

Table of Contents

Introduction.	2
Section 1. Executive Summary.	3
Section 2. Recommendations 5	5
Section 3. The Problem IRV Solves..... 6	6
Section 4. Discussion. 7	7
1. Vermont’s voting system <i>is</i> broken, and <i>needs</i> fixing. 7	7
CHART 1. Vermont Elections with No Majority Winner. 8	8
2. How Vermont’s voting system has changed. 9	9
3. How IRV would work in Vermont..... 9	9
4. IRV promotes majority rule in single-seat elections. 10	10
5. IRV could increase voter participation..... 10	10
6. IRV promotes government stability 11	11
7. IRV encourages sincere voting rather than disingenuous tactical voting..... 11	11
8. IRV reduces the number of “wasted” votes 12	12
9. IRV more accurately reflects each voter’s will. 12	12
10. IRV encourages civility and less negative campaigning 12	12
11. IRV is simple for voters to use..... 13	13
12. IRV ballot design..... 14	14
13. IRV will not create any increased burdens for local polling officials. 15	15
14. IRV and polling place efficiency. 15	15
15. IRV will not generally delay election results 15	15
16. IRV treats all voters equally and does not give extra clout to some 16	16
17. IRV accommodates more candidates without vote splintering. 16	16
18. IRV does not favor or hurt any particular group. 17	17
19. IRV would add no significant cost to running elections. 17	17
20. The variety of runoff voting procedures..... 17	17
21. IRV is superior to two-round runoff elections 18	18
22. IRV can comply with Vermont’s Constitution..... 19	19
23. IRV faces no obstacle from federal laws or the federal constitution..... 21	21
Section 5. Areas for further study..... 22	22
Appendix A. House Resolution 37..... 23	23
Appendix B. Summary of H.665, 1998 IRV Bill. 24	24
Appendix C. History of Vermont Voting Systems..... 25	25
Appendix D. The History of Vermont Elections Without a Majority..... 27	27
Part 1. Election of State Officers..... 27	27
Part 2. Election of U.S. Congressional Representatives..... 29	29
Part 3. Conclusion. 30	30
Appendix E. History of Instant Runoff Voting. 31	31
Appendix F. Mock IRV Elections in Vermont Schools..... 33	33
Chart 2. Mock IRV Election Evaluation Results 35	35
Appendix G. Sample IRV ballots (<i>not included in this file</i>) 36	36
Glossary of Terms. 38	38

INTRODUCTION

After taking considerable testimony on the instant runoff voting (IRV) bill, H.665, last year, the House Committee on Local Government sponsored House Resolution 37, which was adopted by the full House in April 1998. HR.37 established **the Vermont Commission to Study Preference Voting**¹. The Commission has 11 members appointed by the League of Women Voters and Common Cause in accordance with HR.37.

The Commission members are:

Christopher Allen, political science student at UVM

Gerard Colby, author; chair, Vt. Local of the National Writers Union

Christopher Costanzo, 1998 chair, Vermont Libertarian Party

Judy DiMario, former Democratic State Representative

Krista Griffes, political science student at St. Michael's College

Marie P. Griffin, member of the League of Women Voters and a retired librarian

Lisa Martin, former Republican State Representative; chaired Local Government Committee

***Marjorie Power**, chair of this Commission; member of the Older Women's League

Maria Thompson, chair, Vermont Common Cause

Bert Thompson, an employee and student of Johnson State College

Robert Walker, community organizer and organizer for campaign finance reform

There are two general types of preference voting mentioned in HR.37. The Commission early on decided to focus on statewide elections with IRV, and not on legislative elections with proportional representation. The Commission: sponsored numerous mock elections using preference voting in junior and high senior high schools across Vermont; sought input from a variety of civic organizations; established a "devil's advocate" committee to gather arguments against instant runoff voting; and heard from expert witnesses. We would like to particularly thank Gregory Sanford, state archivist; Dr. William Grover, chair of the St. Michael's College political science department; Dr. Douglas Amy, author and professor of politics at Mt. Holyoke College; Rep. Terry Bouricius; and the Center for Voting and Democracy, a Washington, D.C.-based nonpartisan educational organization that provided administrative and technical assistance in carrying out the Commission's work.

¹ For the text of H.R.37, see Appendix A.

SECTION 1. EXECUTIVE SUMMARY

This Commission recommends the adoption of Instant Runoff Voting (IRV) for statewide elections as a remedy to a potentially serious defect in Vermont's election laws. Vermont's plurality election rules allow for the election of a candidate with the most, but less than half, of the votes, **even if the majority of voters oppose this candidate and prefer a different one. This is a fundamental defect that violates the most basic precept of democracy: majority rule.**

Today the plurality problem in the case of the offices of Governor, Lieutenant Governor and Treasurer is resolved by falling back on the legislature. If no candidate receives a popular majority, a secret ballot election by the members of the General Assembly, rather than the voters, decides the race. The General Assembly has had to choose state officers **69 times**, often electing a candidate that had come in second in popular votes, in one case electing a third-place candidate who had received **3%** of the vote, and in another failing to elect a Governor altogether. **In 35% of all election years, at least one statewide race has had a result with no majority winner.** The problem is likely to get worse beginning in the year 2000 with the advent of public financing and the prospect of greater voter choice with a greater number of credible candidates.

Vermont's voting systems have changed repeatedly through the years². For most of Vermont's history, a majority vote was required to win all single-seat elections, and runoff-like re-votes were common. It wasn't until 1940 that re-votes were completely done away with, and a plurality of first-round votes was deemed sufficient for election to any office other than Governor, Lieutenant Governor or Treasurer. The inconvenience of re-voting was felt to be a bigger problem than the risk of undemocratic outcomes. Since IRV eliminates the inconvenience of re-voting, there is no longer any reason to use an election process that allows for the defeat of the candidate actually preferred by a majority of voters.

As proposed for Vermont, IRV would give voters the option of indicating on their ballot their first choice for each statewide office, as well as who their second, third or subsequent choices are, if their first choice doesn't win. The voters' task is simple. **The voters just have to rank candidates in order of preference: 1, 2, 3, etc., or if they prefer, they can still vote for a single candidate as they do presently.** To effectively utilize the system voters do not need to learn any of the intricacies of the transfer tabulation methodology, just as hardly any citizens understand how the electoral college actually works. Among Vermont students who answered a survey question after participating in mock elections using IRV, **91% said the balloting was *not* too difficult and 90% said Vermont should switch to IRV³.** IRV was invented in Massachusetts around 1870, and is now used by nations around the world, including Ireland and Australia⁴. Voters in these countries and 23 American cities have used preference ballots without difficulty

² For a history of Vermont's voting systems, see Appendix C.

³ For the student survey results, see Chart 2 in Appendix F.

⁴ For a history of Instant Runoff Voting, see Appendix E.

Local election officials will face no additional burden⁵, simply counting the first-choice votes, just as they do now. If a candidate achieves a majority, the election is over. If no candidate in a race ends up with a majority of first-choice votes, the ballots are retabulated by a court appointed committee in a manner similar to how a statewide recount is conducted under current law. **Any Instant Runoff Voting re-count would mirror the vote count that would occur if all the voters participated in runoff elections, except that voters have no need to return to the polls.** The candidate with the fewest first-choice votes is eliminated. In the subsequent count, first-choice votes for candidates still in the running again count for those candidates, but the voters whose first-choice candidate was defeated have their votes transferred to their second choices, **the same as occurs in a traditional runoff.** This process of dropping off bottom vote-getters and transferring their votes to their supporters' alternate choices continues, until a candidate gets a majority, or only one candidate remains.

IRV would allow citizens to honestly vote according to their consciences. With Vermont's existing system, some voters struggle with the decision of whether to vote for the candidate they actually prefer, or whether to vote for a perceived "lesser" candidate who may have a better chance of winning, for fear of inadvertently helping the candidate the voter likes the least. IRV does not penalize a voter for voting honestly, as can happen with our existing system. IRV reduces, although it does not eliminate, the problem some voters face of feeling their vote has been "wasted." Since it tends to allow a greater range of candidate choices, IRV can create greater voter interest and turnout. Among high school students who participated in mock elections using IRV, **46% said IRV would make them more likely to vote after they turn eighteen and only 1% said it would make them less likely to vote.**

IRV is preferable to a two-round runoff election in that it saves money, assures that the deciding election will have maximum voter turnout, and does not face constitutional problems. **In a single election, IRV ensures that a candidate actually preferred by a majority of voters can win, and eliminates the existing problem of multiple candidates splintering the vote.**

IRV tends to reduce negative campaigning. One reason for this is concern over alienating voters who would not give a nasty campaigner a second-preference vote, which that candidate might need to win. Although negative campaigning has not yet become a widespread problem in Vermont, IRV may help protect campaign civility here.

IRV will not increase the cost of holding elections, other than the minimal cost of conducting recounts when there is the lack of a first-choice majority. There would be some small transition cost for a voter education campaign.

In sum: The IRV reform that this Commission recommends encourages voter participation, eliminates the distorting effect of multiple candidacies, secures direct popular election of state officials, does not increase the cost of elections, and does not give advantage or disadvantage to conservatives, liberals, major parties, or minor parties. IRV assures that a candidate preferred by the majority of voters will not be defeated by a candidate preferred by a minority, and strengthens Vermont's democracy for the next century.

⁵ Milton town clerk John Cushing, chair of the legislative committee of the Vermont Town Clerk and Treasurers Association, testified that they had no problem with the IRV bill for this reason.

SECTION 2. RECOMMENDATIONS

1. The state should adopt an IRV bill, similar to H.665 from the 1998 session, for all statewide elections beginning in the year 2000⁶. The offices included are: Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor of Accounts, Attorney General, U.S. Senators, U.S. Representative, and electoral college electors (as a block) for President and Vice-President.
2. An IRV law should be structured to allow the option of ranking as many alternates as they wish, but allow individual voters to continue single-choice voting.
3. The State should carry out a voter education campaign to familiarize voters with the new ballots to ease the transition.
4. The General Assembly should study, either directly or through a citizen commission, the idea of proportional representation for electing legislative bodies.

⁶ For a summary of H.665, see Appendix B.

SECTION 3. THE PROBLEM IRV SOLVES

At present in Vermont it is not uncommon for a candidate to be elected with less than a majority of votes cast. **Under current law, It is possible for a candidate preferred by the majority of voters to be defeated by a candidate strongly opposed by a majority of the voters.** The arrival of campaign finance reform, including public financing beginning in the year 2000, may exacerbate this problem by allowing a larger number of credible candidates. Especially when there is no incumbent, it is likely many races will have split votes with no majority winner.

