IN THE SUPREME COURT OF THE STATE OF ALASKA

Scott A. Kohlhaas, The Alaskan Independence Party, Robert M. Bird, and Kenneth P. Jacobus, Appellants, v. State of Alaska; State of Alaska, Division of Elections; Lieutenant Governor Kevin Meyer, in his Official Capacity as Supervisor of Elections; Gail Fenumiai, in her Official Capacity of Director of the Division of Elections, Appellees, and Alaskans for Better Elections, Inc. Intervenor-Appellee. Superior Court No. 3AN-20-09532CI	Supreme Court Case No. S-18210

APPEAL FROM THE SUPERIOR COURT FOR THE STATE OF ALASKA, THIRD JUDICIAL DISTRICT AT ANCHORAGE, THE HONORABLE GREGORY MILLER

AMICUS BRIEF OF VICTOR FISCHER, RICHARD H. PILDES, AND GARY MICHAEL PARSONS, JR.

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I. INTERESTS OF AMICI

Victor (Vic) Fischer, Richard H. Pildes, and G. Michael Parsons submit this brief on behalf of Appellees.

Vic Fischer has dedicated his career to protecting the Alaskan constitution and supporting democracy in Alaska. More than 65 years ago, he served as a delegate to the Alaska Constitutional Convention and drafted much of the state's constitution. He then served as a member of Alaska's last Territorial legislature and later as an Alaska State Senator.

Richard H. Pildes is the Sudler Family Professor of Constitutional Law at New York University School of Law. He is a specialist in legal issues concerning democracy and elections. He has contributed extensive scholarship and research to a range of voting rights topics, including ranked-choice voting. The United States Supreme Court has frequently cited his work on voting issues, including his casebook, *The Law of Democracy: Legal Regulation of the Political Process* (5th ed. 2016).

G. Michael Parsons is a Program Affiliate Scholar at New York University School of Law and a Senior Legal Fellow at FairVote, a nonpartisan, nonprofit organization that advocates for fairer political representation through electoral reform. Since its founding, FairVote has been committed to advancing ranked-choice voting in the United States. In 2021, Pildes and Parsons co-authored the most comprehensive academic article examining the history, context, and meaning of state constitutional plurality-vote provisions and analyzing the constitutionality of ranked-choice voting under these provisions.

Amici share a common commitment to supporting free and fair elections and upholding democratic rights embedded in state constitutions, including the right of voters to implement laws, such as Ballot Measure 2, through direct democracy.

II. INTRODUCTION

Ranked-choice voting (RCV) is a voting system that allows voters to express their preferences among multiple candidates for the same office by ranking those candidates in order of preference on a single ballot. Through a ballot initiative, Alaska voters chose to adopt RCV for use in Alaska's general elections, including that for governor. Like voters in other parts of the country, many voters in Alaska are concerned that the current structure of elections fuels extremism and political polarization, which also makes it more difficult to govern. As the *Anchorage Daily News* put it in endorsing this ballot initiative, "The current single-party-ballot primary system rewards extremist candidates who appeal to a motivated fringe, not the vast majority of Alaskans in the center."[1] In addition, although around 57% of voters in Alaska are registered as nonpartisan or undeclared, the closed primaries that some political parties used shut many Alaskans out of participation in a crucial phase of the election process. Ballot Measure 2 expands participation by permitting all Alaskan voters to participate in the top-four primary structure and the accompanying ranked-choice vote general election.

[1] *Alaska's Elections Aren't Serving Us Well. Ballot Measure 2 Will Help.*, ANCHORAGE DAILY NEWS (Oct. 31, 2020), https://www.adn.com/opinions/editorials/2020/10/31/alaskas-elections-arent-serving-us-well-ballot-measure-2-will-help/ (last visited Nov. 29, 2021).

The pending appeal challenges the ability of Alaska's voters to adopt political reforms they believe will expand political participation and improve Alaska's democracy. Appellants ask this Court to rule that the people of Alaska do not have the power to pursue political reforms such as the top-four primary structure and RCV. One of the arguments advanced by Appellants and *Amici* Hon. Mead Treadwell and Hon. Dick Randolph (*Amici* Treadwell & Randolph) is that RCV violates Article III, Section 3 of the Alaska Constitution, namely its requirement that "the candidate receiving the greatest number of votes shall be governor," because RCV allegedly prevents the candidate who wins the most votes cast from winning the election. This argument is based on a fundamentally flawed view of what the Alaska Constitution means and how RCV operates.

When Alaska adopted its constitution in the 1950s, the founders considered their choices on how to select the winner of the election for governor. In early American history, many states imposed a "majority threshold" requirement, preventing candidates from winning unless they received an outright majority of the votes cast in an election. By the 1950s, however, nearly all states had eliminated majority thresholds in their state constitutions. They did this by enacting provisions *allowing* candidates to win simply by receiving the most votes cast in the election, even if that number did not surpass 50%. The delegates to Alaska's constitutional convention, including *Amicus* Fischer, chose—for the governor's race alone—to adopt such a provision for Alaska's constitution for the same reason so many other constitutions across the country did: to avoid the problems associated with endless runoff elections or legislature-selected winners that had plagued states that imposed majority-vote requirements. This was especially salient for Alaska's governor, as

the short time between the election and taking office would not allow for even the possibility of a separate run-off election or other process for selection.[2]

RCV is not at odds with the language of article III, section 3 of the Alaska Constitution providing that the "candidate receiving the greatest number of votes shall be governor." The reason is simple: the winner of an RCV election is always the candidate who wins the "greatest number of votes." Single-choice voting (SCV) and RCV may use different types of ballots and different tabulation methods, but they both fulfill the same function: measuring public support. And just as SCV can produce a plurality or majority winner without that final result being subjected to a majority-vote requirement, so too can RCV produce a plurality or majority winner without that result being subjected to a majority-vote requirement.

