



The Center for  
Voting and Democracy

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May 20, 2014

Senator Charles E. Schumer  
Chair, Senate Committee on Rules and Administration

Dear Senator Schumer,

On behalf FairVote, I respectfully submit this testimony to the Senate Committee on Rules and Administration, to be included in the hearing record for the hearing held on May 14, 2014 titled *Collection, Analysis and Use of Data: A Measured Approach to Improving Election Administration*.

We recommend exploration and advancement of two reforms that will improve the effective participation of military and overseas voters while also promoting participation of resident voters: (1) the expanded use of voter guides, at least in online form; and (2) expansion of the increasingly common practice of sending ranked choice ballots to overseas voters in elections that may result in a runoff election and in presidential primaries.

We believe that federal research and recommendations regarding options for overseas and military voters have not devoted the warranted time and attention to these solutions. In order to better appreciate the value of this option, we ask that your Committee recommend federal research into these topics:

- Participation rates among military and overseas voters in runoff elections generally;
- The impact of the use of ranked choice voting ballots for participation by military and overseas voters in runoff elections;
- The impact of shorter runoff periods on turnout among in-person voters;
- The disproportionate percentage of votes cast by overseas voters for withdrawn presidential candidates in presidential primaries;
- The costs, if any, associated with the use of ranked choice voting for overseas and military voters and for the expanded use of voter guides.

It is our sincere hope that this testimony is helpful to the Committee in crafting its response to the continuing administrative hurdles faced by voters, especially those in the military and overseas.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Rob Richie".

Rob Richie  
Executive Director

## **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 by FairVote Executive Director Rob Riche to the Senate Committee on Rules and Administration, May 19, 2014, as part of its May 14, 2014 hearing on Collection, Analysis and Use of Data: A Measured Approach to Improving Election Administration*

**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 directly sought to address the difficulties such voters often face in casting ballots, but there remain major gaps that must be filled. Too few jurisdictions appropriate funds for printed or online voter guides that provide substantive information about voters' ballot choices. These guides would be particularly helpful to overseas voters, who are less likely to receive information from traditional media sources and campaigns. Moreover, 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 (one described by South Carolina election officials this year as an "unqualified success"), as well as 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.

Ranked choice ballots already has a proven record of success. This year they will be used as an effective way for runoff jurisdictions to comply with the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and the Military and Overseas Voter Empowerment Act (MOVE) in all congressional primary elections with more than two candidates in Alabama, Arkansas, Mississippi and South Carolina and in all of Louisiana's congressional elections in November. Some localities in Illinois and Arkansas also use ranked choice ballots, but because local elections are not covered by UOCAVA, they will not be used in most local runoff elections, even in the many instances where such runoff elections occur less than three weeks after the first voting round.

This ranked choice ballot solution provides better inclusion of military and overseas voters than the more typical response of extending the time between the first election and the runoff election. In contrast to delaying the runoff, it drives up participation among both overseas voters – who may vote in both elections simultaneously – and in-person voters, who benefit by being more likely to participate in a runoff with a shorter period between elections.

In order to make clear that this is an option for states and to highlight its real practical benefits, we ask that the Committee recommend that the federal government look to those states using this option to gather additional data on overseas voter participation rates, cost to the jurisdiction, and participation of in-person voters under shorter runoff periods. We urge the Committee to consider legislation to expand this practice in more congressional elections, to encourage a form of it in presidential primaries, and create incentives for its use in local and state elections.

## ***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 many American cities and states have debated and subsequently adopted.

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 casting meaningful, effective votes, with particular attention to runoff elections and presidential nomination contests. I propose a major expansion of the practice used this year in congressional elections in Alabama, Arkansas, Louisiana, Mississippi and South Carolina in all of their congressional election runoffs that might go to a runoff. The practice is the result of state law in Arkansas, Louisiana and South Carolina, and the result of court orders in 2013 and 2014 in Alabama and Mississippi. When sending voters their ballots for the primary (or, in the case of Louisiana, the general election), these states also include a separate ranked choice ballot (see attachment for an example from South Carolina) that can be tallied in a runoff election without having to send voters a whole new mailing after the first round of voting. In explaining the value of this approach, I contrast it with the problematic change the federal government imposes on many states: forcing an extension of time between election rounds, which can unintentionally result in decreased voter participation in primaries and runoff elections. I also address the particular value of voter guides for overseas voters and, indeed, all absentee voters.

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 the primary runoff in the 2013 New York City election for public advocate which took place three weeks after the primary election and in the past has been just two weeks after the first round. In reviewing [runoff elections in Miami-Dade County \(FL\)](#), we found that six municipalities holding elections in 2013 had runoff elections scheduled only 14 days after the first election, with two other municipalities holding runoffs less than a month after the first election.

- ***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 and contributes to the need for candidates to raise and spend more money than would be the case in a more concentrated election season.

The impact on when federal primaries are held likely contributes to lower turnout in runoffs. Last July, FairVote issued a [report](#) that analyzed the last 171 regularly scheduled primary elections for U.S. House and U.S. Senate nominations in elections from 1994 to 2012. The report found that these primary runoff elections generally 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 percent. 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 percent, while the 11 runoffs with a gap of twenty days or less had a median decline of only 15.4 percent.

