of invalid ballots is typically less than 1.0%, well below the
24 national error rate of more than 2% in the American presidential election in 2000. As noted
25 earlier, the most recent Irish national election to elect their president had an error rate of 0.8% of
26 ballots cast.

1 17. I have communicated numerous times with Teresa Neighbor, Cambridge City Clerk,
2 and George Goverman, the auditor of elections in Cambridge, where they have used a ranked
3 ballot method for city council and school board elections since the 1940s. They have told me on
4 August 16 that they always finish a count of first choices on the first day of counting. Ms.
5 Neighbor estimated counting 10 ballots a minute was a reasonable time for a counting team. Ms.
6 Neighbor also provided data about invalid ballot rates in Cambridge. They have consistently
7 been lower than the national average for invalid ballots rates. Interestingly, since Cambridge
8 converted in 1997 from a hand count with paper ballots to an automated machine the invalid
9 ballot rate has increased slightly, though still lower than the national average.

1 I declare under penalty of perjury that the foregoing is true and correct of my own
2 personal knowledge and that if called upon I could and would testify competently thereto.
3 Executed this ___th day of August, 2003, at Tacoma Park, Maryland.

4
5 Robert Richie
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28