



# **2009 RANKED CHOICE VOTING WORKING GROUP**

**March 27, 2011**

## INTRODUCTION

On October 29, 2008, the Los Angeles City Council established a working group to identify issues related to implementation of Ranked Choice Voting (RCV), also known as Instant Runoff Voting (IRV), and return with options for the Council to set a public policy on RCV. This report will discuss the recommended policy options the City Council should consider when establishing a policy toward RCV.

The RCV Working Group consisted of representatives from the Office of the City Clerk (City Clerk), the City Attorney, the City Administrative Officer (CAO), the Chief Legislative Analyst (CLA), the City Ethics Commission, the Los Angeles Unified School District (LAUSD), the Los Angeles Community College District (LACCD), the Los Angeles County Registrar-Recorder/County Clerk (Los Angeles County), and Professor R. Michael Alvarez from the California Institute of Technology (CalTech).

To arrive at a set of policy options, the RCV Working Group raised several issues relative to implementing RCV for municipal elections. These issues include:

- **Operational and Legal**

What operational and legal requirements would be necessary to adopt RCV and how will RCV affect the City's relationship with Los Angeles County and other cities for municipal elections?

- **Community and Outreach**

What impact would RCV have on voters, pollworkers, and candidates and how can the City minimize or heighten this impact?

- **Savings/Cost**

What costs and/or savings could the City expect from adopting RCV?

- **Candidate and Ethics**

## What implications will RCV have on the City's Matching Funds Program?

In addition to addressing these issues, the RCV Working Group also discussed issues raised by advocates and critics of RCV, including claims concerning election fatigue, voter turnout, and transparency in elections.

To address these and other issues, the RCV Working Group consulted with a variety of sources, including representatives from jurisdictions that have implemented RCV or will implement RCV in the near future, officials from the California Secretary of State and the Election Assistance Commission (EAC) in regards to voting system certification, and advocates and critics of RCV. In addition to these meetings, the RCV Working Group also developed the City of Los Angeles Ranked Choice Voting Working Group Election Jurisdiction Survey for jurisdictions currently using RCV to ascertain how RCV operates in those jurisdictions and how certain issues have been addressed.

After an extensive review, the RCV Working Group has concluded that implementing a RCV model for municipal contests is feasible if the following criteria were met:

- The acquisition of a new and unconditionally certified voting system with RCV capabilities in conjunction with Los Angeles County;
- Clear Charter authority for implementing RCV, along with Election Code changes and potential changes to the City's Matching Funds Program;
- A significant voter outreach and education campaign;

## BACKGROUND RESEARCH AND FINDINGS

### The City's Current Election Model

The City Clerk conducts elections for all elected City offices, including the Mayor, City Attorney, City Controller, and all 15 members of the City Council. The City also conducts elections for the seven members of the Board of Education for the Los Angeles Unified School District (LAUSD) and the seven members of the Board of Trustees for the Los Angeles Community College District (LACCD), both of which reimburse the City the cost of conducting their elections.

Under the City's current system, the outcome of an election for these offices is determined by what candidate receives a majority of the votes cast for his/her desired office. Initially, the City conducts a primary nominating election in March during which voters may vote for any eligible candidate. If, at that election, no candidate for a particular office receives a majority of votes cast, the top two candidates then participate in a "runoff" election in May in which one winner will necessarily be determined by majority of the votes cast.

When conducting municipal elections, the City regularly interacts with the Los Angeles County Registrar-Recorder/County Clerk (County). Historically, the City and the County have used the same polling place equipment, poll workers, and polling places and have provided each other with emergency equipment replacement and staff during elections, where possible. This partnership has provided voters with a consistent voting experience and is generally considered a benefit to both jurisdictions. In recent years, the City and County have taken steps expand to this partnership, including acquiring a shared vote tally system or, at the very least, guarantee the same polling place equipment to further provide a consistent voting experience for voters and election administrators alike.

In addition, the City consolidates elections with a number of cities who conduct a portion of the LAUSD and LACCD elections within their boundaries. In some instances, the City conducts concurrent elections with these other cities, in which the City conducts an election while the host city conducts their own. Any alteration to the City's current voting model will certainly effect how the City interacts with these jurisdictions.

### Ranked Choice Voting

Ranked choice voting is a method of voting that produces winners with a majority support in a single election. Voters rank candidates in order of preference: a first ranking for their favorite candidate, a second ranking for their next favorite, and so on. If a candidate wins a majority of first choice rankings, he or she wins the election. If no candidate receives a majority of the votes cast in the initial tally, the candidate with the fewest first choice votes is eliminated and his or her second choice votes are counted and distributed amongst the remaining candidates. This process continues until a candidate receives majority support and is declared the winner.

To assist cities and counties in California that are exploring RCV for their elections, the California Secretary of State, with assistance from RCV advocates, is developing a set of RCV guidelines for that will serve as a roadmap for jurisdictions to use although these guidelines will not have the force of law.

### The RCV Debate

Opinions of RCV are mixed. Advocates of RCV cite several benefits to this voting model. For example, the New America Foundation contends that RCV will eliminate runoff elections, fill vacant seats sooner, increase voter participation, invite a wider variety of candidates, reduce negative campaigns, and reduce the number of paper ballots that is used in an election. On the other hand, critics of RCV contend that RCV will reduce transparency and public oversight in election process, cause confusion about the voting and tabulation process, and enhance the difficulty in conducting a manual recount or audit.

### *Advocates' Positions*

In Los Angeles, the most proactive advocates of RCV include the California RCV Coalition, Los Angeles Voters for Instant Runoff Elections, the New America Foundation, and the Center for Voting and Democracy. All of these entities have directly expressed to the City their desire for further consideration of RCV for the City's municipal elections. Though specific details vary among groups their claims about RCV and its theoretical benefits for the City are largely the same. For example, the New America Foundation claims a variety of benefits to implementing RCV, all of which seem to be in keeping with the claims of the other advocacy agencies. These include:

- Fewer elections and reduced voter fatigue
- Increased voter participation
- Elimination of costly runoffs
- Ability to fill vacant seats quicker

- Introduction of new candidates to the election process
- Less negative campaigning

According to RCV advocates, reducing the number of municipal elections by one half would serve to decrease voter fatigue in the City. Advocates purport that the low turnout is due, at least in part, to voters being overly taxed by the frequency of elections. By reducing the number of elections, advocates argue that voters will be more inclined to participate.

In addition to reducing voter fatigue and increasing voter turnout, advocates argue that under a RCV system, there will be no need for a second election, and therefore all runoff election expenses would be eliminated. Also, advocates argue that the City would be able to fill vacancies significantly sooner than under the traditional runoff system. Under the current system, if there are more than two candidates who qualify to run for a vacant office, there is always a possibility that a runoff election will need to take place. If a RCV system were put in place for recall and other special elections, this possibility would be eliminated, and the officer's replacement could resume duties significantly sooner than under the current system. In addition, advocates argue that once the implementation costs of an RCV voting system are recuperated, that RCV will save the City a significant amount of money. The New America Foundation also notes that eliminating a runoff election would result in environmental benefits by reducing the amount of paper products utilized in an election cycle.

Besides adding costs to the City, RCV advocates claim that the short time period between the primary and runoff elections inherently favors candidates that can raise money quickly. Accordingly, they conclude that eliminating this period would create more equitable footing for candidates. Advocates also argue that RCV is more representative of voters' intentions, one which does not result in strategic voting, and one which prevents tertiary candidates from "spoiling" the outcome of an election. Furthermore, they argue that the nature of RCV encourages civility between candidates since second and third choice rankings can play a major role in who is eventually elected. RCV advocates argue that such animosity between candidates distracts attention from the actual issues facing the voting community.

