

# Exhibit 1



# Courthouse News Service

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## Three-Candidate Limit in SF Voting System Unconstitutional, Suit Says By MARIA DINZEO

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SAN FRANCISCO (CN) - San Francisco voters and a defeated candidate for the Board of Supervisors challenged the city's three-candidate "instant runoff" voting system in Federal Court. They claim the system, adopted in 2002, deprives voters of the chance to vote in later rounds by limiting their choices to three, regardless of how many candidates are running.

Under the system, voting takes place on a single day, and if no candidate receives a majority of first-place votes after the initial tally, the instant runoff occurs.

Of the top three candidates, the candidate who receives the fewest number of votes is eliminated, and his or her votes are transferred to the voters' second choices.

"The instant runoff process continues, round after round, until one candidate gets a majority of the 'continuing' votes cast," the complaint states.

But if a voter did not choose anyone in the top three, the ballot is thrown out.

"If you or I go to the polls and vote and our votes aren't counted, it seems to me that our constitutional rights are being violated," said James Parrinello, lead attorney for the plaintiffs.

Plaintiff Ron Dudum, who lost a close race for city supervisor in 2006, says the system is confusing to voters no matter how many times it's explained.

"Advocates in favor of the system simply insist that voter education is all that counts. But what they're really saying is the voters just aren't smart enough. In the real world, no amount of education will make a voter feel confident," he said. Dudum attributes his loss to the ranked-choice voting system, claiming he received more votes than the candidate who was declared the winner. But he says his lawsuit has "nothing to do with sour grapes."

"This isn't about me," said Dudum, who added that he has no plans to run for municipal office again.

He said that as a voter, he is concerned about whether his vote will count in the next election.

"I'm going to vote for mayor next year and I have no idea whether I'm going to pick the right three," he said.

For Rob Richie, Executive Director of think tank FairVote, Dudum's criticism of ranked choice voting is "a natural reaction when one loses a close race," adding Dudum was not as strong a candidate as he claimed and perhaps "didn't understand his own election." He said ranked choice actually allows voters more opportunities to have a deciding vote than other systems. "They are still part of the election and they have three chances to have a deciding vote," he said, indicating that although he and other advocates prefer more rankings than just three, voting machines are not programmed that way and "we have to deal with the realities of the machinery." Parrinello and Dudum said the city instituted the system to reduce the expenses of holding elections.

"If you want to save money, why don't we just do away with elections and have a dictatorship? It's ridiculous," Dudum said. "It's silly to say that money should trump democracy."

Richie said through their lawsuit, Dudum and the other plaintiffs are just "trying to create feelings of unease and confusion," in an attempt to do away with ranked choice voting altogether. "If they for some reason win this litigation it would lead to a long, messy hand count in November," Richie said.

The plaintiffs seek declaratory judgment and an injunction before the November election. They are represented by James Parrinello and Christopher Skinner with Nielsen Merksamer of San Rafael.

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# **Exhibit 2**

OFFICIAL BALLOT

Judge Judge

TEST ELECTION

MAY 6, 2009

MINI-APPLE, MINNESOTA

# Ranked Choice Voting Ballot

## City of Mini-Apple, Minnesota

### Test Election

### May 6, 2009

**INSTRUCTIONS TO VOTERS**

Rank up to 3 candidates for each office in order of your preference: 1st, 2nd, 3rd. Completely fill in the oval next to your choice like this: ●

1. Mark your first choice in Column 1.
2. Mark your second choice in Column 2. This choice must be different from your first choice. If you do not wish to make a second choice, leave the column blank.
3. Mark your third choice in Column 3. This choice must be different from your first and second choices. If you do not wish to make a third choice, leave the column blank.

Do not mark more than one oval per column in each race.  
Do not choose the same candidate more than once.  
Do not skip columns.

You may rank fewer than three candidates. If you make a mistake, ask for a new ballot.

Column 1	Column 2	Column 3
<p><b>Mayor</b> 1 to be elected</p> <p><b>1</b> First Choice Fill in one oval</p> <p><input type="checkbox"/> Fireside Apple Party</p> <p><input type="checkbox"/> Haralson Apple Party</p> <p><input type="checkbox"/> Honeycrisp Apple Party</p> <p><input type="checkbox"/> McIntosh Apple Party</p> <p><input type="checkbox"/> Regent Apple Party</p> <p><input type="checkbox"/> SnowSweet Apple Party</p> <p>write-in, if any</p>	<p><b>Mayor</b> 1 to be elected</p> <p><b>2</b> Second Choice Fill in one oval This must be different from your first choice.</p> <p><input type="checkbox"/> Fireside Apple Party</p> <p><input type="checkbox"/> Haralson Apple Party</p> <p><input type="checkbox"/> Honeycrisp Apple Party</p> <p><input type="checkbox"/> McIntosh Apple Party</p> <p><input type="checkbox"/> Regent Apple Party</p> <p><input type="checkbox"/> SnowSweet Apple Party</p> <p>write-in, if any</p>	<p><b>Mayor</b> 1 to be elected</p> <p><b>3</b> Third Choice Fill in one oval This must be different from your first and second choices.</p> <p><input type="checkbox"/> Fireside Apple Party</p> <p><input type="checkbox"/> Haralson Apple Party</p> <p><input type="checkbox"/> Honeycrisp Apple Party</p> <p><input type="checkbox"/> McIntosh Apple Party</p> <p><input type="checkbox"/> Regent Apple Party</p> <p><input type="checkbox"/> SnowSweet Apple Party</p> <p>write-in, if any</p>
<p><b>Council Member - Ward B</b> 1 to be elected</p> <p><b>1</b> First Choice Fill in one oval</p> <p><input type="checkbox"/> Coniferous Forest Biome Party</p> <p><input type="checkbox"/> Tallgrass Aspen Parkland Biome Party</p> <p><input type="checkbox"/> Deciduous Forest Biome Party</p> <p><input type="checkbox"/> Prairie Grassland Biome Party</p> <p>write-in, if any</p>	<p><b>Council Member - Ward B</b> 1 to be elected</p> <p><b>2</b> Second Choice Fill in one oval This must be different from your first choice.</p> <p><input type="checkbox"/> Coniferous Forest Biome Party</p> <p><input type="checkbox"/> Tallgrass Aspen Parkland Biome Party</p> <p><input type="checkbox"/> Deciduous Forest Biome Party</p> <p><input type="checkbox"/> Prairie Grassland Biome Party</p> <p>write-in, if any</p>	<p><b>Council Member - Ward B</b> 1 to be elected</p> <p><b>3</b> Third choice Fill in one oval This must be different from your first and second choices.</p> <p><input type="checkbox"/> Coniferous Forest Biome Party</p> <p><input type="checkbox"/> Tallgrass Aspen Parkland Biome Party</p> <p><input type="checkbox"/> Deciduous Forest Biome Party</p> <p><input type="checkbox"/> Prairie Grassland Biome Party</p> <p>write-in, if any</p>

City of Mini-Apple Ward B

8005

Typ 01 Seq 0003 Spr 01

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VOTE FRONT AND BACK OF BALLOT

Ward B

# **Exhibit 3**

## How IRV Boosts Voter Turnout

*Submitted by Gautam Dutta on Mon, 06/22/2009 - 04:42.*  
June 21, 2009

### Majority winners: IRV vs. Two round runoffs

In any runoff system, the winning candidate must win a majority of valid ballots cast in the final round of counting between the top candidates (e.g., the "continuing ballots") rather than a majority of total ballots that might have been cast for the race. This is true both of instant runoff voting and two round runoff elections. In the latter case, winning candidates must win a majority of the second election, not a majority of voters who turned out in the highest turnout race. But with voter turnout typically decreasing in the second election, often by dramatic amounts, that means winners are being elected by a smaller pool of voters that can be far less than a majority of voters that turned out in the original election for that race.

This is not merely a point of academic consideration. Below are results from San Francisco elections, where you can see that with the "instant" runoff, winners received significantly more votes and overall support than winners in December's "delayed" runoffs (and especially more than winners in conventional plurality voting elections). By getting the election over in November, during a presidential election year, more votes were cast in the decisive election and winners received more votes both in real terms and as a percent of the vote than the old delayed runoff system. And that means more voters had a say in who their supervisor is.

In contrast, for the previous non-IRV supervisor elections in a presidential election year (2000), relatively high voter turnout elections in November were followed by runoffs with sharply lower voter turnout. The average decline in voter turnout from November to December was 42.3% in 2000. Winning candidates received a majority of the low turnout December electorate in those two runoff elections, but when compared to the total voters who participated in that supervisorial election in November, winning candidates in December received a low of 28% and a high of 45% of the November turnout, with most races in the lower end of this range. But winners in the 2004 IRV races received anywhere from 48.7% to 37.6% of all votes cast in their respective races. In addition, in the IRV races there were far fewer "exhausted ballots" than in the 2000 non-IRV races (for this comparison, we counted voters who do not return and participate in the 2000 December runoff as exhausted). See the tables below.

### Supervisor Races requiring an "instant runoff", November 2004

District/winner	Total valid IRV votes	Votes in final round	Winner's votes	Runoff percent	Percent of all votes	Exhausted ballots	% Effective ballots
D1 McGoldrick	28,787	25,940	14,011	54.0%	48.7%	2847 (9.9%)	90.1%
D5 Mirkarimi	35,109	26,111	13,211	50.6%	37.6%	8998 (25.6%)	74.4%
D7 Elsbernd	31,639	24,325	13,834	56.9%	43.7%	7314 (23.1%)	76.9%
D11 Sandoval	23,176	18,307	10,679	58.3%	46.1%	4869 (21.0%)	79%

### Board of Supervisors races, 2000

District	November election (total votes)	December runoff total votes	Winner's votes (in Dec. runoff)	Percent (winner's votes compared to November votes)	"Exhausted" ballots (non-return voters)
District 1	24,211	14,373	7,486	30.9%	9838 (40.6%)
District 2	27,070	No runoff	No runoff	No runoff	
District 3	21,066	12,414	7,202	34.2%	8652 (41.1%)
District 4	24,617	14,782	8,453	34.3%	9835 (40.0%)
District 5	30,125	15,887	10,384	34.5%	14,238 (47.3%)
District					

6	18,738	10,470	8,472	45.2%	8268 (44.1%)
District 7	30,229	18,627	9,333	30.9%	11,602 (38.4%)
District 8	34,178	18,444	9,578	28.0%	15,734 (46.0%)
District 9	20,972	No runoff	No runoff	No runoff	
District 10	19,764	10,649	5,887	29.8%	9115 (46.1%)
District 11	21,409	13,708	8,345	39.0%	7701 (36.0%)

Thus in the 2004 IRV elections, all winning candidates in the "instant runoffs" had larger vote totals and percentages than winners in 2000 in December's "delayed runoff." Winning candidates ultimately won a greater share of the valid ballots (that is, of the original turnout) than most of the winning candidates in the December 2000 runoffs. In any runoff system, the winning candidate must win a majority of valid ballots cast in the final round of counting between the top candidates (e.g., the "continuing ballots") rather than a majority of total ballots that might have been cast for the race.

Moreover, support for winners was significantly higher if determined by the number of people who ranked the winner with at least one of their three rankings. For example, even though District Five had 22 candidates, winner Ross Mirkarimi was ranked by 47% of voters. Every other winner drew at least one ranking from at least 53% of voters (these numbers are not shown on the charts above). Winning candidates in 2000 received between 5,887 and 10,384 votes. Winning candidates in 2004 received between 10,679 and 14,011, and were ranked on 12,200 to 16,900 ballots.

