

Testimony at the Sec of State rulemaking hearing on August 8, 2018
Re: revised rules for ranked voting

Good morning. My name is Celeste Landry. I live in Boulder, CO.

Thank you for this opportunity to comment on the proposed Election Rules. Thank you also for revising the original proposed rules, particularly the definition of “winning candidate.”

Ranked voting, the subject of proposed Rule 26, is a timely topic as we see more and more momentum for better voting methods across the nation. Not surprisingly, the Secretary of State has received quite a number of comments on proposed Rule 26. Judging from the details in those comments, the rule is still in need of clarity and process improvements. In fact, one expert and advocate of ranked voting recommended holding off entirely on adopting Rule 26 until “a better rule is proposed.”

I submitted written comments on June 22, and I would like to emphasize a few points during my oral comments today. I would like to strongly urge you to more clearly separate the single-winner version – better known as instant-runoff voting – from the multi-winner version – better known as single transferable vote. I proposed a way to do that in the written comments that I submitted. Here are three examples to illustrate the importance of separating the different versions. [26.1 Defns]

- 1) Aspen had problems in its only ranked voting election in 2009 because election administrators only planned how to tabulate a single-winner contest, but both single-winner and multi-winner contests were on the ballot.
- 2) This year David Brooks of the *NY Times* in his June 1st column incorrectly explained how to tabulate a multi-winner ranked voting contest. He provided the single-winner tabulation method instead.*
- 3) The Economist magazine in their recent July 14-20 issue attempted to explain multi-winner ranked voting but left out the critical ideas of surplus votes and the winning threshold.*

The more people understand that the single-winner and multi-winner versions are tallied differently and have different properties, the more likely we are to have success implementing these methods when they are adopted. FairVote and I both suggested in our comments including a definition of “ranked voting method” which clearly distinguishes between instant-runoff voting and single transferable vote.

Moving on to another point: It seems important to note, for a single-winner contest, that the winning candidate must get over 50% of the “active ballots” or the “non-exhausted ballots,” but no term such as “active ballot” or “exhausted ballot” is in proposed Rule 26. Rather, the current phrasing is “over 50% of the votes cast.” Unless I’m misunderstanding the language, “votes cast” includes exhausted ballots. In the recent San Francisco mayoral election, the winning candidate did not receive a majority of the votes cast, but she did win a majority of the active ballots in the final round. [26.1 Defns]

Another point: Everyone who commented on the tabulation process of the multi-winner contests agreed that we should deal with winning candidates' surplus votes before we eliminate a candidate. Please make this change in Rule 26. [26.7]

Finally, I agree with FairVote that there should be an effort to conduct a preliminary tabulation of results soon after the election. If the media is fully aware that the number of outstanding, uncounted ballots may alter the election, they will be your partners in getting out the word that the results are preliminary. We see this right now with yesterday's Ohio special election. The media will not call the election because they don't want to sully their reputation. Colorado can't yet legally hold statewide ranked voting elections as they've had in North Carolina and, most recently, in Maine so please let localities announce unofficial, preliminary results soon after the polls close. [26.6 & 26.7]

To review my main points:

- 1) Please clearly distinguish between single-winner and multi-winner versions of ranked voting.
- 2) Please include language about active ballots and/or exhausted ballots.
- 3) For multi-winner contests please have the tabulation process transfer surplus votes before eliminating a candidate.
- 4) Please allow and encourage election administrators to conduct and announce tabulations of preliminary results.

In his comments, David Cary recommended "constructive engagement with domain-specific experts." Given the number of people who commented on Rule 26 and who provided resources for improving the rule, the Secretary of State's office could find many experts who would be happy to help write the gold standard of ranked voting election rules.

Meanwhile, I don't believe there aren't any elections in Colorado coming up this year which fall under Rule 26** so the Secretary of State's office could adopt the other proposed changes and come back with a well-vetted Rule 26 in a future rulemaking hearing.

Thank you.

*Attached

**Possible upcoming ranked voting elections-- Telluride 2019, Carbondale April 2020, Basalt 2020

could have a much fairer and better system with the passage of a law.

The way to do that is through multi-member districts and ranked-choice voting. In populous states, the congressional districts would be bigger, with around three to five members per district. Voters would rank the candidates on the ballot. If no candidate had a majority of first-place votes, then the candidate with the fewest first-place votes would be eliminated. Voters who preferred that candidate would have their second-choice vote counted instead. The process would be repeated until you get your winners.

This system makes it much easier for third and fourth parties to form, because voting for a third party no longer means voting for one with no chance of winning. You get a much more supple representation of the different political tendencies that actually exist in the country.

The process also means that people with minority views in their region have a greater chance to be represented in Congress. A district in Southern California, for example, might elect a Bernie Sanders-type progressive, a centrist business Democrat and a conservative.

The current system — wherein a vast majority of seats are safely red or blue

There's a better way to elect our government.

and noncompetitive, with only a handful of fiercely contested districts — disappears. Every district becomes a swing district, each vote much more important. Congress begins to work differently because with multiple parties you no longer have stagnant trench warfare — you have shifting coalition-building.

There's a reason voters in proportional representation countries are less disenfranchised with politics than we are. Their systems work better.

Over the last few decades, a lot of work has been done to fight gerrymandering, a reform that would have only a marginal effect on our politics. The good news is that attention seems to be shifting to ranked-choice voting, a change that would have much bigger and better effects.

In 2016, voters in Maine passed a referendum installing ranked-choice voting. The state's Legislature has done everything it can to fight it, but it looks like voters there will use the system for their June 12 primary, and have a chance to make the system permanent.

Representative Don Beyer of Virginia introduced legislation in Congress last year to make this kind of system national. Groups like FairVote champion the reform nationwide, and writers like Drutman are tireless advocates.

Right now our politics is heading in a truly horrendous direction — with vicious, binary political divisions overlapping with and exacerbating historical racial divisions. If we're going to have just one structural reform to head off that nightmare, ranked-choice voting in multi-member districts is the one to choose. □

DAVID BROOKS

One Reform to Save America

THERE ARE A BUNCH of different ways to do democracy. In Western Europe, most countries have proportional representation and a lot of different parties representing voter interests. In this country we've gone with a two-party system and winner-take-all elections.

During the middle of the 20th century, it seemed like we'd chosen the right approach. The proportional multiparty system allowed an extremist named Adolf Hitler to rise to power with the initial support of a tiny fraction of Germany's voters. Both American parties, meanwhile, seemed to bend toward compromise, knowing they had to win over the median voter in order to get to 50.1 percent majorities.

But even then, as Lee Drutman of the think tank New America points out, America really had a four-party system. There were liberal Republicans from places like the Northeast and conservative Republicans from the West. There were liberal Democrats on the coasts and conservative Democrats from the South. The four groups floated into different legislative coalitions depending on the issue and the moment, allowing for flexible bipartisan majorities.

Now the two-party system has rigidified and ossified. The two parties no longer bend to the center. They push to the extremes, where the donor bases and their media propaganda arms are. More and more people feel politically homeless, alienated from both parties and without any say in how the country is run.

Moreover, the whole way of practicing politics has been transformed. Each party imagines that it is one wave election from destroying the other side and gaining total power. Therefore, as Drutman notes, there's no interest in compromise, just winning and losing, gloating and seething.