### *Critics' Positions*

In general, critics of RCV agree that the idea of reducing voter fatigue, increasing voter participation, and saving money on elections are worthy goals. However, critics argue that RCV is not the singular means of achieving these goals or that the claims of advocates are not all accurate, or are overly presumptive in their conclusions. In general, critics cite several flaws with RCV. These include:

- RCV is confusing, complex, and time-consuming to manually count or audit;

- RCV increases the potential for undetectable errors, and;
- RCV does not treat all voters' ballots equally.

Some critics argue that opposition to RCV is rooted in the need to preserve citizen oversight over the City's elections process and increase operational transparency. Ranked choice voting, critics argue, will add to an already complicated (and flawed) election system and lead to voter confusion and disenfranchisement, which in turn will reduce citizen oversight and decrease transparency over the election process. For example, critics argue that under a RCV system, voters may not know if their ballots are counted accurately if they do not understand how RCV is tabulated in the first place. If a flaw was subsequently discovered, the public may not know of it until long after the election has taken place. If a flaw is discovered and manual recount or audit is required, confusion may increase, along with the time required to perform such a function. Critics also point out that the voting process in general may be a deterrent to some voters, particularly those in minority communities and that while RCV is not necessarily the deterrent in this case, it may be an added source of confusion to minority voters.

Critics also suggest that RCV treats voters' ballots unequally, although there is serious doubt that there is any merit to this claim. In general, critics argue that as RCV ballots are exhausted during tabulation, there are fewer ballots to calculate a majority. After 8 or 9 rounds of counting, there may be no majority winner of all votes cast, but rather, a majority of the votes remaining.

In addition to the aforementioned criticisms of RCV, there are concerns have been raised about the City's ability to consolidate municipal and LAUSD/LACCD races and measures with the County of Los Angeles and other cities holding elections on the same day as the City of Los Angeles if the City were to adopt RCV. If this option were eliminated, elections normally consolidated with the County or other cities would either have to be held concurrently on the same Election Day as each other or held on a separate Election Day, which in turn, would require separate ballot, tables at one or possibly two separate polling locations, and two sets of pollworkers. Also, if RCV is adopted, voters in the City could possibly be required to use two different voting systems.

### RCV in Other Jurisdictions

Several jurisdictions around the United States have either implemented RCV or have adopted RCV for future elections. In California, the City and County of San Francisco has

been conducting RCV elections for its municipal elections since 2004. In nearby Alameda County, the Alameda County Registrar of Voters anticipates holding RCV elections for the cities of Berkeley, Oakland, and San Leandro in November 2010. Elsewhere, RCV has been implemented in Burlington, Vermont, and Cary and Hendersonville, North Carolina. RCV has also been implemented in Pierce County, Washington although it should be noted that on November 3, 2009, voters in Pierce County, Washington approved Proposed Charter Amendment No. 3 (by a margin of 70.65% to 29.35%), which eliminated ranked choice voting for and restored the primary and general election system for all county elective offices. Nevertheless, these jurisdictions were available to shed light on their experiences in implementing RCV to the RCV Working Group. However, before any evaluation of other jurisdictions is performed it is necessary to consider key differences between Los Angeles and other large RCV jurisdictions.

### *Comparing Los Angeles and RCV Jurisdictions*

The City of Los Angeles is California's largest city and the second largest election jurisdiction in the State with an estimated 2.2 million registered voters spread out over nearly 500 square miles.<sup>1</sup> San Francisco is the largest RCV jurisdiction in the United States and of the RCV jurisdictions, the most similar to Los Angeles in terms of population, diversity, and governmental structure. Pierce County is the second largest RCV jurisdiction in the United States and has a population nearly as large as San Francisco. However, there are several significant differences with both of these jurisdictions that will complicate direct comparisons. The following illustrate several of these differences:

- San Francisco is a consolidated city-county with over 800,000 residents and over 465,000 registered voters spread out over nearly 47 square miles;
- Pierce County has about 700,000 residents and about 441,331 registered voters spread out over nearly 1,700 square miles;
- 18 year old and older population in Los Angeles is 2.1 million and 650,000 in San Francisco. In addition, Los Angeles also has an overall younger population than San Francisco;

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<sup>1</sup> The City has 1.5 million registered voters. However, when combined with registered voters within the LASUD and the LACCD, the number of registered voters rises to 2.2 million.



- Los Angeles has a higher foreign-born population than San Francisco. In addition, Los Angeles has a much higher Latino/Hispanic population than San Francisco whereas San Francisco has a higher Asian population than Los Angeles;
- Los Angeles has a higher population of people that are much more likely to speak a non-English language at home than San Francisco, 60% to 46%, respectively;
- Los Angeles has a much lower per capita income than San Francisco (about \$26,000 to \$43,000, respectively) and has more families and individuals living below the poverty line;
- Pierce County currently does not have a minority language requirement, although it may require Spanish as a result of the next Census, and;
- Voting by mail is far more ubiquitous in Pierce County than in Los Angeles.

These factors must be kept in mind when comparing RCV jurisdictions to Los Angeles, especially when considering what sort of voter education campaign will be necessary if the City were to implement RCV for municipal contests.

### *RCV Implementation*

Overall, jurisdictions that have implemented RCV appear to have had a positive operational experience. The process, from beginning to end, is relatively straightforward, although not without complications. From an operational standpoint, conducting RCV elections requires significant preparation. According to John Arntz, the Elections Director for San Francisco, and election administrators in Pierce and Alameda County, the single most important factor in implementing RCV, and one that informs the entire RCV process, is to acquire a voting system that is unconditionally certified by the state and federal government and is ready for use far ahead of a given implementation date. Without a viable, unconditionally certified voting system, preparations for any type of election is destabilized.

The experience election administrators had in San Francisco after RCV was adopted provides a good example of the difficulties that may arise as a result of not having a certified voting system. In March 2002, voters in San Francisco approved a charter amendment adopting RCV, which was placed on the ballot as a result of a voter initiative. Following the March 2002 election, San Francisco paid Election Systems & Software (ES&S) \$1.6 million to produce a viable RCV voting system for the November 2002 elections.<sup>2</sup> Unfortunately, a viable RCV voting system could not be produced before this deadline. To accommodate possible delays, the charter amendment stated that if a voting system with RCV capabilities was unavailable for the November 2002 election, the election could be waived until November 2003. However, a viable system was still unavailable so implementation was delayed once more to 2004. As a result of this delay, San Francisco was sued by the Center for Voting and Democracy to compel RCV implementation, although the lawsuit was subsequently dismissed and San Francisco held a traditional run-off election in December 2003. San Francisco eventually held its first RCV election November 2004 and acquired a new voting system through Sequoia for \$12.6 million, which included a RCV component for \$650,000. Currently, Sequoia is the only voting system in California with a RCV component.

Elsewhere, Pierce County, Washington implemented the first RCV election on November 4, 2008.<sup>3</sup> Voters in Pierce County adopted RCV on November 7, 2006, which was placed on the ballot at the recommendation of the Pierce County Charter Review Commission. To prepare, Pierce County formed a Blue Ribbon Review Panel to study and develop an implementation plan for RCV, which was adopted in November 2006, and, if necessary, provide input on additional charter rules.<sup>4</sup> The panel determined that the original charter amendment did not contain enough detail to set implementation parameters and that additional charter amendments were required before implementation could move forward. Four amendments, including establishing the ranking of three candidates (until technology allows for more rankings), allowing multiple elimination of losing candidates, a RCV algorithm that ends when a candidate has a majority, and an amendment asking for the possibility of postponement until 2010, were proposed to voters in 2007. All but the latter amendment were approved.

