

February 25, 2019

Dear New York City Charter Revision Commissioners:

Thank you for the opportunity to provide comment as the Charter Revision Commission considers ranked choice voting for New York City elections. RCV can be a winning solution for everyone. Voters have a larger voice in the process and the convenience of voting their preferences once, eliminating the need for costly, low-turnout runoff elections. Their input elects candidates with the strongest overall voter support. Cost and work performed by election administrators are also greatly reduced as automated processes are implemented and fewer elections are conducted.

As a non-advocacy, nonprofit, educational organization, the Ranked Choice Voting Resource Center (RCVRC) provides information, research, and understanding for the voting method. With decades of experience administering elections, the RCVRC team members have also administered statewide, municipal, and district RCV elections.

The RCVRC has become a go-to resource for election administrators, policy makers, voters, and candidates by providing a compilation of best practices and first-hand experiences from jurisdictions that have used RCV. We have a content rich website that includes model practices for definitions, terms, laws, ballot design, and other work pertaining to RCV such as voter education materials, RCV procedures and tabulation, training poll workers, and webinars. All compatible RCV voting equipment has been identified, and for legacy equipment that can produce a cast vote record, the RCVRC has developed RCV tabulation software, also known as the UTab software, to tally results. UTab is free, open source software and can also be used as an auditing tool to ensure accuracy of RCV tabulation of other voting equipment.

Since our focus is education and sharing administration practices, we will provide an introduction into what ranked choice voting is, why and where the voting method is used, and some key elements of implementation, including an overview of the voting equipment/system used by New York City.

What Is Ranked Choice Voting?

With ranked choice voting, voters rank candidates in order of preference. Candidates running in RCV elections do best when they attract a strong core of first-choice support while also reaching out for second, third, and later choices. When used as an “instant runoff” to elect a single candidate like a mayor or governor, RCV helps elect a candidate that better reflects the support of most voters. RCV can also be used for multi-winner contests, which is not being considered by the Commission.

A proven voting method in the United States and other countries, RCV has emerged as a solution to:

- **Ensure broader support** in an election rather than relying simply on plurality in which only a small portion of the electorate determines a winner.
- **Combine a second primary or runoff election** into a single election.
- **Achieve fair representation** when voting to fill multiple seats for a governing body.

Why is Ranked Choice Voting Used?

Jurisdictions adopt RCV for a number of reasons, from saving money to increasing civility in campaigns. Five key reasons are:

- **Eliminate unnecessary primary and runoff elections.** With RCV, a jurisdiction can get the benefit of two rounds of voting in a single, more representative, higher turnout election. In this context, RCV can save the jurisdiction significant money – the entire cost of a second election in many cases – while helping promote majority support and civil campaigning. This has been the motivation for the adoption of RCV in places like San Francisco (replacing runoffs) and Minneapolis (replacing primaries).
- **Avoid vote-splitting and weak plurality results.** The “spoiler effect” has long been a point of contention in close political contests, where a third candidate appears to have drawn first choice votes away from one candidate in a closely contested race. RCV allows these voters’ full range of preferences to be reflected in the final outcome. Also, in races with numerous candidates, it is common for a winning candidate to receive significantly less than 50% of the vote. In such contests, the leading candidate may receive a weak plurality of the vote.
- **Military and overseas voters.** Jurisdictions with runoff elections must administer the sending and receiving of ballots multiple times: once for the first election and then again for the second. International mail takes time, so the deployed military and overseas voters of these jurisdictions may not have time to receive, complete, and return a runoff ballot before the day of the election. This time crunch is why federal law requires 45 days between rounds of voting in federal elections. Still, many state and local runoff elections occur as little as one week after the first round, effectively disenfranchising overseas and military voters. With RCV ballots, a military and overseas voter can vote in the first round and then rank their back-up candidates. When a runoff occurs, the ranked ballot is counted for whichever candidate in the runoff the overseas voter ranked highest. To date, five states use RCV ballots to include overseas and military voters in runoff elections: Alabama, Arkansas, Louisiana, Mississippi, and South Carolina. Illinois has created the option for local jurisdictions to use this solution as well, which has been adopted by Springfield, IL.
- **Increased civility in campaigns.** In RCV elections, candidates may conduct a more civil campaign, encouraging them to debate the issues and appeal to a broader spectrum of voters. This generates inclusive leadership because the candidates must appeal to voters who might initially vote for someone else but may select that candidate as another ranking. A comprehensive Rutgers University poll of voters in seven cities with RCV found that voters report friendlier campaigns and that RCV had majority support in all the cities using it.
- **Promoting fair representation.** As opposed to standard at-large systems where a majority control all the seats, with multi-winner RCV, majorities will still elect a majority of seats but significant minority groups can elect representatives as well. Since 1941, Cambridge, MA, has elected its nine member Council and six member School Committee using the Proportional Representation form of RCV.

Where Is RCV Used?

Currently RCV is used in 11 U.S. cities including Minneapolis and St. Paul, MN; San Francisco, Berkeley and Oakland, CA; Cambridge, MA; Portland, ME; and Santa Fe, NM. 18 additional cities and counties have approved RCV for use in future elections. Five states and one city use RCV for overseas and military voters in elections with runoffs. In 2018, the State of Maine used RCV for its state and federal primaries, then for its U.S. House and Senate general election. A complete list is available at http://www.rankchoicevoting.org/where_used.

How RCV Works

With single-winner ranked choice voting, voters rank the candidates according to their preferences and, if one candidate receives a majority of first choices, they are the winner, just as in a plurality election. If there is no first-choice majority winner, the candidate (or candidates with the fewest votes) is eliminated and their ballots are counted for their next highest ranked choice. This process continues until one candidate receives a majority or until there are only two candidates remaining.