A similar dynamic was at work in the 2008 elections for Board of Supervisors in San Francisco. Here are those results:

**Vote totals for first and second place candidates, Board of Supervisors races, Districts 1, 3 and 11**

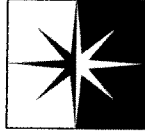
	2008 – using IRV	2000 – non-IRV
District 1	13,117 1st place finisher, 12,761 2nd place	7486 1st place, 6887 2nd
	<b>Total votes: 25,878</b>	<b>Total: 14,373</b>
District 3	13,316 1st place finisher, 9091 2nd place	7202 1st place, 5212 2nd
	<b>Total votes: 22,407</b>	<b>Total: 12,414</b>
District 11	10,027 1st place finisher, 8947 2nd place	8345 1st place, 5363 2nd
	<b>Total votes: 18,974</b>	<b>Total: 13,708</b>

As the chart above shows, by finishing these elections in November using an "instant runoff" instead of in a low turnout "delayed" runoff, voter turnout in 2008 nearly doubled in Districts 1 and 3 compared to the turnout in these Districts for the December runoff in 2000 (that's the last time these District supervisors were elected using a December runoff). District 11 also showed a healthy increase in turnout (District 9, the other district decided this year using ranked choice voting, did not have a December runoff in 2000 since the incumbent won a majority outright in the November election).

This means that, compared to the old December runoff method, a lot more voters are having a say in who their supervisor is using the "instant runoff" rather than a "delayed runoff" in December.

# Exhibit 4





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## **Instant Runoff Voting and Its Impact on Racial Minorities** **Produced by The New America Foundation and FairVote, June 2008**

### **Executive summary:**

Instant runoff voting (IRV) is an election method that determines the choice of a majority of voters in a single round of voting without the need to conduct a separate runoff election. As a majority voting method, IRV is ideal for single-winner offices such as governor, mayor and legislators representing a one-seat district.

In recent years, IRV has been implemented for local elections in several American cities, including San Francisco (CA), Cary (NC), Hendersonville (NC), Takoma Park (MD), and Burlington (VT). It has also been used for state elections to allow overseas voters to participate in runoff elections in such states as Louisiana, South Carolina, and Arkansas.<sup>1</sup> In 2008 Pierce County (WA) began using IRV to elect the county executive and other county offices. IRV has been popular with voters, having won in 13 out of its last 14 ballot measures across the country, including landslide victories in 2006-2008 that averaged 69% of the vote in Oakland (CA), Minneapolis (MN), Santa Fee (NM) and Sarasota (FL).

Internationally, IRV is used to elect the Mayor of London, an extremely diverse and complex city with many racial and language minorities. IRV has been used for generations in national elections in Australia and Ireland. In 2007 it was used for highly praised elections in the complex, multiracial electorate of Papua New Guinea. The related ranked voting system of choice voting (also known as proportional representation) has been used in Cambridge (MA) since 1941 and was previously used with positive impact on representation of racial and ethnic minorities in such cities as New York, Cleveland and Cincinnati.

San Francisco is the largest and most diverse American city to hold an IRV election in recent years. The city's population is 32% Asian American, 7% African American, 14% Latino and 44% white (2006 ACS estimate); a majority of residents aged 25 and older do not have a college degree. San Francisco has administered instant runoff voting in annual elections for numerous local offices

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<sup>1</sup> Louisiana, South Carolina and Arkansas used traditional two-round runoff elections, but there is no time to mail the second round ballot to overseas voters. Hence, these states allow voters to rank a first, second and third choice and the runoff rankings are used to determine each voter's ballot in the second round, if one is necessary.

since November of 2004. The Public Research Institute at San Francisco State University conducted exit polls during two IRV elections in this period, as did other groups like the Asian Law Caucus. In addition, FairVote conducted studies based on precinct analysis of ballots for the 2004 and 2005 elections. The polls of San Francisco voters' opinions and the precinct analysis of turnout and use of rankings in San Francisco demonstrate that:

- Voters of all races and ethnicities strongly preferred IRV over a two-round runoff system.
- Voters of all races and ethnicities find IRV easy to use.
- IRV increased turnout citywide by 2.7 times, and in the city's six most racially and socio-economically diverse neighborhoods turnout quadrupled in the 2005 citywide election (the only race studied for impact on voter turnout).
- An overwhelming majority of voters, including minority voters, reported understanding IRV.

This report concludes with a review of voter education efforts in two IRV elections, including San Francisco's well-funded voter education and outreach campaign in 2004 and Cary, NC's modestly-funded yet still effective voter education effort in 2007.

#### A. Voters preferred instant runoff voting

San Francisco's exit poll results show that voters smoothly transitioned to IRV. The Public Research Institute at San Francisco State University (SFSU) conducted exit polls during the 2004 and 2005 elections that used IRV, including both district races for the board of supervisors and citywide races for various offices. According to the SFSU surveys, voters preferred IRV to the previous runoff system by a margin of over three to one. Overall, 55% of voters stated a preference for IRV, 28% stated no preference, and only 17% missed having the two-round runoff.<sup>2</sup> In every single grouping of voters, as measured by age, race, language, income and education, voters preferred IRV to the old delayed runoff method.<sup>3</sup>

In 2006, the Asian Law Caucus conducted an exit poll of voters for a Board of Supervisors race in District Four, a majority Asian district. Four different Asian candidates were running in this race, which would normally raise concerns about the possibility of Asian voters "splitting their vote" among too many Asian candidates. IRV allowed the Asian vote to coalesce on a winning Asian candidate. The ALC survey found that 66% of Asian respondents called IRV "helpful" compared to 57% of non-Asian respondents. And 82% of Asian respondents ranked two or three choices, while 84% of non-Asians ranked two or three choices.

Exit polls in other U.S. cities that have used IRV for local elections report similar findings. In Cary (NC), 68% of voters preferred IRV over their previous method; in Burlington (VT) 63%, Takoma Park (MD) 89% and Hendersonville (NC) 67%.<sup>4</sup>

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<sup>2</sup> SFSU IRV Survey, July 2006: <http://www.fairvote.org/media/irv/SFSU-PRIRCVFinalReport.pdf>, p. 25

<sup>3</sup> SFSU IRV Survey, July 2006: <http://www.fairvote.org/media/irv/SFSU-PRIRCVFinalReport.pdf>, p. 30

<sup>4</sup> Summary of several cities' IRV exit polls, <http://www.instantrunoff.com/exitpoll.php>

## B. Voters report a high level of understanding

While an understanding of IRV's vote tabulation rules are not necessary for a voter to rank candidates and cast an effective ballot<sup>5</sup>, exit polls typically have asked questions to voters about their level of understanding of IRV. In SFSU's exit polls in 2004 and 2005, for example, 87% of San Franciscans polled said they understood the voting system "perfectly well" or "fairly well".<sup>6</sup> Specifically, ethnic and minority voters reported a very high level of understanding of IRV:<sup>7</sup>

	Understand "Perfectly well" or "Fairly well"
Hispanic/Latino	89.8%
Asian/Pacific Islander	85.7%
African American/Black	84.8%
White	87.8%
Other	85.3%

Exit polls in other American cities using IRV in their local elections also showed that voters reported high levels of understanding: 88% in Takoma Park, MD,<sup>8</sup> 95% in Cary, NC<sup>9</sup>, 86% in Hendersonville, NC<sup>10</sup> and 86% in Burlington, VT.<sup>11</sup>

## C. IRV did not increase the rate of spoiled ballots

The San Francisco studies show that regardless of whether voters knew that they would be asked to rank candidates when they showed up to vote, it was equally easy for them to cast a ranked ballot. Nearly half of San Francisco voters in the city's IRV election in 2005 did not know they were going to vote in an IRV election when they came to vote or received their absentee ballot, yet 99.6% of voters in that year's most hotly contested IRV race cast valid votes – with all categories of voters handling IRV elections well whether they knew about it before voting or not.<sup>12</sup>

In IRV elections, if voters erroneously mark more than one first-choice candidate, it is invalidated as an "overvote." Overvotes are "spoiled" and indicate a lack of voter understanding of how to mark their ballot. If voters do not vote for any candidate in a given race, it is called an "undervote." Undervotes are not "spoiled" ballots. They typically reflect a voter's intent to skip voting in a race due to indifference to the outcome.

In the November 2004 election, San Francisco held IRV elections for seven seats on the Board of Supervisors, along with non-IRV state and federal elections. This election provided valuable data

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<sup>5</sup> It is important to note that a voter who does not know anything about IRV can successfully rank candidates and cast a ballot by simply following the voting instructions. So even the approximate 13% or so of respondents who reported not understanding IRV should not be interpreted as meaning they did not effectively use their ballots or successfully rank their candidates. Many American voters do not understand how the Electoral College system works, yet still can cast an effective vote for president.

<sup>6</sup> SFSU IRV Survey, July 2006: <http://www.fairvote.org/media/irv/SFSU-PRIRCVFinalReport.pdf>, p. 10

<sup>7</sup> SFSU IRV Survey, July 2006: <http://www.fairvote.org/media/irv/SFSU-PRIRCVFinalReport.pdf>, p. 33

<sup>8</sup> Fairvote.org, <http://www.fairvote.org/blog/index.php/2007/01/31/first-takoma-park-irv-election-exit-poll/>

<sup>9</sup> [http://www2.chass.ncsu.edu/cobb/IRV%20Results\\_Tables.pdf](http://www2.chass.ncsu.edu/cobb/IRV%20Results_Tables.pdf)

<sup>10</sup> [http://www2.chass.ncsu.edu/cobb/IRV%20Results\\_Tables.pdf](http://www2.chass.ncsu.edu/cobb/IRV%20Results_Tables.pdf)

<sup>11</sup> Minimum share of votes, among all educational levels, that did not find the ballot confusing:

[http://www.fairvotemn.org/sites/fairvotemn.org/files/burlington\\_exit\\_poll\\_results.pdf](http://www.fairvotemn.org/sites/fairvotemn.org/files/burlington_exit_poll_results.pdf)

<sup>12</sup> SFSU IRV Survey, July 2006: <http://www.fairvote.org/media/irv/SFSU-PRIRCVFinalReport.pdf>

for a precinct analysis by FairVote that compared IRV races with non-IRV races. For the non-IRV presidential, federal, and state races, less than 1% of voters overvoted and 8% of voters undervoted, for a countable-ballot rate of 91.75%. In all the non-presidential races, the countable-ballot rate was 89.7%.<sup>13</sup>

In contrast, in the seven IRV races for the Board of Supervisors, less than 1% of voters overvoted and 8% of voters undervoted, for a countable-ballot rate of 91.1% -- virtually identical to the non-IRV rate, and in fact higher than the countable-ballot rate in non-Presidential elections overall.

IRV elections have shown a very low overvote rate across the nation. In Burlington (VT), for example, 99.9% of ballots cast in a hotly contested five-candidate race for mayor in 2006 were valid. The undervote was lower in the mayor's race than the other Burlington elections that year that did not use IRV, and the turnout was significantly higher than the preceding mayoral election without IRV. In Takoma Park (MD), there was only a single overvote in the city's initial 2007 IRV election with three candidates seeking an open seat -- and there was only a single overvote among all the second choice rankings cast as well.

#### D. IRV increased voter turnout

FairVote's precinct analysis of San Francisco's first citywide election with IRV showed that using IRV rather than a two-round runoff election significantly increased voter turnout in the decisive election, especially among ethnic and racial minority groups. The FairVote precinct analysis compared the 2001 election for City Attorney that did not use IRV (as it had not been passed by voters yet) with a comparable 2005 election for City Attorney and Assessor-Recorder, using IRV. The city attorney race in 2005 was uncontested so a comparison was made between the city attorney race in 2001 and the Assessor-Recorder race in 2005. Both elections took place in odd years and both offices held a similar public profile. The runoff in the December 2001 election for City Attorney had a voter turnout of just 17% of registered voters (74,698 out of 453,961 registered voters). In contrast, during the November 2005 IRV election, turnout was 54% of registered voters (229,714 out of 428,481 registered voters).<sup>14</sup> Based on this analysis, IRV boosted citywide voter turnout in the final, decisive race nearly three-fold (by 2.7 times).<sup>15</sup>

Significantly, the most dramatic rise in turnout was in neighborhoods where people of color make up a majority.<sup>16</sup> Before IRV was introduced, San Francisco's most diverse neighborhoods had the lowest turnout rates. After IRV was introduced, voter turnout in the city's six most socio-economically diverse neighborhoods skyrocketed by over 300% (a four-fold increase in turnout): Western Addition (309.4%), Bayview / Hunter's Point (351.6%), Mission (351.6%), Ingleside (324.6%), Excelsior (310.4%) and Visitation Valley (407.3%).<sup>17</sup>

Another FairVote study comparing San Francisco's voter turnout in two presidential election years, 2000 and 2004, also showed a dramatic increase in participation resulting from the use of IRV. In

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<sup>13</sup> SFSU IRV Survey, May 2005: [SFSU IRV Survey 2004 Election.pdf](#), p. 4

<sup>14</sup> Christopher Jerdonek, [Ranked Choice Voting and Voter Turnout in San Francisco Elections](#), p. 2

<sup>15</sup> Christopher Jerdonek, [Ranked Choice Voting and Voter Turnout in San Francisco Elections](#), p. 5

<sup>16</sup> Christopher Jerdonek, [Ranked Choice Voting and Voter Turnout in San Francisco Elections](#), p. 5

<sup>17</sup> Christopher Jerdonek, [Ranked Choice Voting and Voter Turnout in San Francisco Elections](#), p. 9

the Board of Supervisor races in 2000, IRV was not used and voter turnout declined significantly between the November election and the December runoff. The December runoff turnout ranged from a low of 53% to a high of 64% of the November turnout, depending on the race. In IRV races for Board of Supervisor in the 2004 election, final round turnout ranged from a low of 75% to a high of 90% of the initial round of voters who cast ballots.