Although there are similarities between RCV and traditional elections, there are significant differences that will alter how elections are administered in Los Angeles. For example, voters in RCV jurisdictions are able to rank up to three candidates on large, optical-scan ballots whereas on traditional ballots, voters only mark a smaller ballot card one race at a time. For several jurisdictions, including San Francisco, Pierce County, and Alameda

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<sup>2</sup> San Francisco uses RCV to elect the Mayor, the Board of Supervisors, the District and City Attorneys, Treasurer, Assessor-Recorder, Public Defender, and the Sheriff.

<sup>3</sup> Pierce County uses RCV to elect the County Executive, the County Council Members, Auditor, Assessor-Treasurer, and Sheriff.

<sup>4</sup> The Blue Ribbon Panel consisted of members of the Pierce County Auditor, the Attorney General, Pierce County election staff, the Chamber of Commerce, the Pierce County Veterans Advisory Council, the League of Women Voter of Washington, and various political parties.

County, election administrators issue multiple ballot types since these jurisdictions are also responsible for conducting non-RCV elections. To reduce confusion, these jurisdictions have placed a heavy emphasis on educating voters and pollworkers on how to fill out the different types of ballots.

The RCV tabulation process is significantly different from a traditional ballot tabulation process. For example, if a candidate garners a majority of votes in a RCV or traditional election, the candidate is declared the winner of the election. In RCV elections, the RCV algorithm is not run when this occurs. However, if a candidate fails to receive majority support, RCV ballots are tabulated according to an algorithm that tabulates and redistributes votes. Under a traditional election, if a candidate fails to achieve majority support in a Primary Election, the two top candidates run off against each other in a General Election that is held at a later date. While a RCV tabulation will produce a winner without the need of a second election, the process is nevertheless intricate and complex. In fact, according to Mr. Arntz from San Francisco, the RCV process is time-consuming and in no way “instant” as the name “instant runoff voting” would suggest. For this reason, Mr. Arntz suggested that the City use the term “ranked choice voting” rather than “instant runoff voting” as the former better reflects the nature of the method.

### *Voter Outreach and Education*

In addition to securing a certified voting system and establishing detailed implementation parameters, election administrators in RCV jurisdictions state that it is absolutely crucial that a widespread voter outreach and education campaign be prepared before RCV is implemented.

In 2004, the San Francisco Department of Elections collaborated with several community-based organizations (CBOs) and spent an estimated \$850,000 on a multimedia outreach campaign in three languages: English, Spanish, and Chinese. Specifically, this campaign concentrated on teaching voters how to mark the ballot card as opposed to explaining how RCV is tabulated, and placed a strong emphasis on encouraging voters to fill out all three rankings. The Department also carefully trained its poll workers by adding an additional hour to pollworker training and simplified the RCV ballots and voting instructions. According to Mr. Arntz, the most effective form of outreach in 2004 appeared to be through the community organizations, radio, television, and bus advertisements. In subsequent elections, RCV outreach was incorporated into the normal outreach function of the Elections Department, which has a budget of about \$125,000. In Pierce County, election administrators adopted many of San Francisco’s best outreach practices and utilized an online tutorial, informational mailers, billboards, and public service announcements on major television networks to educate voters.

However, there are concerns that this approach to voter outreach and education is not fully transparent, specifically with regard to how RCV ballots are tabulated. While it appears that voters understand how to fill out RCV ballots, it appears that voters are uncertain as to how ballots are tabulated and how the final election results are determined.

### *Voter Turnout in RCV Elections*

RCV advocates claim that RCV can increase voter participation, although there is reason to doubt that this claim is entirely accurate. When assessing past voter turnout for San Francisco and Pierce County, before and after the implementation of RCV, voter turnout appears to have been affected by RCV. However, as the following analysis will show, it is unclear if the rise in voter turnout is exclusively due to the introduction of RCV.

The following table illustrates voter turnout in San Francisco since 1999:

<b>Municipal Elections In San Francisco 1999-2009</b>			
Year and Election	Federal Election	Municipal Offices	Voter Turnout
November 1999 (Primary)		Mayor, District Attorney, Sherriff	44.95%
December 1999 (Runoff)		Mayor, District Attorney	48.84%
November 2000 (Primary)	Presidential/ Congressional	Board of Supervisors ( Districts 1-11)	66.59%
December 2000 (Runoff)		Board of Supervisors (Districts 1,3-6, 7,8,10,11)	32.55%
November 2001 (Primary)		City Attorney, Treasurer	29.62%
December 2001 (Runoff)		City Attorney	16.58%
November 2002 (Primary)	Congressional	Assessor Recorder, Board of Supervisors (Districts 2, 4, 6, 8, 10)	50.08%
December 2002 (Runoff)		Board of Supervisors (Districts 4, 8)	38.38%
November 2003 (Primary)		Mayor, Board of Supervisors (Districts 1-11)	45.67%
December 2003 (Runoff)		Mayor, District Attorney	54.46%
November 2004 (RCV)	Presidential/ Congressional	Board of Supervisors (Districts 1-3, 5, 7, 9, 11)	74.31%
November 2005 (RCV)		Assessor-Recorder, City Attorney, Treasurer	53.61%
November 2006 (RCV)	Congressional	Assessor-Recorder, Public Defender, Board of Supervisors (Districts 2,4, 6, 8, 10)	60.66%
November 2007 (RCV)		Mayor, District Attorney, Sherriff	35.62%
November 2008 (RCV)	Presidential/ Congressional	Board of Supervisors (Districts 1, 3-5, 7, 9, 11)	81.25%
November 2009 (RCV)		City Attorney, Treasurer	22.58%

Overall, these figures appear to indicate that voter turnout is higher in RCV elections than in non-RCV.<sup>5</sup> However, increases in voter turnout appears to be skewed by the three presidential elections and five congressional elections that have taken place since 1999. In addition, it appears that increases in voter turnout under RCV do not appear to be as enduring as previously thought.

For example, when comparing the November 2005 RCV election (for the Assessor-Recorder, City Attorney, and Treasurer), with voter turnout at 53.61%, with the 2001 Primary and Runoff elections (for the City Attorney and Treasurer), with voter turnout at 29.62% and 16.58% respectively, there appears to be a significant increase in voter

<sup>5</sup> Election Archives by Year. City and County of San Francisco: Department of Elections. 2009. [http://www.sfgov.org/site/elections\\_index.asp?id=61790](http://www.sfgov.org/site/elections_index.asp?id=61790)

turnout under RCV. However, in November 2009, when the City Attorney and Treasurer seats were up for election, the turnout was only 22.58%, a 31% drop in turnout. In addition, when comparing mayoral elections prior to and under the RCV voting model, it appears that voter turnout decreased under RCV in 2007. Between 1999 and 2003, voter turnout for Mayoral runoff elections averaged 51.65%. However, in 2007, under RCV, turnout for the single Mayoral election was only 35.62%. It could be argued that the decrease in voter participation in the 2007 Mayoral can be attributed to a variety of factors, such as fewer candidates, fewer registered voters, or the presence of popular or unopposed incumbents. However, the rise and fall of voter turnout, in any type of election, will always be subject to a wide variety of factors, including whether or not a contentious issue is on the ballot or whether or not there are competitive campaigns among candidates.