Of course, RCV elections tend to produce majority winners more frequently than SCV elections, but that does not mean RCV imposes any kind of "majority threshold" that would prevent the candidate who receives the most votes from being elected.

In claiming otherwise, Appellants and *Amici* Treadwell & Randolph make a profound mistake: they treat each round in the RCV tabulation as if it were a separate election. This is akin to asserting that a football team ahead at half-time has scored "the most points" and therefore is the winner, even though later rounds of the contest have not

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[2] *See* Alaska Const. art. III, § 4 ("The term of office of the governor is four years, *beginning at noon on the first Monday in December following his election* and ending at noon on the first Monday in December four years later." (emphasis added)), and *cf.* Alaska Const. art. II, § 3 ("Legislators shall be elected at general elections. Their terms begin on the fourth Monday of the January following election unless otherwise provided by law.").

yet been completed. But there is no reason to arrive at this non-sensical interpretation. And the Alaska Constitution provides every textual, historical, and institutional reason not to.

When interpreting the Alaska Constitution, this Court considers both the words of the relevant provision and the "purpose of the provision and the intent of the framers."[3] Both "[l]egislative history and the historical context" assist the court in determining purpose and intent.[4]

An RCV election asks voters to cast a vote in a single balloting, consists of multiple rounds of tabulation using the same ballots, and results in one ultimate winner of the election. Because an RCV election always produces a winner based on a single balloting and that winner will always be the candidate who receives the greatest number of votes cast (whether a majority or not), RCV complies with both the plain language and historical purposes of Alaska's "greatest number of votes" provision.

In sum, RCV is a *method* for conducting elections, not a determination of whether a plurality or a majority is required to win. Voters in Alaska should not be deprived of their right to adopt political reforms designed to improve the democratic process based on a fundamentally mistaken argument that RCV is somehow inconsistent with Alaska law.

Finally, *Amicus* Fischer also agrees with Appellee Alaskans for Better Elections that Ballot Measure 2's provisions regarding the pairing of the governor and lieutenant

[3] *Wielechowski v. State*, 403 P.3d 1141, 1146 (Alaska 2017) (internal quotation marks and citation omitted).
[4] *Id.* at 1147 (internal quotation marks and citation omitted).

governor are constitutional under article III, section 8 of the Alaska Constitution, and adopts Appellee's argument by reference. Ballot Measure 2 conforms with both the plain meaning and the intent of the Alaska Constitution.

III. ARGUMENT

A. The adoption of RCV is consistent with "the greatest number of votes" provision in article III, section 3 of the Alaska Constitution.

RCV is a ballot-counting method that is neither prohibited nor discouraged by the Alaska Constitution. Appellants and *Amici* Treadwell & Randolph incorrectly assert that RCV contravenes the constitution's "plurality provision," found in article III, section 3. [Appellants' Br. 17–18; Amici Treadwell & Randolph Br. 4–14] That section provides: "The governor shall be chosen by the qualified voters of the State at a general election. *The candidate receiving the greatest number of votes shall be governor*."[5] Appellants and their *amici* argue this provision precludes RCV because a candidate who receives the most votes at the end of tabulation could prevail over a candidate who received a plurality of first-choice preferences in the first round of tabulation. Supposedly this means that Ballot Measure 2 "requires a majority to win election, not a plurality." [Amici Treadwell & Randolph Br. 13.]

That argument misunderstands both the purpose of non-majority provisions and the nature of ranked-choice voting. The text, history, and purposes of non-majority provisions in state constitutions throughout the United States and in Alaska show RCV to be fully consistent with these provisions. Nothing about RCV *requires* that a winning candidate

[5] Alaska Const. art. III, § 3 (emphasis added).

receive a majority of the votes cast. RCV simply *produces* majority winners more frequently than SCV. And, unlike an actual "majority-vote requirement," nothing about Ballot Measure 2 would render a popular balloting "void" for failure to reach a majority. Instead, RCV always elects the candidate with the "greatest number of votes" at the conclusion of the election, as the text and purpose of article III, section 3 require.

1. "Non-majority" provisions were adopted to ensure a winner would be elected by a single popular balloting rather than by legislatures or by repeatedly calling voters back to the polls.