In raw numbers, winning candidates in the 2000 elections with December's delayed runoffs received between 5,900 and 10,400 votes. Winning candidates in the IRV elections in 2004 received between 10,500 and 13,600, and were ranked in the top three on 12,200 to 16,900 ballots. That means that when comparing the IRV elections to the December runoff elections, many more voters were participating in the final round of the IRV election when the race was decided than were voting in the December runoff elections. And it means with IRV more voters were having a direct impact on the choice of their elected representative than with the December runoffs.

Two key factors account for this dramatic difference in voter turnout: (1) consolidating from two elections to one relieves voter fatigue, and enables voters, campaigns and mobilizing organizations to focus on a single, decisive election, and (2) in San Francisco's case, holding the final election in November rather than December takes advantage of typically higher turnout in November elections when higher profile races like president and governor are on the ballot.

E. Racial minorities more likely to use rankings

With IRV, voters have the options of ranking up to three candidates. That is, they can rank three candidates, rank two candidates, or simply mark a single candidate (as their first and only choice). According to the San Francisco State University study of the 2005 IRV election, San Francisco's racial and ethnic minority voters ranked the most candidates in the citywide election. They overwhelmingly chose to rank three candidates -- more so than white voters:

	Ranked Three
Hispanic/Latino	67.4%
Asian/Pacific Islander	64.7%
African American/Black	72.1%
White	51.4%
Other	56.4%

Overall, half of voters (56.5%) chose to rank three candidates, while another 10.4% ranked two candidates and a third of voters (33.1%) chose one candidate.<sup>18</sup> Nearly half (46%) of voters said ranking candidates was "easy" or "very easy", and only 16% said it was either difficult or very difficult.<sup>19</sup>

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<sup>18</sup> SFSU IRV Survey, July 2006: <http://www.fairvote.org/media/irv/SFSU-PRIRCVFinalReport.pdf>, p. 17. Note that because this race only had three candidates, a voter ranking two candidates in fact cast a fully effective ballot, because that voter's ballot would never count for their third choice.

<sup>19</sup> SFSU IRV Survey, July 2006: <http://www.fairvote.org/media/irv/SFSU-PRIRCVFinalReport.pdf>, p. 21. It is important to note that this self-definition of "difficult" may not have an impact on voters casting an effective ballot. For example, some voters may have said that they found ranking difficult, not because the *act of ranking* was difficult, but instead simply because they considered all of the candidates other than their favorite to be unacceptable, or all candidates relatively similar. For example, a person making a list of movies to rent might say it was "difficult" to rank

Precinct analyses show a similar result. FairVote’s analysis of San Francisco’s 2004 District 1 Supervisor race showed that, on average, supporters of the two Asian American candidates (Lillian Sing and Rose Tsai) made more use of their rankings (2.56 and 2.58 respectively out of a possible three) than the supporters of the eventual winner, Jake McGoldrick (2.41).<sup>20</sup>

This high use of rankings also was found by the Asian Law Caucus’s exit poll survey of the 2006 open seat race in District 4 (one of the city’s most heavily Asian districts). The ALC study found that 82% of Asian Americans ranked two or three candidates on their ballot, compared to 84% of non-Asian Americans.<sup>21</sup> There were clear signs that voters used these rankings effectively. For example, even though voters were limited to three rankings, the race had four strong Asian candidates. Leading Asian organization split their endorsements among these candidates, raising a fear that Asian American voters would split their preferences in a race against a non-Asian candidate who was popular enough to finish second. But instead, the great majority of Asian voters created an ad hoc Asian coalition by choosing to rank three of the Asian candidates in some order. Indeed, a separate FairVote analysis showed that any one of these three Asian candidates would have defeated the non-Asian candidate in an IRV election because they would have picked up the second and third rankings from the supporters of the other Asian candidates.

#### F. Education campaign recommendations

The successful transition to IRV in San Francisco, as well as its successful use in other cities like Burlington (VT) and London (UK), indicates that any community can expect a similarly smooth transition with appropriate preparation. The most important factors boosting effective use of the IRV system are ones that can be done inexpensively: sensible ballot design, clear ballot instructions and well-trained pollworkers. In 2007 Cary (NC) demonstrated how inexpensive voter education campaigns can be, with the county board of elections spending less than \$10,000 for voter education for the first IRV election in a city with more than 110,000 people. We examine two approaches to voter education.

##### *San Francisco: Well-Funded Voter Education Campaign Option*

With a relatively generous budget for voter education for its first IRV elections for seven of the city’s 11 wards during a high turnout presidential election, San Francisco in 2004 pursued an education campaign to voters and various communities that can serve as a model for a community wanting to allocate significant resources to voter education. The San Francisco Department of Elections launched a multi-pronged campaign that included print and electronic media, mass mailings, information in the Voter Information Pamphlet, and targeted outreach to specific communities. In addition, much thought went into ballot design and how to construct the precinct itself and train poll workers. This way, even a voter who had never heard of IRV would have a successful experience on Election Day—or when voting by absentee ballot, as more than three in ten voters have done in recent IRV elections in San Francisco.

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several movies in order of preference, but still be thankful for the opportunity to do so when finding that their favorite is not available.

<sup>20</sup> SFSU IRV Survey, May 2005: [SFSU IRV Survey 2004 Election.pdf](#), p. 5

<sup>21</sup> Nov. 2006 Asian Law Caucus exit poll: <http://www.altrue.net/site/alc/content.php?type=1&id=13223>.

A public relations firm was hired to create a clear and effective message to reach the voters. Posters, brochures, and public service announcements (PSA's) were used to explain IRV in several languages, including Spanish and Mandarin. To ensure that the voting precincts ran smoothly, the Department of Elections carefully trained its poll workers and ensured that voting instruction materials were easy to follow.<sup>22</sup> The initial education campaign cost \$1.70 per voter.<sup>23</sup> In subsequent elections, the cost of the education campaign has been less expensive, costing approximately \$0.50 per voter. Given that Burlington, VT and Cary, NC (see below) spent about \$0.25 per voter for its first IRV elections, San Francisco spending should be viewed as an upper limit of a range of possible spending for a successful campaign.

A review of educational campaigns in San Francisco and other cities demonstrates several steps that are useful for successful and cost-effective voter outreach:

1. Use a clear ballot design
2. Draft clear voter instructions
3. Set up a helpful, multilingual website with sample ballots to educate voters
4. Allocate extra IRV training for poll workers
5. Design the polling station with a goal toward educating voters
6. Use media sources, including the ethnic media, effectively through PSA's, press releases and advertisements
7. The Voter Information Pamphlet should include a special section on IRV
8. One or more separate citywide mailings to all registered voters
9. Distribute helpful, language-appropriate brochures in public places like libraries and grocery stores.
10. Encourage candidates to educate their supporters about IRV; it will benefit them as well.
11. Concentrate education and outreach in the final month before voting takes place, as that is when the most voters are paying attention.
12. Provide information in advance to reporters and editors so their stories have an educational component.

*Cary in 2007: Modest Budget Voter Education Campaign.*

In Cary's city election for mayor, an at-large town council race and two district council seats, the Wake County Board of Elections in North Carolina spent less than \$10,000 in a city of more than 110,000 residents. Nineteen out of twenty voters reported that they understood the system, most of them well, and more than two-thirds preferred it to their old runoff system despite its adoption barely four months earlier. Voter education activities consisted of:

1. The Board of Elections and town sent sample ballots in utility bills and issued a media advisory about the pilot and ballot change.
2. The local newspaper ran articles about the new ballot design and pilot program.

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<sup>22</sup> [New America Foundation: Description and Analysis of San Francisco's Voter Education and Outreach](http://www.newamerica.net/files/Voter%20Education%20and%20Outreach%20in%20SF_A%20Description%20and%20Evaluation_Final.pdf). (A fuller evaluation of the San Francisco Education and Outreach plan from the 2004 election may be found on the Web at [http://www.newamerica.net/files/Voter%20Education%20and%20Outreach%20in%20SF\\_A%20Description%20and%20Evaluation\\_Final.pdf](http://www.newamerica.net/files/Voter%20Education%20and%20Outreach%20in%20SF_A%20Description%20and%20Evaluation_Final.pdf).)

<sup>23</sup> [City Clerk's 2007 Municipal Elections After Action Report](#).

3. Board staff and volunteers visited civic organizations like the Kiwanis and American Legion to inform them of the new IRV ballot.
4. Local radio stations ran 30-second PSA's.
5. The North Carolina Center for Voter Education created a video PSA for IRV, which ran on the government cable access station.
6. The local League of Women Voters and other civic groups like Democracy North Carolina placed sample ballots at grocery stores, libraries and the Division of Motor Vehicles.

As with San Francisco, the most important step was a good ballot design that was intuitive to voters. There are increasing examples of best practices for such designs and instruction to assist other communities implementing IRV.

**Conclusion:**

Instant runoff voting (IRV) has been used in a variety of locations around the United States and around the world. All available data resulting from exit poll surveys and precinct analysis show that the introduction of IRV has not hurt racial and ethnic minority voters, candidates or communities. These voters have understood IRV, preferred it to traditional two round runoffs and have successfully ranked their ballots, using them effectively. In San Francisco's first citywide election with IRV, the six neighborhoods with the highest percentage of racial minorities enjoyed voter turnout four times higher than under the old two round runoff system.

In fact, much of the data shows that in some races IRV has been directly beneficial for racial minority voters and candidates by allowing them to use the ranked ballots to form ad-hoc voter coalitions. The effective use of rankings has allowed racial minority voters to reduce "split votes" among competing minority candidates, assuring that when these voters vote for their favorite candidate, that vote won't unintentionally lead to the election of their least preferred choice.

While there have been some variation in results among various racial and ethnic groups, those disparities have been minor and do not constitute disenfranchisement for any group. Rather, they pinpoint the areas where continued education will be helpful to assure that all voters continue to have a positive experience with instant runoff voting.



# **Exhibit 5**



## New America Foundation Commends Berkeley for Support of Instant Runoff Voting

**Published:** February 10, 2010

The New America Foundation today commended the Berkeley City Council for its overwhelming support for Instant Runoff Voting (IRV). On Tuesday night, by an 8-1 vote of its city council, Berkeley became the third city in Alameda County since the beginning of the New Year to officially adopt Instant Runoff Voting.

"This is history in the making," said **Blair Bobier, Deputy Director of the New America Foundation's Political Reform Program**. "The decision by the Berkeley City Council means that three cities in the same county will all begin using Instant Runoff Voting for the first time this November." Last month, both the Oakland and San Leandro city councils approved using IRV for local elections starting this year.

"We really have to tip our hats to the many people in Alameda County who care so much about local democracy and shepherded this reform for a number of years. With their persistent efforts, groups like the League of Women Voters and Oakland Rising have been a model of citizen participation and dedication," said **Steven Hill, Director of the Political Reform Program**.