Partisans' chief interest is in proving that the other party is despicable — in ramping up fear, hatred and the negative polarization that is the central feature of contemporary American politics.

The result is that people, especially the young, lose faith in democratic norms altogether. There are over 6,000 breweries in America, but when it comes to our politics, we get to choose between Soviet Refrigerator Factory A and Soviet Refrigerator Factory B.

The good news is that we don't have to live with this system. There's nothing in the Constitution that says there have to be only two parties. There's nothing in the Constitution about parties at all. There's not even anything in the Constitution mandating that each congressional district have only one member and be represented by one party. We could have a much fairer and better system with the passage of a law.

multi-winner } incorrect explanation

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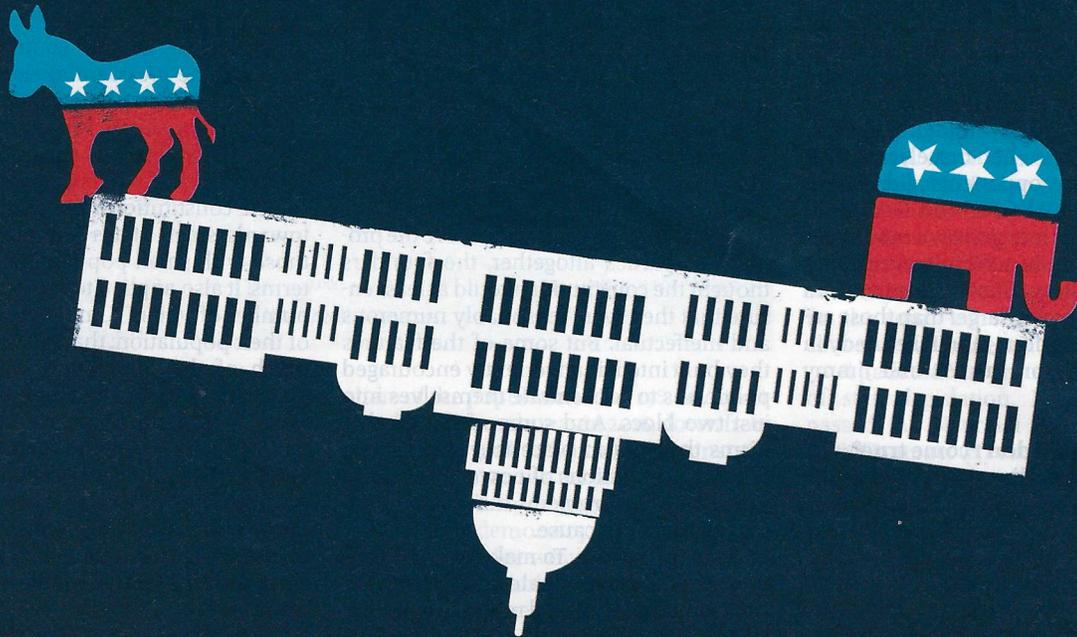
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The minority majority

WASHINGTON, DC

In recent years Americans have voted for Democrats more than for Republicans; why, then, do Republicans control their government?

WHEN pollsters ask Americans which party they plan to vote for in the elections for the House of Representatives this November, those preferring the Democrats lead those preferring the Republicans by around seven percentage points. But this does not mean the Democrats are a shoo-in to win the House. *The Economist's* statistical model of the race for control of the House of Representatives—which uses this sort of “generic ballot” polling, along with other data—currently says that, although the likelihood of a Democratic majority in the popular vote is a remarkable 99.9%, the Republicans still have a 30% chance of holding on to the House (see chart 1 on next page).

The source of this discrepancy is that Democrats will win their seats with big majorities in fewer districts, whereas Republicans will prevail by narrower margins in a larger number of districts. In 2016 Democrats who beat Republican opponents won an average of 67.4% of the two-party vote in their districts, whereas Republicans who defeated Democrats received an average of 63.8%. This imbalance is partly due to deliberate attempts to create districts that provide such results, and partly just down to the fact that Demo-

crats tend to live more tightly bunched together in cities. Together, these two factors put up quite an obstacle. According to our model, the Democrats need to win 53.5% of all votes cast for the two major parties just to have a 50/50 chance of winning a majority in the House.

If this imbalance were limited to a single chamber of the legislature, or a single election cycle, the Democrats' frequent carping about a stacked electoral deck might sound like sour grapes. All electoral systems have their oddities. But changes in where Americans live and contradictions in their constitution—a document designed to work with many weak factions that has instead encouraged and entrenched an increasingly polarised two-party system—have opened gaps between what the voters choose and the representation they get in every arm of the federal government. In recent decades these disparities have consistently favoured the Republicans, and there is no reason to think that trend is going to change on its own.

In the past three House elections, Republicans' share of House seats has been 4.5 percentage points greater than their share of the two-party vote. In 2012 they won a comfortable 54% of the chamber de-

spite receiving fewer votes than their Democratic opponents; in 2014 they converted a 51% two-party-vote share into 55% of the seats.

Such comparisons are harder for the Senate, where only a third of the 100 seats are contested in any election. But adding together all the votes from the most recent election of each senator, Republicans got only 46% of them, and they hold 51 of the seats. According to research by David Wasserman of the Cook Political Report, an electoral-analysis site, even if Democrats won the national vote by six percentage points over a six-year cycle, they would probably still be a minority in both houses.

That the Senate should be disproportionate would not have disappointed the men who wrote America's constitution. They wanted it to represent places, not people, and there is a case for that; other constitutions, such as Germany's, look to ensure regional representation in their upper house. But when it comes to its presidency, America stands alone.

In all the world's other 58 fully presidential democracies—those in which the president is both head of state and head of government—the winning candidate gets the most votes in the final, or only, round of voting. But due to the “electoral college” system that America's founders jury-rigged in part to square the needs of democracy with the demography of slavery, this does not hold true for America. States vote in the college in proportion to their combined representation in both houses of Congress. This set-up means that a candidate who wins narrowly in many small

▶ and smallish states can beat one who gets more votes overall, but racks most of them up in big majorities in a few big states.

During almost all of the 20th century this did not matter much; the candidate who got the most votes won every election from 1896 to 1996. But both of the past two Republicans to win the presidency have received fewer votes when first elected than their Democratic opponents did. In the contest between Al Gore and George W. Bush in 2000, this margin was a modest 0.5 percentage points. In 2016, however, it was substantial: Hillary Clinton's lead of 2.1 percentage points was larger than those enjoyed by the victorious John F. Kennedy in 1960, Richard Nixon in 1968 and Jimmy Carter in 1976.

Is a dream a lie if it don't come true?

America's various disproportional representations are the result of winner-takes-all voting and a two-party system where party allegiance and geography have become surprisingly highly correlated. Places where people live close together vote Democratic, places where they live farther apart vote Republican (see chart 2 on next page). Under some electoral systems this would not matter very much. Under America's it has come to matter a lot, in part because of an anti-party constitution.

America's founders wanted power to be hard to concentrate, and for people who held some powers to be structurally at odds with those who held others. To this end they created a system in which distinct

branches and levels of government provided checks and balances on each other. They hoped these arrangements would be sufficient to hobble any factions which sought to co-ordinate their actions across various levels and branches of government. The first two presidents, George Washington and John Adams, both warned that a two-party system, in particular, would be anathema to the model of government they were trying to build.