Voters mark their ballot simply by ranking their choices in order of preference. NYC's current voting system includes RCV ballot design and vote capture (discussed in more detail on pages 4-5). An example of an RCV ballot based upon a previous NYC election is provided below.

RCV Sample Ballot						
Candidates for nomination for Public Office Candidatos para nominación de Cargo Público						
Mayor Rank up to 5 candidates. Mark no more than 1 oval in each column. Alcalde Rango de hasta 5 candidatos. No marque más de 1 óvalo en cada columna.	1st Choice 1ª elección	2nd Choice 2da elección	3rd Choice 3ra elección	4th Choice 4ª elección	5th Choice 5ª elección	
MICHAEL TOLKEN	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
SAL F. ALBANESE	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
RICHARD S. BASHNER	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
ROBERT GANGI	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
BILL DE BLASIO	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Write-in Candidato por escrito	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Candidates for nomination for Public Office Candidatos para nominación de Cargo Público						
Council Member Vote for one Miembro del Consejo Vote por uno						
CHRISTOPHER MARTE <input type="radio"/>						
MARGARET S. CHIN <input type="radio"/>						
DASHIA IMPERIALE <input type="radio"/>						
AARON FOLDENAUER <input type="radio"/>						
Write-in Candidato por escrito <input type="radio"/>						
Candidates for nomination for Public Office Candidatos para nominación de Cargo Público						
Public Advocate Vote for one Defensor Público Vote por uno						
DAVID EISENBACH <input type="radio"/>						
LETITIA JAMES <input type="radio"/>						
Write-in Candidato por escrito <input type="radio"/>						

To illustrate the tabulation, below is a summary report of the November 2018 Maine Congressional District 2 contest. The table shows the actual number of next choice votes received by each candidate in the second round of tabulation. By more than a 2 to 1 margin, voters whose first choice was eliminated

preferred Golden over Poliquin vaulting Golden to the winning total. Here was a clear case of RCV mitigating a vote splitting situation.

Report Name	Maine Summary Report		
Election Name	General Election		
Election Date	11.06.18		
Office Title	Congressional District 2		
	Round 1	Round 2	Final
Poliquin, Bruce	134184	4747	138931
Golden, Jared F.	132013	10427	142440
Bond, Tiffany L.	16552	-16552	0
Hoar, William R.S.	6875	-6875	0

Path to Success: Implementation and Administration

Educate Election Officials. Implementation of RCV for a jurisdiction follows many of the same protocols and procedures used in any election.

Consider that a defined schedule exists for any election – deadlines for candidates to file, regulations about ballot preparation, requirements for public notice of voting equipment testing or of the election itself, a set time for voting to take place, to name a few. These scheduled events do not change when ranked choice voting is adopted as a voting method. An implementation plan for ranked choice voting incorporates all the elements of any successful election in addition to giving the voter an understanding of how to rank candidates on a ballot, how tabulation is calculated for final results, and confidence in the outcome of the election. The RCVRC has compiled resources and first-hand experiences so new RCV jurisdictions do not have to reinvent the wheel when first implementing RCV.

Educate the Public and the Voters. This can involve as little or as much as the resources available permit. Some jurisdictions conduct extensive public education campaigns. Others, like North Carolina and Maine were given no additional funding and had to execute their education efforts on a minimum of resources. Ideally, RCV education and outreach will complement existing efforts for voters, candidates, and election officials. Previous implementations have proven that the most impactful and inexpensive voter education method is verbal and written instruction when the voters present themselves to vote. The RCVRC website provides links to a variety of education and outreach methods that have been used by jurisdictions.

RCV-Ready Voting System/Equipment. We have worked with all voting system vendors to determine their voting system capabilities. While we are available to address questions or provide additional information, we would encourage the Commission to talk with representatives from Election Systems &

Software (ES&S), the City's contracted vendor, about specific requirements for New York and New York City. As a general overview, ES&S has supported multiple RCV elections, with the most recent being the State of Maine in November 2018. Looking more closely at the system in use by NYC and how the system has been used in other jurisdictions, DS200s combined with Electionware election management software can provide an RCV ballot and produce cast vote records from the system. These cast vote records are imported into an additional software module, Express Runoff, which is available through the vendor to tabulate results. Reports are generated showing round by round tabulation in an Excel spreadsheet and are time stamped for transparency. The ES&S system offers flexible ballot layouts:

- Mixed ballot options – both RCV and non-RCV contests can be on the same ballot
- Landscape or portrait layouts
- Oval position options
- Flexible grid design with the option of a grid or column design for RCV contests
- Multiple ballot sizes.

The configuration file created in this system allows the Express Runoff program to be adapted to run according to the rules of a specific jurisdiction, including batch elimination and skipped rankings. The Ranked Choice Voting Resource Center (RCVRC) held an RCV Symposium in April 2018. ES&S presented about their capabilities at that time. Much of the information provided about the ES&S voting system is based upon this presentation, which can be viewed at <https://youtu.be/s1ksKT3HXXE>. A post-presentation Q&A document is also available at

https://drive.google.com/open?id=1XVPdtTDtFRJooY_Lu1cFir6SMtdgMBHK.

Auditing/Verification of Results. The RCVRC has developed the UTab software as free, open-source software. Jurisdictions can use this tool to tabulate RCV results from the cast vote records of any voting system and/or as a cross-check or audit tool to verify the results generated by a vendor's system.

Additional information about the UTab software is available at

https://www.rankedschoicervoting.org/universal_rcv_tabulator.

Usability Studies. The RCVRC has also partnered with the Center for Civic Design to conduct usability studies and publish reports on best practices derived from voter input on RCV ballot design, voter education, and results presentation. Details of these studies and reports can be found at

<https://www.rankedschoicervoting.org/usability>.