Instant Runoff Voting has been used in San Francisco since 2004 and is being actively considered by elected officials in a number of other cities in California. Instant Runoff Voting is also used in Minneapolis, North Carolina, Arkansas, Australia and Ireland, among other places. It has been approved in other U.S. cities, including Memphis, Santa Fe and St. Paul, and now awaits implementation. This year, the Academy Award for Best Picture will be determined by Instant Runoff Voting.

San Francisco has increased voter turnout, and saved millions of dollars by eliminating unnecessary runoff elections, since switching to IRV in 2004.

For more on instant runoff voting, please visit the [Political Reform Program website](#).

For media requests, please contact Elizabeth Wu at [wu@newamerica.net](mailto:wu@newamerica.net) or (510) 295-9859.

**Issues:** California Instant Runoff Voting

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# **Exhibit 6**

**Results**

<b>Republican Primary results<sup>[1]</sup></b>			
<b>Party</b>	<b>Candidate</b>	<b>Votes</b>	<b>Percentage</b>
Republican	Bill Brady	155,327	20.3%
Republican	Kirk Dillard	154,907	20.2%
Republican	Andy McKenna	147,599	19.3%
Republican	Jim Ryan	130,400	17.0%
Republican	Adam Andrzejewski	110,735	14.5%
Republican	Dan Proft	59,178	7.7%
Republican	Robert Schillerstrom	7,388	1.0%
<b>Totals</b>		<b>765,534</b>	<b>100%</b>

# **Exhibit 7**



## Sen. Hancock and Asm. Eng Introduce IRV Special Elections Bills

*Bills Would Allow Counties to Use Instant Runoff Voting for Special Elections*

**Published:** February 23, 2010

SACRAMENTO-Senator Loni Hancock (D-Oakland) and Assemblymember Mike Eng (D-Monterey Park) introduced SB 1346 and AB 2732, bills that would save counties millions of dollars by allowing them to use instant runoff voting (IRV) for special elections to fill vacancies. Based on a signature idea from the New America Foundation, these bills would drastically reduce the time needed to fill a vacant seat.

"Last year alone, taxpayers wasted millions of dollars on special elections that could have been decided fairly and efficiently with IRV," said **Gautam Dutta, deputy director of the Political Reform Program at the New America Foundation**. "We commend Senator Hancock and Assemblymember Eng for taking this important step toward empowering voters."

Under the current special election system, if one candidate fails to gain a majority of the votes, then the top candidate from each political party enters into a costly run-off election. In 2009, legislative seats previously held by state legislators Mike Duvall, Paul Krekorian, and John Benoit went vacant. While few voters turn out for the special elections, they waste a troubling sum of taxpayer dollars during an economic downturn: nearly \$4 million between the elections to replace Duvall, Krekorian, and Benoit.

With IRV, voters are able to elect a majority winner in a single election by ranking their choices (1, 2, 3). This reform, which has attracted bi-partisan support, saves taxpayer dollars, relieves voter fatigue, and reduces the amount of time people must go without representation as they await the two-round special election cycle to finish. IRV also makes leaders more accountable by encouraging them to run cleaner, more issue-based campaigns, because they are looking to pick up the second rankings from the supporters of other candidates.

"We look forward to working with Senator Hancock and others to move this important legislation forward," said **Steven Hill, director of the Political Reform Program at the New America Foundation**. "Our research shows that communities have been unnecessarily denied representation for long periods of time because it typically takes two separate rounds held months apart to elect a majority winner."

**For media requests, please contact Elizabeth Wu at [wu@newamerica.net](mailto:wu@newamerica.net) or (510) 295-9859.**

### **About the New America Foundation**

The New America Foundation is a nonprofit, nonpartisan public policy institute that invests in new thinkers and new ideas to address the next generation of challenges facing the United States. [www.newamerica.net](http://www.newamerica.net)

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**Issues:** California Instant Runoff Voting

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# **Exhibit 8**

# Stephenson v Ann Arbor Board of Canvassers

November 1975

[Actual charter language that was the subject of this court case]

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

JAMES E. STEPHENSON,  
Plaintiff,

FILE NO. 75—10166 AW

ANN ARBOR BOARD OF CITY CANVAS-  
SERS and JEROME S. WEISS,  
Defendant,

V

ALBERT H. WHEELER, JAMES M. DAHL,  
DOROTHY L. CAHN, MARJORIE C. BRAZER,  
LeROY CAPPAERT, DEBORA H. FREEMAN,  
MARY HELEN S. GILBERT, CHESTER FELDMAN  
and HENRIETTA FELDMAN, individually  
and as a Class,  
Intervening Defendants.

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OPINION OF THE COURT

The City of Ann Arbor, Michigan, on April 7, 1975 held an election for the offices of Mayor and City Councilman. The election of council persons was determined by the plurality system of voting, i.e., the candidate with the most votes was declared the winner.

The Mayor's race was conducted pursuant to a duly adopted Charter Amendment, Section 13.12(b), Ann Arbor City Charter, where by a "Preferential Voting System" was employed. This particular type of preferential voting has been termed the "Ware System" or "Majority Preferential Vote" also referred to as the "M.P.V. System." [1]

The Ann Arbor voters in the November 5, 1974 general election added Section 13.12(b) to their City Charter. The amendment was adopted by a majority of the voters.

Under the "Ware System" of preferential voting, where there are two or more candidates for the office in question, the voter has the right to indicate on his paper ballot, a first and second choice or as many choices in a descending numerical order as there are



candidates. If five candidates were listed on the ballot, then each voter would have the right to indicate by number, his or her first, second, third, fourth and fifth choice. The ballot explanation informed the voter to mark his first choice with the number "1", and his second choice with a number "2" and third choice with a number "3" (Ballot, Exhibit No Two).

Thus, the voter indicated by number who his or her next selection would be if his or her first choice was not in the race, or was eliminated from the race under the "Ware" or "M.P.V. System."

Under the "Ware" or "M.P.V. System" as is set forth in the Ann Arbor Charter Amendment, the candidate with the lowest number of votes is dropped or eliminated from consideration (where there are three or more candidates) and the second choice preferences from the ballots cast for the eliminated candidate, are then counted and distributed to the remaining candidates according to the second indicated preference on each ballot.

In the April 7, 1975 Ann Arbor Mayoria1 election, there were three candidates listed on the paper ballots. They were Carol Ernst, James E. Stephenson and Albert Wheeler.

The results of the election were as follows:

First Preference Votes for Stephenson	14,453
First Preference Votes for Wheeler	11,815
First Preference Votes for Ernst	3,181
First Preference votes for Miscellaneous Write-in Candidates	52

Total Valid First Preference Votes 29,501

No Candidate, whether listed on the paper ballot or by write-in vote received a majority of the valid votes cast as required by the Ann Arbor Charter Amendment.

Following the procedures outlined in the Charter Amendment, write-in candidates, and the ballot candidate with the least number of votes (Ernst) were dropped or eliminated, and the second choice votes wherein they were "First Preference" were counted and distributed among the remaining candidates. Note that because some voters elected not to exercise the option of choosing a second preference, the total number of Valid countable votes was 29,262.

That count of the "Second Preference" Votes from the Ernst ballots and distribution of them among the two candidates resulted in the following vote totals:

Wheeler	14,684
Stephenson	14,563

In view of the fact that the Charter Amendment required that a majority of the total countable vote was necessary in order for a candidate to be elected, and the total countable vote being 29,262, a majority of the vote was 14,631 plus one, or 14,632.

Candidate Wheeler having received 14,684 votes, after the second preference choices were counted from the eliminated candidate's ballots, thus received a majority of the valid countable votes cast and was declared the winner.

Plaintiff Stephenson brought suit, challenging the Constitutionality of the Preferential Voting system established by the Charter Amendment. As part of that action, Plaintiff Stephenson seeks in a Motion for Summary Judgment, a declaration by this Court, that the Charter Amendment is unconstitutional because it violates the equal protection clauses of the 14th Amendment to the Constitution of the United States, and Article 1, Section II, of the Michigan Constitution of 1963.

For purposes of the summary judgment motion the parties hereto agreed that no genuine issue of fact exists, only issues of law. The Court agrees that no genuine issue of fact is before it for consideration and the issue is one of law as raised by the pleadings. Pending decision on this motion, the Court stayed a recount filed by the Plaintiff Stephenson.

The City of Ann Arbor has the duty to insure equal protection of the franchise right to each voter. The equal protection clause of the Fourteenth Amendment to the U.S. Constitution so mandates now that political subdivisions are brought within its coverage by decision of the United States Supreme Court. *Avery v Midland County*, 390 US 474, 88 S Ct 1114; 20 L Ed 45 (1968).

The equality of voting effectiveness is safeguarded by this Amendment. *Reynolds v Simms*, 374 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964); *Wesberry v Sanders*, 376 US 1; 84 S Ct 526; 11 L Ed 481 (1964).

The Michigan Constitution of 1963 additionally guarantees equal protection of the law. Article I, Section 2. And that guarantee likewise extends to the voting franchise.

In view of these provisions and the U.S. Supreme Court interpretation of the guarantees therein provided, does the City of Ann Arbor's Preferential Voting System for the office of Mayor afford equal protection to each voter?

If so, then the Charter Amendment providing for the Preferential Voting System is constitutional. If not, it is unconstitutional. The Michigan Constitution provides that a City has

the power and authority to frame, adopt and amend its charter. Article VII, Section 22.

Under the Home Rule Act, MCLA 117.3; MSA 5.2073(a) voting in a municipal election may be partisan, nonpartisan or preferential ballot, or by any other legal method of voting.

The Michigan Statutes do not provide a definition of preferential voting, and only in this oblique manner is mention made of preferential voting. Nevertheless, because preferential voting is authorized in the Home Rule, a form of preferential voting is permissible under that enabling Act.

The voters of the City of Ann Arbor by majority vote November 5, 1974, decided that a form of preferential voting in the Mayorial Contest should be a part of that City's Charter. There is no question that this Charter amendment was adopted in a proper manner and is a part of the Charter and must, therefore, be followed unless the method of preferential voting employed creates inequities and inequalities among the voters and runs afoul of the equal protection guarantees.

The crux of Plaintiff Stephenson's claim of unconstitutionality is that preferential voting under this Charter amendment creates a classification that restricts the franchise of certain voters and thus treats them unequally.

This claimed classification results from certain voters having their second choice ballots counted while the second choice of other voters whose candidate remains in the race, are not so counted. This creates separate classes of voters and affords the vote of some, more weight than others, Plaintiff asserts.

Plaintiff claims there is no "compelling state reason or interest" for creating such classifications, that would render this preferential voting system constitutional.

In *Hill v Stone*, 95 S Ct 1637 (1975) , 43 LW 4576, and *Kramer v Union Hill School District*, 395 OS 621, 89 S Ct 1886 (1969), the U.S. Supreme Court stated that a classification may not restrict the franchise on grounds other than residence, age and citizenship unless a compelling state interest was shown.

An examination of these cases reveals classifications of voting rights based on ownership versus nonownership of real property and apportionment of voting districts. Nothing in the Charter Amendment itself speaks to classifications of voters as in the aforesaid cases. The Charter Amendment does not discriminate patently or latently against some segment of voters.

All voters for the office of Mayor possessed the

All voters for the office of Mayor possessed the same rights that is, the right to, or right not to, select and list their preferences in numerical order.

All voters possessed the right at the same time (election day) to decide who their second choice etc., candidate would be if their first choice were eliminated from the race.

No voter was restricted in his right. Each voted with this same understanding that his second and third choice preferences could be counted if his or her first choice was the candidate with the least number of votes.

No classification was established by the Charter Amendment or City of Ann Arbor to discriminate against any voter or group of voters--all voters possessed the same rights.

Whatever classification that could be said to have existed, created itself, when a voter had his or her first choice candidate eliminated from the race for having the lowest number of votes after it was ascertained that no candidate possessed a majority of the total vote.

In that context, the second preference vote of a voter became viable as his first preference was eliminated from consideration.