Under Vermont law, most races can be won with a plurality of under 50% of the vote, while some races, by our constitution, are thrown to the General Assembly to choose from among the top three vote-getters. This has already happened 69 times in Vermont history including the recent Lieutenant Governor contest⁷. Both scenarios are less democratic than we might like or need to accept. Split votes, whether on the left or the right, can result in undemocratic or questionable outcomes. For instance, the election of Reform Party candidate, Jesse “the Body” Ventura, as Governor of Minnesota with just 37% of the vote, leaves one wondering if that reflects the majority will of the voters.

In Vermont, in the case of no majority for the offices of Governor, Lieutenant Governor and Treasurer, the decision is taken out of the voters’ hands altogether and given to legislators. If there is no Governor-elect in November, there is no budget or administration being prepared, and the factors considered by legislators may not always reflect the choice that the voters would have made. In January, when the General Assembly convenes, some legislators will vote for the top statewide vote-getter, some will vote as their district voted (although their district may also have been divided with no majority winner), some will vote based on secret deals, and some will vote according to party. In any event, democracy and the principle of majority rule are diminished.

In Alaska, with a solid Republican majority in the legislature, Governor Knowles, a Democrat, was elected with just 41% of the vote because a strong Ross Perot-style independent party was in the race. In a recent election for Congress from New Mexico, Democrat Eric Serna got 39.8%, Green Party candidate Carol Miller got 16.8% and Republican Bill Redmond got 42.7% and won the election. In Alaska, Republicans have made IRV a priority, and in New Mexico, the Democrats have. But, regardless of our possible happiness with particular outcomes, we all should be interested. Election results should reflect the will of the voters.

A solution some states have adopted, particularly in the South, is to hold runoff elections. Two-election runoffs, however, have many problems. Runoffs extend the campaign season and cost money for both the taxpayers who fund the election and the candidates who must renew campaign fund-raising. Runoffs often have a drop-off in turnout that may yield an unrepresentative result, with the “winner” receiving fewer votes than the loser had gotten in the original election. In Vermont, there is also a constitutional obstacle to using a two-election runoff.

Vermont’s election laws are ill-equipped to deal with more than two serious candidates in a race. With public financing offering the prospect of increased voter choice, a dramatic splintering of votes could not only cause the election of a highly unpopular candidate, it could further exacerbate the cynicism of an already cynical public.

⁷ For a list of these elections, see Chart 1, on page 8.

SECTION 4. DISCUSSION

1. Vermont's voting system *is* broken, and *needs* fixing.

Is our current system prone to problems? If so, have these problems been frequent? Have they been serious when they did occur? Are they likely to become more frequent or more serious?

The fundamental problem with plurality election rules is that they allow a candidate that is the least preferred choice of a majority of the voters to be declared the winner. While it is probably true in most cases that the plurality winner is indeed also the candidate most preferred by the majority (in Australia, the initial plurality candidate ends up winning the majority with transfers typically 70-80% of the time), there is no way of knowing if this is true in any particular case without something like IRV. No one really argues over the fact that plurality rules allow for very undemocratic outcomes, violating the principle of majority rule. The question that remains is "Is it worth doing anything about it?"

Some have suggested this is such a rare problem that it hardly warrants a disruptive change. This argument assumes most races will continue to have majority winners (as was common during the century of Republican hegemony in Vermont). It also assumes that in those occasional races when there is no majority winner, the plurality winner is most likely the majority-preferred candidate anyway.

The occurrence of no-majority has been far more common than this argument suggests. **In Vermont's statewide general elections, there have been 120 races with no majority winner.** Due to a failure of any candidate to attain a popular majority, statewide officers have been elected by the General Assembly, instead of by the people, 69 times in Vermont's history, including both Lieutenant Governor and Treasurer in the state's first election in 1778. This occurred 21 times in the case of Governor, 26 times in the case of Lieutenant Governor, 17 times in the case of Treasurer, twice for Auditor of Accounts, twice for Attorney General, and once for Secretary of State. The most recent such election was the 1998 lieutenant gubernatorial race. Since 1972, looking at both constitutional and federal elections (excluding presidential races), there have been 16 statewide races with no majority winner. Of these 16 elections, 7 went to the General Assembly for decision. Over Vermont's entire history the General Assembly had to step in to elect one or more statewide officers in 23% of all election years. **If we look at all statewide races, in 37% of all election years at least one race had a result less than a majority.**

The problem of plurality election rules has gone relatively unnoticed in modern time, first because of the hegemony of the Republican Party and most recently by the dominance of just two major parties. That reality, however, appears to be changing. Recent presidential and state elections, with Perot-style and other independents, have already returned us to the days of plurality rather than majority outcomes. Most importantly, the advent of campaign finance reform, with public financing, nearly assures there will be more than two credible candidates in many statewide elections.

Even if one doesn't accept the notion that plurality elections will be more common in the immediate future, the potential downside of having the selection of a Governor delayed till the General Assembly elects someone in January is far more serious than in the past - and it has been very serious in the past. The most extreme examples of complete disfunction and breakdown occurred just two elections apart. In 1835, William Palmer, the Anti-Mason Party candidate for Governor, received 46% of the popular vote, Democrat William Bradley received 38%, and the

Chart 1. Vermont Elections with No Majority Winner

<u>Year</u>	<u>US Rep</u>	<u>US Sen</u>	<u>Gov</u>	<u>Lt. Gov</u>	<u>Treas.</u>	<u>Sec. State</u>	<u>Aud. Acct.</u>	<u>At. Gen</u>	
1778			X	X					
1781				X					
1782				X					
1784					X				
1785					X				
1786				X	X				
1789			X						
1790				X					
1791	X								
1793	X								
1794	XX								
1796	X			X					
1797			X						
1798	X								
1802	X								
1804	XX								
1812	XX								
1813			X	X					
1814			X	X					
1820	XX								
1824	X								
1826	XX								
1828	XX								
1830	XXXX		X	X					
1831			X	X					
1832			X	X					
1833	XX								
1834	XXXX		X	X	X				
1835			X						
1836	X								
1837					X				
1838	X								
1841			X	X	X				
1843	X								
1844	X								
1845			X	X	X				
1846	XX		X	X	X				
1847			X	X	X				
1848	XXX		X	X	X				
1849			X	X	X				
1850	X								
1852	X		X	X	X				
1853			X	X	X				
1866	X								
1874	X								
1878	X								
1902			X	X					
1912			X	X	X	X	X	X	
1974		X		X	X		X	X	
1976		X		X					
1980		X							
1986			X						
1988	X								
1990							X		
1992						X			
1994	X								
1996							X		
1998				X		X			
Total	44	3	21	26	17	3	4	2	Total 120

Whig candidate, Charles Paine got 16%. After 63 ballots the General Assembly still could not select a Governor. **They finally adjourned for the year leaving the state with no Governor.** Lieutenant Governor Silas Jenison served in the absence of an elected Governor.

In 1837 there was no majority winner in the Treasurer's race. **With the General Assembly deadlocked between the top two vote-getters, they finally compromised by electing the third place candidate, who had received a mere 3% of the popular vote.** This "winner," Norman Williams, refused to serve. But the joint assembly of the House and Senate had already dissolved. The House attempted to reconvene a joint assembly to fill the vacancy, but the newly created Senate refused. The state went the year without an elected Treasurer. The Governor, perhaps illegally, but pragmatically, picked Allen Wardner, who had not even been a candidate, to "supply the vacancy in that office, until the same can be filled in the manner directed by law or the constitution of the state."

Even if the plurality winner in the Governor's race would have won a majority in a runoff, there remains a significant downside for the state by the prolonged period of uncertainty from November until January. If there is no majority Governor-elect in November, there is no budget or administration being prepared, and one can imagine the deal-making between potential Governors and 180 legislators for their votes ("You want a road or office building in your district?"). Such a transition could be devastating to the smooth functioning of government and public confidence.

2. How Vermont's voting system has changed

Vermont has changed both its voting system and majority requirements many times through its history. The acceptance of initial plurality winners is actually a rather recent change in Vermont election law. The majority requirement was finally abandoned altogether for all offices other than constitutional ones only in 1940. **For most of Vermont's history, all single-seat races required a majority to elect.** In cases without an initial majority winner for a legislative seat, if there was no majority a new vote was held, repeatedly, until a majority was achieved. For Congress, this meant elections a month or so apart. For state representatives, it meant re-voting on into the night or the next day at a town meeting. Eventually, plurality victories were recognized if there was no majority winner after a few re-votes. This shift to the plurality rule came in the midst of a period of one-party predominance in which no statewide election was won by any candidate other than a Republican for over a century.

Changes in voting procedure have also been notable, although most of the changes occurred prior to this century. These changes include the allowance of printed ballots rather than written ballots, the usage of absentee ballots, and the introduction of the Australian ballot or government-printed ballot. The only major change in this century was the adoption of state sponsored party primaries in 1915.

As state archivist Gregory Sanford noted in his testimony to the Commission, Vermont has continually changed its voting system in response to political stimuli.

3. How IRV would work in Vermont

Here is one possible scenario of how such a system could work in Vermont. Voters would have the option of indicating on their ballots their first choice for each statewide office, and who their second, third or subsequent choices are, in case their first choice doesn't win. Local election officials will count the first-choice votes, just as they do now. If no candidate in a race ends up with a majority of first-choice votes, the ballots are retabulated by the court, in a manner similar to how a statewide recount is conducted under current law.

The instant runoff re-count mirrors the vote counts that would occur if all the voters participated in runoff elections, except the voters have no need to return to the polls. The candidate with the fewest votes is declared defeated. In the subsequent count, first-choice votes for candidates still in the running again count for those candidates, but the voters whose first-choice candidate was eliminated have their votes transferred to their second choices - the same as occurs in a traditional runoff. This process of dropping off bottom vote-getters and transferring their votes to their supporters alternate choices continues, until some candidate gets a majority, or only one candidate remains. The description of the re-count process can sound complicated, but in fact, the voters' task is simple. **The voters just have to rank candidates in order of preference: 1, 2, 3, etc., or, if they prefer, they can still vote for a single candidate as they do presently,** they just won't give themselves a second choice in case their favorite candidate is knocked out of the race.

4. IRV promotes majority rule in single-seat elections

This is the main attribute of IRV that prompts this Commission to recommend its adoption for all statewide elections. **With our existing plurality rules, depending on the mix of candidates, a candidate that is actually the least favorite of a majority of voters can defeat a candidate that is preferred by a majority of voters.** A voting system that allows this perverse outcome is fundamentally flawed and should be changed. In a single-seat election, such as Governor, IRV assures that a candidate actually preferred by a majority can win.