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 percent of the vote can allow for unrepresentative outcomes in which people end up being represented by someone whom 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 early or absentee voters use ranked choice ballots. As implemented for all runoffs for federal offices and for many state and local offices in Arkansas, Louisiana, South Carolina, and, this year, Alabama and Mississippi, 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 advances 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 Fall 2013 congressional District One special election in order to comply with UOCAVA, an order that the judge extended to cover the Republican primary in the sixth congressional district in 2014 (the only Alabama primary with more than two candidates). In March 2014, Mississippi’s Board of Elections preempted a lawsuit by the Department of Justice by adopting ranked choice ballots for overseas voters. The one time the proposal appeared before voters as a ballot measure, in Springfield, Illinois, it passed with a whopping 91 percent in support. In 2011, FairVote 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 percent 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 percent.

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 schedule for the 2014 election season for the moment 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 absentee in presidential elections. 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 withdrew from an election.

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 the candidate remains 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. 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 active candidate on the ballot..

### 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 is currently done 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 a “yes” vote or “no” vote will have on each ballot measure. Ideally, each candidate 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 should be online at the very minimum, 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.

### Requested Actions

As demonstrated above, these actions may provide the best option for jurisdictions in fully including military and overseas voters in all elections. So far, however, federal research and recommendations regarding options for overseas and military voters has not devoted the warranted time and attention to these solutions. In order to better appreciate the value of this option, we ask that this Committee recommend federal research into at least the following topics:

- Participation rates among military and overseas voters in runoff elections generally;
- The impact of the use of ranked choice voting for participation by military and overseas

voters in runoff elections;

- The impact of shorter runoff periods on turnout among in-person voters;
- The disproportionate percentage of votes cast by overseas voters for withdrawn presidential candidates in presidential primaries;
- The costs, if any, associated with the use of ranked choice voting for overseas and military voters and for the expanded use of voter guides.

### Conclusion

I applaud this Committee 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 creative online forms. 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.

*Attachment: Example of ranked choice voting (“instant runoff”) ballot for overseas voters from South Carolina when first using the system in 2006.*

**INSTANT RUNOFF BALLOT**  
 Official Ballot Republican Party Primary  
 {insert county name here} County, South Carolina  
 June 27, 2006

**Absentee Precinct**

**INSTRUCTIONS TO THE VOTER:** The Instant Runoff Ballot will be used only in the event that no candidate seeking their party's nomination to run for a particular office receives a majority of the votes in the Primary thus forcing a runoff. Instant Runoff Ballots will not be opened if there is no need for a runoff.

For each office on the Instant Runoff Ballot, indicate your order of preference for each candidate whose name is printed on the ballot by filling in the circle in the corresponding column to the right of each candidate. You are not required to indicate a second choice, third choice, and so on. Remember, the more candidates you rank, the more likely your vote will affect the outcome of a potential runoff.

**Example**

<b>U.S. SENATOR</b>			
Rank the candidates in order of preference			
Candidate	1 <sup>st</sup> Choice	2 <sup>nd</sup> Choice	3 <sup>rd</sup> Choice
JOHN ADAMS	①	②	●
THOMAS JEFFERSON	●	②	③
GEORGE WASHINGTON	①	●	③

In the Primary election, no candidate received a majority of the votes and the two candidates that received the most votes were John Adams and George Washington, thus eliminating Thomas Jefferson. Therefore, in this example, even though this voter liked Jefferson the best, Washington would receive the vote because the voter ranked Washington the highest of the runoff candidates.

**Official Ballot**

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<b>LIEUTENANT GOVERNOR</b>			
Rank the candidates in order of preference			
Candidate	1 <sup>st</sup> Choice	2 <sup>nd</sup> Choice	3 <sup>rd</sup> Choice
ANDRE BAUER	①	②	③
MIKE CAMPBELL	①	②	③
HENRY JORDAN	①	②	③

<b>SECRETARY OF STATE</b>			
Rank the candidates in order of preference			
Candidate	1 <sup>st</sup> Choice	2 <sup>nd</sup> Choice	3 <sup>rd</sup> Choice
L W FLYNN	①	②	③
MARK HAMMOND	①	②	③
BILL MCKOWN	①	②	③

<b>STATE TREASURER</b>				
Rank the candidates in order of preference				
Candidate	1 <sup>st</sup> Choice	2 <sup>nd</sup> Choice	3 <sup>rd</sup> Choice	4 <sup>th</sup> Choice
RICK QUINN	①	②	③	④
THOMAS RAVENEL	①	②	③	④
GREG RYBERG	①	②	③	④
JEFF WILLIS	①	②	③	④

<b>SUPERINTENDENT OF EDUCATION</b>					
Rank the candidates in order of preference					
	1 <sup>st</sup> Choice	2 <sup>nd</sup> Choice	3 <sup>rd</sup> Choice	4 <sup>th</sup> Choice	5 <sup>th</sup> Choice



**INSTANT RUNOFF BALLOT**  
**Official Ballot Republican Party Primary**  
 {insert county name here} County, South Carolina  
 June 27, 2006  
**Absentee Precinct**

No. \_\_\_\_\_

\_\_\_\_\_ Initials of Issuing Officer

Candidate	①	②	③	④	⑤
KAREN FLOYD	①	②	③	④	⑤
ELIZABETH MOFFLY	①	②	③	④	⑤
MIKE RYAN	①	②	③	④	⑤
BOB STATON	①	②	③	④	⑤
KERRY WOOD	①	②	③	④	⑤

<b>S.C. HOUSE OF REPRESENTATIVES, DISTRICT 8</b>			
<i>Rank the candidates in order of preference</i>			
Candidate	1 <sup>st</sup> Choice	2 <sup>nd</sup> Choice	3 <sup>rd</sup> Choice
DON BOWEN	①	②	③
TED W LUCKADOO	①	②	③
BECKY R MARTIN	①	②	③

SAMPLE