Aware that they could not solve the problem of parties altogether, the founders thought the constitution would at least ensure that they were reasonably numerous and ineffectual. But some of the features they built into it inadvertently encouraged politicians to concentrate themselves into just two blocs. And some of the mechanisms they put in place to guard against other concentrations of power went on to exacerbate the problems that such a two-party system can cause.

Take the Senate. To make sure the largest states do not dominate the rest, the constitution provides equal representation for all the states, large and small alike. This builds in an over-representation for people in small or sparsely populated places.

For most of the country's history, that bias had only a modest impact. The parties the founders feared competed strongly with each other in both urban and rural areas. Recently, however, population density has become a strong proxy for political preferences. Today the 13 most densely populated states have 121 Democratic

House members and 73 Republican ones; the remainder have 163 Republicans and 72 Democrats. According to data compiled by Jonathan Rodden of Stanford, nearly half the variance in the county-level vote shares in the presidential election of 2016 could be explained solely by their number of voters per square kilometre. Now that the rural has a party, a constitution that favours the rural favours that party.

The constitution's tipping of the scales towards small states was not limited to those with small populations in absolute terms. It also applied to those with a small number of voters compared with the size of their population: that is, states in which much of the population was enslaved. These states argued that their slave populations should count towards their allocation of seats in the House and the weight given to their preferences when choosing a president; the other states resisted. A compromise was struck whereby, when it came to the assignment of political power, a slave counted for three-fifths of a free man or woman.

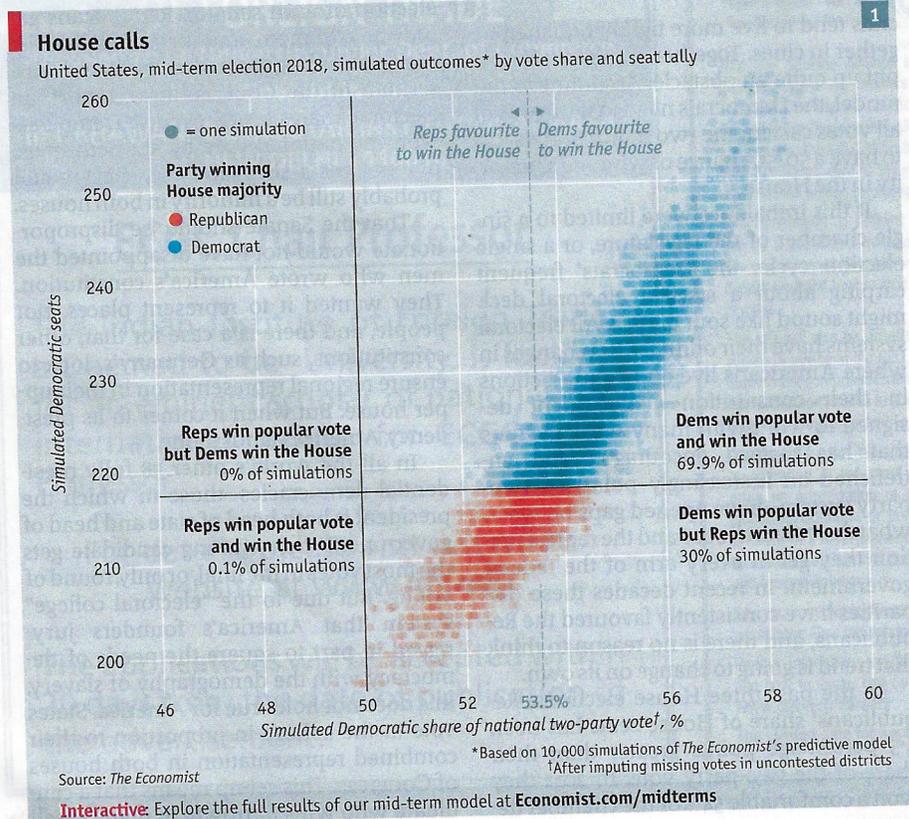
This odious arithmetic required the creation of an electoral college for the presidency, since it divorced the power of a state's votes from the number of people actually casting them. And the founders required an absolute majority in the college to elect a president—if no candidate received over 50% of electoral votes, the choice fell to the House. This created an incentive for the formation of nationwide parties whose candidates could win the necessary majority, thus encouraging the development of a two-party system.

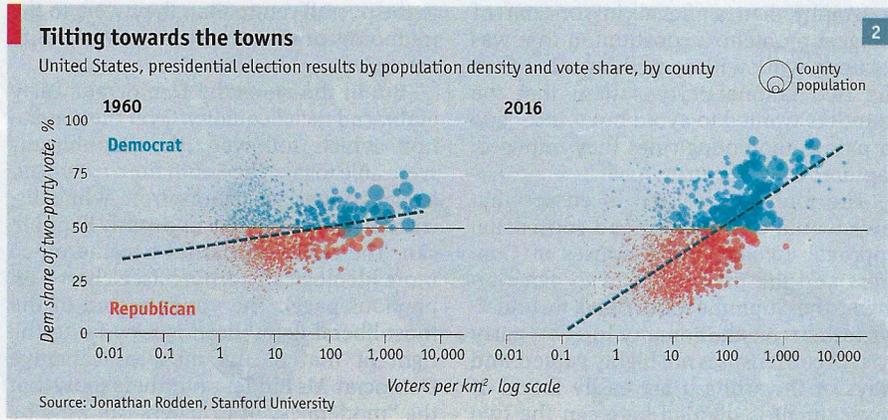
The constitution does not specify how states must allocate their electors—conceivably, states could have split their votes according to the proportion of the vote cast in that state for each candidate. But in order to maximise their influence over the final result, all but two of the states wound up casting their electoral votes on a winner-takes-all basis. As a result smaller parties could not amass any electoral votes at all, which locked in the two-party model.

The hard edge that you're settling for

After the civil war, population and voting were, in principle if not in Jim Crow practice, aligned. But the electoral college persisted, and with it a second formal bias towards low-population states, though not as marked as the one in the Senate. As of the census of 2010, the five most rural states wielded about 50% more electoral votes, and three times as many senators, per resident as the five most urban ones did.

True to the ideal that power should be dispersed, the constitution makes the drawing of districts for House elections a matter for the states. But once there were national parties that competed for state office, too, governors and state legislatures lost little time in drawing up districts spe-





specifically designed to improve their party's chances on the national stage. This gerrymandering is not a new phenomenon; it got its name in 1812.

In the run-up to an election held in 1841, the Democrats running Alabama chose to use a voting system in which all five representatives would be elected statewide, ensuring an all-Democrat delegation. Fearful of similar setbacks elsewhere, the Whig majorities in both houses of Congress passed a law requiring all states to use winner-takes-all, single-member districts. In 1932 a Supreme Court ruling enabled states to reinstate statewide elections for House members, and many did. But in order to prevent southern states from denying representation to black voters Congress restored the single-member-district requirement in 1967.

As a party of the cities, today's Democrats would find themselves at a disadvantage in any geographically based winner-takes-all electoral system in which receiving 99% of the vote is no better than getting 51%. But gerrymandering adds to the disadvantage. Republicans run more state governments than Democrats do, in part because in state legislatures, too, the Democrats concentrated in cities tend to win bigger majorities in fewer districts. That gives the Republicans more opportunities to game the system: in the 2012 redistricting cycle, the boundaries of 48% of House districts were drawn entirely by Republican officials, compared with just 10% by Democratic ones.

