



Californians for Electoral Reform

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Dear Ms. Seiler:

Thank you for considering meeting with us next Tuesday. In preparation for that meeting, I would like to respond to the concerns that CACEO's Elections Legislative Committee has raised regarding AB 1662 (Cook). I hope you will share the following comments with your colleagues on the committee, and that, after considering them, the committee will be able to change its position of opposition to one of support, or at least of neutrality.

AB 1662 would provide that, in the case of an election that might go to a runoff, where the runoff would be held within 90 days of the first election, a special runoff ballot would be mailed to military and overseas absentee voters with their first ballot, so that they could indicate their runoff choices along with their first ballot, in case mail delays would not allow them to receive and return a regular runoff ballot in a timely fashion.

The special runoff ballot would be treated in a manner analogous to a provisional ballot. That is, it would not be opened, credited to the voter's voting history, or tabulated, until the election official had determined that the voter did not return a regular runoff ballot and did not cast a vote in his/her precinct. Even in elections where the runoff is consolidated with other races, only one ballot is counted per voter – the regular ballot if that is returned by the deadline, or the special runoff ballot otherwise.

If it is determined that the special runoff ballot should be counted, it would then be treated in a similar fashion to a damaged ballot. That is, it would be used by the election official to mark a regular runoff ballot on behalf of the voter, using the highest ranked choice on the special runoff ballot that was a candidate in the runoff. If there are consolidated races on the regular runoff ballot, these other races would be treated as undervotes.

No special equipment would be necessary to process the special runoff ballots. The processing would be similar to the process used in Santa Clara County during the February 5th primary, when many precincts ran out of official Democratic Party ballots and voters used either their sample ballots or converted Non-Partisan ballots to indicate their Presidential choice. These ballots were manually duplicated onto ballot cards by the Registrar of Voters' office so that they could be processed by the optical scan equipment.

Thus, the cost of the process is limited to the preparation and mailing of the special runoff ballots (which would be mailed with the regular absentee ballots of the first election, so the additional postage would be incremental), and additional time to process those that are returned in the manner just described. I note that the number of ballots to be so processed is expected to be small. For example, in the February 5th primary, Santa Clara County mailed out 2588 ballots to military and overseas voters (0.38% of registration), of which 661 were returned (0.14% of turnout). Similar percentages held for the June 3rd primary.

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We contemplate that two return envelopes would be used, one to hold the regular absentee ballot, and one to hold the special runoff ballot. (This is the procedure Louisiana uses. They also color-code the ballots and the envelopes to match.)

The instructions to the voter would explain that the special runoff ballot would be used only if their regular runoff ballot, which will be mailed to them later if there is indeed a runoff, is not returned in time to be counted. The instructions would also explain that they need to return the regular absentee ballot in order for their vote to count in the first election.

Similarly, the instructions with the regular runoff ballot would explain that, even if the voter returned a special runoff ballot, they should indicate their runoff choice on the regular runoff ballot, as the regular runoff ballot, if received in time, will be used and the special runoff ballot they sent will not be processed. This is especially important if the runoff is consolidated with other elections that they may want to vote in.

To respond to the specific questions you raise in your May 29, 2007, letter to Assembly Member Cook:

Q1. Won't this confuse voters?

A1. Not if the instructions are clear. While this is not the same thing as instant runoff voting, experience in San Francisco has shown that voters find ranking candidates an easy, even enjoyable, thing to do. Louisiana, Arkansas and South Carolina already allow their military and overseas absentee voters to rank their runoff choices, and we can learn from the instructions they give their voters to make sure our voters aren't confused. (In particular, Louisiana uses color-coded ballots with color-coded return envelopes to prevent confusion.)

Q2. What if only the special runoff ballot is returned and there is no runoff election?

A2. If the voter did not return the regular absentee ballot for the first election, the voter would not have voted in that election, just as if they did not show up to the polls on election day. Since there was no runoff election, the special runoff ballot would not be used, just as if they showed up for an election that wasn't held.

The instructions to the voter would need to stress that they need to return the regular absentee ballot for their vote to count in the first election, and the special runoff ballot in case there is a runoff and they are not able to return the regular runoff ballot (that they will later receive) in time for it to be counted.

Q3. How would these special runoff ballots be tabulated?

A3. The special runoff ballots would be used by the election official to mark a regular runoff ballot. Of the candidates in the runoff, the one that was ranked highest by the voter would get the voter's vote on the regular runoff ballot. This marking of ballots by the election official on behalf of the voter is similar in spirit to how damaged ballots are duplicated, and also similar to how provisional ballots are processed that are cast in the wrong precinct but are nonetheless valid for the races that are common to both precincts (the provisional ballot precinct and the voter's true precinct).

Q4. Take the example of a special election to fill a Congressional vacancy, with two Democrats (candidates A and B), two Republicans (candidates C and D), one Green (G), and one Libertarian (L). No candidate receives a majority in the special primary, and B and C are the top vote getters in their respective parties. In the special runoff election, the candidates are B, C, G, and L.

The voter does not return a regular primary absentee ballot but only returns the special runoff ballot. The voter's first choice is the Green, the second choice is Candidate A, and the third choice is Candidate D. How is the voter's vote counted?

A4. Since the voter did not return a regular primary absentee ballot, they cast no vote in that election. For the runoff, their vote would be counted for the Green candidate, since, of all the candidates in the runoff, that is the candidate ranked highest by the voter.

AB 1662 was last amended April 1, 2008, and we hope that the amendments reflect the intent described above. If in your opinion, or in the opinion of your committee, they do not, we would welcome any suggested changes to the wording you would wish to see.

Sincerely,



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Enc: Copy of AB1662 as amended 1 April 2008

Cc: Assembly Member Paul Cook