

THE CENTER FOR VOTING AND DEMOCRACY

June 19, 2002

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John A. Perez
Chair, Voting Modernization Board
c/o California Secretary of State
Elections Division
1500 11th Street, Room 590
Sacramento, CA 95814
Fax: 916-653-3214

Dear John:

The Center for Voting and Democracy is a non-profit, non-partisan organization whose mission is to ensure that every vote counts and that all voters are represented. To that end, we believe Proposition 41 is an important step forward, and we are pleased to have the opportunity to comment on the disbursement of funds under this proposition. The Center is a national organization, but we have two staffers working in California. We have worked with election reformers and election officials all across the state. Our president is former Member of Congress John B. Anderson.

We have three main comments and would be pleased to discuss these in more detail with members and staff of the Voting Modernization Board.

1. Distribution of funds should be based on the population of counties, not the number of precincts.

This is a simple matter of equity. A precinct with 200 voters might only require one or two new pieces of voting equipment, while a precinct of 1,500 voters might require six or eight new pieces. Allocating the same amount of money to each precinct could mean that people in the small precinct received five or six times as much money per capita than people in the other. That would be grossly unfair.

2. The criteria for distribution of funds should provide incentives to counties that acquire modern voting equipment.

From the point of view of the voter, electronic Direct Recording Equipment (DREs) are much easier to use than optical scan equipment. DREs allow voters to cast ballots in their language of choice. DREs prevent voters from casting invalid votes. DREs are easiest for people with disabilities, including blind voters and voters with limited manual dexterity. DREs are also preferable for voters with low literacy levels. DREs allow voters to review their choices to make sure they voted as intended. We recognize that there are important concerns about vote security with current DRE systems and urge full consideration of those concerns. Again, however, from the point of view of the voters, DREs make it easier for voters to cast accurate votes, so the criteria for distributing funds should provide incentives for counties to acquire DREs.

There are at least two ways to provide such incentives. The first is to provide greater per capita funding levels to counties acquiring DREs. The other is to provide funding to counties buying touch screens *before* counties who opt for optical scan equipment. There may be other ways to provide these incentives.

PO Box 22411, San Francisco CA 94122 · (415) 824-2735 [ph/fax] · calebk@fairvote.org

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Majority Rule Project

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Weinberger

Special Projects Manager

Maritza Valenzuela

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Terry Bouricius
Joleen Garcia
Steven Hill

Full Representation

Rashad Robinson

Web Site

www.fairvote.org

3. Funds should only be distributed for acquisition of voting systems that are compatible with ranked-ballots and cumulative voting.

Many cities and counties have adopted or are seriously considering the use of instant runoff and cumulative voting. San Francisco voters adopted instant runoff voting for all major city and county offices on March 5, 2002 by a vote of 55% to 45%. This will take effect for the November 2003 mayoral election. Voters in Santa Clara County and the cities of Oakland and San Leandro in Alameda County have all passed charter amendments that allow the use of instant runoff voting. The Los Angeles city council has directed its city clerk to study the implementation of instant runoff voting in San Francisco. A charter review committee in Santa Rosa (Sonoma County) has recommended the use of cumulative voting for city council, and voters may be voting on such a charter amendment in November. Legislation at a state level was introduced last year to use instant runoff voting in special elections, and this legislation may be introduced again next year.

It would be unfortunate if counties acquired new voting equipment that precluded the use of ranked ballot and cumulative voting.

On April 30, the Federal Election Commission adopted a new set of Voting System Standards (<http://www.fec.gov/pages/vss/final/vss.html>). These standards apply to new voting equipment seeking certification.

In Volume 1 of the standards, Section 2.2.8.2 on "Voting Variations" is introduced with this paragraph:

"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." (emphasis in original)

The subsequent list of items includes: "m) cumulative voting" and "n) ranked order voting."

Although these standards do not require vendors of newly certified voting equipment to be able to handle cumulative voting and ranked order voting, it does require them to state whether or note their equipment can handle these systems.

We believe that Proposition 41 funds should only be distributed to counties acquiring voting equipment that can accommodate the use of ranked ballots and cumulative voting system.

We thank you for the opportunity to comment on the important task of allocating money to counties that are modernizing their voting equipment.

Finally, I am attaching a letter signed by leading civil rights and civic groups about the importance of flexibility in voting systems, along with a more-detailed description of this principle. The acquisition of electronic DRFs would best achieve this principle.

Please don't hesitate to contact me at any time if you would like to discuss these comments in greater detail.