Presently, the constitutions of 39 states and Puerto Rico include some form of language providing that an outright majority is not necessary to prevail in an election.[6] Such provisions state that the candidate who receives "the highest number of votes,"[7] "the largest number of votes,"[8] "the greatest number of votes,"[9] or "a plurality of the votes"[10] at the general election shall be elected. These provisions were increasingly adopted beginning in the mid-19th century in response to issues arising from "majority-threshold" provisions—constitutional clauses that would reject the election of the most popular candidate in the field outright if that candidate failed to obtain a majority of the popular vote.[11]

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[6] *See* Richard H. Pildes & G. Michael Parsons, *The Legality of Ranked-Choice Voting*, 109 CAL. L. REV. 1773, App'x. (2021).
[7] *Id.* (Alabama, Arizona, Arkansas, Colorado, Delaware, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Missouri, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming).
[8] *Id.* (Maryland, Montana, Rhode Island).
[9] *Id.* (Alaska, Connecticut, Maryland, New Jersey).
[10] *Id.* (Florida, Maine, Maryland, Nevada, New Hampshire).
[11] *See id.* at 1796–97. As states increasingly included "non-majority" provisions in their constitutions, many newly admitted states also opted not to require majority winners from the outset. *See, e.g.*, COLO. CONST. of 1876 art. 4, § 3 (including a "highest number of

This history is critical to understanding the text and purpose of article III, section 3. When interpreting the Alaska Constitution, this Court considers both the words of the relevant provision and the "purpose of the provision and the intent of the framers."[12] In determining purpose and intent, both "[l]egislative history and the historical context, including events preceding ratification" are used to assist the Court.[13]

To understand the history and intent of Alaska's "non-majority" provision, it is helpful to contextualize article III, section 3, in the larger history of such provisions in U.S. state constitutions. Alaska's provision did not develop in a vacuum; it emerged from years of election experience and constitutional practice in other states. As *Amici* Treadwell and Randolph note, [Br. 9 (citing Victor Fischer, *Alaska's Constitutional Convention* (U. of Alaska Press 1975) at 106)], some delegates to the Alaska Constitutional Convention specifically examined similar provisions in other state constitutions before agreeing upon the language of article III, section 3.[14] A report prepared for the delegates also specified some states that still used majority requirements and outlined the "special" contingencies those states employed in the event an election did not achieve a majority.[15] In short,

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votes" provision in Colorado's original 1876 constitution); NEB. CONSTS. OF 1866, 1871, & 1875 AND PROPOSED AMENDMENTS SUBMITTED TO THE PEOPLE 21, 1920 68–69 (Addison E. Sheldon ed., 1920) (both Nebraska's 1866 territorial constitution and its 1875 state constitution contained such provisions); IDAHO CONST. of 1889, art. IV, § 2 ("[T]he persons, respectively, having the highest number of votes for the office voted for shall be elected[.]"); WYO. CONST. of 1889, art. IV, § 3 ("The person having the highest number of votes for governor shall be declared elected[.]").

[12] *Wielechowski*, 403 P.3d at 1146 (internal quotation marks and citation omitted).

[13] *Id.* at 1147 (internal quotation marks and citation omitted).

[14] *See* PROCEEDINGS OF THE ALASKA CONST. CONVENTION 1955–66 BEFORE THE ALASKA LEG. COUNCIL 2066 (1956) (Del. Frank Barr) (referencing a report from Hawaii and similar provisions in "different states").

[15] *A staff paper prepared by Public Administration Service for the Delegates to the Alaska*

Alaska's own provision was informed by the greater history of such provisions in the United States.

Prior to the adoption of the Alaska Constitution, other states had adopted "non-majority" provisions in response to excessively demanding majority-threshold provisions. These provisions considered an election to have failed if no candidate received 50%+1 of the vote.[16] Although strict majority requirements were the norm in the early United States, the inflexibility of majority-threshold rules meant that "non-elections" would occur, in which no candidate achieved a majority, thereby rendering the election a nullity. This would trigger a contingent method of candidate selection, such as calling the voters back to the polls for a new election or allowing the state legislature to select a winner.[17]

As experience with democratic government evolved, voters in most states came to reject both of these options as inferior to one in which voters would decide in a single election who should hold office. And for good reason. In Massachusetts, for instance, it once took 11 runoff elections for one candidate to reach a majority.[18] Indeed, at one point, one of Massachusetts's congressional seats remained vacant for an entire two-year term because voters repeatedly failed to come to a majority.[19] Meanwhile, a congressional seat

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Constitutional Convention (Nov. 1955), at p. 4, n.3.

[16] *See* Pildes & Parsons, *supra* note 6, at 1796–1800.

[17] *See, e.g.*, ME. CONST. art. IV, pt. 1, § 5 (1820) ("[I]n case no person shall have a majority of votes," the constitution required officials to "notify another meeting, and the same proceedings shall be had at every future meeting until an election shall have been effected."); *id.* art. V, pt. 1 § 3 (1820) ("[I]f no person shall have a majority of votes, the House of Representatives shall, by ballot . . . elect two persons, and make return of their names to the Senate, of whom the Senate shall, by ballot, elect one, who shall be declared the Governor.").

[18] *See* SAMUEL ELIOT MORISON, A HISTORY OF THE CONST. OF MASS. 58 (1917).

