



## **Proven Innovations to Uphold Voting Rights for Overseas Voters**

The Value of Ranked Choice Ballots for Presidential Nomination Contests and Federal, State and Local Runoff Elections and of Voter Guides in All Contests

*Testimony Submitted to the Presidential Voting Commission, August 7, 2013*

**Overview:** Nearly five million American citizens of voting age do not live in the United States, including more than 150,000 active members of the armed services. Federal laws in recent years have directly sought to address the difficulties such voters often face in casting ballots, but there remain major gaps that must be filled. One example is that too few jurisdictions appropriate funds for printed or online voter guides with substantive information about voters' ballot choices, which would be particularly helpful to overseas voters who are less likely to receive information from traditional media sources and campaigns. Another example is that many jurisdictions hold runoff elections and presidential nomination contests with rules that can make it either impossible for overseas voters to cast ballots or unnecessarily diminish their vote.

We propose expanded use of voter guides, at least in online form, and expansion of the proven practice of sending ranked choice ballots to overseas voters in elections that may result in a runoff election (a method described by South Carolina election officials this year as an "unqualified success") and in presidential nomination caucuses and presidential primaries. These ranked choice ballots make it far more likely that overseas voters will have a vote that counts in runoff elections and a vote that counts for an active candidate in presidential nomination contests.

**Examples from your first hearing locations:** For concrete examples of the value of our proposal of ranked choice ballots, consider facts associated with the sites of your first two field hearings:

- **Coral Gables in Miami-Dade County, Florida – 14 days for local runoffs and 2012 presidential primary:** Coral Gables, where you held your first hearing, is in Miami-Dade County. The City of Miami has scheduled its runoff this November only seven days after the general election. A majority of the remaining municipalities [holding elections this year](#) in Miami-Dade, including the following six jurisdictions, have scheduled runoff elections or general elections only 14 days after the first election: Biscayne Park, Hialeah, Hialeah Gardens, Miami Beach, North Miami and North Miami Beach. In addition, Bay Harbor Island and Miami Shores scheduled runoffs or general elections less than a month after the first election.

In 2012, Florida held its presidential primary on January 31. All ballots for overseas voters included names of five Republican candidates – Gary Johnson, Michele Bachmann, Herman Cain, Rick Perry and Jon Huntsman – all of whom had withdrawn from the Republican contest before January 31 in the wake of disappointing finishes in the campaign's initial contests earlier in the month. More than a quarter of Florida's 400,000 absentee ballots had already been returned before their withdrawal. In eight of Florida's most populous counties, almost three-quarters of votes for Perry, Huntsman and Bachmann were cast early. In the South Carolina primary, only ten days before Florida's, those three candidates earned only 0.5% of Election Day votes, but nearly ten times that share of absentee votes.

- **Denver, Colorado – 5-week runoff and early presidential caucuses:** Denver has municipal elections every four years, with its next election scheduled for May 5, 2015. Many of Denver’s most important elections go to runoffs, such as the mayoral elections in 2003 and 2011. But runoffs in Denver take place only 35 days after the first election. Printing of runoff ballots could not begin until days after the first election takes place, making it hard for overseas voters to participate.

Colorado held its Republican caucuses on February 7. Parties typically do not provide a means for absentee voters to participate in their caucuses; even when they do, however, vote-by-mail ballots would likely include names of candidates who may have withdrawn by the time of the caucus.

### ***Full Testimony***

I have been executive director of FairVote since 1992. FairVote is a non-partisan, non-profit think tank and advocacy organization that focuses on electoral reform and election analysis, with attention to voter turnout, voter choice and fair representation. We have played a central role in the introduction of a number of significant electoral reform and voting rights proposals that have been debated and adopted in many American cities and states. Your charter focuses on several areas of interest to FairVote, and we will provide supplementary testimony with excerpts from our forthcoming policy guide on areas such as usability testing of ballots, voter registration improvements, and changes to the administrative regime affecting the quality of voting equipment.

The focus of my written testimony today is on the difficulties that so many military and other eligible voters living in other nations face in being able to cast meaningful, effective votes, with particular attention to runoff elections and presidential nomination contests. I propose a major expansion of the practice used by South Carolina, Louisiana and Arkansas in all of their congressional election runoffs. These states send overseas voters a ranked choice ballot that can be tallied in a runoff election without having to send voters a second ballot. In explaining the value of this approach, I contrast it with the problematic change that has been imposed on many states by the federal government: forcing an extension of time between election rounds that can have the unintended consequence of lowering voter participation in primaries and in runoff elections. I also address the particular value of voter guides for overseas voters and, indeed, all absentee voters.

