

### **A. Monotonicity as a Disputed Issue of Material Fact**

When the parties submitted their motions for summary judgment, all parties agreed that the facts were undisputed. In their opposition papers, however, Plaintiffs submitted expert affidavits on the issue of monotonicity. At the initial hearing on October 8, 2008, the Court asked the parties whether the affidavits created a disputed issue of material fact. Plaintiffs stated that a fact issue would arise only if Defendant and/or FairVote disputed that IRV was non-monotonic.

Neither Defendant disputes that IRV is non-monotonic; nor does FairVote.

All parties have provided the affidavits of experts. All experts agree that IRV is non-monotonic; in other words, that IRV could lead to a situation in which a voter's vote for a particular candidate harms, rather than helps, that candidate. (All such scenarios were hypothetical). The experts disagree on whether a non-monotonic voting system violates equal protection and is otherwise permissible. This disagreement relates to legal conclusions, not facts. The expert opinions do not create a disputed issue of material fact.