[19] *Id.* ("[O]ne Congressional district, for a failure to give one of these candidates a majority,

in Vermont once remained contested over the course of 10 separate runoff elections, which only stopped after one of the candidates died.[20] In other states, if no candidate won a majority, the legislature would then choose the officeholder, thus displacing the voters. But, over time, this process led to periods of instability[21] and came to be seen as

remained unrepresented for the entire Congress."); OFFICIAL REPORT OF THE DEBATES AND PROCEEDINGS IN THE STATE CONVENTION, ASSEMBLED MAY 4TH, 1853, TO REVISE AND AMEND THE CONST. OF THE COMMONWEALTH OF MASS. 248 [hereinafter "MASS. CONST. CONVENTION"] (Bos., White & Porter 1853) (statement of Del. Benjamin D. Hyde) ("The more trials there are to elect, the more divided they become, and the more firmly they adhere to their distinctive principles, and an election is almost entirely impossible . . . . I recollect, that where we have tried for a period of one whole congress, for two years, we failed to choose a representative."); *id.* at 253 (statement of Del. John C. Gray) ("Gentlemen may recollect that at one time three seats were vacant in our congressional delegation; and this state of things lasted during a whole congress, if I remember right.").

[20] *See* D. Gregory Sanford & Paul Gillies, *And If There Be No Choice Made: A Meditation on Section 47 of the Vermont Constitution*, 27 VT. L. REV. 783, 792 (2003).

[21] In Rhode Island, for example, there were four no-choice elections for governor in only five years (1889–1893) due to the presence of a third party (the Prohibition Party). *See* PATRICK T. CONLEY & ROBERT G. FLANDERS JR., RHODE ISLAND STATE CONSTITUTION 154 (2011). These elections were sent to the state legislature. In 1889 and 1891, the legislature failed to elect the candidate who received the most popular votes. *See id.* Then, in 1893, the Republican Senate and Democratic House reached an impasse and failed entirely to elect a new governor. *See id.* Rhode Island overwhelmingly removed the majority threshold shortly thereafter. *See id.* Maine similarly experienced no-choice gubernatorial elections in 1878 and 1879, leading to partisan chaos. *See* LOUIS CLINTON HATCH, 2 MAINE: A HISTORY (1919). In 1878, the legislature chose a Democratic governor, despite the Republican receiving more votes. *See id.* at 593–95. In 1879, that same Democratic governor threw out numerous election returns on technicalities, leading to the formation of "rival legislatures," each of which claimed the power to elect the new governor following another no-choice election. *See id.* at 599–604. The state only narrowly avoided outright war. *Id.* at 613–15. Maine removed the majority-threshold requirement for gubernatorial elections from its constitution in 1880. ME. CONST. art. V, pt. 1, § 3.

inconsistent with popular sovereignty.[22] Voters decided they should be the ones to fill elective offices, not legislatures.

Removing strict majority requirements by adopting "non-majority" provisions remedied these problems by allowing a winner to be selected through a single popular election.[23] These provisions did not positively impose any particular kind of election system or method of balloting (indeed, most voters and legislators were likely unaware of alternative election systems at the time the provisions were adopted). Instead, the goal of these provisions was to end the possibility of a "failed" election and eliminate the problems associated with the "special contingencies" that were triggered thereby. These provisions achieved this by requiring that the candidate who received the most votes at the conclusion of a single election would be the winner—whether they received a majority *or* a plurality.

Indeed, records of state constitutional debates and historical commentaries point overwhelmingly to three justifications for plurality provisions: (1) promote finality by determining a winner in a single popular election; (2) improve administrative efficiency

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[22] *See* MASS. CONST. CONVENTION, *supra* note 19, at 242 (statement of Del. William Schouler) ("I ask whether it would not be better to allow the people of the counties to elect their own senators under the plurality system, than it is to throw the question into the House of Representatives, and let us elect them."); *id.* at 254 (statement of Del. John C. Gray) ("[T]he effect of the operation of the majority principle is to take the power of election from the people, and give it to the legislature."); MELBERT B. CAREY, THE CONN. CONST. 37 (1900) ("If we are to retain popular government in Connecticut the constitution should be so changed that the votes of the people, as cast on election day, should have their full effect.").

[23] Pildes & Parsons, *supra* note 6, at 1796–1800.

and economy; and (3) reduce partisan control over election outcomes by removing contingencies such as selection of the winning candidate by the legislature.[24]

Alaska's own constitutional history reflects similar concerns over permitting the legislature to institute a majority-threshold requirement for the governor's race, which could potentially result in a failed election and unacceptable delay in seating a governor. By the time Alaska began its constitutional convention in 1955, "non-majority" provisions were so ubiquitous and seemingly obvious that at least one delegate suggested striking the language as "meaningless" or "confusing."[25] In response, Delegate Katherine Nordale explained the necessity of the provision, arguing that "[I]f you leave this to the legislature they could say that the candidate [must] receiv[e] a majority of the votes cast, and it is conceivable that there may be three tickets in the field for governor."[26] In other words, such a requirement might lead to a "non-election" with no majority winner. Delegate Frank Barr agreed, saying "in case there are more than two candidates that complicates the question, and this solves it right here."[27] In the vote immediately following these comments, the delegates chose to retain the current provision.[28]

The delegates, understandably, did not want a system in which an election might fail to produce a winner. By prohibiting the legislature from *requiring* a majority threshold, the convention assured victory for the candidate with the highest number of votes in a

[24] For numerous examples of these rationales from a variety of states, *see id.* at 1798–99.
[25] PROCEEDINGS OF THE ALASKA CONST. CONVENTION 1955–66 BEFORE THE ALASKA LEG. COUNCIL 2065 (1956) (statement of Del. George Sundborg).
[26] *Id.* at 2065–66 (statement of Del. Katherine Nordale).
[27] *Id.* at 2066 (statement of Del. Frank Barr).
[28] *Id.*

single election—no endlessly returning to the polls, no politicians picking their own favored candidates, no deeming the voice of the people "null and void." RCV provides precisely what Alaska's constitutional delegates sought to achieve.

