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. We wish to provide the following testimony to all individuals and organizations seeking to ensure that new voting equipment acquired under HAVA be compatible with all voting methods currently used in public elections, including instant runoff voting, choice voting and cumulative voting.

Executive Summary

At no cost to the voters, states now 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 these different methods 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 methods until they acquire new voting equipment, which may not occur for another 20 to 30 years.

Interest in a wider range of voting methods is growing rapidly across the country, 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 two particular methods: ranked ballots and cumulative voting:

1. Interest in instant runoff voting and cumulative voting is growing nationwide because they address problems experienced with current voting methods
2. Incompatible voting equipment creates formidable obstacles to adopting these systems.
3. Requiring compatibility with ranked ballots and cumulative voting 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 these voting methods until new equipment is acquired, perhaps decades in the future.
5. HAVA committees 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. We also include four attachments: information about new Federal Elections Commission voting systems standards about ranked ballots and cumulative voting; evidence of vendors' ability to accommodate ranked ballots and cumulative voting; excerpts from testimony prepared for the New York State HAVA Committee; and technical requirements of compatibility.

Introduction

The Help American Vote Act, combined with increases in local and state funding, creates an important opportunity to improve the elections process across the country.

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

* Making it easier for voters to cast a vote as they intend through well designed, voter-friendly interfaces;
* Preventing invalid votes and allowing voters to correct errors;
* Improving access for people with disabilities, people with low rates of English 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 to focus on a different but equally important question: ensuring compatibility of new voting equipment with a full range of viable voting methods.

1. Interest in different methods is growing because they address problems with the current systems

Interest in different voting methods is growing because they address problems experienced with current election methods.

Several jurisdictions have passed legislation that allows or implements instant runoff voting, legislation has been introduced in many states, and many municipalities have expressed serious interest in a wider range of systems.

* San Francisco adopted instant runoff voting to increase voter turnout and save the cost of December runoff elections. Santa Clara County (CA), Vancouver (WA), San Leandro (CA) and Oakland (CA) have all adopted charter amendments that allow the use of instant runoff voting when such technology is available.
* Approximately100 jurisdictions have adopted cumulative voting and limited voting (a similar systems) in the last two decades to resolve Voting Rights Act lawsuits. These include Peoria (IL), Amarillo (TX), Beafort County (NC) and Chilton County (AL).
* Government commissions in many jurisdictions have recommended ranked ballot systems, including Santa Rosa County (CA), Pasadena (CA), Kalamazoo (MI), Austin (TX) and the state of Vermont.
* Numerous legislatures have requested studies of the suitability of different voting systems, including Vermont, North Carolina and the city council of Los Angeles.
* Many colleges and universities have adopted ranked-choice systems, and many have been using such systems for years. Recent adoptions include: University of Maryland-College Park, Stanford University, University of Illinois-Urbana-Champaign, Tufts, Wake Forest, Duke, University of California-Davis, University of California-San Diego and Vassar College.

* Our website, 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 60 years in the city of Cambridge (MA).

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 instant runoff voting, with strong editorials in support of instant runoff voting from newspapers such as *USA Today, St. Petersburg Times, Minneapolis Star Tribune, Trenton Times* and *Sacramento Bee.*

As a reflection of the growing interest in different voting systems, many good government and civil rights groups have endorsed the principle of compatibility and are testifying to this effect before HAVA committees across the country. Groups endorsing voting equipment compatibility with ranked ballots and cumulative voting include:

* Asian American Legal Defense and Education Fund
* Brennan Center for Justice at New York University School of Law
* CALPIRG (California Public Interest Research Group)
* Center for Constitutional Rights
* The Century Foundation (one of the conveners of 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 California, Ohio, Washington, New York, Vermont and South Carolina have expressed interest in requiring compatibility with ranked ballots and cumulative voting.

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

Concerns about election administration played a dominant role in stopping many promising reform efforts.

In Santa Rosa (CA), the registrar of voters in 2002 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 (CA), the registrar of voters stated in 2002 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 moving forward on instant runoff voting.

In San Francisco, the voters adopted instant runoff voting by a large margin in March 2002. 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 and Maine, strong legislative interest in instant runoff voting slowed primarily because 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 different voting methods 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 ballots. 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 certification in a particular state.

* Requests for Proposals (RFPs) in Santa Clara County (CA) and Mendocino County (CA) 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 8th 2003 HAVA committee hearing in San Francisco, 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.

* Cambridge's (MA) experience implementing choice voting on optical scan voting equipment: In Cambridge (MA), after counting ballots by hand in the city's ranked ballot elections for city council and school board, the city decided to start using voting equipment. The vendor charged a one-time software fee of $40,000 to adapt an existing optical scan system to accommodate the ranked ballot system on the equipment. This fee was independent of the number of pieces of equipment used by the city and would not have been charged to any other jurisdiction ordering that company's same equipment. We believe that if ranked ballot compatibility is included in the specifications for new equipment, rather than requiring an adaptation of existing equipment, the feature will be included at no additional cost to the jurisdiction.

* 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: A bidding process with multiple vendors competing gives all competitors incentive to provide maximum options at minimum cost. In Santa Clara County (CA), the county decided to conduct a pilot project with voter-verifiable paper receipts. The three remaining vendors were willing to to add a mechanism for paper receipts at no additional cost. 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 considering different voting methods until new equipment is acquired decades from now.

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 2003 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 to add this standard, the cost of converting to these systems goes up and generally becomes prohibitively expensive. That would mean jurisdictions might have to wait until the next generation of voting equipment is acquired, which might take another 20 to 30 years.

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

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

We recommend that any Requests for Proposals (RFPs) or authorizing legislation include a requirement that the equipment be capable of conducting a ranked-ballot or cumulative voting in the first election in which the equipment is used. The following language would accomplish this:

> "In the first election in which the equipment is used, the system must be able to accommodate ranked ballot and cumulative voting as specified in the Federal Election Commission's Voting System Standards Vol. 1, Sec. 2.2.8.2. m. and n."

In some states, due to the lack of currently certified equipment, it may not be possible to require equipment ready to accommodate ranked ballots and cumulative voting in its first election. In these cases, we recommend language that makes it clear that the vendor must develop and certify such an upgrade upon request of the jurisdiction. The following language is based on the RFP used in Santa Clara County (CA) in 2002-2003:

> "The system must be able to accommodate ranked ballot and cumulative voting as specified in the Federal Election Commission's Voting System Standards Vol. 1, Sec. 2.2.8.2. m. and n. If a ranked-ballot or cumulative voting system is authorized for use in the jurisdiction, the vendor must provide all necessary software and develop and certify an upgrade within a reasonable time to be agreed by the parties."

Conclusion

We are facing a great opportunity to improve our 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
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

Attachment 1

Federal Election Commission Voting System Standards
Adopted April 30, 2002

http://www.fec.gov/pages/vssfinal/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 country 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.

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 run-off 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 1st, 2nd choice, 3rd 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 1st choice, 2nd 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.