Post-Election Analysis

Post-election evaluations are good practice with any election. Data from recent elections in Santa Fe and Minneapolis illustrate voter understanding and proficiency in marking RCV ballots.

- **Santa Fe:** In March 2018, Santa Fe voters used RCV for the first time to elect the city's Mayor and in two City Council races. Exit polling determined that 84% of voters found the ballot easy to use, 62% of voters ranked all five mayoral candidates, and 94% of voters said they were satisfied with their voting experience. 70% of voters said they were very confident their vote was counted as they intended, compared with 55% in a similar November 2016 survey in New Mexico. As for actual ballot counting statistics, 96% of ballots cast counted in the final round of the Mayoral election. Just 1/3 of 1% of ballots were removed due to voter error, with the another 3.7% of ballots running out of rankings from voters. Without RCV, Santa Fe would have held a runoff election between the top two vote getters. Based upon previous turnout numbers, turnout in that decisive election would have certainly dropped more than the 4% seen in final round of their RCV election.

- **Minneapolis** has now used RCV in three election cycles. Looking at data from 2013 and 2017, only 1/5 of 1% of ballots had overvote errors in 2017. On a ballot that included 35 mayoral candidates in 2013, the error rate was the same. There was also a higher percentage of repeat candidate error, often because voters felt that this could help their candidate. These statistics help identify the areas where more voter education may be needed. When reviewing whether voters ranked all three choices in 2013 in the various races, we can see that the Mayor's race, which had 35 candidates, scored the highest with 76.3% of voters ranking three candidates. In 2017, 72.5% of voters used all three ranks. In all other races with three candidates or more, the majority of the voters chose to rank more than one candidate. [Note: Voters in Minneapolis were limited to three rankings in these elections.]

The RCVRC Team is ready to assist staff and the Commission in whatever way is helpful as you explore the possibilities and benefits of Ranked Choice Voting.

Below is a sampling of information on the RCVRC website, www.rankedchoicevoting.org:

- **Model RCV Implementation Plan** (http://bit.ly/RCV_Model_Implementation_Plan) – guides jurisdictions from the beginning phase of policy making and rules development to the post-election processes of auditing and exit polls;
- **RCV Definitions and Tabulation Procedures** (http://bit.ly/VVSG_RCV_spreadsheet) – members of the RCVRC team have participated in a working group to include RCV specifications in forthcoming revision to the EAC's Voluntary Voting System Guidelines (VVSG).
- **From Idea to Implementation: A Ranked Choice Voting and Voting Systems Symposium** (https://www.rankedchoicevoting.org/rcv_online_symposium) – recordings from this inaugural online event include 10 presentations by administrators, academics, EAC staff members, and vendors. These sessions, along with more than 11 webinars (<https://www.rankedchoicevoting.org/webinars>) and 15 RCV Clips podcast episodes (<https://www.rankedchoicevoting.org/podcast>) are archived on the website for reference and use by jurisdictions.

Thank you again for the opportunity to comment. Please let us know how we may be of assistance. We are ready to serve.

Sincerely,
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PROPOSED CHARTER PROVISIONS RE RANKED CHOICE VOTING

Submitted by Common Cause/New York, February 2019

NEW CHARTER PROVISION: Chapter 46, new section 1058- Ranked Choice voting.

- A. Commencing with the primary municipal election of 2021, all city primary and special elections, for all city offices, including the mayor, public advocate, comptroller, borough presidents and city council members, in which there are more than two candidates running shall be conducted using a ranked choice (sometimes called instant runoff) voting system allowing voters to rank in order of their preference five (5) candidates for each office appearing on the ballot. A ranked choice ballot shall allow the voter to rank one write-in candidates for each race in which more than two candidates appear on the ballot. If, after counting all voters' first choice listed on their ballots for an office, no candidate receives a majority (50% +1) of votes cast, the candidate with the fewest votes shall be eliminated. Each ballot shall be tallied again for that office counting the vote from each ballot for the highest ranked candidate who has not been eliminated. If still no candidate for that office receives a majority, the process shall be repeated until a candidate receives a majority of the votes for that office.
- B. Ballots for ranked choice elections in which more than two candidates appear on the ballot shall include instructions explaining how to mark a ballot, as well as any other information deemed necessary by the New York City Board of Elections.
- C. The Office of Civic Engagement shall conduct a voter education campaign to familiarize voters with the ranked choice voting system and shall prepare and provide informational material, including publications, presentations, web-ready content, and videos, explaining ranked choice voting to all city agencies, the Campaign Finance Board, and the New York City Board of Elections.

NEW CHARTER PROVISION, Chapter 46, sec. 1053, Voter Guide., new subparagraph 3 [new material underlined]

For all elections in which there are contested elections for the offices of mayor, public advocate, borough presidents, comptroller, or city council or ballot proposals or referenda pursuant to this charter or the municipal home rule law, each printed voter guide published by the board shall contain:

...