The voter turnout in Pierce County appears to follow a similar pattern as in San Francisco, although there is less data to analyze since Pierce County has only had two RCV elections since 2006. The following table illustrates voter participation in Pierce County since 2002:<sup>6</sup>

<b>County Elections In Pierce County, Washington 2002-2008</b>			
Year and Election	Federal Election	County Offices	Voter
September 2002 (Primary)		Auditor, Prosecuting Attorney, County Council (Districts 1, 5, 7)	34.52%
November 2002 (General)	Congressional	Auditor, Prosecuting Attorney, County Council (Districts 1, 5, 7)	55.43%
September 2003 (Primary)		County Council - District 6	26.95%
November 2003 (General)		County Council - District 6	39.94%
September 2004 (Primary)		County Executive, Assessor-Treasurer, County Council (Districts 2, 3, 4, 6)	43.87%
November 2004 (General)	Presidential/ Congressional	County Executive, Assessor-Treasurer, County Council (Districts 2, 3, 4, 6)	78.26%
September 2006 (Primary)		Auditor, Prosecuting Attorney, County Council (Districts 1, 5, 7)	34.89%
November 2006 (General)	Congressional	Auditor, Prosecuting Attorney, County Council (Districts 1, 5, 7)	57.92%
November 2008 (RCV)	Presidential/ Congressional	County Executive, Prosecuting Attorney, Assessor- Treasurer, Sheriff, County Council (Districts 2, 3, 4, 6)	76.08%
November 2009 (RCV)		Auditor	39.22%

<sup>6</sup> Election Archives by Year. Pierce County, Washington: Elections Department. 2009. [http://www.co.pierce.wa.us/pc/abtus/ourorg/aud/Elections/Archives/Archive\\_index.htm](http://www.co.pierce.wa.us/pc/abtus/ourorg/aud/Elections/Archives/Archive_index.htm)

Prior to RCV, voter turnout was often higher during general elections than in the primary. For the initial RCV election, the voter turnout rate in Pierce County was 76.08%, although, as in San Francisco, this high turnout was likely skewed by the 2008 presidential election.<sup>7</sup> In fact, the turnout for the November 2004 presidential election was 78.26%. In November 2009, the turnout for the County Auditor's race was 39.22%, which was just over 4% higher than the September Primary elections in 2002 and 2006.<sup>8</sup> Since Pierce County did not have the opportunity to develop a history of RCV elections, it is difficult to draw any conclusions on the effect of RCV voter turnout at this time.<sup>9</sup>

Overall, based on the data from San Francisco and Pierce County, attributing an increase in voter turnout solely to RCV at this time may be premature. Voter turnout in both jurisdictions in 2008 and 2004 appear to be skewed higher due to the presidential and congressional elections, both of which were high-profile, contentious events.

### *Voter Response to RCV*

Despite initial setbacks and uncertainties, studies indicate that the voters of San Francisco had a relatively easy time transitioning from a two-round run-off voting model to a RCV model. According to a 2005 study by Professors Francis Neely and Corey Cook of San Francisco State University, the overall voter experience in the 2004 and 2005 RCV elections was positive.<sup>10</sup> The following are the most significant highlights from these studies:

- In 2004 and 2005, 86% and 87% of the voters, respectively, indicated that they understood the RCV system “perfectly well” or “fairly well”, although Asian voters were the least likely to say that they understood RCV overall. In addition, in 2005, minority voters demonstrated high levels of understanding of the RCV system. For example, 89.8% of Hispanic or Latino voters, 85.7% of Asian or Pacific Islander voters, and 84.8% African American voters understood the RCV system “perfectly well” or “fairly well”.

<sup>7</sup> In November 2004, the turnout was 78.26%, an increase very likely due to the 2004 presidential election.

<sup>8</sup> It was in this election that the voters of Pierce County decided to rescind RCV and reinstate the traditional election format for its County seats.

<sup>9</sup> It should be noted that Pierce County voters, along with the rest of the State of Washington favor voting by mail rather than at the polls. In Pierce County, 78% of registered voters are absentee voters. In contrast, polling place turnout varies from 5% to 22%, depending on the competitiveness of an election.

<sup>10</sup> Ranked Choice Voting in San Francisco: Assessing the Ease of Electoral Reform to an Alternative Voting System. Francis Neely, Corey Cook. San Francisco State University. September 2005 & An Assessment of Ranked-Choice Voting in the San Francisco 2005 Election. Francis Neely and Corey Cook, San Francisco State University and Lisel Blash, Public Research Institute. Public Research Institute. San Francisco State University. July 2006.

- In 2004, two-thirds of voters stated a clear preference for RCV over the traditional runoff system. Prior support of RCV was reported at 42%, so the 25% increase in preference indicates that voters may be more accepting of RCV once they have used it firsthand. However, in 2005, 51% of voters stated a preference of RCV model as opposed to 17% of those that preferred the two-round run-off voting model. The remainder expressed no preference.
- In 2004, two-thirds of voters understood that the ballot required ranking. However, 31% of voters stated that they were unfamiliar with RCV. Voters who supported RCV or vote more frequently were more likely to know that the ballot required ranking. On the other hand, the elderly and the least educated were the least likely to know that they would be using an RCV ballot and that they had to rank candidates.
- In 2004, 61% of the voters reported ranking three candidates whereas 15% ranked two and 24% voted for one. Latino voters were more likely to not take advantage of the ranking system and not rank three candidates. However, in 2005, minority voters as a whole demonstrated an increased tendency to rank three candidates. For example, 67.4% of Hispanic or Latino voters, 64.7% of Asian or Pacific Islander voters, and 72.1% of African American voters reported ranking three candidates.
- In 2005, 37% of voters perceived RCV as fairer than the traditional runoff system as opposed to 15% who did not. However, a plurality of voters surveyed perceived no difference between the two models.

In addition to these findings, RCV has also shown to produce low overvote rates, similar to rates in non-RCV elections, which results in fewer spoiled ballots and more countable ballots cast. According to FairVote, a non-profit, non-partisan election reform organization that supports RCV, a precinct analysis conducted in 2004 showed that the overvote rate (1%) and the undervote rate (8%) for RCV and non-RCV ballots produced nearly identical countable ballot rates (91.1% and 91.75%, respectively).<sup>11</sup> Voters in precincts where more campaign money was spent and where voters had previously used RCV produces fewer under and overvotes, which indicates that experience combined with voter outreach or high campaign activity may seem to help voters navigate the RCV system.

In contrast to San Francisco, voters in Pierce County were clearly more ambivalent toward RCV. Following the November 2008 Election, Pierce County asked its voters for feedback on RCV as a voting model. Of the 90,738 respondents, 33.98% stated that they liked RCV and 66.02% stated that they did not like RCV. The remaining respondents were either

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<sup>11</sup> [Instant Run-off Voting and Its Impact on Racial Minorities](#). The New America Foundation and the Center for Voting and Democracy/FairVote. Page 4. June 2008.



undecided or provided another response. According to this survey, voters that did not like RCV often stated that RCV was confusing and unnecessary. On top of apparent voter dissatisfaction, the Pierce County Council passed an ordinance proposing a Charter Amendment that would eliminate RCV and restore the traditional primary/runoff system. On November 3, 2009, voters in Pierce County, Washington approved Proposed Charter Amendment No. 3 (by a margin of 70.65% to 29.35%), which eliminated ranked choice voting for and restored the primary and general election system for all county elective offices.

### Voting System Certification in California

The City currently tabulates ballots using its own vote tally system, Votec, which tabulates ballots that are scanned with LRC optical scan card readers. The Votec tally system has been in use in City elections for over 20 years and is capable of tabulating hundreds of thousands of ballots in a short span of time. However, the Votec vote tally system is incapable of accommodating RCV or other alternative vote tally methods and is limited in long-term resources necessary to accommodate new voting system standards promulgated by the Federal or State governments. The Votec tally system also operates under short term administrative approval from the California Secretary of State for the City's municipal elections. Any attempt to re-program the Votec tabulation system to accommodate RCV will be costly and subject to arduous and lengthy state testing.

In order to address this limitation, the City Clerk drafted and released a Request for Proposal (RFP) for a new voting system on October 7, 2009. The RFP was designed to encourage vendors to submit innovative proposals and demonstrate to the City Clerk the varieties of voting systems that were currently in use or in development, including RCV. While the City Clerk solicited several responses from qualified voting system vendors the City Clerk ultimately recommended that the City not acquire a voting system for the time being. The primary justification informing this decision is the fact that there is no state or federally-approved voting system, with or without a RCV component certified for use in California.

The voting system certification process begins with the U.S. Election Assistance Commission (EAC), a Federal body established as a result of the Help America Vote Act (HAVA) of 2002. The EAC is comprised of four commissioners and is responsible for testing and certifying voting systems using federally-certified laboratories. In general, the EAC will test a voting system's software and hardware and its logic and accuracy for functionality, security, accuracy, and usability. The EAC has been criticized for its lengthy testing process, which, according to the EAC, is necessary to ensure that every voting system undergoes thorough and rigorous scrutiny before proceeding to a given state's testing process, if necessary.

Once a system completes testing and is certified by the EAC, the system will be subject to ongoing monitoring. If problems are discovered during the state testing process or if new

components, such as RCV, are added to the certified system, the EAC will re-test the voting system to ensure compliance. According to the EAC, the testing process under this program is much shorter than the initial testing process to ensure that the state testing process can continue on schedule.

According to the EAC, only two voting system vendors have submitted voting systems for testing with RCV components: Sequoia Voting Systems (Sequoia) and Unisyn Voting Solutions (Unisyn). Of these two, Sequoia is the furthest along in the testing process, which, according to the EAC, may be prepared to analyze and possibly issue laboratory results in a matter of months.

California Election Code 19250 requires that voting systems used in California must first obtain federal certification prior to obtaining approval from the California Secretary of State. Once a voting system receives full federal certification from the federal testing agency, the EAC, a vendor must then submit an application with the Secretary of State and undergo testing according to California standards. The testing process for a system with a RCV component has slight variations than other systems and will also include testing along jurisdiction-specific rules.

Since no voting system with RCV capabilities has yet to receive federal certification, jurisdictions that currently administer RCV elections, such as the City and County of San Francisco and Alameda County, are only able to do so with conditional approval from the Secretary of State, which, according to election administrators in San Francisco and other RCV jurisdictions, can destabilize preparations for the RCV election process. As of December 2009, both San Francisco and Alameda County were granted conditional approval of Sequoia's blended RCV voting system to use in the 2010 Consolidated Gubernatorial Primary and General Elections.<sup>12</sup>

Whereas conditional approval resolves the short-term need to be in compliance with state law, the extensive testing process usually results in the imposition of strict and narrow guidelines for compliance, limited use, and late notification of needed changes. For example, when San Francisco recently received special administrative approval for its RCV elections, election administrators had to include one Direct Recording Electronic (DRE) unit at each polling place and manually remake each vote cast on the DRE. In addition, San Francisco was once required to inspect all VBM ballots for complete markings in dark ink or dark pencil. If a ballot did not have a dark ink or pencil mark, the ballot had to be remade. The concern was that, the ballot tabulator would not count the tens of thousands of VBM ballots that were not fully filled in. These additional conditions required more time, space, and staff to carefully inspect thousands of DRE and VBM ballots. In response to these conditions, San Francisco has developed a backup plan to

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<sup>12</sup> California Secretary of State, Voting Systems: Sequoia Voting Systems. 2010. [http://www.sos.ca.gov/elections/elections\\_vs\\_sequoia.htm](http://www.sos.ca.gov/elections/elections_vs_sequoia.htm)

tabulate ballots in the event conditional approval is denied, which includes purchasing or leasing a second voting system or resorting to a full manual count. The latter option is difficult and requires enough time, space, and staff to count ballots in an orderly fashion that voters could trust.

In Pierce County it was discovered during the certification process that Pierce County could not utilize the polling place tabulation process that had been used in past elections. The polling place tabulation process enabled voting machines to tabulate votes at the polling place. However, during the RCV testing process, these machines were unable to tabulate RCV ballots or run a RCV algorithm. As a result, Pierce County implemented a centralized count process and transported ballots from the polls to a central count area, a process very similar to election night processes in Los Angeles and San Francisco. Following the election, Pierce County instituted 24-hour shifts for one week to check in, inspect, and tabulate thousands of ballots using the same Sequoia system as San Francisco.

### Pursuing RCV Election Reform

The California Constitution provides charter cities like Los Angeles with a substantial measure of self-governance including a special grant of authority over the conduct of city elections.<sup>13</sup> For example, Article XI, Section 5(b) of the state Constitution specifically grants charter cities “plenary authority” over the “manner in which, the method by which, the times at which, and the terms for which” city officers are elected. Accordingly, the City has the authority to establish its own method for electing City officers and the state Constitution does not prohibit the City from adopting RCV, provided that the reform is accomplished through an appropriate change to the City Charter and is consistent with other laws as further discussed below.

Other charter cities have adopted RCV charter amendments pursuant to the authority granted in the California Constitution. In contrast to charter cities, general law cities do not have the authority to conduct RCV elections. State lawmakers recently have introduced legislation, however, that would allow general law cities to experiment with RCV. (See AB 1121 (2009-2010 session); see also AB 1294, vetoed by Governor (2007-2008 session).)

### *Charter Change Required*

Adopting RCV for City elections would require a charter change. The current City Charter establishes a traditional primary/run-off system for candidate elections.<sup>14</sup> RCV would eliminate the primary/run-off system in favor of a single instant run-off election. Thus, implementing RCV would necessitate an amendment to the City Charter approved by the

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<sup>13</sup> Cal. Const., Art. XI, §§ 3, 5; see *Johnson v. Bradley* (1992) 4 Cal.4th 389, 395-405 [discussing the home rule authority of charter cities.]

<sup>14</sup> City Charter §§ 400-440.

voters. The City Charter's provisions regarding vacancies in office also contemplate a primary/run-off system. Therefore a charter change would be necessary even if RCV is to be used only in special vacancy elections.<sup>15</sup>

The City Charter may be changed through a charter amendment placed on the ballot by the City Council and approved by a majority of voters.<sup>16</sup> A charter amendment also may qualify for the ballot through a citizen-sponsored initiative.<sup>17</sup> In addition to charter changes, the City would need to adopt amendments to the City's Election Code and Campaign Finance Ordinance to accommodate for an RCV election system.<sup>18</sup>

A proposed change in the City's election system also impacts LAUSD elections because the City Charter governs the election of members to the LAUSD Board of Education.<sup>19</sup> Therefore, the charter amendment language must clearly state whether LAUSD candidate elections will be conducted on an RCV basis. In order to adopt RCV for LAUSD elections, the charter change must be submitted to the LAUSD electorate and approved by a majority of voters in the LAUSD. The charter change may be designed to make RCV effective only upon the approval of both the City and LAUSD electorates so that it does not result in the City and LAUSD having different election systems.

#### *RCV and the Courts*

The California courts have not addressed the legality of an RCV system. In February of 2010, a lawsuit was filed in federal court challenging the constitutionality of San Francisco's RCV system. The lawsuit alleges that RCV violates the Equal Protection and Due Process Clauses of the 14th Amendment and the right to vote protected under the 1st Amendment of the United States Constitution. We are monitoring the litigation, which is in its early stages. This is not surprising considering that only a few cities in the state have adopted RCV election systems and only one city, San Francisco, has conducted an RCV election. San Francisco previously faced a legal challenge related to its RCV reform, but that challenge was based on its ability to meet the timetable for implementing RCV set forth in its charter amendment, and was not a direct challenge to the underlying validity of RCV.

A different type of preferential voting system, known as the Hare system, was invalidated by a California appellate court in *People v. Elkus* (1922) 59 Cal.App. 396. The Hare system at issue in the *Elkus* case was used to fill nine at-large seats on the Sacramento city council by allowing voters to rank one candidate as their first choice, one candidate as their second choice, and so on. The court held that this system violated a former provision of the state Constitution entitling voters to vote in "all elections" because it gave voters only one first-choice vote even though there were nine council seat elections on the ballot.