One response to all this is to say that the problem is the Democrats' to solve. They used to appeal outside the cities, towns and denser suburbs; if they were to do so again the constitutional bias towards less populated places would no longer trouble them. But although this may seem like sound politics, it is more to wish away, or paper over, the problem than to solve it. The distribution and make-up of America's population really has changed. More people live in cities than have ever done so before, and they want, and believe in, different things from those who don't. Adapting policies to appeal to an ever-shrinking

share of the population—just 19% of Americans lived in rural areas in 2016, down from 25% in 1990 and 36% in 1950—against the wishes of the party's urban base cannot be a stable long-term strategy. Nor is it a recipe for a healthy democracy.

An alternative would be to try to make the system equitable given today's aligned ideological and geographical polarisation. This is not easy. Creating a directly elected presidency or restructuring representation in the Senate would require changing the constitution, and just now the idea of an amendment aimed at either of these goals receiving assent from two-thirds of both houses of Congress is implausible. That said, there is another mechanism for tabling an amendment: a constitutional convention called by two-thirds of the states. This route has never been used, but activists for a balanced-budget amendment have signed up 28 of the 34 states they need for such a convention. If it were ever to be held, other amendments might possibly be tabled there, too, including perhaps some that reform the voting system.

Absent that wild card, though, most efforts at reform are aimed below the constitutional threshold. On the electoral college, activists think they have found paths to abolition that not only fit within the constitution's constraints, but do not even require action by Congress.

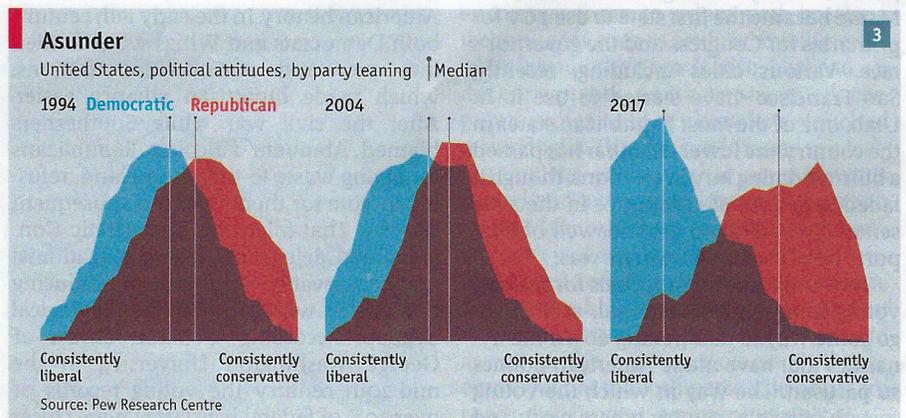
One of these runs through the courts. A campaign led by Lawrence Lessig, a law

professor at Harvard, and David Boies, an eminent trial lawyer, has filed suits in four states arguing that the winner-takes-all allocation of their electoral-college votes is unconstitutional. If all a state's electoral-college votes go to a candidate supported by just 51% of that state's voters, they argue, the other 49% have in effect been disenfranchised. How this argument fares has yet to be seen. But to achieve its goals it would need to be upheld by the Supreme Court. Invalidating the voting procedure used for most of American history by the vast majority of states would be a big step for the court—especially given its current conservative make-up.

A path that may prove easier makes use of state legislation. In 2007 Maryland passed the National Popular Vote Interstate Compact (NPVIC), a law that obliges the state's presidential electors to vote for the winner of the nationwide popular vote rather than the victor in their state—so long as states representing an overall majority of the electoral college have approved an identical bill. Eleven states have since followed Maryland's lead. The NPVIC now has 172 electoral votes committed, over halfway to the magic number of 270—a majority in the college.

Just cut it loose

So far, the compact has become law only in states with Democratic legislatures. But some Republicans see its merit, too. In the presidential elections of 2004, 2008 and 2012, the disposition of states in play meant that the Democratic candidate would have won the electoral college had the national popular vote been tied, and a "blue wall" of northern and coastal states was said to give Democratic candidates an inbuilt advantage. The holes Donald Trump kicked in the rusty northern bit of that wall, and his coupling of an electoral-college win with a popular-vote defeat, has understandably dampened Republican enthusiasm. But John Koza, the leader of the NPVIC effort, says that as of last year 153 of the 156 Republican state legislators who sponsored NPVIC bills in 2016 are still on board. Last year Saul Anuzis and Michael ▶▶



► Steele, the former chairman of the Michigan and national Republican parties, wrote that the NPVIC was “an idea whose time has come”.

The House, too, could be reformed without any constitutional amendment. Again, the legal route looks hard. The Supreme Court sent challenges to various forms of gerrymandering back down to the lower courts in its recent term, rather than issuing a firm ruling. Brett Kavanaugh, Mr Trump’s recently announced nominee to the court, would probably, if confirmed, be less likely to restrict the practice than the departing Anthony Kennedy was.

But this has been a banner year for anti-gerrymandering ballot initiatives which bypass governors and legislatures and their party allegiances. In May, Ohio voters approved a measure making it harder for the state legislature to draw up partisan districts. In November voters in Colorado, Michigan, Missouri and Utah will be able to vote for reforms that either make re-drawing districts a bipartisan business or outsource it to non-partisan commissions.

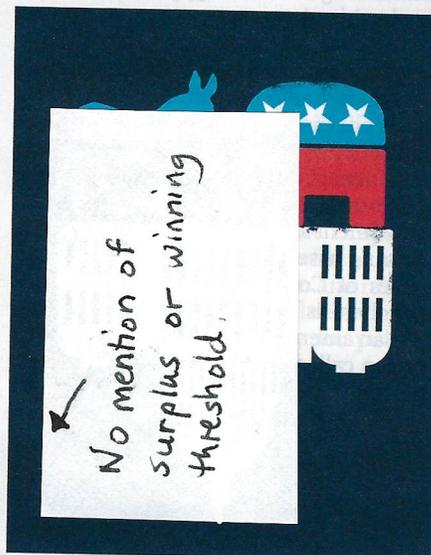
A more ambitious initiative, if one that is less likely to see short-term success, has been introduced in the House. Don Beyer, a Democratic congressman, has sponsored a bill mandating the nationwide adoption of multi-member districts and ranked-choice voting (RCV), a system used in Australia, Ireland and Sri Lanka. Under Mr Beyer’s proposal, voters would not choose a single candidate, but rank the candidates standing by order of preference until reaching someone whom they did not want to support under any circumstances. When the ballots were counted, the contender with the fewest first-choice votes would be eliminated, and his or her support reallocated to those voters’ second choices. This would then be repeated until the field was reduced to the required size—between three and five representatives, depending on the seat. The system is broadly, though not entirely, proportional. It also tends to ensure that candidates acceptable to a broad swathe of voters are rewarded for that breadth.

Mr Beyer says he knows his bill will not pass in today’s Congress. But in June Maine became the first state to use RCV for primaries for Congress and the governor’s race. Various cities—including, recently, San Francisco—have started to use it. In Utah, one of the most Republican states in the country, the lower chamber has passed a bill mandating RCV in elections, though it failed to get out of committee in the state senate. It is hardly a groundswell of support—but it is more than there was.