3. For a voter guide mailed in connection with any primary or special election held for the offices of mayor, public advocate, borough presidents, comptroller, or city council in which the election for any office is conducted using a ranked choice voting system, each printed voter guide published by the board shall include a separate page providing an explanation of ranked choice voting and instructions on properly completing a ballot ranking five candidates, as well as information regarding city websites on which instructional information and videos about ranked choice voting can be found;

4. information on each candidate, including but not limited to name, party affiliation, present and previous public offices held, present occupation and employer, prior employment and other public service experience, educational background, a listing of major organizational affiliations and endorsements, and a concise statement by each candidate of his or her principles, platform or views;

5. where there is a ballot proposal or referendum, concise statements explaining such proposal or referendum and an abstract of each such proposal or referendum; and

6. For a voter guide mailed in connection with the citywide primary and general elections held every four years, such voter guide shall include for each registered voter a list of the primary and general elections held over the previous four calendar years for which, according to the records of the board of elections, such voter was registered to vote and whether such voter voted in each such election. Such information may be printed separately from such voter guide, provided that it is included with the mailing of such voter guide.

a. For all other elections in which there are contested elections held in the city of New York for any city, county, state, or federal office or ballot proposals or referenda pursuant to city, county, state, or federal law, each voter guide shall contain information that the board deems necessary or useful to the electorate or is otherwise consistent with the board's responsibility under this chapter to improve public awareness of candidates, ballot proposals, or referenda.

b. Voter guides shall be prepared in plain language using words with common and everyday meanings.

c. The board shall promulgate such rules as it deems necessary for the preparation and publication of voter guides in English, Spanish and any other languages the board determines to be necessary and appropriate and for the distribution of the guide in at least one media format. The purpose of such rules shall be to ensure that the guide and its distribution will serve to fully, fairly and impartially inform the public about the issues and candidates appearing on the ballot.





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**Ranked-Choice Voting for New York City Elections
February 20, 2019**

Good evening, Commissioner Benjamin and members of the Charter Revision Commission.

My name is Bella Wang, and I am the Chair of the Voting Reform Initiative at the League of Women Voters of the City of New York.

The League of Women Voters is a multi-issue, nonpartisan political organization that promotes informed and active participation in government at the national, state and local level.

We are very pleased to see that the Commission is exploring the implications of ranked-choice (also known as instant runoff) voting for New York City elections. We have supported this process since 2010, when we advocated for it to be implemented for the special non-partisan elections that fill City Council vacancies, as well as for absentee and military voters in the 2013 primaries for city-wide offices. **We now recommend that it be implemented in all city elections, including City Council and citywide positions.**

Past and present Public Advocate elections demonstrate the need for ranked-choice voting. The 2009 and 2013 citywide Democratic primaries required runoff elections after no Public Advocate candidate received 40% or more of the vote. These elections cost the city \$13 million dollars each, yet in 2013, only 7% of the eligible voters turned out for the Public Advocate runoff. In this month's upcoming 17-person Public Advocate special election, which will have no runoff due to its special election status, a candidate may very well win citywide office with less than 30% of the vote. Similarly, though they are not subject to a runoff, City Council races may have many candidates, leading to situations where the winner may achieve only a small plurality of the votes.

The New York City League has looked for alternatives which would achieve the stated goal of electing candidates who have significant voter support, without requiring a second election. Last fall, we reached out to League of Women Voters chapters in areas with experience with ranked-choice voting. Also known as "instant runoff voting," the process allows voters to vote first for their favored candidate, and then rank the other candidates in order of subsequent preference. When the votes are tabulated, the first candidate to reach a majority of over 50% is

elected. If no candidate reaches more than 50%, the candidate with the fewest votes is removed from the count, and the ballots of those voters for whom that candidate was first choice are then re-allocated to the voters' second choice. This elimination and redistribution process continues until one candidate achieves a majority.

Ranked-choice voting allows voters to express their preferences more fully than they can in the existing electoral system. It has been implemented successfully in many situations, including major U.S. cities including San Francisco, Minneapolis, and Santa Fe, the state of Maine, and also countries like Australia. Cambridge, MA, has been using this system since 1941. We recommend that, following the example of most systems in the United States, voters have the option to rank at least three and at most six candidates for a given office.

Some have suggested that the process is too confusing for voters, but voters in other places have found listing their choices in order of preference to be intuitive and easy to understand. Exit surveys conducted in Santa Fe's 2018 municipal elections indicated increased voter confidence in the quality of the result. In other elections, voters frequently used the option to rank more than one choice; about 80% of voters for Governor in Maine's June 2018 primary selected at least 2 candidates, as did 87% of voters for Mayor of Minneapolis in 2017.

Ranked-choice voting has other advantages for democratic discourse. Santa Fe observers reported a decrease in the quantity of negative campaigning, since every candidate wants to be a voter's second choice, even if not their first choice. Little negative advertising is also reported in Cambridge, MA, which has ranked candidates in municipal elections for decades.

While we strongly recommend ample funding for logistical and educational needs, RCV is cost effective compared to the cost of runoffs. It has been run in Maine on a shoestring budget of an additional \$110,000 beyond regular election costs, and St. Paul, MN, implemented the system on a budget of \$190,000, half of which was a one-time cost.

Thank you for the opportunity to speak.

Bella Wang

Member of the League of Women Voters of the City of New York

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Written Testimony
2019 NYC Charter Revision Commission
2/20/2019

Overview

There are a few broad points I would like to express to the commission.

- No election system is perfect. Each system involves trade-offs. Instant runoff voting (IRV) has both negative and positive attributes, as do all voting systems. I do not take a formal position on what voting system is best. Rather, my view is that policymakers and voters should be aware of the potential tradeoffs.
- Here are a few potential positive aspects of IRV:
 - o IRV might save money, but an increased cost associated with voter education drives may offset administrative gains from holding a single election.
 - o IRV might produce a winner than a primary-runoff system. This winner may be preferred by more people than would have voted in the runoff election. This is not a guaranteed outcome and is likely unknowable.
 - o IRV might change how candidates' campaign, but there is no academic research that shows it encourages a more positive campaign environment. Anecdotal evidence is not a reliable data source.
 - o IRV might increase turnout in local elections. Disentangling the effects of increased voter mobilization in the past few elections (2017 and 2018) from the potential effect of IRV is difficult.
- Here are a few potential negative aspects of IRV:
 - o IRV elections are likely a more cognitively difficult task than a single choice election.
 - o IRV elections become more difficult the farther "down ballot" the contest is. Information becomes scarce in local elections, which makes any single decision difficult, and a ranking of options become even more so.
 - o IRV does not, in general, produce majority winners. Most IRV elections in the United States end up producing plurality winners because there is a high rate of ballot exhaustion (see below for more information on this).
 - o The negative costs of IRV are likely disproportionately born by minority voters (see below for more information on this).