First, I want to congratulate the commission for including as the second item of its charter an examination of the burdens placed on Americans voting while living outside the United States. We currently have [more than 150,000 active members](#) of the armed forces serving in other nations, and, according to the United States Election project, a [total of 4,737,600 eligible voters in](#) the 2012 presidential election were living in other nations. The usual burdens faced by absentee voters are exacerbated by living outside the United States, particularly for members of the military who change addresses frequently. Despite protections provided by important federal laws such as Uniform and Overseas Citizens Absentee Voting Act (UOCAVA) and the Military and Overseas Voter Empowerment Act (MOVE), overseas voters are too often effectively disenfranchised from our elections, particularly in state and local elections not covered by UOCAVA and MOVE.

Under our current rules and procedures, the problems for overseas voters are particularly acute in two forms of elections: presidential nomination contests and state and local runoff elections held

separately from federal elections. For both of these elections, the problem is largely one of timing.

- ***Runoff elections:*** Any runoff election that is held close to the first round of elections can make it extremely difficult to accommodate timely transmission and collection of ballots sent overseas. As suggested by the examples from the locations of your opening field hearings, many localities hold runoff elections less than a month after the first round. A prominent example is this fall's primary runoff in the New York City mayoral election – which will take place three weeks after the primary election and in the past has been just two weeks after the first round.
- ***Presidential nomination contests:*** Presidential nomination contests unfold quickly after initial contests in the opening states of Iowa, New Hampshire, South Carolina and Nevada. Those early contests always lead major presidential candidates to withdraw from the race, but ballots with those candidates' names will have already been sent to overseas voters who may cast them and mail them before those candidates drop out. In 2008, for example, 25 states and territories held nomination contests on February 5, only a few days after the withdrawal of Democrat John Edwards and Republican Rudy Giuliani. Furthermore, parties usually fail to provide overseas voters with an opportunity to participate in privately-administered caucuses that involve in-person voting.

#### Ranked Ballots for Overseas Voters in Runoff Elections and Primary-General Elections:

In 1986, Congress passed the Uniformed and Overseas Absentee Voting Act (UOCAVA) to protect the voting rights of citizens who submit ballots from abroad, including military service members. In 2009, Congress reinforced UOCAVA by passing the Military and Overseas Voters Empowerment Act (MOVE). The MOVE Act mandated that jurisdictions mail ballots to overseas voters at least 45 days before a federal election to allow sufficient time for these voters to receive and return their ballots. This requirement has the practical impact of requiring many states to move their primary elections to before Labor Day and to extend time between the first and final round of runoff elections. Four years later, these laws have not yet achieved full compliance, and they do not cover state and local elections held separately from the federal elections.

When forcing changes in election dates, these laws also have had negative consequences. For example, a large number of states were forced to change traditional primary dates in September to earlier dates. Voter turnout in primary elections has already declined precipitously in recent decades, yet holding primary elections in the summer months of July and August results in even lower turnout than September primaries. Moving primaries before July can interfere with state legislators' lawmaking duties in the spring. Any earlier primary date extends the election season, which surveys indicate most voters would like to shorten, and contributes to the need for candidates to raise and spend more money than a more concentrated election season.

The impact on when federal primaries are held likely contributes to lower turnout in runoffs. In July FairVote issued a report (<http://www.fairvote.org/assets/Uploads/Federal-Primary-Election-Runoff-Turnout2013Aug2.pdf>) that analyzed the last 171 regularly scheduled primary elections for U.S. House and U.S. Senate nominations in elections from 1994 to 2012. In general, these primary runoff elections result in lower turnout; all but six of these runoffs resulted in a turnout decrease between the initial primary and the runoff, with a median turnout decline of 33.2%. The turnout decline was strongly correlated to the length of time between runoff rounds. The 56 primary runoffs

occurring more than thirty days after the first round had a median decline in turnout of 48.1%, while the 11 runoffs with a gap of twenty days or less had a median decline of only 15.4%.

One response to such numbers would be to suggest that runoff elections themselves are problematic. But there is real value in requiring winners of nominations and general elections contests to earn more than half the vote. Allowing winners with well under 50% of the vote can allow for unrepresentative outcomes in which people end up being represented by someone a majority of voters saw as their last choice. It also results in charges that certain candidates are “spoilers” and should withdraw to avoid splitting the vote.

Fortunately, policymakers have other options for upholding the voting rights of overseas voters and complying with the UOCAVA and MOVE laws. Jurisdictions can adopt the increasingly common practice of having military voters, overseas voters and those who vote early or absentee use ranked choice ballots. As implemented for all runoffs for federal offices and for many state and local offices in Arkansas, Louisiana and South Carolina, overseas voters would receive two ballots at the same time: one standard ballot, and one ranked choice ballot. The ranked choice ballot would include all candidates from the first election (whether for a primary or first-round before a runoff), and voters would be asked to rank them in order of preference. Voters return both ballots simultaneously to election officials. The standard ballot is counted in the first election according to normal procedures. In the second election, the ranked choice ballot is counted toward the highest ranked candidate who advanced to the second round.