2. RCV always elects the candidate with the "greatest number of votes."

Ballot Measure 2 squarely complies with the plain language and historical purposes of article III, section 3. Voters cast a single ranked ballot in a single election, and RCV's tabulation process identifies which candidate has received "the greatest number of votes" based on that single balloting.[29] As a matter of constitutional interpretation, little more needs to be said.

Appellants and *Amici* Treadwell & Randolph attempt to cast doubt on this plain reading, however, by alleging that RCV's tabulation process is akin to the kind of majority-threshold requirement found in early American constitutions. It is not.

Appellants and their *amici* confuse two distinct aspects of the election system: the number of votes a candidate must achieve in order to be elected and the balloting method used for the election. The former asks what level of popular support must be attained for a candidate to be elected; the latter asks how this level should be measured.

Consider the traditional, SCV balloting method. SCV is used in states with *and* without majority thresholds. That is because SCV is simply a method of measuring support. The most popular candidate in an SCV election might receive a plurality of the

[29] *See* AS 15.15.350(d)(1).

votes cast or a majority of the votes cast. A *separate* rule determines whether that number of votes is sufficient to be elected.[30]

The same is true of RCV. RCV can be used in states with *and* without majority thresholds. The most popular candidate in an RCV election might receive either a plurality or a majority of votes cast. Of course, RCV winners will more frequently receive a majority of the vote, but if no one does, the candidate who receives the plurality of the votes wins. That is because RCV, like SCV, is a balloting method, not a vote threshold.

Nor does the fact that an RCV tabulation proceeds in sequential rounds mean that it is "a system that *requires* a majority of votes in contravention of the Constitution." [Treadwell & Randolph Amici Br. 7 (emphasis added)]

First and most significantly, RCV imposes no final threshold requirement that would nullify an election if that threshold were not met. At the conclusion of an RCV election, whichever candidate has "the greatest number of votes" in the final round of tabulation is declared the winner. Just as with SCV, RCV runs no risk at all of leading to a "non-election"—the core mischief that "non-majority" provisions were adopted to avoid.[31] RCV entails only one election, at the end of which some candidate will have the most votes and be elected.

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[30] Appellants implicitly recognize this distinction. While arguing that aspects of Alaska's electoral *process* have remained the same throughout Alaska's history, Appellants acknowledge that still, "[t]he candidate receiving the greatest number of votes, whether that number is a majority or a plurality, is elected governor." [Appellants' Br. 17] This highlights that a vote threshold plays a constitutionally distinct role from the balloting method used to actually measure popular support.

[31] Samuel L. Bray, *The Mischief Rule*, 109 GEO. L.J. 967 (2021) (discussing the role and function of "the mischief rule" in the interpretive exercise).

Second, although state law (or regulations) will often have the RCV tabulation stop when a candidate obtains a majority of the votes in a particular tabulation round, it does not stop because RCV *requires* a majority. Rather, when a candidate obtains an absolute majority in any given round of tabulation, it becomes mathematically impossible for any other candidate to receive more votes, even if all other remaining candidates' votes were transferred to the second-place vote-getter. The election is over, not due to any "majority-vote requirement," but because the winner of "the greatest number of votes" has been identified and any further tabulation is considered unnecessary.[32]

Finally, RCV does not even necessarily result in a majority outcome. Because RCV elections do not require voters to use all of their rankings, it is possible that some voters' ballots will not count towards one of the candidates remaining in the final round.[33] When these "inactive" or "exhausted" votes are included in the denominator, it becomes possible that a candidate who has received a majority of votes *in the final round of tabulation* might

[32] In fact, many RCV jurisdictions are increasingly choosing to run the tabulation down to two candidates even after one candidate receives a majority because doing so provides additional information to voters about the winning candidate's "mandate." *See, e.g.*, Kimberly Veklerov, *East Bay Officials Push for More Transparency in Ranked-choice Vote Counting*, S.F. CHRON. (Oct. 19, 2018), https://www.sfchronicle.com/bayarea/article/East-Bayofficials-push-for-more-transparency-in-13321986.php (discussing how the tabulation process in San Francisco now continues until only two candidates remain, regardless of whether a candidate receives a majority share of the vote in an earlier round).