This is not true if IRV is used for electing a legislature from multiple districts. Like all winner-take-all systems, including Vermont's existing one and IRV, the majority can be thwarted depending on the distribution of supporters throughout the various districts. In the recent elections in Quebec, which uses the same plurality voting rules as Vermont, the Liberal Party candidates received 44% of the vote and 38% of the seats compared to the PQ's smaller 43% of the vote, yet 60% of the seats. Thus the Commission concludes that while IRV may be somewhat better than our existing system for electing legislators, it also cannot assure majority rule. The Commission is limiting its recommendations to statewide elections, and suggests further study of legislative election options.

5. IRV could increase voter participation

The reasoning for why IRV might increase voter participation runs like this: Some potential voters may feel that there are no candidates on the ballot that they can really get excited about -- so they don't bother voting. Since IRV eliminates the problem of multiple candidates splitting the vote and throwing the race to least preferred candidates, more candidates, representing a broader range of views, will feel free to run. While IRV will not enhance the chances of a candidate with marginal support to win, it may encourage greater voter participation since some refrainers may feel they have a candidate to enthusiastically support with their first-choice vote.

All of the nations that use IRV have far higher levels of voter participation than does Vermont. However, there are so many other contrasting factors involved that no causal relationship can be assumed.

The mayoral elections in Ann Arbor, Michigan during the 1970's provide clearer evidence of the potential impact of IRV. The relevant factor is whether an election has only two credible contenders or more (which IRV accommodates). In 1971 and 1977 there were only two candidates running for Mayor and the average turnout was 24,401. In 1973 and in 1975 (with IRV) the Human Rights Party joined the Democrats and Republicans in the mayoral races and the average voter turnout was 31,190 -- 28% higher.

The Commission observed mock elections using IRV conducted at eight Vermont schools. **Among high school students who participated, 46% said IRV would make them more likely to vote after they turn eighteen and only 1% said it would make them less likely to vote**⁸.

The Commission concludes that IRV could have a positive impact on voter participation rates and public debate in Vermont. However, it is not certain that this impact would be significant or permanent. While the Commission is encouraged by the prospect of increased levels of voter participation, this is still sufficiently speculative that it should not, by itself, be a reason for adopting IRV.

6. IRV promotes government stability

Stability in government, which fairly reflects changes in voter attitudes, is beneficial for both civil society and commerce. Plurality voting systems are subject to extreme swings in government even if there is no change in public sentiment, depending on the number and mix of candidates in a race. If a majority of the voters are of persuasion *a*, and there is only one candidate who advocates *a*, that candidate will win. But if in the next election there are two or more candidates advocating *a*, a candidate who advocates *b*, who is intensely disapproved of by the majority of voters, can win under plurality rules. IRV, like all majoritarian systems, is, of course, also subject to swings, but only if the public attitude itself shifts, or if the population is nearly evenly divided between two competing camps. **Any voting system, such as Vermont's, that allows the minority to defeat the majority is subject to undemocratic and wild swings in government.** This is a strong argument in favor of adopting IRV.

7. IRV encourages sincere voting rather than disingenuous tactical voting

To accurately aggregate individual opinions into a community decision, a voting system should encourage citizens to honestly vote according to their consciences. **With our existing system, some voters struggle with the decision of whether to vote for the candidate they actually prefer, or whether to vote for a perceived "lesser" candidate who may have a better chance of winning for fear of inadvertently helping the candidate the voters like the least.**

Various preference voting systems *other* than IRV, examined by this Commission, such as approval voting, Bucklin voting, and at-large multi-seat voting (actually a multi-vote *no*-preference system) suffer a similar problem of insincere tactical voting. Voters who honestly express their second or subsequent choices on their ballots may be penalized since those alternate-choice votes may cause the defeat of their most preferred candidates. The "smart" voter with a strong first preference will "bullet vote," refraining from expressing any alternate choices. **This is not a difficulty with systems such as IRV, however, since voters who select second or subsequent choices will not thereby help defeat their first choice.**

8. IRV reduces the number of "wasted" votes

"Wasted" votes are a particular problem with the single seat winner-take-all plurality elections common in the U. S. Many votes can be described as "wasted." Voters who vote for a most preferred candidate that turns out to have no chance of winning, not only waste their vote, but may actually inadvertently contribute to the election of their least preferred candidate due to a splitting of the vote. But there are many other "wasted" votes. Voters who vote for a lower

⁸ For student survey results, see Chart 2, In Appendix F.

preference candidate under the mistaken impression that their first choice candidates couldn't win will feel the votes were wasted when it turns out the favored candidate might have had a good chance after all. **IRV eliminates this kind of "wasted" vote problem.**

However, IRV does not alleviate other types of "wasted" votes. The Voters of party A who live in a district that is overwhelmingly dominated by party B voters may feel their votes are wasted since they never get to help elect a representative. Voters who support the dominant party B may also feel their votes are "wasted" as they are not needed. The feeling of these voters that they are "wasting" their votes certainly discourages voter participation in the U.S. Such noncompetitive districts (often a result of gerrymandering) are common throughout the U.S. and Vermont. With IRV, up to 49% of voters may feel their votes were wasted, whereas with our existing plurality rules, a significant majority of voters may feel they "wasted" their votes.

9. IRV more accurately reflects each voter's will

There are two sides to a voter's "will" in a single seat election with more than two candidates. The first is that which the voter most wants, a favorite candidate, and may be called "sympathy." The second is that which the voter most dreads, a candidate the voter wishes to defeat, and may be called "antipathy." Under our current system some voters can roll their sympathy and antipathy into a single vote for a favorite candidate. However, other voters are limited to expressing only one side of their "will," and must choose. We don't know which aspect of the voters' "will" voters are expressing. Did voters really like candidate A, or did they feel forced into voting for A even though they preferred B, because they believed a vote for B would serve to help elect candidate C, due to splitting the vote? **IRV frees all voters to fully and honestly express their honest will, both as to what they really want and what they will settle for, to avoid getting what they loathe.** By so doing, IRV more accurately reflects the collective voters' will, with a decision that fully incorporates both voters' sympathy and antipathy.

10. IRV encourages civility and less negative campaigning

IRV tends to reduce negative campaigning, since candidates are concerned about alienating voters who could give them a second-preference vote that the candidate might need to win. While there is evidence of this in Australia and Ireland, the Commission does not consider it a major factor in recommending IRV for Vermont. Negative campaigning in Vermont has not yet risen to the deplorable levels witnessed in some other states. Campaigns remain reasonably civil, if not actually informative. **Although negative campaigning has not yet become a widespread problem in Vermont, IRV may help protect campaign civility here.**

The Commission is also not convinced by the obverse of this argument, that IRV could "dumb-down" campaigns as candidates try to avoid taking controversial stands so as not to alienate potential second-choice transfers. Depending on the mix of candidates in a race, the Australian experience does indicate that candidates adjust their rhetoric so as to be considered as a second-choice by voters that are not their core supporters. Does this accommodation reflect civility or timidity on issues?

It seems unlikely that IRV would encourage candidates to shy away from taking strong positions that differentiate themselves from the field. With IRV, no candidate can win simply by being everyone's *second*-choice. A candidate without enough first-choice votes gets eliminated under IRV rules and never gets to benefit from congenial transfers from unalienated voters. **This suggests a strategy of trying to excite enough voters to give the candidate their first-choice**

votes while avoiding nasty campaign tactics that will sour supporters of other candidates: a campaign based on issues that make candidates stand out without the alienating impact of negative ads. Since candidates will not be expecting second-choice transfers from voters at the other end of the political spectrum, but rather from supporters of candidates nearer their own perspective, there is less reason to avoid taking clear stands on issues.

However, one of the factors that is cited by those who argue IRV reduces negative campaigning has little to do with appealing for second-choice votes. This argument is that negative campaigning is simply less effective in multi-candidate races. When there are only two credible candidates in a race, a smear ad campaign may not convince any voter to switch toward the originator of the negative campaign, yet still be successful. Negative ads are intended to 1) get voters to switch candidates and 2) dissuade the supporters of one's opponent from even bothering to vote at all. This is done at the calculated cost of repugnance, turning other undecided voters against the nasty campaigner. Creating cynicism toward politicians generally, and reducing voter turnout (particularly by your opponent's supporters) is a proven tactic, at least outside Vermont. In a race with multiple candidates, supporters of the smeared candidate have other candidates to switch to other than the originator of the negative ads. So the cost of going negative may not be counterbalanced by an equal pick-up of switchers.

11. IRV is simple for voters to use

When the IRV system is first explained, some assume it will be complicated for voters. However, to effectively utilize the system voters have no need to learn any of the intricacies of the transfer tabulation methodology, just as hardly any citizens really understand how the electoral college works (with recourse to election by Congress with one vote per state in the event of no majority). **Among Vermont students who answered a survey question after participating in mock elections using IRV, 91% said the balloting was *not* too difficult and 90% said Vermont should switch to IRV⁹.**

While it is true that any change in the status quo will require a voter education effort, there is nothing inherently complex in the *voters'* role in IRV. Vermonters are well acquainted with the procedure of ranking preferences on survey forms, for favorite sports teams, movies or other things. International experience, and the experience in the 23 U.S. cities that have used some form of preference voting this century, shows that ranking candidates is a task easily grasped by the electorate. Voters in countries using IRV or PR preference voting, such as Australia, and Malta, which have 95% voter participation rates, don't find it difficult. Citizens in Australia, Malta, and Ireland are not smarter than Vermonters, nor do those nations have levels of literacy significantly higher than Vermont's. Northern Ireland adopted the use of a preference ballot in 1998 as part of the peace plan, and experienced minuscule occurrence of spoiled ballots with a far higher voter participation rate than Vermont.

The importance of the transition should not be ignored, however. In 1890, Vermont first adopted use of the "Australian ballot" (government-printed ballots listing all qualifying candidates). In the first election using this new system, in 1892, there was some protest of the new ballot. Much of the protest focused around inadequate preparation. Prior to this new system, voters could prepare ballots at home or simply pick up party ballots on their way to the polls. Voters had no need to mark their ballots. They simply had to deposit their ballots in the ballot

⁹ For the student survey results, see Chart 2 in Appendix F.

box. Starting in 1892, voters had to go into voting booths and find the names of their preferred candidates and mark the right number of boxes depending on how many seats were being filled for each office. There were long lines waiting for ballots and spaces in polling booths, accompanied by many complaints. Rather than repealing the Australian ballot, the next legislature increased the number of polling booths the towns had to provide from one for each 75 voters to one for each 50 voters. **The transition to the modern “Australian ballot,” a preference ballot, is a much smaller step than was the 1892 change.**

The voter education campaign necessary to ease the transition would cost only a fraction of the amount the state currently spends “educating” citizens to buy lottery tickets (the state’s single largest communication effort with its citizenry). Also, due to the nature of such a campaign, unlike lottery advertising, free public service announcement slots would almost certainly be made available by the state media.