That voter in substance still has only one vote that is counted, his or her first choice having been eliminated. His second preference vote is counted the same as the votes for the first two candidates. Such a voter does not have his vote counted twice--it counts only once and if that first preference no longer remains and is eliminated from consideration, his or her second preference is the "counted" vote. Voters for the top two candidates still have their vote counted for their first choice.

There is no deliberate scheme or practice that classifies voters under this system of voting. Each voter has the same right at the time he casts his or her ballot. Each voter has his or her ballot counted once in any count that determines whether one candidate has a majority of the votes. Each voter has the same opportunity as the next voter in deciding whether or not to list numerical preferences for his or her candidate and has the same equality of opportunity as any other voter if his or her candidate is eliminated as the lowest vote-getter, and his or her second choice preference becomes the viable vote.

This Court further finds nothing unconstitutional in the Charter Amendment that requires the winning candidate to have a majority of the votes cast in an election for the office of Mayor. Much has been said and written on the subject of a winning candidate for office, assuming that office with the backing (by votes)

of less than a majority of those voting. Who can say that the voters of Ann Arbor do not know what they want, by their mandate that the Mayor of the City be elected by a majority of the voters. Far better to have the People's will expressed more adequately in, this fashion, than to wonder what would have been the results of a run-off election not provided for.

The fact that the Charter Amendment in question consolidates two elections into one, does not of itself create a classification nor discriminate against any group of voters. It possesses a monetary savings to the municipality in question and is not a factor to be overlooked.

Basic to all, is the right of self determination by the Ann Arbor voters. Their Charter Amendment was voted into effect by a majority of those voting November 5, 1974. The fact that "Ware" or preferential voting system is "different" from the system of voting we have come to know in this State, does not affect its validity.

This Court finds no classification of voters or their rights, created under this system of preferential voting, as the U.S. Supreme Court found in *Hill v Kramer*, supra.

Under the Michigan Constitution, Article VII, Section 22, the City of Ann Arbor has "the power and authority to frame, adopt and amend its charter". The provisions of Michigan's Constitution as concerns municipalities are to be liberally construed, in their favor, Section 34.

Thus, it is clear that the City of Ann Arbor could and did amend its charter to provide for a system of voting permitted by state statute, MCLA 117.3; MSA 5.2073(a). So long as that system of voting meets constitutional requirements, however "different" it may seem to some, it is a permissible form of voting.

Examined from every angle and tested against the standards of *Hill v Stone*, supra, this Court finds no classification or suspect classification of voters or their rights that would violate the equal protection clauses of either the United States or Michigan Constitutions. Nor can there be found any infringement of a fundamental right of any voter of the City of Ann Arbor in the exercise or operation of this voting system. All voters possess the same right to vote, to list numerical preferences and are subject to the same possibility of having their first preference eliminated and second or third etc., preference then counted in order to achieve the election of their Mayor by a majority of the total countable votes cast in the election.

The Court also finds no merit to Plaintiff's claim

that certain voters have an opportunity to change their minds and their votes while others do not have that right under this "M.P.V." System. Each voter has an equal opportunity and right at the time he or she casts his or her ballot election day. The fact that each person voting lists different orders of preference does not mean that some voters have greater rights than others. Each voter is on an equal footing with the next voter as to whether his first preference, second preference etc. will remain in the "elimination process". It is the equal right to list preferences and the equal opportunity to be eliminated or to stay in the running that accords each voter the same rights, not the possibilities of whose first or second preference may or may not stay in the counting. Each voter is given the same rights at the same time, that is, the time of casting his or her ballot. It is then that a voter may "change his or her mind" by consciously deciding who his or her first, second or third preference is for the office of Mayor. Thus, at the time of vote casting, each voter who chooses to make more than one preferential selection, in effect exercises his or her mental process of changing his or her mind, as the voter decides that a certain candidate meets his tests for Mayor in the event his or her first choice does not remain in the the running. This Court finds no constitutional infringement or prohibition against changing one's mind in this fashion, inasmuch as each voter is given the same right to do so at the same time and each voter's ballot is given the equal right to be counted in the same manner as any other voter's ballot. Each voter has the same rights as the next one. Nothing in the "M.P.V." system weighs one voter's rights over the other. The M.P.V. system, thus has the same effect as a run-off election, except that it consolidates it into one election.

Plaintiff has failed to demonstrate any true classification restricting the franchise of certain voters. Even if such a classification were found, this Court finds that a compelling state interest exists that would permit a classification in vote counting under such a M.P.V. system, as the City of Ann Arbor provides in its charter. The State does possess a great interest in speedy determination of elections, reduced election costs, involvement of a greater base of voters, affording greater voice in government by minorities and having the elected officer-holder be one who is the choice of a majority of the voters.

The argument by Plaintiff that the M.P.V. system employed here, violates the "one-man, one-vote" requirement of *Baker v Carr*, 369 US 186; B2 S Ct 691; *Reynolds v Simms*, supra, and *Wesberry v Sanders*, supra, likewise fails when the tests of those cases are applied to the manner and method this M.P.V. system

manner and method this M.P.V. system employed to determine the winner. Again, each voter is given the same equal opportunity at the time he or she casts his ballot. His or her vote is not "weighed differently" from any other votes in the election. Each voter will have one of his or her preferences counted if he or she elects to make more than one preference. The fact that a few voters may decide not to make more than one preference does not render the system unconstitutional. It is a choice or right possessed that the voter may or may not exercise.

To count every second preferential vote as Plaintiff urges, would make the system self-defeating and in essence would encourage voters not to make a second or third choice, since it would work to defeat that voter's first choice. In "M.P.V.", the second choice of a voter is not counted unless his or her first choice is eliminated from the election first.

An examination of the one-man, one-vote cases discloses that the Court was concerned with certain voter's votes being weighted more than other voters. A voter in one district would have one vote for a particular office while a voter in another district would have two votes for a similar office in the same Representative Body, due to the second voting area only having half the population of the first area. This situation violated equal protection rights guaranteed to all voters under the United States Constitution. What violated equal protection there, was the inequitable effect of giving some voters two votes and other voters only one vote for their representative to the same representative body.

Under the "M.P.V. System", however, no one person or voter has more than one effective vote for one office. No voter's vote can be counted more than once for the same candidate. In the final analysis, no voter is given greater weight in his or her vote over the vote of another voter, although to understand this does require a conceptual understanding of how the effect of a "M.P.V. System" is like that of a run-off election. The form of majority preferential voting employed in the City of Ann Arbor's election of its Mayor does not violate the one-man, one-vote mandate nor does it deprive anyone of equal protection rights under the Michigan or United States Constitutions.

Plaintiff cited *Wattles Ex Rel Johnson v Upjohn*, 211 Mich 514, 179 NW 335 as authority for its claim that Preferential Voting is unconstitutional. While *Wattles* was decided under the 1908 Michigan Constitution, the crux of the matter is that the facts in the present case are clearly distinguishable from *Wattles*. In *Wattles*, the Court was dealing with a multiple office situation involving proportional

representation. The Preferential System employed was the "Hare" System, which is clearly different from the "Ware" or "M.P.V." System used in Ann Arbor.

This difference is well set forth in Representation of Minorities In An At Large Election in City and Village Governments under Michigan Law, by Leon H. Weaver, M.S.U., at pages 43-47.

Likewise, in *Maynard v Board of Canvassers*, 84 Mich 228; 47 NW 756, the system of voting struck down by the Court was not the "Ware" or "M.P.V. System" but a cumulative voting system that clearly violated equal protection of voting rights. See also 29 C.J.S. Elections, page 53.

The Michigan Courts, heretofore, have not ruled on the constitutionality of the "Ware" or "Majority Preferential Voting" system as was employed by the City of Ann Arbor in its Mayorial race.

For the reasons set forth herein, and because of the obligation of this Court to scrutinize carefully any attack on the constitutionality of a State statute and self-determination rights this Court finds and determines the "Ware" or "Majority Preferential Voting" System as adopted and employed in the Ann Arbor Mayorial race to be constitutional and not violative of the equal protection clauses of the United States or Michigan Constitutions.

Accordingly then, the Summary Judgment Motion of the Defendants herein is granted and the Summary Judgment Motion of the Plaintiff is denied.

Counsel for the Defendant, Albert H. Wheeler et al shall within 10 days prepare the Judgment pursuant to this Opinion and have the same approved as to form by counsel for the Plaintiff and present the same to the Court for signature. In the event of disagreement or failure to agree upon the form of the Judgment settlement of it shall be noticed for hearing within the same period of time.

This being a question of public import and precedent, no costs or attorney fees are awarded Either party.

James G. Fleming  
Circuit Judge

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[1] "The Majority Preferential Vote in Michigan Cities", an unpublished article by Dr. Leon H. Weaver, Michigan State University, East Lansing, Michigan.



# **Exhibit 9**

Library

## How Proportional Representation Can Empower Minorities and the Poor

Robert Richie, Douglas Amy, and Frederick McBride

*This article was originally entitled "New Means of Political Empowerment: Proportional Voting," and appeared in the November/December 2000 newsletter of the Poverty and Race Research Action Council.*

In May 2000, the citizens of Amarillo, Texas, filled four seats on its school board by cumulative voting. No black or Latino candidate had been elected to Amarillo's seven-member school board in more than two decades, despite Latinos and African-Americans making up more than 20% of the city's population and an even larger share of the student population. Instituted to settle a voting rights lawsuit, cumulative voting had an immediate impact: a black candidate and Latino candidate won seats with strong support in their communities; voter turnout increased four times over the most recent school board election; and all parties in the voting rights settlement expressed satisfaction with the new system.

That a generally conservative city like Amarillo would adopt cumulative voting is only one example of how proportional and semi-proportional voting systems in recent years have moved from being "controversial" to credible alternatives for political empowerment. On their own merits and as a strategic response to Supreme Court rulings that hinder creation of district boundaries to provide for increased representation of racial minorities, these voting methods—specifically, choice voting, cumulative voting and limited voting (see accompanying box)—are increasingly recognized as a means to increase minority representation in local, state and even federal elections.

Proportional representation (PR) creates new avenues of political power for people of color and the poor, two groups traditionally denied fair access to power in this country. Despite making up a quarter of the U.S. population, African-Americans and Latinos (as of 2000) hold less than 10 % of the country's elected offices and not a single governorship or U.S. Senate seat. Imagine for a moment how different it would be if the Senate had 25 African-Americans and Latinos instead of none. They would make up an important voting bloc, and their very presence on committees and as colleagues on the Senate floor would be a powerful reminder of the political concerns of people of color. No longer would it be easy to put these issues on the back-burner, as so often happens today.

Adopting PR to elect the U.S. Senate would require constitutional change, but all other legislative bodies in the United States—including the House of Representatives—could be elected by PR without touching the Constitution. What prevents such fantasies of fair representation from more often becoming a reality is our continued adherence to an election principle—winner-take-all—that is inherently unjust and undemocratic. Winner-take-all elections, whether in single-member districts or for at-large positions, require winning candidates to attract a majority or substantial plurality of the vote. By definition, candidates representing political minorities have great difficulty amassing this large a share of votes, and so stand little chance of being elected. Thus, under our current system, racial minorities and the poor have the right to vote, but are often denied the equally fundamental right to representation. This systematic disempowerment of minorities and the poor is an inevitable result of winner-take-all systems.

Proportional representation is designed to remedy these electoral injustices. It ensures that any grouping of like-minded people—minorities and majorities—gets a fair share of power and representation in our legislative bodies, whereas our current winner-take-all principle can award 100 % of the representation

to a 50.1 % majority. If black voters comprise 20 % of the vote in a racially polarized county, they can elect at least one of the five seats—rather than be shut out, as they would be in a traditional at-large election or in a single-member district plan that dispersed their vote across several districts.

Versions of proportional representation are used in most well-established democracies. In 1999, there were 36 democracies with a high Freedom House human rights rating and a population over two million. Of these, only two—the U.S. and Canada—used exclusively winner-take-all elections for national elections; most used proportional representation for their most powerful legislative body. In 1999, South Africa held its second elections using proportional representation; once again, voter turnout and voter respect for the outcome were high, all racial and political groupings elected a fair share of seats, and women won more than twice the share of seats held by women in the U.S. Congress.