Ballot Exhaustion

In our article “Ballot (and voter) ‘exhaustion’ under Instant Runoff Voting: An examination of four ranked-choice elections,”¹ Vladimir Kogan and I document an interesting outcome in IRV contests: Contrary to what proponents of IRV had promised, IRV elections often only produced a plurality winner. This result occurred because ballots can become exhausted and no longer factor into the outcome. Sometimes this is because a voter selects only one candidate. Sometimes the voter fills out their ballot completely, but their preferred choices are eliminated before they reach the last round. For instance, consider Table 1 (a reproduction of Tables 2 and 3 in our article). In these four contests, the final winner never received above 45.7% of the total votes cast. The rate of exhaustion also varied, with San Francisco reaching an alarming rate of 27.1% (as a side note, the most recent mayoral vote in San Francisco had an exhaustion rate of about 8.5%).

Table 1. Percent of Votes Cast for Election Winners and Rates of Exhaustion

	Oakland	Pierce County	San Francisco	San Leandro
Total Votes for Winner	53,897	136,346	84,457	10,277
Total Valid Votes Cast	119,607	299,132	194,418	22,484
Winner's Vote Share	45.1%	45.6%	43.4%	45.7%
Rate of Exhaustion	11.6%	10.2%	27.1%	9.6%

It would be easy to conclude that the ballot exhaustion rates — which produces plurality winners — were a result of voters simply not filling out their ballots completely. That was not the case, as those who filled out complete ballots (in these contests, three unique candidates were marked) also contributed to the exhaustion rate (see Table 2). One often-cited reason for this problem is that the technology did not allow for more than three choices on the ballot. Yet, data from Portland, Maine (2011 mayoral) shows that simply allowing additional rankings is not going to solve the issue of ballot exhaustion. Portland allowed voters to rank all fifteen candidates. The exhaustion rate was 18 percent.

Table 2. Rate of Ballot Exhaustion by Category

	Oakland	Pierce County	San Francisco	San Leandro
Three Unique Candidates Marked	7.8%	0.0%	22.5%	2.7%
Duplicate Candidates Marked	25.3%	18.4%	48.1%	21.3%
Two Unique Candidates Marked	13.3%	5.3%	29.8%	6.1%
One Candidate Marked	27.9%	31.1%	44.8%	29.0%

The degree to which one sees ballot exhaustion is problematic for representative democracy hinges on whether one is willing to assume that those exhausted votes would have had an impact on the final outcome of the election if they had, in fact, been given an opportunity to weigh in on the final two candidates. There is, unfortunately, no way to know this for certain. Similarly, we cannot be certain whether or not these exhausted voters would have turned out to vote in a runoff

¹ Burnett, Craig M., and Vladimir Kogan. 2015. “Ballot (and voter) ‘exhaustion’ under Instant Runoff Voting: An examination of four ranked-choice elections.” *Electoral Studies*, 37:41-49.

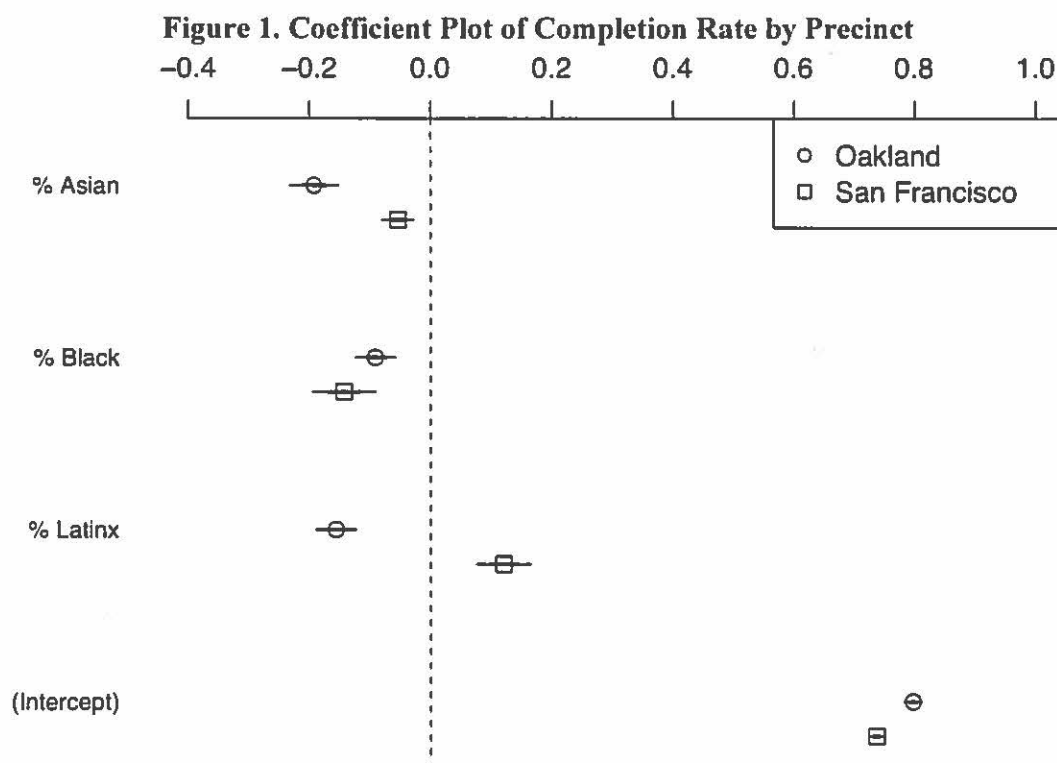
election. The difference between the two outcomes — being exhausted in an IRV election versus not showing up to vote in a runoff election — is that we have a better understanding about the voting calculus of the individual who chooses not to vote in a runoff election: they likely did not have a strong enough preference to motivate themselves to cast a ballot in the runoff. By contrast, the exhausted voter's preferences are completely unknowable.