And unlike other proposals for making voting more representational, RCV might go some way to dampening down the dynamics that have made American politics so partisan. The way in which the voting system fails in a country where party and

geography align is, after all, just one part of a bigger problem: a constitution that was set up to work with something other than the two-national-party system that the founders wanted to avoid but which, due in part to the voting rules they imposed, captured their country.

The founders wanted to ensure that laws would command broad consensual approval: two powerful houses of Congress and the president had to agree on them, the Supreme Court had to underwrite their constitutionality. In a two-party system consensus is not highly valued, and ways of thwarting it are easily found. If government is divided between the two parties, they can use the checks and balances the founders provided to veto each other’s proposals, preventing policies from being enacted even if they might, on their merits, draw consensual support. If one



party secures unified control, it can ignore the checks and balances and impose its will on the temporarily powerless opposition, consensus be damned.

When parties are broad churches, and when there are causes that, for at least some of their members, matter more than party unity, these problems are minimised. And that is how it was for much of American history. In the early 19th century both Democrats and Whigs were divided into pro- and anti-abolition factions, which made bipartisan alliance easier. After the civil war white Southerners blamed Abraham Lincoln’s Republicans for laying waste to their homeland, refusing to vote for them over the subsequent century. That filled the Democratic Congressional delegation with segregationist and conservative Southerners, producing two parties with considerable ideological overlap. According to Sarah Binder of George Washington University, in the mid-20th century the voting records of over 30% of federal legislators were closer

to the overall centre than they were to the midpoints of those representatives’ political parties.

But in the 1960s the Democratic Party embraced racial equality. Over the generation which followed, the Republicans were able to take the South from it. By 2010 congressional delegations from white districts in the South were uniformly Republican. The realigned parties became much more ideologically distinct (see chart 3 on previous page). The voting record of the most liberal Republican is now far to the right of that of the most conservative Democrat. Ms Binder’s numbers show that the “moderates” in Congress can now be counted on one hand.

The result has been a great deal of gridlock—aided, in the Senate, by filibusters that used to be rare and are now the norm. Congress has approved around 40% fewer laws per session since 1994 than it did from 1975–94. The baleful equilibrium is punctuated, when control of the various branches aligns, by spurts of partisan lawmaking. At present, the main check on the Republican use of that dominance is their internal division. Since 2010, majority-party leaders have generally refused to bring legislation to the floor that does not command a majority of their own party. As William Connelly of Washington & Lee University writes, “intra-party factionalism curbs the excesses of inter-party factionalism”—but it exacts a cost in stasis.

Poking that dog with a stick

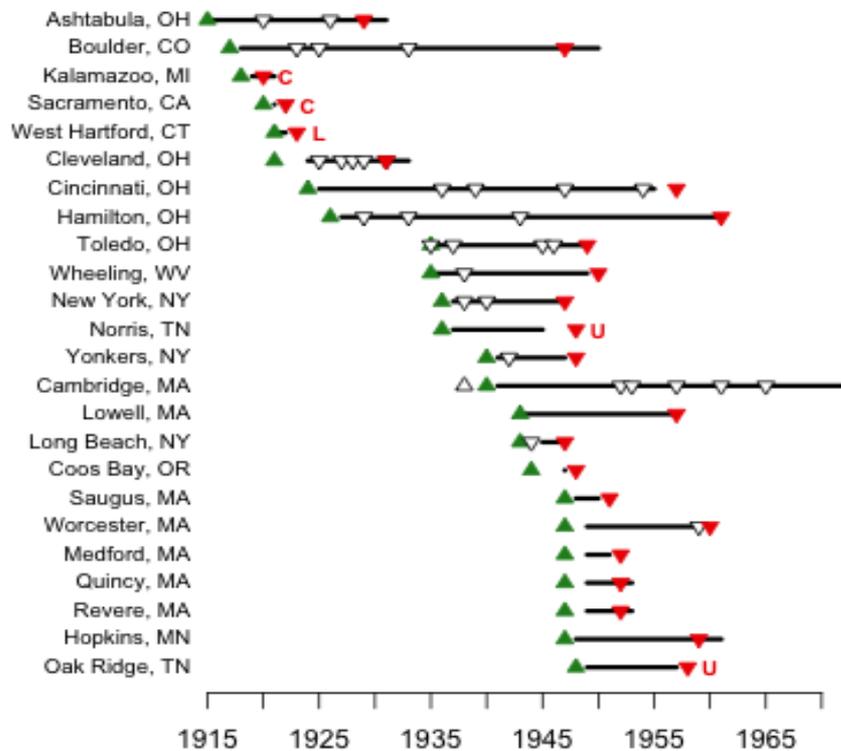
This is not a situation open to easy reform; nor would all want to reform it. Parties try to become strong, and remain strong, for perfectly understandable political reasons. Strong parties can be a boon, though the balance of benefit to risk is better in a system designed with them in mind. And American society is divided in ways it was not before; its partisan politics are in part a cause of that—but in part, too, a consequence of it.

An electoral system that has its thumb on the scales, though, is harder to defend. And measures to redress that electoral bias through greater proportionality in the voting system might also help with the broader issues of political division. Systems with elements of proportional representation, such as that sought by reformers of the electoral college or House districts, not only provide bulwarks against charges of illegitimacy. They also have a tendency towards consensus of the sort the founders wanted. There is a reason why, when choosing their own constitutions, no other country has for long survived with a replica of the American model—and why when guiding the design of constitutions for others, as they did in post-war Germany and Japan, Americans have always suggested solutions quite unlike the one under which they live. ■

Use of STV in the US in the 1900s

Chart by Jack Santucci, jacksantucci.com, 2017 PhD, Georgetown University

Use of proportional representation (STV) in US cities



Empty triangles: failed adoption (upward) or repeal referenda (downward).

All but New York City included PR in council-manager charters.

Non-referendum repeal methods: C=unconst. by court, L=state legislature, U=unknown.

CHARTER

AND

CODE

OF

BOULDER, COLORADO

1925

Published by Authority of the City Council
of Boulder, Colorado

Compiled and Prepared for Publication
By FRANK L. MOORHEAD, City Attorney

PREFATORY SYNOPSIS

The Charter Convention of the City of Boulder, Colorado, herewith submits to the voters of the City the Charter which it has framed in conformity with the regulations set forth in Article Twenty of the State Constitution, an article which has come to be known throughout the State as the "Home-rule Amendment."

The Convention began its labors, and it ended them, with the conviction that its one chief duty was to provide for the City of Boulder a simple and direct form of local government based upon sound business principles, and easily responsive through amendment to the changing popular will. In working out this problem, the people were thought of as the stockholders in a large and growing corporation, which is administered by a board of directors through a presiding officer and a manager. Free use was made of the numerous charters already in successful operation in different parts of the country, and also of the valuable suggestions that came from various local societies and public-spirited citizens. The result, as set out below, may therefore rightly be called the joint product of the Convention, the community, and the illuminating experience of cities having Home Rule.