12. IRV ballot design¹⁰

Existing state law gives the Secretary of State authority to approve designs of ballots within guidelines. It is possible and desirable to redesign the ballot to allow voters to mark their ballots in exactly the same manner as they have in the past. The option of ranking alternate choices should probably be treated as an add-on section of the ballot. **Unlike Australian federal elections, Vermont should use optional preference voting as is done in New South Wales and other jurisdictions within Australia. This way, those voters loathe to change, could still mark their ballots as they are used to -- with the same amount of input into the outcome of the Governor’s election as they ever had in the past.** Such voters would be forgoing the new power, unavailable under current law, to help select the winner in case there is no majority winner. Thus the traditionalist who refrains from ranking alternatives does not have a diminution of power, but simply is voluntarily not seizing an additional input opportunity.

A preference ballot can be designed with the goal of making it simple for the voter to understand and mark, or with the goal of making it easy for poll workers in those towns that do hand counts. For example, a ballot design that simply has the voter put a rank number next to each candidate is simple for the voter but may slow down the count since all candidates may have some mark next to their name, the counter will need just that much more attention to pick out the “1.”

An alternate design that has a separate column of boxes or circles for indicating alternate choice numbers is quick and easy to count, since the first-choice stands out more. Another reason for having a separate column for alternate choices, is to help distinguish those races using IRV, in which voters are allowed to indicate alternate choices from those races voters are still limited to a first choice only. A design of this sort may also be necessary for machine-read ballots, so that indications of alternate choices are physically separated from that portion of the ballot where the machine scans for a first-choice mark. Of course, machine ballots are already different than hand-count ballots in Vermont. Finding the optimal point of balance between ease for the voters and ease for the counters will be a judgement call. While Cambridge, Massachusetts, uses a machine read preference ballot, most countries use a hand count ballot exclusively.

13. IRV will not create any increased burdens for local polling officials

¹⁰ For some sample IRV ballots, see Appendix G.

Some might worry that the retabulation of ballots will require local polling officials to stay up late into the night and impose an unreasonable burden. As proposed in H.665, none of the new retabulation responsibilities would be placed on local polling officials. They would do nothing differently than they do currently: counting first-choice preferences and reporting to the Secretary of State. There is no need to buy any new vote tabulating machines. All of the “complex” elements of IRV are proposed to be handled like a statewide recount: by a committee appointed by the court, sometime after the voting day. These “complexities” only come into play when there is no majority first-choice winner. In elections with an initial majority winner, there is no administrative burden or even cost in using IRV.

Recognizing that IRV for statewide races will cause no increased workload for local polling officials, John Cushing, chair of the legislative committee of the Vermont Town Clerk and Treasurers Association, testified to the House Local Government Committee that they have no problem with such a reform. Speaking personally, Mr. Cushing said he favored IRV since it keeps the election of the Governor “in the hands of the people.”

Poll workers will likely need to answer more questions than usual during the first couple of elections using new IRV ballots. The voter education campaign, with sample ballots, would probably need to extend through the election day.

14. IRV and polling place efficiency

As in the election of 1892, when Vermont first used the Australian ballot, it is reasonable to expect it will take some voters longer to mark a preference ballot for the first time. Of course, as long as voters understand that choosing alternate candidates is merely an option, rather than a requirement, this shouldn’t be a significant concern. **Indeed, some voters will be able to mark their ballots faster as they no longer need to stand with their pencil poised as they wrestle with their conscience about whether to vote for their favorite candidate or the “lesser-of-two-evils” candidate.**

Other reforms, not currently being examined by this Commission, could further speed up the balloting process. Oregon has led the way in this country in the use of mail ballots. The concept of a voting day is being replaced with a voting deadline. Ballots are mailed to qualified voters who can fill them out in the privacy of their homes and either mail them back or bring them in to the polls on the deadline day. In some ways, this is akin to a return to the voting efficiency of pre-1892 Vermont, when no voting booths were even needed.

15. IRV will not generally delay election results

Since it is not being proposed that Vermont poll workers perform the transfers and retabulations on election night, the concern is that the public will be upset with a new delay in getting results. The IRV retabulations would be carried out by a court-appointed recount committee at least a couple of weeks after the election day. However, in fact, the same amount of information, first-choice results, will be available just as quickly as under the existing system. **In races where there is a majority winner, IRV will not change the reporting time at all. In statewide races, where no majority is achieved by any candidate, IRV can provide *new* information that remains undiscovered with our current system -- that is, which of the candidates a majority of voters actually prefer.** In an age of instant gratification, some may argue that it is better to pick the plurality candidate and declare that person elected quickly than to worry about which candidate the majority of voters would have picked.

While technically there is no winner for any constitutional offices until the General Assembly convenes almost two months later, since only the General Assembly can certify a winner, as a practical matter, unless there is a recount, the winner in majority races is generally “known” the next day. However, in the case of Governor, Lieutenant Governor and Treasurer, when there is no majority winner, under our existing system the result is genuinely not known until January when the General Assembly votes by secret ballot. IRV would not change the constitutional fact that the winner is not official until January. As a practical matter, however, IRV will allow the voters and the members of the General Assembly to know if there is a candidate a majority of voters prefer, and thus which candidate will be declared elected, more than a month quicker than under existing law.

16. IRV treats all voters equally and does not give extra clout to some

When the procedure of IRV is described, some people figure that the supporters of the fringe candidates (those with the fewest votes) are getting two votes while supporters of the top candidates get only one vote. This is not true. Every voter has exactly the same clout with IRV. If there is no majority winner, the supporters of fringe candidates have their candidate eliminated while the supporters of major candidates get to keep their candidates in the running. **While the bottom candidates’ voters have their ballots transferred to their second choices and counted a second time, the voters who favored the top candidates get to have their ballots remain with their favorite candidates and also counted again. This is the same logic that is used in a regular runoff.** In a regular runoff, it is those voters whose favorite candidate is out of the running that decide the outcome.

Another related confusion has to do with the notion that if low-ranking candidates were dropped in some different order, their ballot transfers could produce a different winner. This is not true. If the transfers from the bottom candidate(s) reveal a majority for a particular one of the top candidates, then it is a mathematical truism that no other candidate *could* have a majority (unless you had a perverse rule that eliminated one of the top two candidates first).

17. IRV accommodates more candidates without vote splintering

IRV completely eliminates the problem in our existing system of multiple candidates splintering constituencies resulting unrepresentative outcomes. Our existing winner-take-all plurality voting system provides a powerful disincentive for offering voters a range of choices. With current plurality rules, a third party candidate entering a race is most likely to help the candidate furthest from the third party’s perspective, thus alienating potential supporters. In some cases, third parties have attempted to use this reality as a blunt instrument to extract concessions from major parties. The threat of running a candidate may elicit a change in a major party candidate’s position, but only if the threat is plausible. New Mexico is a place where this threat is more than merely plausible, with the Green Party now regularly denying Democrats what they may consider their “rightful” election in liberal districts. Since IRV eliminates this splintering effect, some third parties likely will feel freer to run candidates and voters will feel freer to vote their true preferences. This may be perceived as undesirable by major party leaders who do not understand the new dynamic of IRV. Multiple candidacies are only a problem if we use our existing plurality rules. With plurality rules, third parties are considered dangerous both to the major parties as well as to fair election outcomes (due to the vote splintering effect). **So, while IRV may open the door to third party candidacies, at the same time it eliminates the problem that third party candidacies may create in our existing system.**

18. IRV does not favor or hurt any particular group

This reform does not give advantage or disadvantage to conservatives, liberals, major parties, or minor parties. As evidence of the nonpartisan nature of this reform, note that among the sponsors of the 1998 instant runoff voting bill, H.665, were a conservative Republican, Rep. Dwyer, a moderate Republican, Rep. Little, a conservative Democrat, Rep. Howrigan, a liberal Democrat, Rep. Woodward, and a Progressive, Rep. Bouricius. This reform eliminates the concern about vote splintering or wasted votes. Voters have every incentive to vote their true beliefs -- their favorite candidate first, their next favorite second and so on -- because their ballot can still count toward a winner if their first choice loses. There also is no reason for voters not to rank as many candidates as they want, as a voter's lower choice will never help defeat one of that voter's higher choices.

19. IRV would add no significant cost to running elections

As proposed, for exclusively statewide races, there would be no changes for town clerks or local election officials. **If the first-choice votes result in majorities in an election, then this new system costs nothing. If some race requires instant runoff tabulations, the cost is the same as a recount** — just the minor cost of transporting the ballots to Montpelier and the retabulation — much cheaper and easier than a traditional runoff election.

There would be some small transition costs, including redesigning and testing the ballot before actual use, as well as a voter education campaign on how to use the new ballot. The cost of an education campaign should be small since public service announcements will certainly be made available by Vermont media. If the state spent a fraction of what it spends on promoting the lottery, to strengthen our democracy, this Commission believes it would be money well spent.

20. The variety of runoff voting procedures

A system with traditional runoff elections in the event of no majority is clearly more democratic than the existing plurality rule, but suffers from drawbacks that instant runoff avoids.

There are three kinds of runoffs. The first is the “new election” open to new candidates, with no formal process for the winnowing of bottom vote-getters. Some candidates might drop out of subsequent elections while other new candidates might join the race. This can and has led to time-consuming re-voting.

Vermont has had a long history with such new election runoffs. This is the procedure Vermont law required for state and federal legislative races until at least 1916. Both our U.S. and Vermont State Representatives used to need a majority rather than a mere plurality to win election. In the case of towns' representatives, the ballot box would be opened and counted at 3:00 p.m. on election day and if there were no majority attained, the gathered townspeople would vote again, and again, sometimes for days, until someone got a majority. In the case of federal candidates, new elections would be scheduled a month or so later, sometimes repeatedly for months (even for over a year in one case) until a majority was achieved.

A modern two-round runoff election, rather than just being a new election, eliminates candidates who are deemed to have little chance of winning. **With the more common method, all but the top two candidates are eliminated.** This expediency assures that the runoff will end with a majority winner on the next ballot. We can term this “batch elimination.” Runoffs are common in southern states but are rare in Vermont. It is used in some municipal elections, such as in Burlington. However, the Burlington City Charter is even more expedient. It allows a Mayoral or a City Council candidate to win with a plurality as low as 40% to avoid the hassle of frequent runoffs. If nobody reaches the 40% threshold, the top two candidates face off a month later. This

batch elimination runoff is also specified in the Vermont General Assembly's joint rule 10 when electing members to such boards as UVM or state college boards of trustees.