IRV's Potential Harmful Effects on Minority Voters

I have conducted preliminary analysis on the potential impacts on minority voters in the Oakland and San Francisco data I analyzed in the previous section. There are a few points I would like to make:

- Racial minorities tend to have lower rates of ballot completion — that is, ranking the maximum number of candidates allowed.
- Racial minorities do not necessarily experience higher rates of exhaustion, but are more at risk of higher rates of exhaustion when a co-ethnic frontrunner is not present.

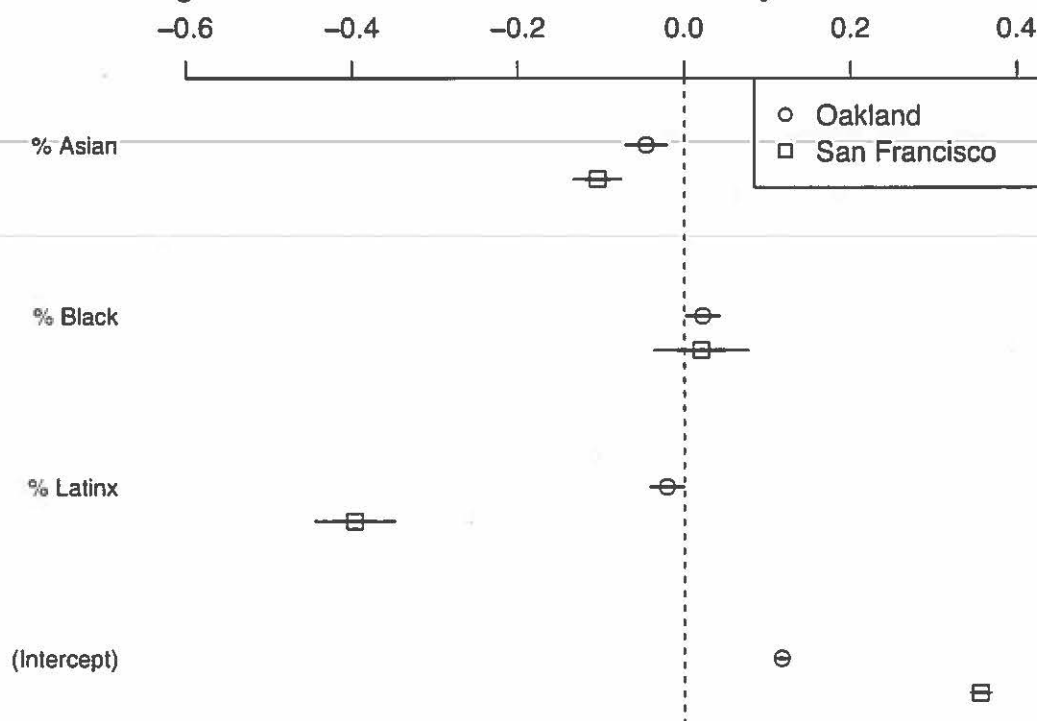
Consider Figure 1. Figure 1 shows the effect of race/ethnicity on ballot completeness. White voters constitute the reference category. In general, racial minorities are more likely to submit incomplete ballots relative to white voters. The only exception is for Latinx voters in San Francisco.



Note: Estimates based on the 2010 Oakland Mayoral Election and the 2011 San Francisco Mayoral Election. The bars represent 95% confidence intervals.

Next, consider Figure 2. As the analysis shows, Asian and Latinx voters are actually somewhat less likely to have their ballots exhausted relative to white voters. Black voters are either more likely to have their ballots exhausted relative to white voters (Oakland) or be indistinguishable from white voters' exhaustion rates (San Francisco). It is important, however, to consider the context of these elections. In San Francisco, there were co-ethnic frontrunners of both Asian and Latinx descent. The same was largely true in Oakland (while Don Perata was not a co-ethnic for Latinx voters, he had represented Oakland for decades, building name recognition in the Latinx community). Accordingly, I conclude that when there is a co-ethnic frontrunner, exhaustion rates are lower, even though ballot completeness is also lower. As such, if there is no co-ethnic front runner, ranked choice voting runs the risk of disproportionately increasing exhaustion rates among racial minorities.

Figure 2. Coefficient Plot of Exhaustion Rate by Precinct



Note: Estimates based on the 2010 Oakland Mayoral Election and the 2011 San Francisco Mayoral Election. The bars represent 95% confidence intervals.

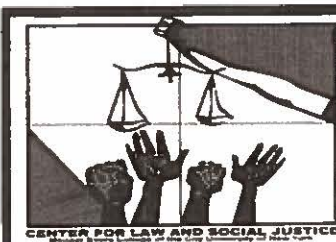
Finally, I would note that, on this topic, Jason McDaniel has published research concluding that IRV likely has a depressive effect on minority turnout for some groups. Citation: McDaniel, J. A. (2016). Writing the rules to rank the candidates: Examining the impact of instant runoff voting on racial group turnout in San Francisco mayoral elections. *Journal of Urban Affairs*, 38(3), 387-408.