This Charter vests the people with every political power permitted to any community under the Constitution of the State. These powers may be exercised in two ways: through a Council of nine members, elected at large by popular vote, and serving without compensation; secondly, by direct action, through the Initiative, the Referendum, and the Recall. No direct action is subject to review by the Council. The rights and powers of the people are well safe-guarded, though prompt and certain action, free at all times from dead-lock, is assured. The presiding officer of the Council, chosen from its own membership, is the Mayor of the City, he being its official head for all ceremonial, legal, and military uses. The term of the mayoralty is two years, unless shortened by the choice of a new presiding officer.

In all campaigns, nominations are by petition. For elections of officials, the Hare system of preferential voting is prescribed. This system insures a real representation of like-thinking groups of voters, instead of the present fictitious representation based on wards or other arbitrary geographical districts. It minimizes also the well known evils of parties and of excessive campaign funds. All elective officers are subject to recall.

The executive and administrative business of the City is put in charge of a City Manager, not necessarily a local citizen, chosen by the Council for an indefinite term. He is responsible to the Council, which may at any time remove him; but it has no voice in his choice of methods of execution, nor in the appointment or discharge of his working force; here, the power is his, limited only by his responsibility to the Council for the results achieved.

The business of the City is carried on through six principal departments, each under the City Manager, or under a Director appointed by him.

1. The Department of Public Service includes public improvements and buildings, streets and other travel-ways, water

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except that the tax levy ordinance, the annual appropriation ordinance, any ordinance providing for a vote by or submission to the people, and ordinances ordering improvements initiated by petition and to be paid for by special assessments shall take effect immediately upon publication.

Section 19. AMENDMENT OR REPEAL:—No ordinance or section thereof shall be amended, superseded, or repealed except by an ordinance regularly adopted.

Section 20. ORDINANCES GRANTING FRANCHISES:—No proposed ordinance granting any proposed franchise shall be put upon its final passage within sixty days after its introduction, nor until it has been published not less than once a week for two consecutive weeks in two daily newspapers of the City in general circulation.

Section 21. RECORD OF ORDINANCES:—A true copy of every ordinance when adopted shall be numbered and recorded in a book marked "Ordinance Record" and a certificate of adoption and publication shall be authenticated by the certificate of the publisher, and by the signatures of the Mayor and City Clerk. The ordinances adopted by the vote of the qualified electors of the City shall be separately numbered and recorded, commencing with "People's Ordinance No. 1."

ARTICLE III

Elections

Section 22. MUNICIPAL ELECTIONS DEFINED:—A General Municipal Election shall be held in the City of Boulder on the eleventh day of December, 1917, and on the first Tuesday after the first Monday in November in 1919, and on the first Tuesday after the first Monday in November of every second year thereafter, and shall be known as the General Municipal Election. All other municipal elections shall be known as Special Municipal Elections.

Section 23. NOMINATION BY PETITION—REQUIREMENTS OF PETITIONS:—All elective officers of the City shall be nominated by petition which shall consist of the candidate's consent, the prayer and signatures of the petitioners, and the City Clerk's certificate of petition. Each petition shall be on a separate paper, of uniform size, to be provided by the City Clerk, and shall contain the name of but one candidate. No elector shall sign petitions for more candidates than the number of places of that particular designation to be filled at the election; and should he do so, his signature shall be void as to the petition or petitions which he last signed.

Section 24. CANDIDATE'S AFFIDAVIT OF CONSENT:—Before any petition is filed with the City Clerk, the candidate whose name appears on said petition shall appear before the City Clerk, and take the oath (or affirmation) which appears on

Section 25. REQUIREMENTS FOR SIGNING PETITIONS:—Before signing a petition of nomination, each signer thereof the form of petition herein set forth,

shall take oath (or affirmation) before the City Clerk that the representations set forth in the petition are true, and shall sign his name thereto in a space designated by the City Clerk, together with his residence, street and number, place of business and the date of signing.

Section 26. CITY CLERK'S CERTIFICATE OF PETITION:—When a petition of nomination shall have been signed by not less than twenty-five and not more than thirty-five qualified and duly registered electors, and not later than the fifteenth day before the pending municipal election, the City Clerk shall check such petition with the official registration list, determine its sufficiency, and, if sufficient, shall append his Certification of Petition, and file the completed petition in his office, together with the date and certificate of his filing thereof.

Section 27. FORM OF NOMINATION PETITION:— CANDIDATE'S CONSENT.

STATE OF COLORADO, }
COUNTY OF BOULDER, } SS.
CITY OF BOULDER.

I, _____, do solemnly swear (or affirm)
(Name of Candidate)

that I am a qualified elector of the City of Boulder and that on the date of the next General Municipal Election, I will be not less than twenty-five years of age and will have been a resident of the City of Boulder for the five years immediately prior thereto and that if legally nominated, I will stand as candidate for Councilman at the General Municipal Election to be held on _____ A. D. 19____

(Candidate's signature.)

Subscribed and sworn to before me this _____
day of _____, A. D. 19____

(Seal of the City of Boulder.)
City Clerk.

ELECTORS' PETITION.

We, the undersigned electors of the City of Boulder, hereby nominate _____, whose residence is _____, whose place of business is at _____, for office of _____ to be voted upon at the election to be held in the City of Boulder on the _____ day of _____, 19____, and we individually swear (or affirm) that we are qualified to vote for a candidate for the above office, and that we have not signed more nomination petitions of candidates for this office than there are persons to be elected thereto; and we further swear (or affirm) that we join in this petition for the nomination of the above named person upon the condition that the said _____ has not become a candidate as the nominee or representative of, nor because of any prom-

ised support from, any political party, or from any person or firm or combined interests in any measure or franchise.

No.	Names of Electors	Residence	Place of Business	Date of Signature	Check Mark by Clerk
1.					
2.					
3.					
35.					

CITY CLERK'S CERTIFICATION OF PETITION.

STATE OF COLORADO,
 COUNTY OF BOULDER, } SS.
 CITY OF BOULDER.

I hereby certify that each and every person whose signature appears on this petition, personally appeared before me on the day and date set opposite his name, was duly sworn as to the matters set forth in said petition, and signed his name as petitioner for the purpose above set forth; and I further certify that I have examined the official registration list of persons qualified to vote at the next ensuing municipal election named in such petition; that _____ of the above petitioners (state the number) appear as duly qualified and registered electors in the City of Boulder; and that to the best of my knowledge and belief this petition is _____ sufficient.

In testimony whereof, I have hereunto set my hand and the seal of the City of Boulder this _____ day of _____ A. D. 19____ (Fifteenth day before election)

 City Clerk.

(Seal of the City of Boulder.)

Section 28. TIME OF COMPLETING THE PETITION:—A petition of nomination shall be completed and filed in the office of the City Clerk not earlier than thirty nor later than fifteen days before the election.

Section 29. WITHDRAWAL FROM NOMINATION:—Any person having been duly and regularly nominated as herein provided, may, prior to the tenth day preceding the election for which he has been nominated, withdraw from such nomination by filing with the City Clerk a sworn statement of such withdrawal.

Section 30. PRESERVATION AND FILING OF PETITIONS:—The City Clerk shall preserve and file in his office for a period of six years, all petitions of nomination and all certificates, acceptances and withdrawals belonging thereto.

