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OFFICE OF ELECTIONS**

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SCOTT T. NAGO
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**TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON HOUSE BILL NO. 626, SD 1
RELATING TO VACANCIES**

March 28, 2019

Chair Dela Cruz and members of the Senate Committee on Ways and Means, thank you for the opportunity to provide comments on House Bill No. 626, SD 1. The purpose of this bill is to require vacancies in the office of United States Representative to be filled by a special election utilizing ranked choice voting, and for the Governor to make a temporary appointment pending the special election.

We would recommend removing the proposed language of §17-2(c) for the Governor to appoint a Representative to Congress as it appears to conflict with Article I, Section 2, Clause 4 of the United States Constitution which states, “[w]hen vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.” Given this, vacancies in the United States House of Representatives may not be filled by appointment.

Thank you for the opportunity to provide comments on House Bill No. 626, SD 1.



Testimony on HB626 SD1 Relating to Elections
By Rob Richie, FairVote Action President, March 26, 2019

Dear Chair Donovan M. Dela Cruz and members of Committee on Ways and Means:

I am writing to express FairVote Action's general support for HB626 SD1, regarding ranked choice voting in U.S. House vacancies and to suggest one amendment.

This bill would mean that even in a crowded field of candidates, such as those often seen in vacancy elections, a representative winner will be selected in the election without the risk of vote-splitting. All voters are able to participate in a single, decisive election. While FairVote Action also supports a similar bill HB210, we especially like HB626 SD1's language at this time because it is easier to implement with current voting equipment and because its scope of affected contests addresses specific instances in Hawaii elections where ranked choice voting would provide greater assurance that the outcome reflected a majority decision rather than a plurality one.

FairVote Action is a national nonpartisan organization that educates and advocates for electoral system reforms that improve democracy in our elections. We work closely with FairVote, our 501-c-3 partner organization, which I have led as executive director and now president since 1992. We are a leading national resource on ranked choice voting (RCV), and we work closely in the growing number of states and cities using RCV, including in statewide elections in Maine and elections in nine cities in the past 15 months and in the nine cities scheduled to use RCV for the first time later this year.

HB626 would improve elections by upholding the principles of majority rule and representative democracy. RCV ensures that elections are won with majorities without the need for costly, inefficient runoff elections. With RCV, voters rank candidates in order of choice: their first choice, with an option to rank backup preferences as a second choice, third choice and so on. All first choices are counted with a value of one vote. If a candidate receives more than half of the first choices, they win, just like in any other election. If not, the candidate with the fewest votes is eliminated, and voters who picked that candidate as 'number 1' will have their votes count for their next choice. The process continues until two candidates remain. Winners with RCV will always have a majority of the vote when matched head-to-head against their final opponent. These winners usually win the most first choices as well. When a candidate initially in second place wins, RCV has prevented an unfair outcome due to the majority splitting the vote.

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RCV's simplicity, representative outcomes, and positive experience for voters have made it an increasingly popular election method. Recommended by Robert's Rules of Order and used in hundreds of private association elections, RCV is fully constitutional, having been twice upheld in federal courts, including in the Ninth Circuit Court of Appeal in 2011 and in district court in Maine in 2018. RCV is used in 11 cities, and another 11 cities and counties in the past year have acted to use RCV in their upcoming elections.

Last year, Maine became the first state to adopt RCV for use at the state and federal level, including in the seven-candidate Democratic primary and four-candidate Republican primary for governor in June and in the U.S. Senate and two U.S. House elections in November. (See results of one race on final page.) Despite RCV being introduced to voters without an appropriation for voter education, Maine voters responded well to the system. More votes were cast in the Democratic primary than any in state history, and voter turnout increased in November. The percentage of Maine voters who skipped the US Senate and U.S. House RCV races dropped sharply from recent elections for those offices without RCV, and voter error was miniscule -- more than 99.8% cast valid ballots. A Bangor Daily News exit survey found that more than 60% of voters want to keep RCV for congressional elections and a majority to extend it to governor; a huge majority of voters reported it was easy to vote with RCV.

This first use in Maine mirrors what we have seen elsewhere. As implementation of RCV becomes straightforward and candidates adjust to the new rules, RCV consistently works well. Among examples: 1) in San Francisco in June 2018, more city voters chose to cast an RCV ballot for mayor than a non-RCV ballot for governor and U.S. Senator; 2) in Santa Fe's first use of RCV in March 2018, voter turnout was sharply up from its comparably contested mayoral election in 2014, 99.9% cast valid ballots, more than three in five voters ranked all five candidates, and RCV results were released on election night; 3) in Minneapolis, a comprehensive city staff report on the November 2017 election provided a range of evidence on how well voters are using RCV and that fewer than one in five voters would prefer not voting with RCV.