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<sup>15</sup> City Charter §§ 409, 410,

<sup>16</sup> Cal. Const., Article XI, § 3.

<sup>17</sup> Cal. Const., Article XI, § 3(b).

<sup>18</sup> Additional legal issues may arise depending on the nature of any changes to the City's campaign finance and matching funds laws.

<sup>19</sup> Cal. Const., Art. IX, § 16.

RCV clearly is distinguishable from the Hare system in that RCV entitles voters to have a first-choice vote for each elected position on the ballot.

Outside California, the RCV Working Group is aware of two cases directly addressing the validity of RCV. Just recently, in June of 2009, the Minnesota Supreme Court upheld a voter-approved measure establishing RCV in the city of Minneapolis.<sup>20</sup> Adopted in November 2006, the Minneapolis RCV system is similar to the system currently utilized in San Francisco. Before Minneapolis could implement RCV, opponents filed a challenge to the charter amendment essentially alleging that RCV violated the right to vote and equal protection under one-person one-vote principles. Opponents argued that under RCV some votes count more than others in determining the outcome of elections. The Minnesota Supreme Court disagreed with this characterization, explaining that RCV systems are like traditional primary/run-off systems in that “only one vote per voter can be counted in each round.”<sup>21</sup> The court held that RCV does not unequally weight votes because “every voter has the same opportunity to rank candidates when she casts her ballot, and in each round every voter’s vote carries the same value.”<sup>22</sup> The Minnesota Supreme Court concluded that the burdens imposed by RCV on the right to vote, if any, are “minimal” and that those burdens are justified by the city’s purported interest in adopting RCV (e.g., reducing election costs, increasing voter turnout, encouraging less divisive campaigns).<sup>23</sup> Therefore, the court held that the Minneapolis RCV charter amendment was not unconstitutional on its face.

The other case is a 1975 state trial court decision from Michigan upholding the constitutionality of an RCV system adopted by the voters of Ann Arbor.<sup>24</sup> Plaintiffs alleged that the Ann Arbor voting system, which was similar to the San Francisco system, violated the Equal Protection Clause because it allowed for the second choice ballots of some voters to be counted while the second choice of other voters whose first-choice candidate remained in the race are not counted. The Michigan court rejected this challenge, holding that RCV provides every person an equal right to vote because each voter has only one vote counted in a round.

As these cases indicate, opponents of RCV have challenged the system in court mainly alleging that it infringes on voters constitutional rights to vote and to equal protection. If a challenge were filed in Los Angeles, a court would evaluate the burdens, if any, imposed by RCV and then “weigh the asserted injury to the right to vote against the ‘precise interests put forward by the [City] as justifications for the burden imposed by its rule.’”<sup>25</sup> In assessing the constitutionality of RCV, a California court likely will consider the holdings and reasoning of the Minnesota and Michigan cases discussed above. California courts are not bound, however, by the decisions of other state courts and the facts and

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<sup>20</sup> *Minnesota Voters Alliance v. City of Minneapolis* (Minn. 2009) 766 N.W.2d 683.

<sup>21</sup> *Id.* at p. 692.

<sup>22</sup> *Id.* at p. 693.

<sup>23</sup> *Id.* at pp. 696-697.

<sup>24</sup> *Stephenson v. Ann Arbor Board of City Canvassers* (Mich. Cir. Ct. 1975) Jackson County Case No. 75-10166AW.)

<sup>25</sup> *Crawford v. Marion County Election Bd.* (2008) 128 S.Ct. 1610, 1616 [quoting *Burdick v. Takushi* (1992) 504 U.S. 428, 434].

circumstances surrounding an RCV system in Los Angeles may be different than those present elsewhere.

Opponents of RCV also have raised concerns about the validity of the system under the Voting Rights Act. Section 2 of the Voting Rights Act (VRA) prohibits the City from using any voting standard, practice or procedure in a manner which “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” The statute is violated if it is shown, based on a totality of circumstances, that the voting process is “not equally open to participation” in that protected class members “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.”<sup>26</sup> The RCV Working Group is not aware of any cases addressing the validity of RCV under Section 2 or any other provision of the Voting Rights Act. The Act was not raised in the Minnesota and Michigan cases discussed above. According to Department of Justice (DOJ) staff, the DOJ has not taken a position regarding the validity of RCV under the Voting Rights Act. DOJ staff confirmed, however, that measures must be taken to ensure equal access for all voters and compliance with minority language translation requirements. These measures clearly must include a voter education and outreach effort in all seven VRA-mandated languages to help ensure that voters are provided information about RCV and have the opportunity to participate in RCV elections on an equal basis.

#### Effects of RCV on Matching Funds Program

In addition to issues related to implementation, public education, and legal issues, the issue of how RCV might affect the City’s comprehensive and groundbreaking public campaign financing program was also considered by the RCV Working Group.

In order to “encourage a broader participation in the political process”, Los Angeles voters have placed limits on the amount a person may contribute to a candidate for elective City office.<sup>27</sup> Similarly, in 1990, the voters adopted a partial public financing system for City elections, to reduce the disproportionate influence of large contributions, increase the value of smaller contributions, limit campaign expenditures, reduce excessive fundraising by incumbents, encourage competition for elective office, and help restore public trust in government.<sup>28</sup> All of these goals could be affected by RCV, depending on the mechanics of the particular system that is adopted and the resulting dynamics of elections conducted within that system.

#### *Mechanics of the Current Matching Funds Program*

City law currently provides public matching funds to City candidates who qualify for and agree to participate in the voluntary matching funds program. Candidates can receive matching funds for relatively small contributions from individual donors (\$250 or less for

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<sup>26</sup> 42 U.S.C.S. § 1973

<sup>27</sup> Los Angeles City Charter (Charter) § 470(a).

<sup>28</sup> Charter § 471(a)(2).

City Council candidates and \$500 or less for Citywide candidates).<sup>29</sup> Qualified candidates receive dollar-for-dollar matches of contributions from individual donors, up to the following maximums.<sup>30</sup>

***Funding Amounts***

	<b>Mayor</b>	<b>City Attorney</b>	<b>Controller</b>	<b>Council</b>
<b>Primary:</b>	\$667,000	\$300,000	\$267,000	\$100,000
<b>General:</b>	\$800,000	\$350,000	\$300,000	\$125,000

The dollar-for-dollar matching formula can be accelerated to a three-to-one formula in certain circumstances. In a primary election, the formula is accelerated in a particular race if a candidate who is not participating in the matching funds program (a “non-participating candidate”) exceeds the expenditure limit (discussed below) and contributes personal funds equal to at least 50 percent of the expenditure limit.<sup>31</sup> In a general election, the formula is accelerated in a particular race in either of the following circumstances:

1. A non-participating candidate exceeds the expenditure limit (discussed below) and contributes personal funds equal to at least 50 percent of the expenditure limit; or
2. Non-candidate spending that either opposes a participating candidate or supports that candidate’s opponent aggregates \$200,000 in a Mayoral race, \$100,000 in a City Attorney or Controller race, or \$50,000 in a City Council race.<sup>32</sup>

Furthermore, if either of two circumstances occurs in a general election, the funding amounts are also increased as follows:<sup>33</sup>

***Increased Funding Amounts in General Election***

<b>Race</b>	<b>Additional Funds</b>	<b>Total Public Funds</b>
<b>Mayor</b>	\$200,000	\$1,000,000
<b>City Attorney</b>	\$70,000	\$420,000
<b>Controller</b>	\$60,000	\$360,000
<b>City Council</b>	\$25,000	\$150,000

Candidates who participate in the matching funds program also agree to limit their overall campaign spending.<sup>34</sup> Again, the expenditure limits are based on the type of candidate and the type of election, as indicated in the table below:

***Expenditure Limits***

	<b>Mayor</b>	<b>City Attorney</b>	<b>Controller</b>	<b>Council</b>
<b>Primary:</b>	\$2,251,000	\$1,013,000	\$900,000	\$330,000
<b>General:</b>	\$1,800,000	\$788,000	\$676,000	\$275,000

<sup>29</sup> Los Angeles Municipal Code (LAMC) § 49.7.19(A)(1).

