



The Center for  
Voting and Democracy

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September 29, 2007

To: Debra Bowen, Secretary of State  
From: Rob Richie, Executive Director, FairVote  
Re: San Francisco elections

I hope all is well with you and your work as Secretary of State – we remain thrilled that such a savvy advocate of electoral reform and fair elections has taken this critically important position.

These of course are apprehensive times in terms of voting equipment and election administration. We at FairVote really are rooting for your office to figure out a better way than what we have seen over the years from the private vendors that run our elections. The system obviously is broken, starting with the federal level and the lack of national standards, a chaotic testing regimen and the decentralized hodgepodge of election administration. Existing vendors seem to use that chaos to their financial advantage, and potentially new vendors find it so bewildering and expensive to enter the field that it has undermined new vendors and the innovations or new equipment that would come with them. And that in turn leaves states, counties and voters between a rock and a hard place – the richest nation in the world left with decidedly inferior voting equipment and software.

As you know, San Francisco is in a tough place moving toward November's election. Just as in past years like 2003, we at FairVote have been following the situation in San Francisco closely. Like you, we were greatly chagrined to see ES&S reach a new low over the AutoMARK. We certainly understand your office's frustration with ES&S -- someday we will have to jointly commiserate over our incredible frustrations with ES&S, not only in California, but in several other ES&S states/counties where instant runoff voting is on the front burner -- and we applaud your attempts to hold them to reasonable standards. At the same time, we think it's important to precisely target your interventions so they are narrowly tailored and don't inadvertently make things even more difficult for San Francisco, either its Department of Elections or its voters. After all, San Francisco has had to bear the brunt of ES&S for some time.

Specifically, after examining your conditions stated in your letter dated September 14, 2007 to ES&S, we believe there are other interventions that would be equally effective in fostering a secure election, but be a lot less challenging for the Department of Elections to implement – and a lot better for instant runoff voting (a.k.a., ranked choice voting, RCV). At the end of the day, what we all want is a good election where voters are able to cast their ballots with the confidence that the election has security and integrity.

Following is some of our analysis regarding some of the conditions that have been ordered by the Secretary of State's office, and alternative ways that could ensure the security and integrity of the election that would be easier for the Department to implement, and would involve less disruption for San Francisco voters.

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as to retain the multiple levels of redundancy and security that have existed in prior elections. Given error notification and multiple redundancies, I think it makes sense to allow San Francisco to use the precinct results both for posting as preliminary results on election night, as well as part of the official election results, without having to run all of the precinct ballots through the IV-C. Given that the Eagles have error notification, the "invisible ink" problem is best dealt with by the existing technology and the existing procedures. The problem you have identified, i.e. the Eagles not reading light blue, red or green ink is spotted by the equipment, just as it spots all undervotes.

At the very least, if you do not want the precinct/Eagle results included as part of the official tally, the Department should be allowed to use the precinct results as preliminary results. This is important towards public confidence in the election, because if they see hardly any election results being put out on election night or even for several days, what are people going to think? Bev Harris and others believe that would be a red flag, and we agree.

**2) Outstacking requirements:** On page 4 of your letter, there is a requirement that the IV-C must be programmed to outstack all RCV ballots that have undervotes in ANY ranking. So in other words, any precinct voter who doesn't use all three of their rankings -- even after the error notification tells them that they have not used all three of their rankings and the voters says, "that's OK, I only wanted to use one (or two) of my rankings" -- that ballot will be outstacked. And then an election worker must manually REMAKE that ballot, and then it's tabulated. To put this in the context of the upcoming mayoral race, a race for which there are typically 240,000 ballots, incumbent Mayor Gavin Newsom is running for reelection with no major opponents; none of his opponents are even known outside their own small circle of friends. It's very conceivable that there will be 200,000 or more ballots that only have Gavin Newsom ranked on that ballot, or Newsom and one other candidate, with 60% of those ballots having been cast in precincts where the voting equipment has error notification that catches any undervotes. That would mean 120,000 or so ballots, possibly more, that would have to be remade, even though those ballots benefited from error notification in the precincts and have undervotes that clearly resulted from voter intent rather than "invisible ink." I fail to see what public interest is realized by this intervention.

*Proposed remedy:* Instead of outstacking and doing remakes if all three rankings are not filled out, San Francisco could outstack all completely undervoted ballots, i.e. those with no rankings at all, and examine those for evidence of failure to read them due to the "invisible ink" problem. The rationale behind this is that if the equipment can read one ranking, it should be able to read all available rankings on the ballot unless the voter for some reason changed pens, using a "good pen" for one ranking and a "bad pen" with "invisible ink" for other rankings -- which seems extremely unlikely. A more appropriate intervention would be to simply examine all completely undervoted ballots that have no rankings. San Francisco typically has about 25,000 of such completely undervoted ballots, so that would mean the Department would have to examine far fewer ballots, saving them a lot of work. Yet this proposed intervention would still ensure that undervotes are the result of a voter's intent, rather than "invisible ink".

**3) Manual count triggers and RCV:** On page 5 of your letter, it says that if there is a discrepancy between the manual count and machine count of 10% between the last-place candidate and the second to last place candidate, then additional precincts must be manually counted, starting with 5% more precincts. As I understand this, let's say you have a last-place candidate with two votes, and a



intending a higher percent for absentees to make up for the lack of "error notification" that is inherent with absentee ballots. But the great value of error notification is greatly diminished when the absentee voter, by definition, will not have an opportunity to correct her/his ballot.

*Proposed remedy:* Lower the manual tally for absentee ballots from 25% to 10%, like it is for precinct ballots. 10% would still be ten times what San Francisco has ever used before, and seems to us to be sufficient and appropriate. We applaud your goal of increasing the percent of the manual tally, in San Francisco and the rest of California, but 25% seems to be unnecessarily high.

Again, my colleagues and I want to thank you for your important work to make elections work better in the United States and California. Certainly these vendors deserve to be cracked down on, and some degree of intervention is necessary. But it has been my observation that the interventions must be narrowly tailored and precisely targeted to create as little disruption as possible to the smooth running of an election. Otherwise, you run the risk of provoking a backlash to your important and worthy efforts. We completely respect and agree with your goal to make elections more secure, and stand ready to assist you however we can.

Please feel encouraged to contact me if you wish to discuss these matters. I wish you great success in your endeavors, and hope that the recommendations above are helpful toward the mutual goal of ensuring that San Francisco has a secure and successful election. Beyond San Francisco, we also have more general ideas about how to improve election administration and voting equipment that we have been discussing with others, such as Minnesota Secretary of State Mark Ritchie. Mark will be a keynote speaker at our national conference from November 9-11, which you might find of interest, since there is a component on election security, along with other ideas of great interest to you like the National Popular Vote plan and ranked choice voting. You can read more at [www.claimdemocracy.org](http://www.claimdemocracy.org) -- we'll also be having people like Ray Martinez give testimonials to our chair John Anderson at our 15th anniversary gala dinner on November 10. I would be happy to discuss these "big picture" details further, if that is of interest.