[33] Pildes & Parsons, *supra* note 6, at 1786. *See also Dudum v. Arntz*, 640 F.3d 1098, 1111 (9th Cir. 2011) (noting that RCV "does not necessarily produce a majority result; a plurality of the total votes cast can prevail, as the majority is only of the last stage of calculation, when many candidates have been mathematically eliminated"); *Op. of the Justs.*, 2017 ME 100, ¶ 65, 162 A.3d 188, 211 n.38 (noting that it is "possible that . . . the prevailing candidate could win by a plurality of votes [if] a ballot becomes 'exhausted'").

have only received a plurality of the *total number of overall votes cast* in the race.[34]

Whether such a result should be characterized as a "majority win" may be an interesting question for advocates, opponents, and academics to debate as a matter of policy.[35] But it is irrelevant as a matter of constitutional interpretation in states with "non-majority" provisions.[36] Under RCV, the candidate with the most votes in the final round prevails regardless of whether that candidate achieves a true majority of all votes cast. As even Appellants' *amici* acknowledge, that is all that matters under Alaska's "non-majority" provision—that "the candidate for governor who receives the highest number of votes wins, whether that number of votes is more or less than 50 percent of the total number of

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[34] *Amici* Treadwell and Randolph cite a perfect example in their brief: the 2018 race for Maine's second congressional district. [*See* Br. 15] In that race, Bruce Poliquin received 46% of first choices, Jared Golden received 45% of first choices, and two independent candidates received the remaining first choices. After the independent candidates were eliminated, however, Golden prevailed, having earned more votes than Poliquin by the end of tabulation. Whether Golden received "a majority," however, depends on which votes you include in the denominator. On 7,820 ballots, voters ranked an independent candidate first and then declined to fill in any other preference rankings. On another 335 ballots, voters only ranked the two independent candidates. When these candidates were eliminated, those votes did not transfer to Golden *or* Poliquin. That meant that while Golden won with a majority (50.6%) of the votes *still active in the final round*, he won with only a plurality (49.2%) of the *total number of votes cast* in the race overall. Pildes & Parsons, *supra* note 6, at 1819–20.

[35] *See, e.g.*, Lindsey Cormack & Jack Santucci, *New Yorkers used ranked-choice voting last month. Did it eliminate spoilers, as promised?*, THE WASH. POST (July 27, 2021), https://www.washingtonpost.com/politics/2021/07/27/new-yorkers-used-ranked-choice-voting-last-month-did-it-eliminate-spoilers-promised/ ("Only 13 of 46 city council elections were decided in the first round, with clear majorities favoring one candidate. For the others, so many ballots became 'inactive' as top-ranked candidates were eliminated that most winners did not earn a majority of the votes cast.") (last visited Nov. 29, 2021).

[36] This question *is* relevant in states with majority threshold provisions, but only to the question of whether any given RCV result does or does not satisfy the state's majority-threshold rule—not the legality of RCV as a balloting method. *See* Pildes & Parsons, *supra* note 6, at 1818–27.

votes cast." [Treadwell & Randolph Amici Br. 6 (citing LAA, Alaska's Constitution: A Citizen's Guide, 77 (5th ed. 2021))]

In short, whether a state's constitution requires a majority of votes to win or not, neither the text nor the purpose of such provisions say anything about whether that state's balloting method should be SCV or RCV. That is a choice Alaska's voters are free to make.

3. RCV does not involve a series of runoff elections.

Under RCV, voters cast a vote in a single election and the tabulation process for that election produces a single, final result. Appellants and *Amici* Treadwell & Randolph obscure this fact because their entire argument depends on misleadingly arguing that each round of RCV vote tabulation is a separate election rather than just one step in a single process. [*See* Appellants' Br. 17 (calling RCV, "in essence, a series of run-off elections")] After all, with each ranked ballot fully counted and every round of tabulation complete, RCV balloting will *always* elect the candidate with the greatest number of votes. Appellants and their *amici* can manufacture a conflict with the constitution only if each round of counting somehow constitutes a separate "election" and each preference ranking on each voter's ballot constitutes a separate "vote."

Simply put, it is fundamentally wrong to treat the first round of tabulation like a separate election, and there is no reason to think the state constitution somehow demands this treatment. Again, this is akin to treating each quarter of a football game as if it were a separate game rather than one stage in a single game. In a ranked-choice election, voters cast a single ranked vote on a single ballot at a single point in time, and the candidate with

the most votes wins the election. A ranked vote may convey more information than a single-choice vote, but there is still only one election. On the other hand, in a traditional runoff election, voters begin their decision-making anew after the first election concludes. Candidates must resume campaigning and mobilize voters to turn out for a separate election. The state must fund and conduct an entirely new election. Some voters who participated in the first election may not turn out for the runoff election; some voters may turn out for the runoff election who did not vote in the first election. And all voters who choose to participate in the runoff must cast a new ballot following the completion of—and with knowledge of—the first election's result.

This distinguishing characteristic has been recognized by state courts,[37] federal courts,[38] and academic commentators alike.[39] Even Appellants themselves point out that, unlike a traditional, separate runoff election, an RCV voter "must vote in advance for the second and later rounds." [Appellants' Br. 15–16] At no point is the voter given the opportunity to reconsider candidates or cast a new vote after the first round of tabulation.

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[37] *See Moore v. Election Comm'rs*, 35 N.E.2d 222, 238–39 (Mass. 1941) (observing that "no voter can cast more than one effective vote, even though he has the privilege of expressing preferences as to the candidate for whom his vote shall be effective when it is demonstrated that it will not be effective for a candidate for whom he has expressed a greater preference" and stating that "candidates receiving the largest numbers of effective votes counted in accordance with the plan are elected, as would be true in ordinary plurality voting").