Sincerely,



Caleb Kleppner
Majority Rule Project Director

PO Box 22411, San Francisco CA 94122 · (415) 824-2735 [ph/fax] · calebk@fairvote.org

Originally drafted June 2001

To whom it may concern:

The controversial presidential elections in Florida in 2000 demonstrated that many American counties use antiquated voting equipment. There is a consensus among election administrators, elected officials, civic leaders and the public at-large that many jurisdictions should modernize their equipment to ensure that voter intentions are accurately recorded and counted.

As a whole, we believe that much more needs to be done to improve our electoral process than purchasing new voting equipment and software. At the same time, we believe that such new equipment, when made equally available in all precincts, is an essential building block to a fair and just representative democracy. But it is critically important new voting mechanics expand democracy rather than put any unnecessary limitations upon it. For that reason, we support federal and state requirements that all new voting equipment and software have the following features:

- Have a precinct-based, error-correcting capacity to ensure that voters have the opportunity to correct or avoid any errors, such as over-votes and under-votes
- Be flexible enough to handle ballot types necessary for all election systems currently used in the United States, including cumulative voting and ranked choice ballots
- Provide full accessibility to people with disabilities
- Ensure ballots can be read and understood with minimal assistance by people whose level of literacy is low and by people whose primary language is other than English.

Sincerely,

Asian American Legal Defense and Education Fund
Brennan Center for Justice
Center for Voting and Democracy
Committee for the Study of the American Electorate
Demos: A Network for Ideas & Action
Lawyers' Committee for Civil Rights Under Law
National Asian Pacific American Legal Consortium
Puerto Rican Legal Defense and Education Fund
U.S. Public Interest Research Group

Voting Equipment and the Benefits of Flexibility *The Center for Voting and Democracy*

There are several important criteria that counties and states should satisfy in purchasing new equipment and software. One particularly important criterion is flexibility. The principle of flexibility in voting equipment includes several components:

A. Precinct-Based, Error-Correcting Capacity: Research in the wake of the 2000 elections demonstrates that perhaps the most straightforward way to reduce invalid votes is to ensure that voters have the opportunity to correct any over-votes and under-votes or avoid them altogether. The capacity for precinct-based error correction can be built into all current voting technologies.

B. Capacity to Handle All Ballot Types: There are currently four ballot types used individually and in combination in public elections in the U.S. They are:

1. Voters vote for one candidate only in a given level of election
2. Voters vote for more than one candidate in a given election
3. Voters can allocate more than one vote to a single candidate (cumulative voting)
4. Voters can rank candidates in order of choice (choice voting and instant runoff voting)

Jurisdictions acquiring new voting equipment can generally ensure compatibility with all ballots types at no additional cost. Voting technologies include: 1) electronic Direct Recording Equipment (DRE), often referred to as ATM- or touch-screen style equipment, 2) optical scanning equipment; and 3) modern punch card equipment. Some equipment provides ballot type flexibility more easily than others, with DRE's likely have the potential for the easiest designs. Most equipment and technologies, such as lever and push-button machines, are generally incompatible with all ballot types. Some relatively modern equipment is incompatible without software adjustments. The counties of Santa Clara (CA), Alameda (CA) and Travis (TX) are among those that have included in their request for proposals requirements that their new DRE's be able to handle ranked-ballots, and all major DRE vendors now have ranked ballots as a standard available feature. Three major companies which produce optical scan equipment, ES&S, Global and Sequoia, can handle ranked-choice ballots with their latest precinct scanners.

C. Accessibility for People with Disabilities: The federal Americans with Disabilities Act (ADA) and the National Voter Registration Act (NVRA or "Motor Voter") guarantee access to polling sites and voting equipment for people with disabilities of sight and mobility. However, interpretation of this law has not satisfied advocates of people with disabilities, as it has allowed jurisdictions to purchase new equipment that does not provide the levels of accessibility these advocates seek. There is a developing consensus among election administration reformers that greater accessibility is of fundamental concern, which raises particular questions about voting equipment -- like optical scan technology -- that makes it impossible or difficult for those who are visually impaired to cast a secret ballot.

D. Recognition of Differences in Language and Literacy Level: The federal Voting Rights Act requires that under certain conditions election materials must be provided in languages other than English. Voting equipment and materials also should be useable by voters who have low levels of literacy. All modern voting equipment can be designed for multiple languages, although some can do so with less strain on election administrators than others. For example, electronic DRE's can allow voters to indicate their language of choice without requiring election administrators to print and distribute ballots in those languages. Particular voting equipment and ballot designs vary greatly in terms of their ease of use by people with low levels of literacy. Although machines currently used in many places are not accessible to people who do not read English, experience from around the world shows that it is possible to design fully accessible materials for any voting equipment or technology. The key is to use simple, clear language along with pictures, symbols and/or numbers.