<sup>30</sup> LAMC §§ 49.7.20(A), 49.7.22(A)–(B)

<sup>31</sup> LAMC § 49.7.22(C)

<sup>32</sup> LAMC § 49.7.22(E)

<sup>33</sup> LAMC § 49.7.22(D).

<sup>34</sup> LAMC § 49.7.13

These expenditure limits are lifted in a particular race if a non-participating candidate spends more than the expenditure limits or if non-candidate spending aggregates more than \$50,000 in a City Council race, \$100,000 in a City Attorney or Controller race, or \$200,000 in a Mayoral race.<sup>35</sup>

#### *Financing the Matching Funds Program*

The City is required to allocate \$2,000,000 per fiscal year to the Public Matching Funds Trust Fund, unless the trust fund has reached a maximum of \$8,000,000.<sup>36</sup> Those numbers must be adjusted based on the Consumer Price Index and are currently \$3,075,200 per year, unless the trust fund balance is \$12,300,800.<sup>37</sup>

One of the key issues in a successful public financing program is how much money to devote to it. First and foremost, there must be a consistent and guaranteed source of funding, so candidates know that they can rely on receiving a certain amount of funds in exchange for complying with the requirements of the program, such as limiting the use of personal funds and limiting their overall spending. In addition, the program must strike a delicate balance between providing appropriate funding, encouraging candidates to participate in the program, and meeting voter expectations that public funds will be used most effectively. If sufficient public funds are not offered, the program will not be attractive, candidates will not participate, and the program's goals may not be achieved.

#### *RCV and the Matching Funds Program*

There are a number of moving parts in the matching funds program, each of which affects a candidate's ability to wage a competitive campaign. If any one of those moving parts is altered in an RCV system, there could be significant implications for how well the City's election system achieves the goals of the matching funds program. For example, it is possible that RCV elections could affect the typical number of candidates in City elections. If that were to result in more candidates participating in the matching funds program, the program could require greater annual allocations to meet the demands, assuming the program's current funding levels for participating candidates remain constant. As another example, in RCV elections, something such as how many candidates voters are asked to rank could affect how candidates wage their campaigns in order to place among those with the highest rankings. Candidate communication strategies could be affected, which, in turn, could affect how candidates spend their money or how much money candidates believe they need to spend to be competitive within that RCV system. As a result, candidate expenditure limits might need to be adjusted accordingly.

Of particular interest to City candidates in recent years is how the matching funds program treats non-candidate spending (i.e., independent expenditures and member communications). Currently, as noted above, additional matching funds are provided in

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<sup>35</sup> LAMC § 49.7.14

<sup>36</sup> Charter §§ 471(c)(1)–(2)

<sup>37</sup> *Id.*



response to non-candidate spending in general elections only. With only two candidates in a race, it is much easier to determine which candidate is supported by non-candidate spending and which candidate is opposed. When there are multiple candidates in a race, such as in a primary or in a single-election system, it may be a difficult or impossible task to accurately and timely determine which candidates benefit from non-candidate spending.

If RCV elections are pursued, the question of whether the City will continue to provide additional matching funds in response to non-candidate spending must be addressed. If additional matching funds are maintained, the number of candidates and the levels of non-candidate spending in City races could significantly affect the sufficiency of the trust fund allocations. In addition to the possibility that non-candidate spending could continue to grow as it has in recent years, it is also possible that additional matching funds would need to be provided to multiple candidates. In that scenario, it is likely that more public money would be required to maintain the program.

Non-candidate spending has been on the rise. It represented just one percent of all campaign spending in the City's 1993 elections but has represented 14 to 19 percent of campaign spending in City elections since 2003. When citywide seats are open (meaning no incumbent is running for reelection), non-candidate spending tends to be highest. For example, in 2005's open Mayoral race, \$4,295,062 in non-candidate spending was reported. More recently, \$1,439,733 in non-candidate spending was reported in the 2009 open City Attorney race. In addition, the Supreme Court's recent decision in *Citizens United v. Federal Elections Commission*, 558 U.S.\_\_\_\_ (2010), could further increase independent expenditures in City races. Providing candidates with some ability to respond to unplanned non-candidate spending that occurs in their races seems to be an important component of a public financing program that is attractive to candidates and can achieve its purposes. However, in RCV elections, the cost of providing a reasonable response could be very high if non-candidate spending continues to represent a sizeable percentage of all campaign spending and additional funding is provided to more than one candidate in any given race.

### *Contribution Limits*

In addition to a public matching funds program, the voters have established contribution limits for City elections. A person may not give more than \$500 in a single election to a City Council candidate or more than \$1,000 in a single election to a Citywide candidate.<sup>38</sup>

As noted above, RCV elections could have an effect on the amount of money candidates believe they need to effectively communicate with the voters in a competitive campaign. If campaign costs in RCV elections are significantly higher or lower than current campaign costs, the City's contribution limits should be closely examined to determine whether they should be adjusted.

### *Required Amendments*

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<sup>38</sup> Charter §§ 470(c)(3)–(4)

As previously mentioned, an RCV election system could have multiple effects on the City's campaign financing laws and how they achieve their stated goals. To properly accommodate those effects, a thorough review of the laws would be imperative if the City is to continue to foster sound campaign financing laws and a successful public financing program. Amendments to the Charter would be required if contribution limits or allocations to the Public Matching Funds Trust Fund needed to be changed. Amendments to the LAMC and the Los Angeles Administrative Code (LAAC) would be required if the City's approach to matching fund formulas, expenditure limits, or responses to non-candidate spending needed to be changed.

In addition to the significant policy considerations associated with RCV's potential effect on the City's campaign finance laws, there are also technical amendments that would be required. For example, references to elections would need to be changed to reflect the system that the City adopts. This would be required in multiple sections of the Charter, the LAMC, and the LAAC.

### *San Francisco's Experience*

The one jurisdiction that currently has both RCV and a matching funds program is San Francisco. The RCV Working Group communicated with the San Francisco Ethics Commission in an effort to gather data about how RCV has affected their matching funds program. However, despite studying its own election experiences, the San Francisco Ethics Commission has indicated that it has not been able to identify a clear relationship between RCV and changes in its matching funds program.

San Francisco first offered public financing in its 2002 Board of Supervisors election, to encourage more candidates to run for office, to allow candidates to spend more time discussing issues and less time fundraising, and to encourage candidates to limit their spending.<sup>39</sup> The 2002 election did not have a large number of candidates, because many incumbents were running for reelection. The next election, in 2004, was their first RCV election, and no changes were made at that time to their public financing system. There were many more candidates in that election than there had been in 2002, but there were also more open-seat races. The number of candidates then dropped in 2006, when mostly incumbents were running for reelection. In 2008, many more candidates participated than usual; however, in addition to having mostly open-seat races, the amount of public funding available to each candidate had also been increased.