Various proportional and semi-proportional systems exist in both partisan and non-partisan forms. More than 200 localities in the United States use one of three non-partisan systems: cumulative voting, limited voting or choice voting. The many forms of PR embody the same goals: (1) assuring that all eligible voters have an effective vote; (2) assuring that as many voters as possible have someone to represent them in policy-making bodies; (3) enabling both majorities and minorities to have fair representation, and (4) creating legislatures that truly represent the wide diversity of the electorate's political opinions and interests. Not all PR elections achieve these goals, particularly for very small groupings of voters, but they have a proven record of achieving these goals more effectively than winner-take-all systems.

Proportional representation allows for the emergence of a pluralistic multi-party system that could include parties speaking strongly for racial and ethnic minorities and people of all incomes and across the political spectrum. If PR were adopted in the U.S., the electoral prospects of lower-income Americans likely would be improved by the first successful organization of leftist or labor parties, as exist in virtually all Western democracies with PR. Under winner-take-all rules, it is essentially futile to organize such parties. A third party stands little chance of electoral victory and in fact has the perverse impact of helping the party its supporters most oppose by splitting the vote of the established party it would otherwise support.

In a PR system, a labor party or other low-income party could create a viable electoral presence without splitting the vote. Knowing that each new vote could help gain more seats, a low-income party would have more incentive to inform, cultivate and mobilize its supporters. By creating a viable electoral presence, the party would give low-income Americans a powerful, urgently needed reason to vote. Data from the U.S. Census shows a direct correlation between voter turnout and income that is only becoming more pronounced. In the 1996 presidential race, under the current system, voter turnout was only 44% among the 17 million American citizens earning less than \$15,000 a year, in stark contrast to the 76% turnout among the 23 million citizens earning more than \$75,000. Under PR, the poor would have much greater incentive to vote because they would know that their votes would actually elect someone to represent their interests.

### Proportional Voting in Practice

Texas provides a good example of the increasing use of proportional voting systems. In addition to Amarillo, more than 50 Texas jurisdictions adopted cumulative voting in the 1990s; in 1995, then-Texas Governor George W. Bush signed legislation that allows school districts to adopt cumulative voting and limited voting.

- Cumulative voting and limited voting have been used in nearly two dozen Alabama localities for a decade in the wake of a sweeping win in a voting rights case. Studies of these Alabama elections

demonstrate that they have boosted turnout and increased black representation as much as or more than would have occurred if single-member districts had been used. In Chilton County, black candidate Bobby Agee in 1988 led the field in the first elections using cumulative voting for a seven-seat county commission, even though blacks were barely 10% of the population and he was heavily outspent. Most of his supporters, overwhelmingly black, took advantage of their opportunity to allocate all seven of their votes for him rather than spread their votes among other candidates. The first black commissioner in Chilton County's history, Agee has twice been re-elected and has served as chair of the commission.

- Choice voting has been used for decades to elect the city council in Cambridge, Massachusetts, and the local school boards in New York City. These bodies have reflected the diversity of the cities far better than other elected bodies in the same cities. This was also typically true when choice voting was used to elect city councils in New York City, Cincinnati and other major cities before its Cold War-era repeal.
- Starting in 1995 with Congresswoman Cynthia McKinney's Voters' Choice Act, bills to allow states to use proportional systems for U.S. House elections were introduced in every session. North Carolina Congressman Melvin Watt's 1999 States' Choice of Voting Systems Act drew bipartisan support and was the subject of a hearing; those testifying in favor of the bill and proportional systems included the Department of Justice and Republican Congressman Tom Campbell.
- Nearly 100 jurisdictions have adopted proportional systems to settle voting rights challenges, and federal judges several times have sought to impose them directly as remedies in voting rights cases. Very familiar with redistricting as a result of having presided over a challenge to Illinois' congressional districts in which majority-minority districts were upheld, Federal Judge David Coar in 1998 ordered the city of Chicago Heights to adopt cumulative voting to elect its city council and park board. Cumulative voting has a rich history in Illinois, being specifically permitted in state law, used currently in Peoria and used for more than a century to elect the state's House of Representatives, during which time representatives like Harold Washington and Carol Moseley-Braun were elected.
- The U.S. Department of Justice (DOJ) has taken important positions involving proportional systems. The DOJ has pre-cleared use of cumulative voting and limited voting in numerous states covered by Section Five of the Voting Rights Act; as of 2000, every jurisdiction seeking to convert from a winner-take-all system to one of these systems ultimately was permitted to do so. In 1999, the DOJ wrote an amicus brief for the Chicago Heights case, backing Judge Coar's order of cumulative voting. Also in 1999, the DOJ denied pre-clearance to New York City after the legislature voted to replace choice voting (a fully proportional voting system) with limited voting (a less proportional system) for electing the city's local school boards; choice voting had elected a significantly higher percentage of racial minorities to school boards than had been elected to other legislative bodies in the city.
- Significant organizations support education about proportional voting methods. In 1998, a National Black Caucus of State Legislators task force found strong interest among black legislators in learning more about proportional and semi-proportional systems, particularly in how they might assist redistricting negotiations. The League of United Latin American Citizens, National Association for the Advancement of Colored People (NAACP), and the Mexican American Legal Defense and Educational Fund joined with local plaintiffs to win the adoption of cumulative voting in Amarillo, the largest city now using cumulative voting. The National Conference of Black Political Scientists endorsed proportional systems in 1999. In 2000, the Southern Center for Studies in Public Policy pursued ambitious educational outreach to black elected officials and historically black colleges and universities, while the Southern Regional Council produced a booklet on Alabama's history with proportional systems. National and state affiliates of US Public Interest Research Group, Common Cause, the National Organization for Women and the League of Women Voters adopted positions in favor of proportional representation.

### An Alternative to Majority-Minority Districts

This rising interest in proportional representation obviously is not occurring in a vacuum. Voting Rights Act provisions on redistricting divided and preoccupied the Supreme Court more than any other issue in the 1990s. The Court heard arguments in cases involving voting rights and redistricting every year in the wake of its 1993 *Shaw v. Reno* ruling, often producing bitterly contested 5-4 decisions that had the general—if poorly defined—impact of limiting states' use of race in drawing legislative district lines.

Proportional representation can increase minority representation without requiring the creation of “majority-minority districts”—districts where a racial minority is the majority. Drawing such districts has been the most effective solution to minority underrepresentation, but can have important drawbacks. For example, majority-minority districts require the continuation of some degree of housing segregation that concentrates minority populations within easily drawn boundaries. Another problem is that minority-dominated districts still deny representation to many voters—even if candidates they might like can win in some districts, many people will be left as “filler people” in a district in which they are the minority. A third difficulty is that the process of concentrating predominantly Democratic minorities into one district can create surrounding districts that are more Republican, resulting in the election of more conservatives who are less likely to support the interests of minorities. Majority-minority districts are fairer than the old white-dominated districts, but not always as good as proportional representation.

Apart from legal battles over *Shaw* and philosophical concerns, civil rights attorneys have discovered, in states like Texas, Alabama, and North Carolina, that alternative systems can simply be a good fit with local conditions. Perhaps a minority community is more geographically dispersed than necessary for a single-member district plan. Perhaps a jurisdiction may want to avoid redistricting every decade. Perhaps there is frustration that most voters in a minority community are still left out of a chance to elect a candidate of choice even with a district plan that provides for enhanced minority representation. Perhaps in a multi-racial community, a citywide proportional plan is the easiest way for different racial minorities to elect representation.

Local government is an obvious place for stressing the utility of a proportional plan, as the mathematics of what it takes to win representation are quite straightforward. But higher election levels such as state legislatures are also now being considered. As for Congress, it would take a version of Representative Watt's legislation to give states the sensible option to consider some degree of proportional voting in seeking to fairly represent our increasingly complex diversity.

The goal of proportional systems is simple: providing means to allow fair and realistic opportunities for citizens to elect individuals of their own choosing. While no cure-all, they are a necessary step toward creation of a more inclusive, responsive political system, and will finally give badly needed representation to poor and minority Americans who have been systematically denied access to power by our flawed winner-take-all election rules.

[Douglas Amy ([damy@mtholyoke.edu](mailto:damy@mtholyoke.edu)) is a professor at Mount Holyoke College of Politics. His latest book is *Behind the Ballot Box: A Citizen's Guide to Voting and Democracy* (Praeger Publishing 2000). Robert Richie ([fairvote@compuserve.com](mailto:fairvote@compuserve.com)) founder and executive director of the Center for Voting and Democracy (6930 Carroll Ave., #901, Takoma Park, MD 20912, 301/270-4616), a non-profit organization that researches and distributes information on election reforms promoting voter participation, accountable government and fair representation.]

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### Proportional Voting Systems

- Limited Voting

In limited voting, voters either cast fewer votes than the number of seats or political parties nominate fewer candidates than there are seats. The greater the difference between the number of seats and the number for which one can vote, the greater the opportunities for minority representation. Versions of limited voting are used in Washington, D.C., Philadelphia, Hartford and numerous other local jurisdictions. It has been adopted to resolve at least 30 voting rights cases in Alabama and North Carolina since 1987.

*Example:* In a race to elect five candidates, voters might be limited to two votes. Winning candidates are determined by a simple plurality: the five candidates with the most votes.

- Cumulative Voting

In cumulative voting, voters cast as many votes as there are seats to be elected. But unlike winner-take-all systems, voters are not restricted to giving only one vote to a candidate. Instead, they can cast multiple votes for one or more candidates.

Cumulative voting was used to elect the Illinois state legislature from 1870 to 1980. In recent years it has been used to resolve voting rights cases for city council and county commission elections in Alabama, Illinois and New Mexico and for school board elections in Alabama, South Dakota and Texas.

*Example:* In a race to elect five candidates, voters can cast one vote for five candidates, five votes for one candidate or any combination in between. The five highest vote-getters win.

- Choice voting

Also known as “single transferable vote” and “preference voting,” choice voting is the most common candidate-based proportional system used in other nations. Each voter has one vote, but can rank candidates in order of choice (1, 2, 3, 4, etc.). Candidates win by reaching a “victory threshold” roughly equal to the number of votes divided by the number of seats. If a candidate has too little first-choice support to win, votes for that candidate are transferred to those voters’ next choices. This transfer of votes facilitates coalition-building and allows a candidate to run without fear of being a “spoiler” splitting the vote.

Choice voting has been used for city council and school board elections in Cambridge, Massachusetts, since 1941 and is used for New York City local school board elections. Ireland and Australia use choice voting for national elections. The city council in Cambridge (where blacks are 13 % of the population) has had black representatives since the 1950s. Choice voting in other cities, including for five elections to the New York city council from 1937 to 1945, also resulted in fair racial, ethnic and partisan representation.

*Example:* In a race to elect five candidates, voters can rank in order of choice as many candidates as they wish. Candidates win by gaining the support of about one-fifth of the voters. A ballot counts towards the election of that voter’s top-ranked candidate who needs that vote to win

# **Exhibit 10**

Louisiana	<a href="#">San Francisco County Supervisor November 2000 ballot</a> <a href="#">A ranked choice 2001 general election ballot from Louisiana (.pdf 330kB)</a>
Cambridge, Massachusetts	<a href="#">2001 city council (.pdf 45.3kB)</a> <a href="#">2001 school board (.pdf 22.5kB)</a>
Utah	<a href="#">Sample Utah ballot</a>
Vermont	<a href="#">2006 test ballot from Burlington, VT (.pdf 84kB)</a> <a href="#">Five draft ballots for Vermont (.pdf 180kB)</a> <a href="#">Final Burlington ballot (.pdf)</a> <a href="#">2009 Burlington Ballot</a>
Sample Two-choice ballot	<a href="#">Ballot model for non-IRV voting equipment (.pdf 69kB)</a>

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# CANDIDATES FOR SCHOOL COMMITTEE

for Term of Two Years

## Instructions to Voters

**MARK YOUR CHOICES  
BY FILLING IN THE NUMBERED  
OVALS ONLY,  
LIKE THIS ○**

Fill in the number one **①** next to your first choice; fill in the number two **②** oval next to your second choice; fill in the number three **③** oval next to your third choice, and so on. You may fill in as many choices as you please.