[38] *See Dudum*, 640 F.3d at 1107 ("[O]nce the polls close and calculations begin, no new votes are cast. . . . The ballots . . . are the initial inputs; the sequence of calculations mandated by [RCV] is used to arrive at a single output—one winning candidate.").

[39] Peter C. Fishburn, *Social Choice and Plurality-like Electoral Systems*, in Bernard Grofman, Electoral Laws and Their Political Consequences 193, 195 (Bernard Grofman & Arend Lijphart eds., 1986) (pointing out the "obvious differences" between a preferential voting system and a traditional runoff, including that "preferential voting requires voters to order the candidates and never needs a second ballot").

And it is only after the final stage of RCV tabulation that a voter's vote actually becomes legally effective.[40] In other words, each voter only has one vote, and that one vote counts for the highest-ranked candidate still in the race. The voter's preference rankings simply let the state know who the vote should count for—they are not separate "votes."

To be sure, the analogy to traditional runoff elections can be deceptively tempting. In a recent non-binding advisory opinion, the Justices of Maine's Supreme Judicial Court made this exact mistake, treating the first round of an RCV tabulation as if it were a separate election and the *first* preference ranking as if it were somehow a separate vote.[41] Notably missing from the Justices' mere two-paragraph analysis, however, was any explanation of *why* Maine's constitution compelled this curious result. Rather than examining RCV on its own merits to determine whether it complied with the text and purpose of the state's plurality provision, the Justices simply treated RCV *as though* it were a traditional runoff with multiple elections.

But as one federal circuit court has observed of the comparison between RCV and traditional runoffs: "the analogy is just that—an analogy."[42] When voters in Alaska adopted RCV, they surely did not think they were creating a system in which they would participate in a distinct series of "elections"—the number of which would vary from office to office or year to year depending on how many rounds of RCV tabulation were necessary to identify a winner. And the system the voters actually adopted is distinguishable from

[40] Pildes & Parsons, *supra* note 6, at 1807.
[41] *See Op. of the Justs.*, 2017 ME 100, ¶¶ 61, 64, 162 A.3d 188, 211.
[42] *Dudum*, 640 F.3d at 1107.

traditional runoff elections in every constitutionally meaningful way.[43]

In short, when voters cast a ranked vote in a ranked-choice election, they recognize that their vote will be given effect according to the tabulation rules they themselves adopted and that the candidate who receives the most votes in that election will win. Appellants and their *amici* may not like that process, but the people of Alaska came to a different conclusion. And should the voters change their mind after experience with RCV and decide to return to using SCV, they are free to do so as well. But if the balloting method the people adopted complies with the plain language and purpose of the state constitution—as RCV does—then the people's word is the final word.

B. Ballot Measure 2's method of pairing the governor and the lieutenant governor is constitutional under article III, section 8 of the Alaska Constitution.[44]

Amicus Fischer agrees with, and adopts by reference, the arguments made by Appellee Alaskans for Better Elections regarding Ballot Measure 2's method of pairing the governor and lieutenant governor. [ABE Ae. Br. 34–50] Contrary to what *Amici* Treadwell & Randolph claim, the plain language of article III, section 8 does not mandate that a candidate for lieutenant governor may *only* receive a nomination by running solo in a partisan primary. [Amici Treadwell & Randolph Br. 20] In fact, the section clearly contains broad language that encompasses the provisions of Ballot Measure 2.

[43] *See supra* section III.A.2.

[44] *Amici* Richard H. Pildes and G. Michael Parsons possess expertise on state constitutional majority and non-majority provisions but not on the issue in Part II and therefore do not address the arguments in this section.

Amici read into the constitution a requirement that does not exist. In reality, article III, section 8 gives the legislature (and the people, via ballot initiative) discretion to determine the manner for nominating and selecting candidates for lieutenant governor. Its language is plainly permissive, giving the legislature (or voters) the ability to "provide[] by law" any "manner" for "nominating candidates for . . . elective offices."[45] Indeed, the provision was written as a compromise among delegates to the Constitutional Convention, and its intent was to leave the details of the nominating process for lieutenant governor up to future legislatures and voters.[46] The resulting language merely requires that state law not treat the nomination for lieutenant governor differently than nominations for other elective offices. Ballot Measure 2 does exactly that; it does not differentiate the nomination of lieutenant governor from any other type of nomination, except that the lieutenant governor must be paired with a candidate for governor, as is required by the second sentence of article III, section 8.[47]

Amici Treadwell & Randolph's interpretation of article III, section 8 is furthermore inconsistent with the manner in which lieutenant governor nominations have proceeded in Alaska since far before the passage of Ballot Measure 2. Since 1960, there were multiple

[45] Alaska Const. art. III, § 8.
[46] *See* 3 Proceedings of the Alaska Const. Convention (PACC) at 2009–10 (Jan. 13, 1956) (comments of Delegate Vic Fischer) (noting that draft language "would appear to leave the way open for the legislature to prescribe" the manner of a primary); *see also id.* at 2010 (comments of Delegate Victor Rivers) ("I agree with Mr. Fischer that this section does leave open the method which the law would prescribe . . . so the legislature could decide as to how the nominations would be made[.]").
[47] Alaska Const. art. III, § 8. ("In the general election the votes cast for a candidate for governor shall be considered as cast also for the candidate for lieutenant governor running jointly with him.").