Since the inception of its public financing program, San Francisco has had an increase in the number of candidates participating in the program, as well as a corresponding increase in the amount of public money required to maintain the program. In 2002, they disbursed a total of \$281,989 in public matching funds; and in 2008, that number had risen by 366 percent to \$1,315,470.<sup>40</sup> However, the sense of the San Francisco Ethics Commission is

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<sup>39</sup> *Report on San Francisco's Limited Public Financing Program: November 4, 2008 Board of Supervisors Election*, available July 6, 2009 at [http://sfarchive.org/agencies/ethics/www.sfgov.org/site/uploadedfiles/ethics/campaign\\_finance/Public\\_Financing\\_Report-Final.pdf](http://sfarchive.org/agencies/ethics/www.sfgov.org/site/uploadedfiles/ethics/campaign_finance/Public_Financing_Report-Final.pdf), p. 1.

<sup>40</sup> *Id.* at p. 19

that the change is likely a result of a larger funding cap, which encouraged more candidates to participate in the program.

San Francisco has also had a steady increase in the average amount of public funds disbursed per candidate since 2002. In fact, the average nearly doubled from 2006 (\$36,131 per candidate) to 2008 (\$69,235 per candidate).<sup>41</sup> Other variations include the number of candidates in any given election, which seems to be most closely tied to the number of incumbents running for reelection (since 2002, 100 percent of incumbents in San Francisco elections have won).<sup>42</sup> And finally, San Francisco experienced a huge increase in non-candidate spending in 2008 (141 percent more than in 2006, and 421 percent more than in 2004), but they attribute that to court action enjoining the enforcement of committee contribution limits and not to the RCV election system.

Based on the San Francisco experience, it is difficult to assess the effect that RCV elections would have on a Los Angeles matching funds program. Because many variables appear to have been at play in San Francisco elections since 2002, they have not been able to draw a definitive link between an RCV election system and changes in their public financing program.

#### Fiscal Impact of RCV

The Office of the City Administrative Officer is expected to report on the fiscal impact under separate cover.

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

## RECOMMENDED POLICY OPTIONS

Based on discussions held with various jurisdictions, state and federal officials, and RCV advocates and critics and the RCV Working Group's research, the RCV Working Group has developed the following policy options for the City Council to take into consideration when developing a policy toward RCV:

### Acquisition of an Unconditionally Certified RCV Voting System

**If RCV is adopted, the City must first acquire a new voting system with RCV capabilities that is fully and unconditionally certified and approved for use in California.** As previously mentioned, [California Election Code 19250 requires that voting systems used in California must first obtain federal certification prior to obtaining approval from the California Secretary of State.](#) Only by acquiring a new and fully certified voting system will the City ensure that any equipment and software used in municipal elections is in compliance with State and Federal voting system standards.

Currently, there is no state or federally-approved voting system with a RCV component for use in California and very few voting system vendors have developed or are developing voting systems with RCV capability. If the City were to acquire an uncertified voting system, there is a risk that the Secretary of State may not grant conditional certification in time to adequately prepare for an election or not at all, both of which would render the system inoperable and diminish public confidence in the integrity of municipal elections.

Furthermore, if the City were to proceed with an uncertified system, it is uncertain what conditions will be imposed on the City by the Secretary of State as a result of receiving temporary approval.

### Considerations for a Charter Amendment

**In order to implement RCV for municipal contests, the voters of Los Angeles must approve an amendment to the City Charter.** In order to implement RCV, the Los Angeles City Charter (Charter), the Los Angeles Municipal Code (LAMC), the Los Angeles Administrative Code (LAAC), and the Los Angeles Election Code will require amendment. If the City Council were to place an RCV-related charter change on a ballot, the charter language must be drafted to provide sufficient notice to the voters of the specific changes contemplated in the measure and presented in a manner that avoids voter confusion. To those ends, the charter amendment language must set forth the basic details of the RCV system.

At a minimum, any proposed charter amendment should state the specific date or condition that would trigger implementation of RCV. This would provide clarity to the voters, clarity to City staff charged with conducting elections and clarity to potential candidates seeking to run for office. Moreover, to reduce legal risks, the timetable for implementing RCV should be based on realistic considerations. This would help the City avoid the sort of litigation filed in San Francisco, which faced legal challenges because it was unable to meet the implementation schedule contained in its RCV charter amendment. In addition, a potential RCV measure must be carefully drafted to provide sufficient notice to the voters of the proposed changes and avoid voter confusion.

### Voter Outreach and Education

**If RCV is adopted, the City must engage in a significant multi-language, multi-media voter education program to last for at least two election cycles.** Jurisdictions that have implemented RCV, such as San Francisco and Pierce County, Washington, engaged in considerable voter outreach and education programs to ensure that voters were aware of the change in voting method and knew how to fill out the ballot. The City must engage in a similar campaign to properly educate over 2 million voters of the new municipal voting system and how to use it. A variety of media, including television, radio and mass transit advertising, will be required in all 7 federally-mandated languages to effectively reach all segments of the City's diverse voting communities.

In addition to effectively educating voters, the City must also effectively educate pollworkers when implementing a new system since pollworkers will be required to understand RCV effectively assist voters. Failure to place a heavy emphasis on voter and pollworker outreach and education may result in greater confusion and decreased voter participation.

On a similar note, the assertion that RCV will increase voter turnout appears to be inconclusive and will require more research. Evidence suggests that RCV is a contributing factor to increasing voter turnout, but is merely one factor among many others that ultimately affects the rise and fall of voter turnout.

### Coordination/Consolidation with the County and Other Jurisdictions

**If RCV is adopted, the City may lose the ability to consolidate municipal and LAUSD/LACCD races and measures with the County of Los Angeles and other cities holding elections on the same day as the City of Los Angeles.** The City often consolidates Special Elections onto County-run elections and currently consolidates LAUSD and LACCD races onto other neighboring cities ballots (such as Beverly Hills, San Fernando, West Hollywood). Eliminating this option would require that Special Elections would either have to be held concurrently on the same Election Day as each other or held

on a separate Election Day. Holding concurrent elections would require two separate ballots, Vote-by-Mail ballots, tables at one or possibly two separate polling locations, and two sets of pollworkers. Certainly, this situation will likely increase the potential for confusion or error at the polls.

Because the City and County currently use the same voting system, voters and pollworkers have a consistent Election Day experience. Adopting RCV could change this scenario and represent a significant departure from what voters in Los Angeles have become accustomed to over the past several decades. If a RCV system were adopted, voters in the City could possibly be required to use two different voting systems: one system for City municipal elections and a different system for County, State and Federal elections. However, if the City were to acquire a fully certified voting system, the City should consider purchasing a voting system in partnership with Los Angeles County. Acquiring a voting system with the County will ensure a consistent voting experience for election administrators and voters and will ensure that City contests consolidated onto elections administered by the County can be tallied in accordance with the City's Election Code.

#### RCV and the City's Matching Funds Program

**If RCV is adopted, the City will have several options to consider regarding the City's campaign financing laws.** The first option would be to make no changes. That would mean no additional funding in the face of non-candidate spending, and it could lead to unrealistic or outmoded contribution limits, expenditure limits, and funding amounts. The next option would be to provide additional public money in the matching funds program when non-candidate spending occurs and adjust the contribution, expenditure, and funding levels accordingly. This could result in the need for significantly more funding than the program currently receives.

The City may also want to once again consider the merits of a full public financing system as a reform enacted in tandem with an RCV election system. To do this effectively, the mechanics of a specific RCV system must first be identified, so that its unique dynamics can be better understood. At that point, the Ethics Commission could better analyze changes to the City's campaign financing laws that might be necessary to uphold the voter mandate to reform the financing of City elections and encourage broad participation in the electoral process.

#### **Recommendation:**

Inasmuch as this report is provided to define the issues surrounding Ranked Choice Voting, the report should be noted and filed.

## Conclusion

Without a doubt, adopting RCV for municipal elections would represent a major change in the conduct of elections in Los Angeles. If adopted, RCV will require a certified election system, thorough planning, sufficient resources, and a flexible implementation schedule to ensure a smooth transition.