Table 1 - Linear Regression of Completion and Exhaustion Rate by Precinct

	Completion Rate		Exhaustion Rate	
	Oakland	San Francisco	Oakland	San Francisco
% Latinx	-0.16*** (0.02)	0.12*** (0.02)	-0.02** (0.01)	-0.40*** (0.02)
% Black	-0.09*** (0.02)	-0.14*** (0.03)	0.02** (0.01)	0.02 (0.03)
% Asian	-0.19*** (0.02)	-0.05*** (0.01)	-0.05*** (0.01)	-0.10*** (0.01)
Constant	0.80*** (0.01)	0.74*** (0.01)	0.12*** (0.005)	0.36*** (0.01)
Observations	225	417	225	417
R ²	0.45	0.14	0.11	0.41
Adjusted R ²	0.44	0.14	0.09	0.41
Residual Std. Error	0.04 (df = 221)	0.05 (df = 413)	0.02 (df = 221)	0.05 (df = 413)
F Statistic	59.87*** (df = 3; 221)	22.93*** (df = 3; 413)	8.73*** (df = 3; 221)	97.21*** (df = 3; 413)

Note: Estimates based on the 2010 Oakland Mayoral Election and the 2011 San Francisco Mayoral Election. *p<0.1; **p<0.05; ***p<0.01

Summary: These are the regression estimates I use to produce Figures 1 and 2 above.



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**TESTIMONY OF
THE CENTER FOR LAW AND SOCIAL JUSTICE**

**before the
CHARTER REVISION COMMISSION 2019**

on

February 20, 2019

**Prepared by:
Esmeralda Simmons, Esq.
Executive Director**



My name is Esmeralda Simmons. I serve as the Executive Director of the Center for Law and Social Justice. The Center for Law and Social Justice (CLSJ) is a unit of Medgar Evers College of The City University of New York. Founded in 1986 by means of a New York State legislative grant, the mission of CLSJ is to provide quality advocacy, conduct research, and advocacy training services to. CLSJ seeks to accomplish its mission by conducting research, and initiating public policy advocacy projects and litigation on behalf of community organizations and groups of people of African descent and the disenfranchised that promote civil and human rights, and national and international understanding. Because of the Center's unique combination of advocacy services from a community-based perspective, it is a focal point for progressive activity. I have an extensive forty year background as a voting rights attorney in NYC elections and redistricting. I have litigated in every major state and congressional redistricting case since 1981. I have led advocacy efforts for on behalf of Black New Yorker for fair redistricting before the 2001 and 2011 NYC Districting Commissions. In addition, I have served as Vice Chair of the initial 1991 NYC Districting Commission appointed by then Mayor David I. Dinkins.

**CENTER FOR LAW AND SOCIAL JUSTICE – A Voice for Fair and Equitable
Elections and City Council Redistricting in NYC**

From its initial days, CLSJ has served as an advocate for fair and effective elections in NYC. In 1988, CLSJ successfully challenged the Board of Elections in the City of New York for its pattern of discriminatory election day practices against Black and Latinx voters in *Ashe v. The Board of Elections*.

- **New York City's Experience with Ranked Choice Voting/ Cumulative Voting**

CLSJ also advocated before the US Department of Justice Voting Rights Section to preserve School Board elections in New York City when City Hall (Mayor Bloomberg) moved to gain mayoral control and eliminate the Community School Boards in NYC. New York lost this local **Ranked Choice Voting/** cumulative voting election system as collateral damage in the fight over mayoral control of NYC's public school system and its multimillion dollar budget.

I believe that NYC would greatly benefit from implementing a Ranked Choice Voting system in all city elections, except judicial elections. I base my opinion upon the successful history of Black, Latinx, and Asian voting and candidate election in the Community School Board elections from 1970 to 2002. The cumulative voting system of NYC Community School board elections was instituted as result part of the enactment of the 1969 School Decentralization Law of New York State. Its legislative intent was: *to enhance the participation of local racial minority New Yorkers, including non-citizens in the election; to enhance racial minority representation and to encourage community involvement.*¹ (emphasis added)

According to Max Rubin, who evaluated the School Boards elections, the Ranked Choice Voting system which he labeled "Proportional Representation" was a success, albeit initially viewed as complicated.

¹ Rubin, Max J., Community School Board Elections in New York City. A Report to the New York State Commissioner of Education, New York State Education Dept., Albany. Dec. 73.

He stated:

“Under the Decentralization Law, the legislation provided for proportional representation through preferential voting in order to provide representation of minority viewpoints, ideological as well as ethnic. Under this method of election, the voter must make his selections in order of priority. A counting procedure is spelled out which assigns the minimum quota of "first choice" votes needed to win a seat, and once the quota is met by a candidate, it transfers the remaining top choices for him to the second choice on the ballot, and so on. Candidates are eliminated in- a similarly complicated way.... The value of proportional representation is a subject on which there can be valid disagreement. Opponents of this method argue that there is confusion over how to rank and count candidates and that this intimidates the prospective voter and discourages people from voting. It is also argued that proportional representation requires special training of election workers and counters as well as educating, the voters. It is argued that, it does not achieve minority representation per se but only in terms: and in proportion ,to the number of votes cast. It is also a fact that there is a certain element of chance because the order of counting ballot is determined by lot. Another point that is made is that voting machines are not used and perhaps cannot be used, and the necessity of paper ballots opens the possibilities of fraud. The proponents of proportional representation point to its advantages: first, the statistics would indicate that the system is working quite well. It gives voting minorities some representation and the strongest groups obtain the seats to which they are entitled. There are those who argue that the reason that cities have abandoned proportional representation is that it works too well, to the disadvantage of the major parties, allowing minority parties a representation which the majority does not wish. Much of the difficulty of ranking the candidates would be dissipated if there were

fewer candidates on the ballot... With each election, the voters understand the "system" better. It should not be difficult for the staff of the Commission to train adequately inspectors and election workers to understand the procedures. So far as complexity is concerned, the ballot which, confronted voters on the voting machine at the general election on November 6 was far more complicated, than the preferential ballots used in Community School Board elections." ²

Indeed, school board elections provided the means for the election of the first Asians to public office in New York City and as well as the major increase in the election of Black, Latinx and immigrants to public office within the city from 1996 to 2002.