Scholarly research about older elections is encouraging as well. In 2013 and 2014 for example, the Rutgers-Eagleton poll conducted a study examining the experiences of voters in RCV and non-RCV cities in seven cities, including four in California. 84% of voters reported understanding RCV; indeed, more voters understood RCV thoroughly than they did plurality voting (limited to one preference). More voters also understood RCV than California's top two runoff system. Majorities of voters across all seven cities supported keeping their RCV system.



The issue of RCV has come before the legislature in Hawaii in previous years. However, the evidence has never been so strong that voters like and use RCV well and the roadmap to implementing RCV smoothly and efficiently, as detailed by the Ranked Choice Voting Resource Center at RankedChoiceVoting.org. RCV is an elegant, intuitive solution to the problems seen in crowded vacancy elections. It is proven in practice, with more communities interested in its benefits each year.

Importantly, Hawaii election officials seem ready to implement the provisions of HB626. While narrower than the provisions in HB210, SB427 addresses the specific problem of fair outcomes in vacancy elections for U.S. House. Several winners of vacancy elections in Hawaii in the past decade have won with well under half the votes cast. Limiting voters to one choice in crowded vacancy election fields in fact can be seen as a literal form of voter suppression. Consider that in high-profile races with RCV, nearly nine in ten voters will indicate at least a second choice as a backup -- like in the mayoral elections in the past year in Santa Fe and San Francisco and in the Democratic primary for governor in Maine, where more than three times as many voters chose to rank at least six of the seven candidates as chose to rank only one. Yet Maine's old rules and Hawaii's current plurality system forces everyone to be limited to one preference.

I would like to propose one important amendment. Under the U.S. Constitution, no Member of the U.S. House can be appointed, even on an interim basis. As a result, Section 4c should be removed. That is, this language is inconsistent with the U.S. Constitution when applied to U.S. House vacancies: "Pending the special election, the governor shall make a temporary appointment to fill the vacancy by selecting a person from a list of three prospective appointees submitted by the same political party as the prior incumbent. The appointee shall serve until the special election and qualification of the person duly elected to fill the vacancy and shall be, at the time of appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the same political party as the prior incumbent. The appointee shall be a resident of the State. If the prior incumbent was not a member of any political party, the governor shall appoint a person who is not and has not been, for at least six months immediately prior to the appointment, a member of any political party."

Thank you for this opportunity to testify, and please don't hesitate to contact me at rr@fairvote.org or (301) 270-4616 if you have any questions.

Attached: Sample RCV ballot and election outcome from Maine elections in 2018



Ranked Choice Voting Ballot: Maine Democratic 2018 Primary for Governor

Here is the ballot used in Maine for its Democratic primary election in the governor in 2018 that resulted in the nomination of Janet Mills. Turnout hit an all-time high, and more than three times as many voters chose to rank at least six candidates as only one.

Governor	1st Choice	2nd Choice	3rd Choice	4th Choice	5th Choice	6th Choice	7th Choice	8th Choice
Cote, Adam Roland Sanford	0	0	0	0	0	0	0	0
Dion, Donna J. Biddeford	0	0	0	0	0	0	0	0
Dion, Mark N. Portland	0	0	0	0	0	0	0	0
Eves, Mark W. North Berwick	0	0	0	0	0	0	0	0
Mills, Janet T. Farmington	0	0	0	0	0	0	0	0
Russell, Diane Marie Portland	0	0	0	0	0	0	0	0
Sweet, Elizabeth A. Hallowell	0	0	0	0	0	0	0	0
Write-in	0	0	0	0	0	0	0	0

RCV Election Example: Maine Congressional Elections, 2018

Maine, 2nd U.S. House District Ranked choice Voting Election, November 2018			
Candidate	Round 1	Round 2	Round 3
Jared Golden Democrat	45.5%	46.2%	50.5%
	128,999 votes	130,182 votes	139,231 votes
Bruce Poliquin Republican	46.4%	47.1%	49.5%
	131,631 votes	132,505 votes	136,326 votes
Tiffany Bond Independent	5.7%	6.7%	Defeated
	16,260 votes	18,831 votes	
Will Hoar Independent	2.4%	Defeated	
	6,753 votes		



AMERICANS FOR DEMOCRATIC ACTION

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March 26 , 2019

TO: Honorable Chair Dela Cruz & WAM Committee Members

RE: HB 626 HD1 Relating to Vacancies.