Fill in no more than one oval per candidate.  
Fill in no more than one oval per column.

**To vote for a write-in candidate**, fill in a numbered oval next to the name you have written, showing your choice as a number for a candidate. Record write-ins from the top line down.

**If you spoil this ballot**, return it for cancellation to the election officer in charge of the ballots and get another from such officer.

Only one vote per candidate.  
Only one vote per column.

DO NOT USE RED TO MARK BALLOT

FRED BAKER, 109 Inman Street	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
VINCENT J. DELANEY, 7 Jackson Gardens	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
MARLA L. ERLIEN, 23 Greenough Avenue	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
ALFRED B. FANTINI, 4 Canal Park	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
JOSEPH G. GRASSI, 393 Cambridge Street	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
RICHARD HARDING, JR., 187 Windsor Street	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
ALAN C. PRICE, 15 Corporal Burns Road	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
SUSANA M. SEGAT, 94 Wendell Street	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
ALICE L. TURKEL, 12 Upton Street	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
NANCY WALSER, 335 Huron Avenue	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
WRITE-IN	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
WRITE-IN	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
WRITE-IN	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
WRITE-IN	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
WRITE-IN	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
WRITE-IN	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩

Only one vote per candidate. Only one vote per column.

# **Exhibit 11**

LISTEN  
TEXT ONLY  
PRINT  
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## Results Summary Nov 2002

Consolidated General Election and Neighborhood Statistics

**Tuesday, November 5, 2002**

### Current Election Results

SUMMARY REPORT

SAN FRANCISCO  
GENERAL ELECTION  
NOVEMBER 5, 2002

Official Results

RUN DATE:12/03/02 03:27 PM

	VOTES	PERCENT
PRECINCTS COUNTED (OF 632) . . . . .	632	100.00
REGISTERED VOTERS - TOTAL . . . . .	449,508	
BALLOTS CAST - TOTAL. . . . .	225,102	
VOTER TURNOUT - TOTAL . . . . .		50.08
GOVERNOR		
VOTE FOR 1		
GRAY DAVIS (DEM) . . . . .	143,102	65.78
PETER MIGUEL CAMEJO (GRN) . . . . .	33,495	15.40
BILL SIMON (REP) . . . . .	33,214	15.27
GARY DAVID COPELAND (LIB) . . . . .	3,048	1.40
IRIS ADAM (NLW) . . . . .	1,649	.76
REINHOLD GULKE (AMI). . . . .	1,639	.75
WRITE-IN. . . . .	1,414	.65
LIEUTENANT GOVERNOR		
VOTE FOR 1		
CRUZ M. BUSTAMANTE (DEM) . . . . .	136,416	65.68
BRUCE McPHERSON (REP) . . . . .	34,133	16.43
DONNA J. WARREN (GRN) . . . . .	29,019	13.97
PAT WRIGHT (LIB) . . . . .	3,072	1.48
PAUL JERRY HANNOSH (RFM) . . . . .	1,554	.75
JIM KING (AMI). . . . .	1,540	.74
KALEE PRZYBYLAK (NLW) . . . . .	1,524	.73
WRITE-IN. . . . .	454	.22

## SECRETARY OF STATE

## VOTE FOR 1

KEVIN SHELLEY (DEM)	151,172	73.60
KEITH OLBERG (REP)	26,477	12.89
LARRY SHOUP (GRN)	15,852	7.72
GAIL K. LIGHTFOOT (LIB)	4,851	2.36
LOUISE MARIE ALLISON (NLW)	3,565	1.74
VALLI SHARPE-GEISLER (RFM)	1,687	.82
EDWARD C. NOONAN (AMI)	1,586	.77
WRITE-IN.	194	.09

## CONTROLLER

## VOTE FOR 1

STEVE WESTLY (DEM)	129,048	64.20
TOM McCLINTOCK (REP)	44,700	22.24
LAURA WELLS (GRN)	21,124	10.51
J. CARLOS AGUIRRE (NLW)	4,357	2.17
ERNEST F. VANCE (AMI)	1,579	.79
WRITE-IN.	208	.10

## TREASURER

## VOTE FOR 1

PHIL ANGELIDES (DEM)	141,131	70.26
GREG CONLON (REP)	31,671	15.77
JEANNE-MARIE ROSENMEIER (GRN)	18,831	9.38
MARIAN SMITHSON (LIB)	4,005	1.99
SYLVIA VALENTINE (NLW)	2,876	1.43
NATHAN E. JOHNSON (AMI)	2,205	1.10
WRITE-IN.	142	.07

## ATTORNEY GENERAL

## VOTE FOR 1

BILL LOCKYER (DEM)	150,730	73.70
DICK ACKERMAN (REP)	30,419	14.87
GLEN FREEMAN MOWRER (GRN)	15,882	7.77
DIANE BEALL TEMPLIN (AMI)	4,026	1.97
ED KUWATCH (LIB)	3,316	1.62
WRITE-IN.	156	.08

## INSURANCE COMMISSIONER

## VOTE FOR 1

JOHN GARAMENDI (DEM)	137,602	70.10
GARY MENDOZA (REP)	29,931	15.25
DAVID I. SHEIDLOWER (GRN)	15,261	7.77

DALE F. OGDEN (LIB) . . . . .	6,342	3.23
RAUL CALDERON, JR. (NLW) . . . . .	4,231	2.16
STEVE KLEIN (AMI) . . . . .	2,777	1.41
WRITE-IN. . . . .	154	.08

MEMBER, BOARD OF EQUALIZATION-D1

VOTE FOR 1

CAROLE MIGDEN (DEM) . . . . .	145,086	77.32
MARK S. BENDICK (REP) . . . . .	31,954	17.03
ELIZABETH C. BRIERLY (LIB) . . . . .	10,186	5.43
WRITE-IN. . . . .	408	.22

US REPRESENTATIVE-D8

VOTE FOR 1

NANCY PELOSI (DEM) . . . . .	127,684	79.19
G. MICHAEL GERMAN (REP) . . . . .	20,063	12.44
JAY POND (GRN) . . . . .	10,033	6.22
IRA SPIVACK (LIB) . . . . .	2,659	1.65
WRITE-IN. . . . .	793	.49

US REPRESENTATIVE-D12

VOTE FOR 1

TOM LANTOS (DEM) . . . . .	28,603	73.78
MICHAEL J. MOLONEY (REP) . . . . .	7,238	18.67
MAAD ABU-GHAZALAH (LIB) . . . . .	2,626	6.77
WRITE-IN. . . . .	299	.77

STATE SENATOR-D8

VOTE FOR 1

JACKIE SPEIER (DEM) . . . . .	69,557	81.42
DENNIS ZELL (REP) . . . . .	13,280	15.55
ROBERT FLIEGLER (LIB) . . . . .	2,437	2.85
WRITE-IN. . . . .	154	.18

MEMBER, STATE ASSEMBLY-D12

VOTE FOR 1

LELAND YEE (DEM) . . . . .	64,967	78.03
HOWARD EPSTEIN (REP) . . . . .	12,852	15.44
MICHAEL F. DENNY (LIB) . . . . .	5,216	6.26
WRITE-IN. . . . .	226	.27

MEMBER, STATE ASSEMBLY-D13

VOTE FOR 1

MARK LENO (DEM) . . . . .	89,921	81.10
---------------------------	--------	-------

GAIL E. NEIRA (REP) . . . . .	15,278	13.78
CHRISTOPHER R. MADEN (LIB). . . . .	5,134	4.63
WRITE-IN. . . . .	549	.50
CARLOS MORENO-SUPREME COURT		
YES . . . . .	97,270	83.51
NO. . . . .	19,208	16.49
MARVIN BAXTER-SUPREME COURT		
YES . . . . .	93,491	78.46
NO. . . . .	25,661	21.54
KATHRYN WERDEGAR-SUPREME CT		
YES . . . . .	99,780	82.67
NO. . . . .	20,919	17.33
JAMES MARCHIANO-APPEALS COURT		
YES . . . . .	91,886	80.53
NO. . . . .	22,209	19.47
SANDRA MARGULIES-APPEALS COURT		
YES . . . . .	97,300	83.31
NO. . . . .	19,492	16.69
WILLIAM STEIN-APPEALS COURT		
YES . . . . .	89,308	79.12
NO. . . . .	23,573	20.88
J. ANTHONY KLINE-APPEALS COURT		
YES . . . . .	96,108	81.36
NO. . . . .	22,016	18.64
WILLIAM MCGUINESS-APPEALS COURT		
YES . . . . .	90,816	80.10
NO. . . . .	22,563	19.90
JOANNE PARRILLI-APPEALS COURT		
YES . . . . .	93,230	82.20
NO. . . . .	20,188	17.80
STUART POLLAK-APPEALS COURT		
YES . . . . .	87,411	78.09
NO. . . . .	24,521	21.91

LAURENCE KAY-APPEALS COURT		
YES . . . . .	89,117	79.50
NO. . . . .	22,981	20.50
PATRICIA SEPULVEDA-APPEALS COURT		
YES . . . . .	91,387	81.55
NO. . . . .	20,679	18.45
MARIA RIVERA-APPEALS COURT		
YES . . . . .	92,002	82.17
NO. . . . .	19,962	17.83
BARBARA JONES-APPEALS COURT		
YES . . . . .	93,454	82.94
NO. . . . .	19,221	17.06
LINDA GEMELLO-APPEALS COURT		
YES . . . . .	92,586	81.93
NO. . . . .	20,419	18.07
MARK SIMONS-APPEALS COURT		
YES . . . . .	85,860	78.50
NO. . . . .	23,514	21.50
JUDGE-SUP COURT, OFFICE #10		
VOTE FOR 1		
GAIL DEKREON . . . . .	75,562	51.37
SEAN F. CONNOLLY . . . . .	69,562	47.29
WRITE-IN. . . . .	1,973	1.34
STATE SUP-PUBLIC INSTRUCTION		
VOTE FOR 1		
JACK O"CONNELL. . . . .	117,446	73.43
KATHERINE H. SMITH . . . . .	40,946	25.60
WRITE-IN. . . . .	1,549	.97
MEMBER, BOARD OF EDUCATION		
VOTE FOR 3		
DAN KELLY . . . . .	85,371	20.97
SARAH LIPSON . . . . .	74,109	18.21
EDDIE CHIN . . . . .	72,604	17.84
DANIEL GUILLORY . . . . .	67,774	16.65
JAMES M. CALLOWAY. . . . .	44,218	10.86
WHITNEY LEIGH . . . . .	22,851	5.61

ALEXANDRA PASTINE. . . . .	12,527	3.08
BILL DOHERTY . . . . .	11,277	2.77
JASON JONES. . . . .	9,512	2.34
ATTILA GABOR . . . . .	5,780	1.42
WRITE-IN. . . . .	1,046	.26

MEMBER, COMM COLLEGE BOARD

VOTE FOR 3

ANITA GRIER. . . . .	98,652	26.71
LAWRENCE WONG . . . . .	83,545	22.62
JOHNNIE L. CARTER, JR. . . . .	70,278	19.03
PETER B. GALLEGOS. . . . .	64,204	17.39
ABEL MOUTON. . . . .	35,214	9.54
AMARCY D. BERRY . . . . .	16,127	4.37
WRITE-IN. . . . .	1,277	.35

MEMBER, BOARD OF SUPERVISORS-D2

VOTE FOR 1

GAVIN NEWSOM . . . . .	15,674	78.77
LYNNE NEWHOUSE SEGAL. . . . .	3,147	15.81
LEN PETTIGREW . . . . .	821	4.13
H. BROWN. . . . .	209	1.05
WRITE-IN. . . . .	48	.24

MEMBER, BOARD OF SUPERVISORS-D4

VOTE FOR 1

FIONA MA. . . . .	4,259	23.56
RON DUDUM . . . . .	4,145	22.93
ED JEW . . . . .	2,915	16.12
ANDREW LEE . . . . .	2,897	16.03
JOEL VENTRESCA. . . . .	1,522	8.42
BARRY HERMANSON . . . . .	1,252	6.93
MARKS LAM . . . . .	675	3.73
KRISTA SPENCE LORETTO . . . . .	393	2.17
WRITE-IN. . . . .	20	.11

MEMBER, BOARD OF SUPERVISORS-D6

VOTE FOR 1

CHRIS DALY . . . . .	6,645	51.21
BURKE STRUNSKY. . . . .	1,896	14.61
ROGER GORDON . . . . .	1,859	14.33
MICHAEL A. SWEET . . . . .	1,247	9.61
ARTHUR JACKSON. . . . .	343	2.64
MALINKA MOYE . . . . .	304	2.34



GARRETT JENKINS . . . . .	274	2.11
ROBERT N. POWER . . . . .	199	1.53
JAMES LEO DUNN. . . . .	183	1.41
WRITE-IN. . . . .	27	.21

MEMBER, BOARD OF SUPERVISORS-D8

VOTE FOR 1

EILEEN HANSEN . . . . .	9,820	36.23
BEVAN DUFTY. . . . .	8,795	32.45
TOM RADULOVICH. . . . .	5,221	19.26
JAMES GREEN. . . . .	1,896	7.00
STARCHILD . . . . .	825	3.04
SHAWN O"HEARN . . . . .	485	1.79
WRITE-IN. . . . .	59	.22

MEMBER, BOARD OF SUPERVISORS-D10

VOTE FOR 1

SOPHIE MAXWELL. . . . .	9,723	97.45
WRITE-IN. . . . .	254	2.55

ASSESSOR-RECORDER

VOTE FOR 1

MABEL TENG . . . . .	104,456	59.17
DORIS M. WARD . . . . .	70,907	40.17
WRITE-IN. . . . .	1,172	.66

BART DIRECTOR DISTRICT 8

VOTE FOR 1

JAMES FANG . . . . .	45,494	64.82
VESKO G. MARINOV . . . . .	24,203	34.48
WRITE-IN. . . . .	490	.70

PROPOSITION 46

YES . . . . .	149,399	72.02
NO. . . . .	58,036	27.98

PROPOSITION 47

YES . . . . .	154,893	74.65
NO. . . . .	52,608	25.35

PROPOSITION 48

YES . . . . .	155,757	81.43
NO. . . . .	35,516	18.57

PROPOSITION 49		
YES . . . . .	106,054	51.61
NO. . . . .	99,442	48.39
PROPOSITION 50		
YES . . . . .	133,423	66.28
NO. . . . .	67,874	33.72
PROPOSITION 51		
NO. . . . .	113,074	59.02
YES . . . . .	78,496	40.98
PROPOSITION 52		
YES . . . . .	120,110	59.02
NO. . . . .	83,383	40.98
PROPOSITION A		
YES . . . . .	105,468	53.25
NO. . . . .	92,577	46.75
PROPOSITION B		
YES . . . . .	117,752	55.84
NO. . . . .	93,135	44.16
PROPOSITION C		
YES . . . . .	112,475	55.00
NO. . . . .	92,042	45.00
PROPOSITION D		
NO. . . . .	111,255	53.72
YES . . . . .	95,835	46.28
PROPOSITION E		
YES . . . . .	108,080	55.27
NO. . . . .	87,482	44.73
PROPOSITION F		
YES . . . . .	113,470	56.71
NO. . . . .	86,627	43.29
PROPOSITION G		
YES . . . . .	141,052	72.89
NO. . . . .	52,467	27.11

PROPOSITION H		
YES . . . . .	132,440	64.26
NO. . . . .	73,653	35.74
PROPOSITION I		
YES . . . . .	111,600	53.75
NO. . . . .	96,033	46.25
PROPOSITION J		
YES . . . . .	111,646	55.55
NO. . . . .	89,351	44.45
PROPOSITION K		
NO. . . . .	119,931	62.57
YES . . . . .	71,756	37.43
PROPOSITION L		
NO. . . . .	113,902	55.27
YES . . . . .	92,163	44.73
PROPOSITION M		
NO. . . . .	98,127	51.23
YES . . . . .	93,404	48.77
PROPOSITION N		
YES . . . . .	125,436	59.77
NO. . . . .	84,433	40.23
PROPOSITION O		
NO. . . . .	106,257	51.93
YES . . . . .	98,341	48.07
PROPOSITION P		
YES . . . . .	109,577	56.65
NO. . . . .	83,843	43.35
PROPOSITION Q		
YES . . . . .	131,117	67.26
NO. . . . .	63,822	32.74
PROPOSITION R		
NO. . . . .	123,129	60.00
YES . . . . .	82,089	40.00

PROPOSITION S

YES . . . . .	127,661	62.02
NO. . . . .	78,181	37.98

BART PROPOSITION BB

YES . . . . .	140,610	72.94
NO. . . . .	52,167	27.06

# **Exhibit 12**

### SEC. 13.102. - INSTANT RUNOFF ELECTIONS.

- (a) For the purposes of this section: (1) a candidate shall be deemed "continuing" if the candidate has not been eliminated; (2) a ballot shall be deemed "continuing" if it is not exhausted; and (3) a ballot shall be deemed "exhausted," and not counted in further stages of the tabulation, if all of the choices have been eliminated or there are no more choices indicated on the ballot. If a ranked-choice ballot gives equal rank to two or more candidates, the ballot shall be declared exhausted when such multiple rankings are reached. If a voter casts a ranked-choice ballot but skips a rank, the voter's vote shall be transferred to that voter's next ranked choice.
- (b) The Mayor, Sheriff, District Attorney, City Attorney, Treasurer, Assessor-Recorder, Public Defender, and members of the Board of Supervisors shall be elected using a ranked-choice, or "instant runoff," ballot. The ballot shall allow voters to rank a number of choices in order of preference equal to the total number of candidates for each office; provided, however, if the voting system, vote tabulation system or similar or related equipment used by the City and County cannot feasibly accommodate choices equal to the total number of candidates running for each office, then the Director of Elections may limit the number of choices a voter may rank to no fewer than three. The ballot shall in no way interfere with a voter's ability to cast a vote for a write-in candidate.
- (c) If a candidate receives a majority of the first choices, that candidate shall be declared elected. If no candidate receives a majority, the candidate who received the fewest first choices shall be eliminated and each vote cast for that candidate shall be transferred to the next ranked candidate on that voter's ballot. If, after this transfer of votes, any candidate has a majority of the votes from the continuing ballots, that candidate shall be declared elected.
- (d) If no candidate receives a majority of votes from the continuing ballots after a candidate has been eliminated and his or her votes have been transferred to the next-ranked candidate, the continuing candidate with the fewest votes from the continuing ballots shall be eliminated. All votes cast for that candidate shall be transferred to the next-ranked continuing candidate on each voter's ballot. This process of eliminating candidates and transferring their votes to the next-ranked continuing candidates shall be repeated until a candidate receives a majority of the votes from the continuing ballots.
- (e) If the total number of votes of the two or more candidates credited with the lowest number of votes is less than the number of votes credited to the candidate with the next highest number of votes, those candidates with the lowest number of votes shall be eliminated simultaneously and their votes transferred to the next-ranked continuing candidate on each ballot in a single counting operation.
- (f) A tie between two or more candidates shall be resolved in accordance with State law.
- (g) The Department of Elections shall conduct a voter education campaign to familiarize voters with the ranked-choice or, "instant runoff," method of voting.
- (h) Any voting system, vote tabulation system, or similar or related equipment acquired by the City and County shall have the capability to accommodate this system of ranked-choice, or "instant runoff," balloting.
- (i) Ranked choice, or "instant runoff," balloting shall be used for the general municipal election in November 2002 and all subsequent elections. If the Director of Elections certifies to the Board of Supervisors and the Mayor no later than July 1, 2002 that the Department will not be ready to implement ranked-choice balloting in November 2002, then the City shall begin using ranked-choice, or "instant runoff," balloting at the November 2003 general municipal election.

If ranked-choice, or "instant runoff," balloting is not used in November of 2002, and no candidate for any elective office of the City and County, except the Board of Education and the Governing Board of the Community College District, receives a majority of the votes cast at an election for such office, the two candidates receiving the most votes shall qualify to have their names placed on the ballot for a runoff election held on the second Tuesday in December of 2002.

*(Added March 2002) (Former Section 13.102 added November 1996; repealed March 2002)*

### SEC. 13.103. - SPECIAL MUNICIPAL ELECTIONS.

Special municipal elections may be called in accordance with state laws.

The date of any special municipal election shall be fixed by the Board of Supervisors not less than 105 nor more than 120 days from the date of calling such election; however, no special municipal election shall be held within 105 days of any general municipal or statewide election. The Board of Supervisors may consolidate a special municipal election with a general municipal or statewide election.

# **Exhibit 13**





# **Exhibit 14**

1. A ballot is exhausted after all of the validly ranked candidates have been eliminated. This can happen under several conditions:
  - a) No candidates have been marked on the ballot.
  - b) Only one or two candidates have been marked on the ballot.
  - c) Three candidates have been marked on the ballot.
  - d) A voter has marked an overvote: more than two candidates are marked at a ranking level. When that happens, the public listing of ballots shows that ranking level as an overvote and subsequent ranking levels are shown as undervotes.
2. The complaint and the Katz declaration incorrectly attribute all exhausted ballots to condition 1.c), the focus of the complaint, and as a result greatly exaggerate the effects of 1.c).
3. The exhausted ballots in the 2006 District 4 Supervisor contest can be further categorized as follows:

1.	Ballots exhausted by end of last round	6,010
2.	Ballots exhausted by end of first round (#3 + #4)	2,171
3.	Ballots with no rankings	1,970
4.	Ballots with overvote at highest ranking	201
5.	Ballots exhausted due to transfers (#1 - #2 = #6 + #7)	3,839
6.	Ballots exhausted due to transfers but with less than three ranked candidates	3,012
7.	Ballots exhausted due to transfers and with three ranked candidates	827
8.	Margin of victory in last round	801
9.	Margin of victory in last round as percent of fully ranked exhausted ballots (#8 / #7)	96.9%

4. The ballots that were exhausted at the end of the first round were not effected by the limit of three rankings.
5. Nearly one-third (1970, 32.8%) of the ballots that were exhausted by the end of the last round (6010) were ballots in which voters did not vote in the contest at all.
6. Not all of the 3839 ballots that were exhausted due to transfers in the second and later rounds were exhausted because of the limit of three rankings. Some voters did not fully utilize the three rankings that were available.
7. At most, 827 ballots may have been forced to exhaustion because of the

- three-ranking limitation. All other ballots were exhausted because voters did not make full use of the available three rankings.
8. Of the 827 ballots that ranked three candidates and were exhausted, some would still be exhausted even if the limit of three rankings were eased. Not all voters that ranked three candidates would rank more candidates, even if it had been possible.
    - a) Of the voters that ranked at least one candidate (19,814), 24.4% (4,828) ranked only 1 candidate and did not rank a second candidate.
    - b) Of the voters that ranked at least two candidates (14,986), 17.6% (2,643) ranked only 2 candidates and did not rank a third candidate.
  9. Dudum was not the second strongest candidate in the contest, just the strongest candidate in opposition to Jew. Other candidates were stronger than Dudum, but were eliminated earlier because they shared a higher affinity with Jew in voter preferences.
    - a) If the contest is retabulated with Jew excluded from the contest, Mak beats Dudum.
    - b) If the contest is retabulated with both Jew and Mak excluded from the contest, Chan beats Dudum.
  10. In the final round, the transfers (3215) that went from Mak to either Jew or Dudum went mostly to Jew (1933, 60.1%) rather than Dudum (1282, 39.9%).
  11. Of the 827 ballots that ranked three candidates and were exhausted due to transfers, 192 ballots voted for all three of Mak, Chan, and Zheng in some order. Voters who most preferred one of these three candidates were more likely to prefer Jew (1939, 59.2%) rather than Dudum (1338, 40.8%) as a second choice.
  12. It is unlikely that Dudum would have won the contest if more than three rankings had been allowed. In order to win, Dudum would have had to win at least 96.9% of the additional rankings, plus an additional vote for every additional vote that Jew would have received. For example, if Jew would have won just 1.7% of the additional rankings, Dudum would still lose the contest.