This practice has been used for more than six years in congressional and state primary elections in South Carolina, in general elections for Congress and state offices in Louisiana, and for congressional, state and local primary elections in Arkansas. On July 26, 2013, a federal judge ordered Alabama to use a ranked choice ballot for overseas and military voters for the upcoming congressional District One special election in order to comply with UOCAVA. The one time the proposal appeared before voters as a ballot measure, in Springfield (IL), it passed with a whopping 91% in support. FairVote in 2011 addressed legal questions associated with the proposal in this report: <http://www.fairvote.org/legality-of-the-use-of-ranked-choice-absentee-ballots-for-military-and-overseas-voters>.

Speaking about South Carolina’s experience with the use of ranked choice ballots for overseas voters, Chris Whitmire, Director of Public Information of the South Carolina State Election Commission had this to say in a May 8, 2013 message, which we share with his permission:

We consider it an unqualified success. We’ve heard nothing but good things from voters about it. In the past, UOCAVA voters had a very difficult time participating in runoffs due to the two-week turnaround time. In the June 2012 primary, 92.5% of UOCAVA primary voters also participated in the runoff. That is exceptional, and that doesn’t even take into account those voters who may not have had a runoff to vote for. The real participation rate could be closer to 100%.

Compare this proposal to the recent order by a federal judge to resolve a UOCAVA challenge to Georgia’s runoff schedule. In what could be a nightmare for administrators and for voters being asked to vote so many times, the current schedule for the 2014 election season has voters being asked to vote in separate state and federal primary runoffs and general election runoffs. Even if the state runoff dates are changed to accommodate the new federal primary dates ordered by the judge,

the state will likely have lower turnout in its runoffs for Election Day voters, and it will have to hold its congressional runoffs after the start of the new Congress.

#### Ranked Ballots for Overseas Voters in Presidential Nomination Contests:

Using ranked choice ballots for overseas and military voters would also allow a more meaningful vote for the millions of Americans who vote via absentee. On March 1, 2012, I [coauthored an op-ed for \*Roll Call\*](#) with Paul Gronke, a highly regarded professor of political science at Reed College and director of the Early Voting Information Center. We focused on the problem of how, in presidential elections, overseas and military voters are far more likely than Election Day voters to cast a ballot for candidates who have withdrawn from an election, as explained earlier in my testimony.

The straightforward solution is to have these voters send back a single ranked choice ballot and to establish a practice where withdrawing candidates formally submit their withdrawal to states with upcoming contests where they are on the overseas ballot. Rather than have a ballot count for a withdrawn candidate, it instead would count for the highest-ranked candidate on the ballot who remains an active candidate. Although party-administered caucuses are outside the direct purview of your commission, we also suggest that parties give overseas voters registered with their party the same opportunity to return a ranked choice ballot, with it counting for the highest-ranked candidate on the ballot who is an active candidate.

#### Voter Guides for Voters in All Elections:

In most elections, voters must rely on getting information about their ballot choices from private media sources or directly from campaigns. The media disproportionately covers some candidates and issues and not others, while campaigns attempt to push a particular agenda, and may even provide deceptive information to manipulate voters. These problems are exacerbated for overseas voters, who usually do not have the same opportunity to receive this private information nor interact directly with candidates and watch debates.

FairVote has long proposed that all jurisdictions invest in democracy by creating voter guides, as exemplified in California, Oregon and Washington. State or local election officials would provide a comprehensive guide to all voters explaining which candidates are running, which initiatives are on the ballot, and the effect of a “yes” vote or “no” vote on each ballot measure will have. Each candidate ideally would be able to include a statement describing themselves and their platform, as would the official “yes” and “no” campaigns on ballot measures. The guide would also provide a comprehensive explanation of how to vote. While such guides ideally would be mailed (at least to currently registered voters, but potentially to all households with additional information on how to register to vote), they at least should be on-line, potentially with additional features like “talking head” videos where candidates and ballot measure proponents and opponents would have an opportunity to make a case for their position or candidacy.

#### Conclusion

I applaud your commission for seeking to improve the voting experience for voters and to take steps to facilitate voting. I ask that you recommend that states and localities use ranked choice ballots for overseas voters in any election that might go to a runoff taking place less than two months after the

first election and in presidential nomination contests. I also ask that you recommend that voter guides become a common practice, at least in on-line form. Certainly we all agree that our men and women in uniform should have their votes count meaningfully in all elections, especially as they protect and defend our country from abroad.

I would be happy to provide additional information about these proposals and to address any other questions about the voting process.