Section 31. ELECTION NOTICES:—The City Clerk shall on the tenth day before the election certify a list of the candidates so nominated for office at such election, whose names

are entitled to appear upon the ballot as being the list of candidates nominated as required by this Charter, together with the offices to be filled at such election, designating whether such election shall be for a full or unexpired term; and he shall file in his office said certified list of names with residence and business addresses, and the offices so to be filled, and he shall cause to be published a notice calling such election, for five successive days before such election, in not more than two daily newspapers of general circulation and published in the City of Boulder, which notice shall contain a list of said names of candidates, with residence, place of business, the offices to be filled, the time when and the places at which such election shall be held.

Section 32. GENERAL ELECTION REGULATIONS:—The provisions of any and all State laws now or hereafter in force, except as the Council may otherwise by ordinance provide, or as may be otherwise herein provided, relating to the qualification and registration of electors, the manner of voting, the duties of election officers, and all other particulars in respect to the management of elections, in so far as the same may be applicable, shall govern all municipal elections; Provided, that the City Council, exclusive of such members thereof as are candidates at the then pending election, shall constitute the General Canvassing and Election Board, and shall meet and duly canvass the election returns, as certified by the precinct or district election officials, which returns and certifications shall be in accordance with the provisions of this Charter. If at any time the number of Councilmen eligible to serve on the General Canvassing and Election Board be less than five, it shall be the duty of the City Council at a regular meeting prior to the day of election, by resolution duly entered on its records, to designate a sufficient number of qualified electors, not candidates at such election, to sit with the eligible members of the Council on such board so that the said board in sitting shall never consist of less than five; And, Provided further, that the City Council of the present existing government of the City of Boulder, together with such qualified electors as may be by them designated, shall constitute the General Canvassing and Election Board for the purpose of canvassing and determining the result of the first election to be held hereunder. Said Board shall have power to appoint such clerks and assistants as may be necessary to canvass the vote. The Council shall make the necessary appropriation to meet the expenses of such clerks and assistants.

The City Clerk or his duly authorized assistant shall act as Secretary of the Board of Canvassers, and shall spread the result on a record kept for the purpose, and shall issue such certificates, under the Seal of the City, as the circumstances may warrant and necessitate.

Section 33. PREPARATION AND FORM OF BALLOTS:—All ballots used in municipal elections held under this Charter shall be printed by the City, and shall contain the names of the regularly nominated candidates, without party or other designation. The arrangement of names in each group shall

be alphabetical. The ballot shall contain as many additional blank spaces in each group (for voting for, and writing in names of additional candidates) as there are places to be filled in such group at the pending election. The form of ballot shall be substantially as follows; but the City Clerk may adopt such method for segregating the different groups of candidates (for offices of different terms, to be voted on at the same election) as he may consider desirable or convenient, and in conformity with this Charter or such ordinances as may be hereafter adopted, or the laws of the State applicable thereto:

OFFICIAL BALLOT

Directions to Voters:
 Put the figure 1 opposite the name of your first choice. If you want to express also second, third, and other choices, do so by putting the figure 2 opposite the name of your second choice, the figure 3 opposite the name of your third choice, and so on. You may express thus as many choices as you please.
 This ballot will not be counted for your second choice unless it is found that it cannot help your first; it will not be counted for your third choice unless it is found that it cannot help either your first or your second, etc. **THE MORE CHOICES YOU EXPRESS, THE SURER YOU ARE TO MAKE YOUR BALLOT COUNT FOR ONE OF THE CANDIDATES YOU FAVOR.**
 A ballot is spoiled if the figure 1 is put opposite more than one name. If you spoil this ballot, tear it across once, return it to the election officer in charge of the ballots, and get another from him.

FOR MEMBERS OF THE COUNCIL

(For term of _____ years) -----Are To Be Chosen From This Group.	
Choice	Candidates

Section 34. MARKING OF BALLOTS:—Ballots for the election of Councilmen shall be marked according to the rule set out in the preceding section, which shall always be printed at the top of each ballot under the head of "Directions to Voters."

Section 35. RULES FOR COUNTING THE BALLOTS:—Ballots cast for the election of members of the Council shall be counted and the results determined by the election authorities according to the following rules:

- (a) On all ballots a cross shall be considered equivalent to the figure 1. So far as may be consistent with the general election laws, every ballot from which the first choice of the voter can be clearly ascertained shall be considered valid.
- (b) The General Canvassing and Election Board shall sit in the Council Chamber for the purpose of receiving and counting the ballots on the day of election, and shall, by duly appointed and sworn clerks and messengers appointed for that purpose, receive from the election boards in the various voting precincts, districts or voting units, from time to time as they may require the same, the ballots cast in the respective precincts. Such transfer of ballots from the various precincts, districts or voting units, to the said Canvassing Board, shall be made in sealed ballot boxes; the said Canvassing Board shall first sort and count the ballots as they are received according to the first-choices of the voters, the said count continuing as to each precinct, district or voting unit, separately, until all ballots have been received and counted from the various precincts, districts or voting units. The ballots declared invalid as to any group by the Canvassing Board shall be held in separate packages, properly marked on the outside, while the count as to that group is in progress.
- (c) First-choice votes for each candidate shall be added and tabulated. This completes the first count.
- (d) The whole number of valid ballots shall then be divided by a number greater by one than the number of seats to be filled. The next whole number larger than the resulting quotient is the quota or constituency that suffices to elect a member.
- (e) All candidates the number of whose votes on the first count is equal to or greater than the quota shall then be declared elected.
- (f) All votes obtained by a candidate in excess of the quota shall be termed his surplus.
- (g) The surpluses shall be transferred, the largest surplus first, then the next largest, and so on, according to the following rules.
- (h) The transferable ballots of a candidate having a surplus shall be sorted into separate piles according to the next choice marked on each for a continuing candidate. The non-transferable ballots shall be sorted into a separate pile. The number of ballots in each pile shall then be ascertained. If the number of the transferable ballots is equal to or less than the surplus, they shall all be successively transferred,

↑ Transfer surplus (g)
 before eliminating a candidate

each to the continuing candidate marked on it as next choice in accordance with rule (n).

If the number of the transferable ballots is greater than the surplus, such ballots to the number of the surplus shall be successively transferred, the particular ballots thus taken for transfer as the surplus being taken from the several piles proportionately according to the following directions:

(1) Multiply the number of ballots in each pile of transferable ballots by the fraction of which the numerator is the number of surplus ballots and the denominator is the total number of transferable ballots in the several piles.

(2) Of the fractions that may appear in the resulting products, as many of the largest shall be considered as having the value of one as may be necessary to make the total number of ballots transferred equal to the surplus. All other fractions shall be disregarded.

(3) The product in the case of each pile is the number of ballots to be successively transferred from the pile, each to the continuing candidate marked on it as next choice in accordance with rule (n).

The particular ballots to be taken for transfer from each pile shall be taken as they happen to come to hand without selection.

If any ballot properly reckoned as transferable at the beginning of the process prescribed in this rule (h) becomes non-transferable during the process, it shall be treated thereafter as a non-transferable ballot.

(i) "Ballots capable of transfer" means ballots from which the next choice of the voter for some continuing candidate can be clearly ascertained. A "continuing candidate" is a candidate as yet neither elected nor defeated. "Successively" means one after another separately so far as the work of one electoral official or clerk is concerned; but nothing in this section is meant to prevent the transfer of ballots by two or more officials or clerks simultaneously, provided only that precautions are taken to avoid transferring any ballot to a candidate who has already received the quota.