Support for Hearing on March 28

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support HB 626 HD1 as it would provide for the filling of vacancies in the U. S. House of Representatives through a special election with rank choice voting. Races where there are multiple parties and more than one member of each party result often in a plurality victory. Rank choice voting is a truly democratic way to decide these elections. Voters may need to be educated on this new process.

Thank you for your favorable consideration.

Sincerely,

John Bickel President





Thursday, March 28, 2019

House Bill 626 SD1
Supporting the Intent

Aloha, Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee on Ways and Means,

The Democratic Party of Hawai'i (The Party) **supports the intent of HB626 SD1 Relating to Vacancies** and recommends amendments. In its current form, the bills requires vacancies in the office of U.S. Representative to be filled by special election that is conducted using ranked choice voting (RCV) and requires the Governor to make a temporary appointment to the office pending the special election.

The Party supports the Legislature's intent to introduce RCV as a means to conduct elections. Currently in Hawaii, special elections are "run-off" in nature, which means Republicans, Democrats, and others run against each other in a winner-take-all race. The last time Hawaii experienced a special election for the U.S. House of Representatives was when then Congressman Neil Abercrombie vacated his seat to run for Governor. In that instance, a three-way race between Colleen Hanabusa, Ed Case, and Charles Djou resulted in the two Democrats (combined) winning the majority, but Djou won by receiving more votes than either of his two opponents. He went on to serve in Congress until the General Election though he didn't receive a majority of the votes cast.

By applying RCV to special elections for the U.S. House of Representatives, the Legislature can help ensure the intent of voters by giving them the option to rank their first, second, third choices, etc.

The Party would like to note that the U.S. Constitution requires the filling of vacancies for the U.S. House of Representatives by special election. We believe the provision allowing the Governor to appoint for any length of time is unconstitutional.

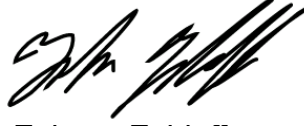
Additionally, the Party would like to express its strong objection to the original language of the bill and would ask the committee to consider what would happen if the above scenario were to happen when vacancies occur in state and local elected positions. Should some version of the original language return, we would request that RCV be employed for those special elections as well. Or allow the law to remain as it is today.

For all these reasons, we urge you to pass this bill, with amendments.

Mahalo for the opportunity to testify,



Josh Frost
Co-Chair, Legislation Committee
Democratic Party of Hawai'i



Zahava Zaidoff
Co-Chair, Legislation Committee
Democratic Party of Hawai'i

HB-626-SD-1

Submitted on: 3/25/2019 10:57:58 PM

Testimony for WAM on 3/28/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Comments	No

Comments:

You may need a civics course, to wit, a review of the U.S. Constitution. It requires that vacancies in the House of Representatives be filled by election. There is no provision for interim appointments until the election is held.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

LATE

ON THE FOLLOWING MEASURE:

H.B. NO. 626, S.D. 1, RELATING TO VACANCIES.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, March 28, 2019

TIME: 10:20 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN TESTIMONY ONLY. (For more information, call Valri Lei Kunimoto, Deputy Attorney General at 586-1274.)

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill and makes the following comments.

H.B. No. 626, S.D. 1, requires vacancies in the representation of the State in the U.S. House of Representatives to be filled by a special election utilizing ranked choice voting. The bill also requires the Governor to make a temporary appointment to the office of U.S. House of Representatives pending the special election by selecting a person from a list of three prospective appointees submitted by the same political party as the prior incumbent.

Article I, section 2, clause 4, of the U.S. Constitution provides as follows:

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The clause requires representatives to Congress to be selected by election. The temporary appointment of a representative by the Governor pending a special election in the new subsection (c) being added to section 17-2, Hawaii Revised Statutes, in section 1, page 3, line 12, to page 4, line 4, of the bill is contrary to the U.S. Constitution and the Department recommends that the provision be deleted to avoid a constitutional challenge.

Thank you for the opportunity to submit testimony on this bill.

LATE

HB-626-SD-1

Submitted on: 3/27/2019 11:43:58 PM

Testimony for WAM on 3/28/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Democrats Legislative Priorities Committee	Support	No

Comments: