

LEGAL CHALLENGES TO ALLOCATION OF PROPOSITION 41 FUNDS

At the June 19, 2002 meeting of the VMB, Board members asked for information on potential causes of action if funds are allocated according to one or more formulas. That information is attached.

In addition, it is important to note that the federal court judge did *NOT* rule that pre-scored punch card voting systems violate either the US Constitution or the Voting Rights Act. The parties to this case stipulated that, given the Secretary of State's decertification of these voting systems as "obsolete", the only issue of contention was that of the timing of the conversion process. The Secretary of State argued that decertification should be effective in July 2005 in order to permit counties time to convert to more modern voting systems, such as touch screen systems. Plaintiffs, on the other hand, argued that, in their opinion, counties could implement touch screen systems in time for the March 2004 election, and that even if that was not possible, all that was required by the stipulated agreement was that the county be able to convert to *ANY* system (i.e. not necessarily a touch screen system) that was certified for use in California and did not include pre-scored punch cards.

VOTING MODERNIZATION BOARD
JULY 17, 2002

Memorandum

To: Chairman Perez and Voting Modernization Board Members
From: Stephen N. Trout, Elections Counsel
Date: July 8, 2002
Re: Legal Challenges to Allocation of Proposition 41 Funds

There are two general ways that groups or individuals could challenge the allocation of the Voting Modernization Bond Act funds. The first possibility is that the allocation formula selected by this Board is not consistent with the intent of the voters, and the second is that the allocation formula violates the federal and state constitution or federal Voting Rights Act.

A challenge based on the intent of the voters would argue that the voters wanted some other method for allocating funds. That other method would have to be specified in the lawsuit. The law in this area is that the intent of the voters is determined by the ballot arguments for and against the proposition.

A challenge based on constitutional grounds would be what the ACLU lawyers hinted at during the last meeting of the Voting Modernization Board. The law requires that the formula adopted by the Board must be reasonably related to a legitimate government purpose. It is clear that providing dollars for the modernization of voting equipment is a legitimate government purpose, and equally clear that any of the allocation formulas presented to the Board to date are reasonable to achieve that purpose. Constitutional principles will not be violated if the Board chooses to allocate the funds to each of the 58 counties, or some combination thereof, based on an articulated rational and reasonable standard.

The ACLU has made a policy argument that the Voting Modernization Bond Act funds must be preferentially allocated to the nine decertified prescored punchcard counties. Others have made the policy argument that the funds should be allocated to all 58 counties based on the number of eligible voters. Still others argue that the funds should be allocated based on population or the number of precincts or polling places. All of these policy arguments are reasonable and any of these allocation formulas would not be in violation of the federal or state constitution.

There have been threats of litigation if the nine prescored punchcard counties are given priority, as well as threats of litigation if the nine prescored punchcard counties are not given priority. There have been threats of lawsuits if all of the 58 counties do not receive some portion of the Proposition 41 funds. In short, any course chosen by this Board for the allocation of funds will likely be challenged. There is a strong likelihood that all such challenges will fail as long as the allocation standards and practices adopted by the Board are reasonable and rationally related to the purpose of Proposition 41, modernizing California's voting systems.

I am prepared to provide the Board a formal legal analysis of any arguments presented to this Board by any group or individual, or by board members themselves.