The third method involves dropping the bottom candidates one at a time in a series of runoffs. This is the procedure set forth in state law (V.S.A. Title 17 sec. 2384) for a party committee to nominate a candidate to fill a vacancy on the general election ballot. This procedure does not have the difficulties of a runoff in a general election: there is no need to reassemble the voters at a future date, since all of the "voters" (members of the party committee present) simply remain in the room while the ballots are counted. If after two ballots no candidate has a majority, the bottom vote-getter is eliminated and balloting is repeated. Subsequent bottom vote-getters are removed until someone gets a majority. This same basic procedure is also used to elect party leaders in the U.S. House of Representatives (Rep. Dick Armey recently won re-election as majority leader from a field of four contenders on the third round, after the elimination of the bottom vote-getters, Rep. Hastert and then Rep. Dunn). This is a time-consuming, though probably the "fairest," procedure since, in a crowded field, it allows for the possibility that a third place candidate may actually be more popular with a majority of the voters than either of the first two candidates, depending on the nature of the vote split.

"Batch elimination," while less democratic, is more practical for general elections since it is unreasonable to call voters back multiple times if there happen to be many candidates. Instant Runoff Voting, however, does not face the problem of turning voters out for a re-vote, and thus is free to use the more democratic sequential elimination of bottom candidates. This is how it is utilized in Australia.

21. IRV is superior to two-round runoff elections

In our society, for many reasons, it is hard to get many voters to pay attention to election campaigns. Unlike in a traditional two-round runoff election, voters only have to pay attention once with IRV. A traditional runoff extends the campaign season and can be met with a collective sigh of "Oh no, here we go again." **IRV increases the likelihood that the ultimate decision will be made at the election with the greatest level of citizen participation.** Runoffs tend to have a lower voter turnout, though there are, of course, exceptions. Imagine the turnout for a runoff for a more minor office such as state Treasurer. The winner of a runoff may get fewer votes than an opponent got in the original election, leading to doubts about the "will of the people," hobbled legitimacy, and lack of a perceived mandate.

Traditional runoffs are also costly, both to the taxpayer who must pay for the duplicate election and to the candidates who must resume campaign fund-raising and prolong the stress on their families and business lives. **The cost of ballot retabulation in the case of IRV is a tiny fraction of the cost of holding a new election.**

Traditional runoffs can also create doubts about candidates' sincerity as they change their message and repackage themselves based on their narrowed opposition, and the new perceived swing voters.

IRV eliminates one of the biggest confusions for many voters that traditional runoffs don't solve. When there are more than two candidates, many voters currently make a complex calculus of what candidate they want compared to what candidate they think can win and what candidate they don't want that might win if they "waste" their vote on the candidate they actually prefer. The complexity of this assessment frustrates many voters who may feel either resentment or shame in voting for what they see as the "lesser of two evils" while feeling forced to abandon their true preference. While IRV eliminates the need for this calculation, it persists in traditional runoffs that drop to the top two candidates.

In addition to retaining this complexity, traditional runoffs also introduce a new element of possible manipulation. If voters are confident that there will be a runoff, and their favored candidate will be in it, they may consider voting for the perceived “weaker” or more extreme, opponent in hopes that that candidate will make it to the runoff, knocking off the stronger opponent, and thus improving the chances of their favored candidate. This manipulation may not be widespread but it is certainly real. Witness Vermont’s open primary in which voters whose party has no serious primary challenges vote in the other party’s primary for the perceived weakest opponent. It is widely believed that this logic played a part in Fred Tuttle’s U.S. Senate primary victory.

In Vermont, there is also a constitutional barrier to using traditional runoffs for electing a Governor, Lieutenant Governor or Treasurer. The votes cast to elect these officers must be cast at a single particular election, when Vermonters elect their state representatives, rather than at two separate elections. IRV simply retabulates those same ballots and thus does not run afoul of this restriction. Changing the constitution is extremely difficult. The time-lock on our constitution means that the soonest a change could take effect is for the elections of 2004.

22. IRV can comply with Vermont’s Constitution

The essence of this question revolves around Chapter II sec. 47 of the Vermont Constitution, which requires the General Assembly to elect a Governor, Lieutenant Governor, or Treasurer whenever there is no election by the people. Would IRV preempt the General Assembly and provide an alternative method of resolving the situation when there was no majority?

This would be unconstitutional if an IRV bill attempted to bypass the General Assembly’s authority, but that can easily be avoided. Under existing law and under H.665 only the General Assembly canvassing committee appointed in January can declare a candidate elected. Under existing law and H.665, other bodies including a canvassing committee consisting of members appointed by the major parties and the court in the case of recounts or other challenges can advise the official General Assembly canvassing committee as to which candidate received “the major part of the votes.” **The actual voting method is not mentioned in the constitution and it has changed over time. The General Assembly may pass a law which defines in statute what “the major part of the votes” means within any particular system of voting, whether that be instant runoff voting, or our existing system.** If, after transfers, a candidate ends up with a majority, this can be legally defined as “the major part of the votes.” In this case, the election is not given to the General Assembly since the second controlling phrase, “[if] there shall be no election,” does not get activated. Since voting for alternative choices is proposed to be optional, it is still possible for there to be an outcome after the transfers in which there is still no majority, and with no candidate receiving “the major part of the votes” there would have been “no election” and the General Assembly would proceed to elect from among the top three candidates.

Another constitutional question that might have been raised, as to whether the constitution allows voters to express more than one preference on a ballot, is answered definitively by precedent of other court challenges in states such as Ohio, Massachusetts and Michigan. In all cases, preference voting has been universally upheld. In some of these court challenges, it was unsuccessfully argued that IRV, or other preference voting systems, gave voters more than one vote and thus violated the one person one vote rule. This is wrong on several counts. First, the one person one vote rule simply is a shorthand description of equal voting power for each voter. Otherwise, at-large elections such as the Chittenden County Senate race where voters get six votes, or the two-seat representative districts, where voters get two votes, would be problematic. But

more fundamentally, **IRV does not give voters more than one vote for Governor.** The name for preference voting systems used internationally and by political scientists is the “*single* transferable vote” (STV). The name describes the fact that there is only one net vote to be had, but that the vote for the candidate for whom it will ultimately count can be transferred. Even if one concluded, contrary to court precedent and political science understanding, that IRV did entail more than one vote, the specific wording in the Vermont Constitution is accommodating in that it uses the plural noun “votes” in describing the task of the voters to “bring in their votes for Governor...”

Finally, the changes envisioned by the use of IRV are far less troubling than the existing flagrant deviations from the voting procedure as far as it is described in sec. 47. The details that are no longer complied with are: 1. the voters “bring their votes for Governor, with the name fairly written.” (The ballots are now preprinted and provided by the polling officials as a result of the reforms of 1890, and preprinted party ballots have been deemed constitutionally acceptable since at least 1832. Also, voters are no longer required to “bring” in their votes, but may *send* in absentee ballots, contrary to an 1864 opinion of the Vermont Supreme Court.) 2. The Constable receives the ballots and seals them up. (The General Assembly long ago provided for a more practical secure and convenient polling procedure with local polling officials who are not constables.) 3. With no counting of the ballots, the constables “deliver them to the Representatives chosen to attend the General Assembly” in January. (Currently, the ballots are counted locally, a summary sheet is prepared and the results transferred to a return form which is delivered or mailed to the Secretary of State within 48 hours. Then a statewide canvassing committee, consisting of representatives of the major parties, reviews the return forms from all over the state and prepares a draft certificate of election for the use of the General Assembly.) 4. In January the General Assembly meets and appoints a committee to “receive, sort, and count the votes for Governor”, Lieutenant Governor and Treasurer. (The General Assembly does appoint a committee in January, but it never sees the votes, does not sort or count them, but instead reviews and adopts a report provided by the Secretary of State.)

All of these existing deviations from Constitutionally mandated procedures, however, are probably not “unconstitutional” in that the goals and purpose of section 47 is to assure a fair and honest determination of the voters’ will. The technologies and customs of the times have changed markedly since the 1700's. Printed ballots are easily distributed, the mails are more reliable, voting machines can make the sorting of ballots unnecessary, etc. As the Vermont Supreme Court ruled in *Temple vs. Mead* (1832), when the use of printed ballots instead of handwritten ballots was challenged, Section 47 “was intended to secure to the freemen the privilege of voting for the officers therein named by ballot. . .” and the procedure of balloting may evolve with the times.

23. IRV faces no obstacle from federal laws or the federal constitution

For state elections, there is certainly no federal restriction. Many states and municipalities have used a variety of preference voting systems. But what about Vermont’s federal elections, President/Vice president electors, U.S. Senators, and U.S. Representative? Is there a federal restriction on voting systems? There are some regulations, but none that would preclude IRV.

The constitutional requirements are few. They include: The requirement that Congress be chosen by the citizenry (Article I sec. 2: states “The House of Representatives shall be composed of Members chosen every second Year by the People of the several States...”); **that the state legislatures shall decide the voting system subject to override by Congress** (Article I sec. 4: states “The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of chusing [sic] Senators.”); that

Congress shall rule on disputes over an election of a member (Article I sec. 5: “Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members...”); **the voting system for selecting members of the electoral college is solely the responsibility of the state legislature except as to the timing**, (Article II sec. 1: The President and Vice-President shall "be elected as follows Each State shall appoint, in such manner as the Legislature thereof may direct, a Number of Electors, equal to [the number of Representatives and Senators combined]...The Congress may determine the Time of chusing [sic] the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”).

There are only two restrictions Congress has applied to how states conduct federal elections. The first restriction is a prohibition against electing U.S. Representatives from at-large districts of more than one seat. This is irrelevant for Vermont, as we currently have only one Representative, although that number is not set in the Constitution and could be raised by a change in the law that put a cap on the size of the House. The second restriction is an 1872 law that prohibits any state from holding a decisive election for a *federal* office on any date prior to the national date. This law was cited when the Supreme Court threw out a Louisiana voting system used from 1975 till this year, wherein an open, unitary primary, allowed a winner with more than 50% of the total vote to be declared elected in October without any November election. **Neither of these restrictions would have any impact on Vermont’s adopting IRV.**

SECTION 5. AREAS FOR FURTHER STUDY

Due to time constraints, the Commission is not making detailed recommendations in certain areas that could fall within the scope of our original charge.

While the Commission is familiar with the 1998 instant runoff voting bill, H.665, we did not delve into the details of its functioning. We recommend it generally, while leaving the drafting details to the appropriate legislative committees and legislative counsel.