(j) The transfer of each ballot shall be tallied on sheets provided by the City Clerk for that purpose.

(k) After the transfer of all surpluses, the votes standing to the credit of each candidate shall be added up and tabulated, as the second count.

(l) After the tabulation of the second count (or after that of the first count if no candidate has received a surplus on the first) every candidate who has no votes to his credit shall be declared defeated. Thereupon the candidate lowest on the poll as it then stands shall be declared defeated, and all his ballots capable of transfer shall be transferred successively to continuing candidates, each ballot being transferred to the credit of that continuing candidate next preferred by the voter. After the transfer of these ballots a fresh tabulation of results shall be made. In this manner candidates shall be successively

declared defeated, and their ballots capable of transfer shall be transferred to continuing candidates, and a fresh tabulation of results made. After any tabulation the candidate next to be declared defeated shall be the one then lowest on the poll.

(m) If after the second or any later count the total of the votes of two or more candidates lowest on the poll is less than the vote of the next higher candidate, those lowest candidates shall be declared defeated simultaneously, and all their ballots capable of transfer shall be transferred successively to continuing candidates, each ballot being transferred to the credit of that continuing candidate next preferred by the voter. In this operation the ballots of the lowest candidate shall be transferred first, then those of the candidate next higher, and so on. No fresh tabulation of results shall be made until the ballots of all the candidates thus simultaneously defeated have been transferred.

(n) Whenever in the transfer of a surplus or of the ballots of a defeated candidate the votes of any candidate become equal to the quota, he shall immediately be declared elected and no further transfer to him shall be made.

(o) When candidates to the number of the seats to be filled have received a quota and have therefore been declared elected, all other candidates shall be declared defeated and the election shall be at an end; when only one seat remains to be filled, and the votes of one continuing candidate exceed the total of all the votes of the other continuing candidates, that candidate shall be declared elected and the election shall be at an end; and when the number of continuing candidates is reduced to the number of seats to be filled, those candidates shall be declared elected whether they have received the full quota or not and the election shall be at an end.

(p) If at any count two or more candidates at the bottom of the poll have the same number of votes, that candidate shall first be declared defeated who was lowest at the next preceding count at which the number of their votes was different. Should it happen that the number is the same on all counts, lots shall be drawn to decide which candidate shall next be declared defeated. Unresolvable ties shall in all cases be determined by lot.

(q) In the transfer of the ballots of any candidate who has received ballots by transfer, those ballots shall first be transferred upon which he was first choice, and the remaining ballots shall be transferred in the order of the counts by which they were received by him.

(r) On each tabulation a record shall be kept, under the designation "non-transferable ballots," of those ballots which have not been used in the election of any candidate and which are not capable of transfer.

(s) Every ballot that is transferred from one candidate to another shall be stamped or marked so that its entire course from candidate to candidate throughout the counting can be conveniently traced. The ballots shall be preserved by the general electoral authorities until the end of the term for which the members of the council are being elected. In case a re-count of the ballots is made, every ballot shall be made

to take in the re-count the same course that it took in the original count unless there is discovered a mistake that requires its taking a different course, in which case the mistake shall be corrected and also any further changes made in the course taken by ballots that may be required as a result of the correction. These principles shall apply also to the correction of any error that may be discovered during the original count.

(t) So far as may be consistent with good order and with convenience in the counting and transferring of the ballots, the public, representatives of the press, and especially the candidates themselves or their duly authorized representatives shall be afforded every facility for being present and witnessing these operations.

Section 36. EXPENDITURE OF MONEY ON ELECTIONS:
—All expenditures of money in aid of or for the purpose of defeating the election of candidates or in behalf of or against decisions on public utility, or franchise questions, or initiated or referred measures, or bond issues, before the electorate for a vote, except for holding public meetings and printing and distributing literature, are prohibited.

No candidate, nor any person, association, or organization on behalf of or in opposition to any person's candidacy shall directly or indirectly pay, promise to pay, or cause to be paid, in cash or by any other material inducement, for work for or against the election of any such candidate. No candidate shall directly or indirectly hire, use or cause to be used or hired in aid of his candidacy, any automobile, carriage or other vehicle for the transporting of voters to or from the polls.

The provisions of this section shall apply to all general, special and recall elections, and to the registration of voters.

No person, persons, business firm or partnership, nor corporation directly or indirectly interested financially in or who would be financially affected by a decision on a public utility or franchise question or any initiated or referred measure, or bond issue, before the electorate for a decision, nor any person, association, or organization on behalf of either or any of them, directly or indirectly, shall pay or cause to be paid, in cash or by any other material inducement, for work in behalf of or against such a decision. No person, persons, business firm or partnership, corporation, or any person, association or organization in behalf of or against either or any of them shall directly or indirectly hire, use or cause to be used or hired in behalf of or against such a decision, any automobile, carriage or other vehicle for the transporting of voters to or from the polls.

Every elective officer, at the time he takes his oath of office, shall make and file with the City Clerk an oath that he has not violated any of the provisions of this section, which oath shall enumerate specifically the prohibitions in this section and shall contain a complete itemized statement of expenditures of money, or of the giving of any other consideration or promise by him or by any other person in his behalf in such election.

A violation of any of the provisions of this section or of any applicable State law by any candidate, or by any person, association or organization in his behalf, shall disqualify such candidate from holding the office for which he is a candidate. A violation of any of the provisions of this section or of any State law, in behalf of a public utility or franchise decision shall subject such decision to invalidation by a Court of competent jurisdiction at its discretion.

Any person, persons, business firm or partnership, or corporation, or any person, organization or association on behalf of either or any of them, violating the provisions of this section shall be guilty of a misdemeanor.

ARTICLE IV DIRECT LEGISLATION The Initiative

Section 37. POWER TO INITIATE ORDINANCES:—The people shall have the power at their option to propose ordinances, including ordinances granting franchises or privileges, and other measures, and to adopt the same at the polls, such power being known as the initiative. A petition, meeting the requirements hereinafter provided and requesting the Council to pass an ordinance, resolution, order or vote (all of these four terms being hereinafter included in the term "measure") therein set forth or designated, shall be termed an initiative petition and shall be acted upon as hereinafter provided.

Section 38. PREPARATION OF INITIATIVE PETITIONS:—Signatures to initiative petitions need not all be on one paper, but the circulator of every such paper shall make an affidavit that each signature appended to the paper is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify the place. All such papers pertaining to any one measure shall have written or printed thereon the names and addresses of at least five electors who shall be officially regarded as filing the petition, and shall constitute a committee of the petitioners for the purposes hereinafter named. All such papers shall be filed in the office of the City Clerk as one instrument. Attached to every such instrument shall be a certificate signed by the committee of petitioners, or a majority of them, stating whether the petition is intended to be a "Five Per Cent Petition" or a "Fifteen Per Cent Petition."

Section 39. FILING OF PETITION:—Within ten days after the filing of the petition the City Clerk shall ascertain by examination the number of electors whose signatures are appended thereto and whether this number is at least five per cent or fifteen per cent, as the case may be, of the last preceding vote cast within the City for all candidates for Governor, and he shall attach to said petition his certificate showing the result of said examination. If, by the City Clerk's certificate, of which notice in writing shall be given to one or more of the