"But the overriding question about proportional representation is whether it does, indeed, achieve its end of giving fair representation on the Community School Boards to various minorities within the districts. Citywide, according to the Board of Education, the population is 21 percent black, 15 percent Puerto Rican and Spanish surnamed, 1 percent Oriental and 63 percent "other" - chiefly whites. Of the 288 Community Board members elected on May 1, 25 percent are black, 12 percent Puerto Rican and Spanish surnamed and one-half percent from Oriental background. In other words; the citywide figures would indicate that the ethnic minorities, despite their low turnout compared to whites, are represented approximately in proportion to their relationship to the total population.... ON BALANCE, I RECOMMEND THAT PROPORTIONAL REPRESENTATION AND THE PREFERENTIAL BALLOT BE CONTINUED."³

The record shows that cumulative voting worked well when NYC had community school board elections. More significantly to me, and other voting rights attorneys, it

² Ibid. 17

³ Id.

accomplished what no other electoral system used in NYC has ever accomplished – near parity between the percentages of racial minority candidates elected and the percentage of the population of Black, Latinx, and Asians city residents. Consequently when the city proposed to eliminate community school board elections, every major voting rights organization, including the Center for Law and Social Justice, Latino Justice/ PRLDEF and the Asian American Legal Defense and Education Fund, opposed that move at public hearings and petitioned the US Department of Justice to block the subject legislative change.

In addition, one of this nation's premier voting rights scholar, Lani Guinier, has argued the benefits of cumulative voting. In her treatise, *The Tyranny of the Majority*, she strongly takes the position that cumulative voting would better support the cause of "equal voting weight and equal voting power" for racial minority voters. She further states

"The winner-take-all feature of majority rule would be discarded in favor of cumulative voting, which allows voters to cumulate their votes in order to express the intensity of their preferences. In this fashion, interest representation strives to ensure that groups that are politically cohesive, sufficiently numerous, and strategically mobilized will be able to elect a representative to the legislative body."⁴

I strongly urge the Commissioner of this Charter Revision Commission to consider and adopt cumulative voting as the method of voting for elections in NYC.

⁴ Guinier, Lani, The Tyranny of the Majority, Fundamental Fairness in Representative Democracy, Free Press, Simon & Schuster, New York 1995

NYC DISTRICTING COMMISSION

Membership Formula: 15= Council 5 /maj (from 5 boros) + Council 3 /2nd maj (from 3 boros) + Mayor 7 any boro /<=3 maj + 4 = 2nd maj and/or no enrolled and/or minor party.

I served as Vice-Chair of the initial 1991 Districting Commission. I am very proud of the groundbreaking work that we did in process and procedures, data accessibility, and public input towards the creation of the first 50 member City Council. In regard to the composition of the DC, I was a strong advocate for the inclusion of language to the effect that the composition of the DC be appointed to reflect the racial diversity of NYC.

That language passed the referendum and the first Districting Commission was composed with that in mind. However, it is significant that that portion of the membership criteria was later successfully challenged in state court by Richard Ravitch and others as requiring a "racial quota."

I believe that the composition formula of the Commission is currently skewed against Black and Latinx voters.

First, it requires that three members be appointed by the Council from the political party that has the second largest delegation within the Council. Throughout the history of the Commission, that political party has been the Republican Party. That party has received less than 4% of the vote in New York City general elections and has a very low percentage of Black and Latinx enrollment among the city's total voter registrations. Ye, this provision alone requires that the Republican Party be given 20% of the seats.

Second, this Charter requirement, combined with the “No majority clause”, i.e, “that individuals enrolled in a single political party shall not be a majority of the total number of members of the commission,” virtually guarantees that the majority of membership of the Commission will be White. This would occur notwithstanding the reality that the majority of New Yorkers are Latinx, Black, and Asian.

New York City and the Districting Commission lost federal oversight to prevent Racial discrimination in NYC’s voting practices when Section 5 of the US Voting Rights Act was disabled by the US Supreme Court. Without that preemptive legal oversight, future Districting Commissions may be less attentive to protecting such rights in the redistricting process. Current redistricting cases illustrate how attention to fairness and non-discrimination is often lost when political power is being divvying up in the redistricting process.

I therefore recommend that amending the Charter to include permissive language, such as “the appointing authorities should strive to have the Commission reflect the City’s racial population.” This specific language, while not a mandate, may serve as a reminder that racial composition is important. This language would be a positive step towards achieving racial equity in NYC’s redistricting maps of the future.

NEW YORK CITY VOTING RIGHTS COMMISSION

Finally, we urge this Commission to consider creating a **NYC Voting Rights** section of the Charter that would mimic the provisions of the federal Section 5 of the VRA on a local level. Other jurisdictions such as the state of California have already taken such

action to achieve non-discriminatory elections. Such provisions would require all voting changes by the Board of the Elections and the Districting Commission to be precleared by a city Voting Rights Commission created by this Charter Commission. Unfortunately, NYC's long term and recent history of racial discrimination at the polls continue to warrant such scrutiny.

CONCLUSION

I thank this Charter Revision Commission for affording me the opportunity to address it as an expert who has devoted most of my professional years to addressing voting rights issues. I appreciate the opportunity to make recommendations for your consideration. I also thank you for the opportunity to inspire you to think BIG. Our great city deserves no less.

Sources Cited

Guinier, Lani, The Tyranny of the Majority, Fundamental Fairness in Representative Democracy, Free Press, Simon & Schuster, New York 1995.

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