The Commission is not making any recommendations about how the IRV ballot should be designed, other than that a balance must be struck between ease for the voter and ease for the polling officials. The Commission examined numerous ballot designs used around North America and around the world for both hand counts and machine-read ballots, and concluded ballot redesign should not be an obstacle to the adoption of IRV. The principles of good ballot design already exist in Vermont's statutes, which give authority to the Secretary of State to specify approved designs through rules.

Finally, while the Commission did take some expert testimony and did give some consideration to the use of preference voting in the election of legislators, we are not prepared to give a recommendation in this area. Arguments were made about the desirability and rejuvenation of our democracy that could result from the adoption of some form of proportional representation for the election of legislators. We do believe this is an area worthy of continued examination by the General Assembly (either by committee or special citizen commission). We agree with critics of our existing winner-take-all legislative races that such a voting system tends to under-represent minority voices within the "people's house" and thus constricts political debate and weakens public interest in electoral participation. The fact that the U.S. has, by far, the lowest rate of voter participation of any developed democracy is of great concern to us. Proportional representation is certainly an option that should be considered, but is beyond the limits of this report.

APPENDIX A.

H.R. 37 Vermont House Resolution relating to the creation of a Vermont Commission to Study Preference Voting

Whereas, plurality election rules in races with more than two candidates can result in a candidate opposed by a majority of the voters being declared the winner, and

Whereas, in 35 percent of all election years in Vermont, one or more federal or statewide races had a result less than a majority, and

Whereas, in 23 percent of all election years, the General Assembly had to intercede to elect one or more statewide officers, due to the lack of a popular majority, and

Whereas, 21 times in Vermont's history the Governor was elected by the General Assembly rather than the voters, due to a failure to achieve the constitutionally required majority of popular votes, and

Whereas, the General Assembly has often elected a statewide candidate who did not receive the greatest number of votes, and

Whereas, in one election year with no majority winner in the Governor's race, the General Assembly deadlocked and elected no Governor, forcing the Lieutenant Governor to serve, and in another election year with no majority in the Treasurer's race the General Assembly elected the third-place candidate who had received only three percent of the popular vote and who therefore refused to serve, leaving Vermont with no Treasurer, and

Whereas, recent presidential elections in Vermont with more than two candidates indicate that the existing plurality election rules cannot be certain to faithfully reflect majority voter sentiment, and

Whereas, the advent of public financing in certain statewide elections, beginning in the year 2000, could increase the likelihood of multiple viable candidates, and

Whereas, having more than two credible candidates increases the chances of there being no majority winner, and

Whereas, alternative voting systems that solve this problem through an instant runoff or single transferrable vote system are used in democracies around the world, including Australia and Ireland, and

Whereas, the house of representatives could benefit from a broad examination and public discussion of such alternative voting systems, now therefore be it

Resolved by the House of Representatives:

That there is created a Vermont Commission to Study Preference Voting that shall consist of a maximum of 12 Vermont residents, one-half of whom shall be designated by the Vermont League of Women Voters, and one-half of whom shall be designated by Vermont Common Cause and who shall represent a diversity of political parties, and include at least one resident under the age of 25, and be it further

Resolved: That the League of Women Voters and Common Cause shall forward the names and contact information of the commission members so designated to the Secretary of State who shall designate one member of the commission to act as convener for the first meeting at which the commission shall elect a chair, and be it further

Resolved: That the commission shall analyze possible impacts of public campaign financing as it relates to any increased likelihood of failures to attain majorities, and to review alternative voting systems, including the Australian single transferrable vote system and variants that would facilitate popular majority rule in single seat elections or representative outcomes in multiseat legislative elections, and be it further

Resolved: That the commission shall give its highest priority to an examination of those statewide races that will be eligible for public financing, and be it further

Resolved: That the commission is encouraged to seek the assistance of the political science departments at Vermont institutions of higher education, and be it further

Resolved: That the commission is encouraged to conduct mock elections, utilizing a preference voting system, and be it further

Resolved: That the commission shall report its findings and recommendations, including any draft legislation that it deems necessary to implement its recommendations, to the house of representatives by January 15, 1999, and be it further

Resolved: That the members of the commission shall not be entitled to per diem compensation nor expenses from the state of Vermont in connection with their duties, and be it further

Resolved: That the Clerk of the House be directed to send a copy of this resolution to the Secretary of State, Vermont Common Cause and the Vermont League of Women Voters.

APPENDIX B.

Summary of 1998's H.665 - Instant Runoff Voting for statewide elections

Introduced by: Representatives Bouricius (P-Burlington), Dwyer (R-Thetford), Howrigan (D-Fairfield), Kendall (R-Woodstock), Little (R-Shelburne), Snyder (D-Pittsford), and Woodward (D-Johnson)

In the case where, under existing election laws, there would be no majority winner, instead, a retabulation of ballots using the instant runoff method is used to discover which candidate is actually preferred by the most voters. Put in the negative, Instant Runoff Voting assures that a candidate the majority of voters oppose is not inadvertently declared elected.

The ballot for statewide elections is redesigned, consistent with the existing principles, to allow a voter to rank each candidate in order of preference. [Sec. 3]

Voters have the option to rank candidates, but are not required to do so. Voters can mark ballots in exactly the same manner as in the past. There is no change in the conduct of the election. Local election officials will count first choice votes in the same manner as in the past, whether by hand or machine.

When the existing statewide canvassing committee meets (one member from each major party) they prepare a certificate of election for the candidate for each office who received a majority of first choice votes. If they discover that no candidate in a particular race received a majority of the first choice votes, instead of preparing a certificate of election for the non-majority plurality winner, they petition the court, in the same manner as a recount, to convene a runoff count committee to determine the actual majority winner. [Sec. 6]

The Instant Runoff Method mirrors the ballot counts that would occur if the voters participated in a series of runoff elections. In a regular runoff, voters who had selected the bottom vote-getter would have to pick from the remaining candidates. Likewise with instant runoff retabulation, without calling the voters back to the polls, the same result can be discovered by re-examining the preferences marked on the ballots. First choice ballots for candidates who are still in the running once again count towards those same candidates. Voters whose first choice candidate has been eliminated have their ballots transferred to each individual voter's next choice (the same as in a regular runoff). If there is still no majority winner, the successive bottom vote-getters are excluded and their supporters' ballots are transferred to the next choices that are still in the running. This process continues until there is a majority winner, or there is only one candidate left. In the extremely unlikely prospect that the last remaining candidate failed to win a majority, a report of no election is issued and the legislature elects as provided in the constitution (except for the federal offices where the final candidate is declared elected).

This bill would take effect in time for the November elections in the year 2000.

APPENDIX C.

History of Vermont Voting Systems

Unlike some states where voters once were required to loudly proclaim their choice of candidates in front of election officials, Vermont favored the use of the secret ballot from its very inception. Vermont's constitution has always required voters to "bring their votes for Governor, with the name fairly written." This language was the core of an early constitutional challenge to one of the early changes to our voting procedure. By the early 1800s, candidates, parties and newspapers were printing lists of endorsed candidates that voters could submit as a ballot. The Vermont Supreme Court ruled in *Temple vs. Mead* (1832), that the use of printed ballots instead of handwritten ballots was acceptable, since the language in Section 47 "was intended to secure to the freemen the privilege of voting for the officers therein named by ballot. . ." rather than to require any particular method of balloting. The same section of language was cited by the Vermont Supreme Court during the civil war to invalidate absentee voting by Vermont's soldiers away at war, using the logic that "bring" is not the same thing as "send." In the twentieth century this has obviously been reversed.

The biggest change to the procedure of voting in Vermont occurred at the end of the nineteenth century with the adoption of the "Australian ballot." Today the phrase "Australian ballot" is used to distinguish voting by a secret ballot as opposed to a face-to-face town meeting, but that is not what the term actually means. Prior to 1892, ballots listing only favored candidates were provided by candidates, parties and newspapers. The Australian innovation adopted by Vermont was the use of government-printed ballots that listed all qualifying candidates.

Ironically, at the same time that Vermont started using the "Australian" ballot, Australia was beginning the process of abandoning it, in favor of the modern Australian ballot, which is a preference ballot used for IRV and PR elections.¹¹

In the first Vermont election using this new system, there was some protest of the new voting procedure. Formerly, voters could prepare ballots at home or simply pick up party ballots on their way to the polls. Voters had no need to mark ballots, they simply had to deposit them in the ballot box. Now the voters had to go into a voting booth and find the names of their preferred candidates and mark the right number of boxes depending on how many seats were being filled for each office. There were long lines waiting for ballots and spaces in polling booths, accompanied by many complaints. Rather than repealing the Australian ballot, the legislature increased the ratio of polling booths the towns had to provide from one for each 75 voters to one for each 50 voters.

The use of the Australian ballot also had implications for independent candidates and smaller parties. How was it to be decided which candidates to list on the official ballot? Unlike some states, Vermont has maintained a manageable petition threshold that allows any serious

¹¹ For sample historic and modern Australian ballots, see appendix G.

candidate to appear on the ballot. **The major change in Vermont's ballot access laws was the adoption of state-sponsored party primaries in 1915.**

There have been a few small changes to Vermont's "Australian" ballot over the years. These include listing candidates in alphabetical order grouped by office, rather than by party, as is still done by some other states to facilitate straight party voting.

Some of the more far-reaching changes to Vermont's voting system have occurred in this century. **The most well-known change, of course, is the change in what groups of citizens were included as part of the eligible voting pool -- extending suffrage to women and young people between the ages of 18 and 21.**

A less well-known but fundamental change has been the abandoning of the majority requirement to win election. The acceptance of plurality winners is a rather recent change in Vermont election law. For most of Vermont's history, all single seat races required a majority to elect. In the case of legislative seats, if there was no majority a new vote was held, repeatedly, until a majority was achieved. For Congress, this meant elections a month or so apart. For state representatives, it meant re-voting on into the night or the next day at a town meeting. The majority requirement was relaxed for most elections by 1916, allowing plurality winners after a limited number of re-votes. Majority rule was finally repealed altogether for all offices, other than constitutional offices, only in 1940.

The shift to the plurality rule came in the midst of a period of one-party predominance in which no statewide election was won by any candidate other than a Republican for over a century. Because of the hegemony of just one, and later two, political parties, this abandonment of one of the most basic principles of democracy -- majority rule -- went unnoticed. With only one or two choices, candidates were sure to win with majorities anyway. It is only with the reappearance of third party and serious independent candidacies since the 1970's that the potentially undemocratic results of plurality rule would again be a potential problem.

As State Archivist Gregory Sanford noted in his testimony to the Commission, Vermont has continually changed its voting system in response to political stimuli.

APPENDIX D.

The History of Vermont Elections Without a Majority

Volume XXI of the State Papers entitled Vermont Elections 1789-1989, published by the Secretary of State, is the primary source for this section.

Part 1. Election of State Officers

Vermont has had frequent and serious problems with the failure to popularly elect constitutional officers by a majority vote. Due to this failure of any candidate to attain a popular majority, statewide officers have been elected by the General Assembly, instead of by the people, 69 times in Vermont's history, including both Lieutenant Governor and Treasurer in the state's first election in 1778. This occurred 21 times in the case of Governor, 26 times in the case of Lieutenant Governor, 17 times in the case of Treasurer, twice for Auditor of Accounts, twice for Attorney General, and once for Secretary of State. The most recent such election was the 1998 lieutenant gubernatorial race. Since 1972, there have been 11 state officer elections with no majority winner. Of these 11 elections, 7 went to the General Assembly for decision.¹² The General Assembly had to step in to elect one or more statewide officers in 23% of all election years.¹³

In most cases, the General Assembly elected the candidate who had the highest popular vote total. In some of these cases, however, that plurality candidate may well not have been the preferred candidate of the majority of voters. Some examples: In nine gubernatorial elections in the 1840's and 1850's, if the popular vote totals of the Democratic candidate and the Free Soil Democratic Party or Liberty Party candidate are combined, they constitute a majority, yet the Whig candidate had a plurality, and was elected by the General Assembly. In 1912 the combined vote total of the Democrat (31%), Progressive (24%), Prohibition (3%) and Socialist (2%) candidates for Governor equaled 60% of the vote. The Republican, with just over 40% of the popular vote, however, was elected Governor by the General Assembly.

¹² Until recent times the offices of Attorney General, Auditor of Accounts and Secretary of State, by statute, required a majority to be elected, or else be chosen by the General Assembly, the same as the constitutionally mandated offices. In the late 1970s this law was amended, declaring the plurality candidate elected.

¹³ Biennial elections did not become the norm until 1870.

In a number of cases, the General Assembly elected a candidate who had come in second, or even third, in the popular vote. Some noteworthy examples follow. In 1789 Thomas Chittenden had 44% of the vote, but the General Assembly elected Moses Robinson instead, even though he had received only 26% of the popular vote. In 1813, although the Democratic-Republican Party candidate, Jonas Galusha, had the popular plurality and was just 155 votes short of an absolute majority, the General Assembly elected Federalist Martin Chittenden Governor by a vote of 112 to 111. The most recent example of the General Assembly's rejection of the plurality candidate occurred in 1976 when Republican T. Gary Buckley, who had come in second in popular vote was elected by a three-vote margin in the General Assembly over the plurality winner, John Alden. In this case, the candidate who had forced the race into the General Assembly was Liberty Union candidate John Franco (to the left of both the Democrat and Republican), indicating a majority of the electorate would almost certainly have selected Alden instead of Buckley in a one-on-one or instant runoff election.

An election of special importance in the history of both the Republican and Democratic Parties of Vermont occurred in 1853. Contrary to common belief, the first Democratic Governor of Vermont was not Phil Hoff, but rather John Robinson, elected by the General Assembly in 1853. Robinson had come in a distant second in popular vote (38%). Whig candidate Erastus Fairbanks had 44% and Lawrence Brainerd, the Free Soil Democrat, had 18%. *After nine days and 26 ballots* the General Assembly finally elected the Democrat Governor and then went on to do likewise in the election of a Lieutenant Governor and Treasurer (in which races the Democrats had also come in second). There are two reasons noted for the General Assembly's rejection of the plurality candidate. First, Fairbanks, the incumbent Governor, had irritated many members of the General Assembly with his support for a temperance bill that had passed by one vote the previous year. And second, the Free Soil Democratic Party members of the General Assembly struck a deal with the Democrats that a Free Soil Democratic Party member would be elected Speaker of the House. The Free Soil Democratic Party leadership outside the statehouse, including defeated gubernatorial candidate Brainerd, repudiated the deal. The resulting split in the party led to the creation of the Republican Party in Vermont in 1854.

The most extreme examples of complete disfunction and breakdown occurred just two elections apart. In 1835 William Palmer, the Anti-Mason Party candidate for Governor, received 46% of the popular vote, Democrat William Bradley received 38%, and the Whig candidate, Charles Paine got 16%. After 63 ballots the General Assembly still could not select a Governor. They finally adjourned for the year leaving the state with no Governor. Lieutenant Governor Silas Jenison served in the absence of an elected Governor.

In 1837 there was no majority winner in the Treasurer's race. With the General Assembly deadlocked between the top two vote-getters, they finally compromised by electing the third place candidate who had received a mere 3% of the popular vote. This "winner," Norman Williams, refused to serve. But the joint assembly of the House and Senate had already dissolved. The House attempted to reconvene a joint assembly to fill the vacancy, but the newly created Senate refused. The state went the year without an elected Treasurer. The Governor, perhaps illegally, but pragmatically, picked Allen Wardner, who had not even been a candidate, to "supply the vacancy in that office, until the same can be filled in the manner directed by law or the constitution of the state."

Part 2. Election of U.S. Congressional Representatives

In the case of election of federal officials, there has never been a provision for election by the General Assembly in the event of a failure to attain a majority. For most of Vermont's history, when there was no majority winner, new elections were held until some candidate received a majority. It often took many such runoff elections, month after month, to find the candidate most preferred by a majority of voters. The most extreme case was in Fourth Congressional District in 1830. It took ten new elections, spanning 18 months, to get a winner.

These new elections were not exactly "runoffs," as we know them, in that anyone could run in the new election, including candidates who had not even been in the original election. However, they often served as runoffs, as candidates who finished poorly in one round would often drop out or be abandoned by their supporters for more viable candidates. In 26% of all biennial elections since 1791 there was no majority winner in one or more of Vermont's congressional districts.

The election laws changed several times, making a chronologic analysis difficult. For example, for a few years in the early nineteenth century Vermont elected its Representatives to Congress¹⁴ in at-large elections, with the top six candidates elected. Any analysis concerning attainment of a majority is confused by this voting system. In 1916 the majority requirement for this office was completely eliminated, but by then the Republican Party dominance was so overwhelming that hardly any elections were settled with less than a majority. The most recent election for Congress won with a mere plurality was in 1994, when Bernard Sanders won with 49.8%. In 1988 Peter Smith won the U.S. House seat with 41%. In that election, independent Bernard Sanders had 38%, and Democrat Paul Poirier received 19% with a bit over 2% divided among the remaining three candidates.

When Vermont held new elections as a result of no majority in the original election, the plurality winner more often than not ended up winning a majority in a subsequent runoff. However, in 16 elections the ultimate winner, eventually given a majority by the voters, was not the original plurality "winner." One noteworthy example of this occurred in Vermont's first congressional election in 1791. Matthew Lyon originally received 36% of the popular vote, Israel Smith had 35% and Isaac Tichenor got 29%. In the new election, Tichenor's total dropped to 2% and the original second place candidate, Smith, was elected with 68%.

In 1832, after the particularly protracted battle in the Fourth District in 1830-2, the General Assembly compromised the democratic principle of majority rule to avoid such stalemates and changed the majority requirement, so that whichever candidate was the top vote-getter after the second runoff, whether by majority or plurality, would be declared elected. This was further changed in 1848 to a single runoff. A single runoff, however, did not always allow for an adequate winnowing of candidates. In 1850, in Vermont's First Congressional District, A. L. Miner who had come in second in the original election with 31%, won the runoff with just 39% of the vote. The original election had had a field of four candidates. In the runoff, only the original bottom vote-getter, Democrat Merritt Clark (10%), withdrew, leaving a fairly even three-way split in the final election. The majority requirement and runoff elections for congressional races were dropped altogether in 1916. Since the Republican candidate in this era generally got

¹⁴ At its peak, Vermont had six U.S. Representatives.

70 - 80% of the vote, the abandonment of a basic democratic principle hardly seemed significant for actual elections.

The direct election of U.S. Senators did not commence until 1914 with the Seventeenth Amendment to the U. S. Constitution. This was the height of the Vermont Republican era, so issues of a majority requirement were not considered. In modern times, however, (1974, 1976 and 1980) U. S. Senate elections in Vermont have been won with a plurality less than a majority.

Part 3. Conclusion

Looking at both federal and statewide elections, in 37% of all election years one or more races had a result less than a majority in Vermont. The fact that the state used to have runoff elections for at least some races, contributed to the reality that in most of these cases it is likely that the candidate preferred by most voters was ultimately elected. Vermont, however, no longer has runoffs.

The problem of plurality election rules has gone relatively unnoticed in modern time, first because of the hegemony of the Republican Party and most recently by the dominance of just two major parties. That reality, however, is now an anachronism. Recent presidential and state elections, with Perot-style and other independents have already returned us to the days of plurality rather than majority outcomes. Most importantly, the advent of campaign finance reform, with public financing, nearly assures there will be more than two credible candidates in many statewide elections. Quoting from an essay on the history of Vermont's elections,

Each election brings to light new reasons to contest elections in Vermont, and we will never exhaust the possibilities, given the ingenuity of voters and the opportunities for conflict. The best we can do is strengthen the laws we have on elections, and on the critical steps that follow the casting of ballots in particular, so that Vermont elections will always be, in the words of the Constitution, "free and voluntary," and truly representative of the intent of the voters.¹⁵

¹⁵ Paul S. Gillies, "A Short Popular History of Vermont Elections," in Christie Carter, ed., *Vermont Elections 1789-1989*, State Papers of Vermont, Vol. 21, Secretary of State, 1989, p. 49.

APPENDIX E.

The History of Instant Runoff Voting

The key to the development of instant runoff voting (IRV) was the invention of the single transferable vote (STV) in the 1850's by Thomas Hare in England and Carl Andrae in Denmark. The essence of STV is the concept that a citizen would have one vote in a particular contest, but that that vote might be transferred from one candidate to another according to each voter's ranking of candidates, depending on the aggregate result of other voters' ballots. Hare devised this balloting and counting procedure in creating a system of proportional representation.

IRV, however, is not a system of proportional representation. Instead, IRV uses the STV innovation in a winner-take-all context. **Instant runoff voting, using a preference ballot, was invented by an American, W. R. Ware, a Professor at the Massachusetts Institute of Technology, around 1870.** The first known use of IRV in a governmental election was in 1893 in Queensland, Australia. However, this was a modified version of IRV in which all candidates except the top two were eliminated in a batch rather than sequentially, as in the pure form of IRV. The "staggered runoff" concept that we understand today as IRV was first used in Western Australia in 1908.

IRV, called "alternative vote" in Australia, came to be used in most Australian legislative elections, although it was superseded by Hare's STV system of proportional representation for the federal Senate. IRV is still used for electing members of the lower house. IRV is also used in other nations, such as Ireland. In the United Kingdom, the Jenkins Commission, appointed by the new government, released their report October 29 that recommends the use of IRV for electing the House of Commons (with proportional representation achieved through the election of additional members based on the popular vote for parties nationally).

In the United States, IRV election laws were first adopted in 1912. Four states -- Florida, Indiana, Maryland, and Minnesota -- used versions of IRV for party primaries. Seven other states, used a different version of preference voting known as the Bucklin system. Bucklin was found to be defective as it allowed a voter's second-choice vote to help defeat a voter's first-choice candidate. With Bucklin voting, most voters refrained from giving second choices, and the intent of discovering which candidate was favored by a majority of voters was thwarted.

Of the four states with IRV, only the Maryland law used the standard IRV sequential elimination of bottom candidates, while the others used batch elimination of all but the top two candidates. After a series of primary elections in which alternate preference votes happened to play no role in determining the winner, this voting procedure was eclipsed in all four states. By the 1930's all of these preference voting systems had been replaced by other primary election reforms, including the use of a second, or runoff primary in the event of a non-majority outcome.

STV became a key element of the municipal reform movement of the 1920's, and eventually 23 U.S. cities adopted proportional representation for council and school board elections. In these cities, one would think IRV would have been a natural for electing a mayor, since proportionality is moot with an inherently single seat election. Instead, the reform movement of the day pushed for abolishing the mayor's office, preferring a city manager form of government.

The next use of IRV in the U.S. came in 1975 in Ann Arbor Michigan. The presence in Ann Arbor of a third party, the Human Rights Party, created lively three-way elections with concerns about splintering the vote. The election of the first ever African-American Democrat as mayor on the strength of second-choice votes transferred from the Human Rights Party candidate, prompted an effort by Republicans, the beneficiaries of split liberal votes with plurality rules, to eliminate the system. A legal challenge failed as the court upheld the IRV law. Since, in this particular case, it was the incumbent Republican Mayor who would have won under the old plurality rules, the Republicans led a repeal effort.

Currently, several states in which third party politics are creating splintered vote situations for the major parties, IRV is being considered. In New Mexico, where the Green Party and Democratic Party have split the "liberal" vote, giving Republicans 43% plurality wins, the Democratic Party is actively pursuing IRV. In Alaska, where a Perot-style independent party has "spoiled" Republican races, the Republicans are interested in IRV. The New Mexico State Senate came close to approving a constitutional amendment in 1998 to allow IRV with a favorable vote in the Rules Committee and a tie vote in the subsequent committee. Unlike Vermont, the constitution of New Mexico specifies that the plurality candidate must be declared elected.

The single transferable vote is a more common voting procedure in the U.S. than most of us realize. Even the Academy Awards uses STV in determining their finalists. The American Political Science Association (APSA), the organization of political science professors, uses IRV to elect their national president, since political scientists understand that IRV is the fairest and simplest way to elect a single winner from a field of candidates.

APPENDIX F.

Mock Election Demonstrations using IRV in Vermont Schools

As resolved in HR.37, the established Commission observed the process of Instant Runoff Voting by conducting mock elections in various classes at six high schools and two junior high schools in Vermont. These mock elections were held during the months of September, October, November and December at Lamoille Union, Middlebury, West Rutland, Black River (Ludlow), U32 (E. Montpelier), Bellows Free Academy (St. Albans), Harwood Union (Duxbury), and Mt. Abraham Union (Bristol). Prior to the mock election, a brief presentation was held regarding HR.37, the history of Vermont elections and the history of IRV. Students were first encouraged to discuss the meaning of democracy. The majority of students recognized that the process of democracy has continued to evolve and develop internationally, in our nation and in the state of Vermont, and that different systems of voting may be discussed as being “more” or “less” democratic.

At the close of the presentation and discussion, students participated in both the voting and counting procedures of the mock IRV election. Students were given a ballot with four former United States presidents and asked to read the directions, printed as they might appear on an actual IRV election ballot. Various ballot designs were used to gauge how user-friendly they might be. In a few schools, the directions were read aloud to the students, as well. The students, then, proceeded to vote by ranking the candidates in order of preference. Four volunteer students collected and counted the ballots, counting the first-choice votes first. In most of the classes, no candidate received an initial majority of the votes. Students comprehended the process of transferring votes from the lowest ranked candidate and continued the process by redistributing the votes to find the candidate truly preferred by the majority of voters.

In some of the mock elections, the process of IRV revealed that a candidate who had not received the greatest plurality of initial votes, was the candidate actually preferred, over the plurality candidate, by the majority of the students.

At the close of class, students were given evaluation forms that were to be collected by the teacher and mailed to the Commission. As of this writing, five of the schools, representing 120 students have returned their evaluation forms. A copy of the evaluation form submitted to the students and a chart of the results of the evaluations, along with a copy of the actual mock election ballot, may be found in Chart 2 on page 35.

Of all students expressing an opinion, 91% said that marking the ballot was *not* “too difficult or confusing.” (If junior high students are excluded, the figure rises to 93%.) Since the ballots were not explained to the students in detail, the Commission finds this very encouraging. In a real election, sample ballots that show how to mark the ballot should all but eliminate concerns about IRV’s supposed complexity for the voters. **There is no evidence that voting in an IRV election is any more confusing than our current system.**

In the evaluations, 20% of the students said that their parents don't vote regularly, and of those who ventured a guess, 17% said they doubted they themselves would vote regularly once they turned eighteen. The correlation of these two answers is impressive, with 100% of those who doubted they would vote reporting that their parents also do not vote regularly.

As to the question of whether IRV would encourage greater voter participation, 42 students, or 35%, said they would be more likely to vote if IRV were used, only four students (3%) said they would be less likely, with the rest indicating it would make no difference. Of the nineteen students who said that they would not vote regularly, once they turned eighteen, three students (or 16% of that group) said that they would be more likely to vote if Vermont had a preference voting system such as Instant Runoff Voting.

Of the 116 students expressing an opinion, **90% said Vermont should use Instant Runoff Voting.** As happened with the members of this Commission, once students understood how IRV works to restore the principle of majority rule, it is almost universally favored over our existing system.

Some of the classes also received a brief explanation of proportional representation in electing legislative bodies. Of the 84 students who answered the following question, "Do you think Vermont should consider using proportional representation for electing either its House of Representatives or its State Senate?" 93% said yes. The Commission did not feel it had sufficient time to adequately address this side of preference voting but suggests that this public enthusiasm warrants further examination of proportional representation by the General Assembly.

The four Commission members who observed the presentations and mock elections at the various schools all testify to the interest of the students in the Instant Runoff system, their recognition of the system as "more fair" or "more democratic," as well as their interest in the continued study of proportional representation by the Vermont State Legislature.

CHART 2. Mock IRV Election Survey

120 students (85 high school / 35 junior high) from various Vermont schools
 Percentages are of those expressing an opinion

1. Did you find marking your Instant Runoff Ballot too difficult or confusing?

	high school	all students
YES =	7% 6	9% 11
NO =	93% 79	91% 108
Total =	85	119

2. Do you think Vermont should use Instant Runoff Voting?

	high school	all students
YES =	90% 74	90% 104
NO =	10% 8	10% 12
Total =	82	116

3. Do you think Vermont should consider using proportional representation for electing either its House of Representatives or its State Senate?

	high school	all students
YES =	93% 69	93% 78
NO =	7% 5	7% 6
Total =	74	84

4. Do your parents vote in all, or almost all elections?

	high school	all students
YES =	76% 65	80% 96
NO =	24% 20	20% 24
Total =	85	120

5. Do you think you will vote regularly after you turn 18?

	high school	all students
YES =	76% 64	83% 95
NO =	24% 17	17% 19
Total =	81	114

6. Do you think you would be any more or less likely to vote if Vermont had a preference voting system such as Instant Runoff Voting?

	high school	all students
MORE =	46% 38	36% 42
LESS =	1% 1	3% 4
No Diff.=	53% 44	61% 71
Total =	83	117

Glossary of terms used in this report

Instant Runoff Voting (IRV): This is a voting system used to determine a majority winner in a single-seat race from a field of candidates. With IRV, each voter has one vote and ranks candidates in order of choice (1, 2, 3, etc.). All first choices are counted, and if no candidate wins a majority of first choices the retabulation of ballots simulates a series of run-off elections. The last place candidate (candidate with the least first-choices) is eliminated. Ballots of voters who ranked the eliminated candidate first are then redistributed to their second-choice candidates, as indicated on each voter's ballot. First-choice ballots for candidates still in the running are again counted for those favored candidates. Last place candidates are successively eliminated and ballots are redistributed to next choices until one candidate remains or a candidate gains over 50% of votes. IRV is not a system of proportional representation.

Plurality election rule: Under plurality elections, in a single-seat race, the candidate with the most votes wins even if that represents a minority of voters. With a field of five candidates, it is possible to win with as little as 21% of the vote, for example. Plurality winners may, or may not, be the most preferred-choice of a majority of the voters. For this reason, it is sometimes called "minority rule." Plurality election rules are common in the U.S. and Vermont.

Proportional Representation (PR): This refers to a variety of systems used for electing a legislature in which the number of seats a party wins is more or less proportional to the percentage of popular votes received. PR does NOT refer to a parliamentary system in which the executive branch of government is selected by the legislative branch. PR can be used to elect the legislature in either a parliamentary or a presidential system such as the United States'. PR is not part of this Commission's recommendations.

Single Transferable Vote (STV): This is a preference voting system in which voters rank candidates in order of preference. The single vote can be transferred from one candidate to another according to the voters' rankings, depending on the cumulative result of other voters' ballots. STV can be used for IRV winner-take-all elections, and in multi-seat PR elections. In IRV elections, ballots can only be transferred from eliminated candidates to candidates still in the running. In PR elections, ballots can also be transferred from the surplus of a winning candidate, who has surpassed the winning threshold, to voters' alternate choices so as to minimize the number of wasted votes and achieve overall proportionality.

Winner-Take-All election: In contrast to PR, winner-take-all refers to an election rule whereby the majority (or in the case of plurality elections, merely the largest faction) in a district receives 100% of the seats. Some offices, such as Governor, are inherently winner-take-all, since there is only one seat. All Vermont elections are currently winner-take-all. Winner-take-all systems tend to exclude minority voices from legislative debate.