methods by which a lieutenant governor could be nominated.[48] Several of these nomination methods explicitly conflict with *Amici*'s position that lieutenant governor candidates *must* run solo in a partisan primary, including nomination by signature petition and selection by a political party due to the death, withdrawal, or disqualification of a candidate.[49] This Court has repeatedly recognized a strong presumption of constitutionality for laws passed by the first legislature, as the first legislature was composed of many of the original drafters of the Alaska Constitution.[50]

Candidates for lieutenant governor have, in fact, qualified for the ballot via both of the above methods without challenge. Constitutional Delegate Jack Coghill, for example, was elected lieutenant governor after being nominated for the general election via the

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[48] *See* Ch. 83, § 5.11, SLA 1960 ("If any candidate nominated at the party primary nomination dies, withdraws, or becomes disqualified from holding office for which he is nominated after the primary nomination and 10 days or more before the general election, the vacancy may be filled by party petition. The secretary of state shall place the name of the person nominated by party petition on the general election ballot."); Ch. 83, § 5.53, SLA 1960 ("Petitions for the nomination of candidates for the office of governor, secretary of state, United States senator and United States representative shall be signed by not less than 1,000 qualified voters. *Candidates for the office of governor and secretary of state must file jointly*." (emphasis added)); Ch. 83, § 5.56, SLA 1960 ("The secretary of state shall place the names and political group affiliation of persons who have been properly nominated by petition on the general election ballot."); *see also O'Callaghan v. State (O'Callaghan I)*, 826 P.2d 1132, 1137, n.8 (Alaska 1992) (noting that section 5.11 was "the predecessor to AS 15.25.110").

[49] *See supra* note 48.

[50] *See State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 777 (Alaska 1980) ("[S]ince [the statute] was passed by the first state legislature, several members of which had served in the Alaska Constitutional Convention, and was approved by Governor Egan, who had been chairman of the Convention, a stronger than usual presumption of constitutionality should be applied."); *Bradner v. Hammond*, 553 P.2d 1, 4 n.4 (Alaska 1976) ("Contemporaneous interpretation of fundamental law by those participating in its drafting has traditionally been viewed as especially weighty evidence of the framers' intent." (citations omitted)).

second process above.[51] And in 2014, a petition candidate for governor and his selected lieutenant governor won the general election.[52] It is additionally conceivable that candidates for governor and lieutenant governor may win an election through a write-in campaign.[53]

Finally, *Amici* Treadwell & Randolph's interpretation itself conflicts with article III, section 8, because it does not allow the lieutenant governor to be nominated "in the manner" candidates for all other offices may be nominated. In fact, it would remove the nomination methods listed above for the lieutenant governor office *only*. Treating nominees for lieutenant governor differently than nominees for all other offices violates the plain language of the constitutional provision. Accordingly, the Court should reject *Amici* Treadwell & Randolph's unworkable interpretation of article III, section 8.

IV. CONCLUSION

For the foregoing reasons, this Court should reject the Appellants' arguments and uphold the decision from the court below.

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[51] *O'Callaghan v. State (O'Callaghan II)*, 920 P.2d 1387, 1387–88 (Alaska 1996) ; s*ee also* Alaska Constitutional Convention Files, Folder 101, http://www.akleg.gov/pdf/billfiles/ConstitutionalConvention/Folder%20101.pdf (listing "John B. Coghill" as a constitutional convention delegate from Nenana, Alaska).

[52] *See* Richard Mauer, *Walker, Mallott To Join Forces In Governor's Race*, ANCHORAGE DAILY NEWS (Sep. 2, 2014), https://www.adn.com/politics/article/walker-mallott-join-forces-governors-race/2014/09/02/ (last visited Dec. 3, 2021); Patrick Temple-West, *Independent Walker Wins Alaska Governor's Race*, POLITICO (Nov. 14, 2014), https://www.politico.com/story/2014/11/bill-walker-alaska-governors-race-2014-sean-parnell-112922 (last visited Dec. 3, 2021).

[53] Yereth Rosen, *Senator Lisa Murkowski Wins Alaska Write-in Campaign*, REUTERS (Nov. 17, 2010), https://www.reuters.com/article/us-usa-elections-murkowski/senator-lisa-murkowski-wins-alaska-write-in-campaign-idUSTRE6AG51C20101118 (last visited Dec. 3, 2021).

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APPENDIX TO AMICUS BRIEF OF VICTOR FISCHER, RICHARD H. PILDES, AND GARY MICHAEL PARSONS, JR.

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CONSTITUTION

OF THE

STATE OF COLORADO,

ADOPTED IN

CONVENTION, MARCH 14, 1876;

ALSO THE

Address of the Convention

TO THE

PEOPLE OF COLORADO.

ELECTION, SATURDAY, JULY 1, 1876.

DENVER, COL.
TRIBUNE BOOK AND JOB PRINTING HOUSE.
1876.

PREAMBLE.

We, the people of Colorado, with profound reverence for the Supreme Ruler of the Universe, in order to form a more independent and perfect government; establish justice; insure tranquility; provide for the common defense; promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the "State of Colorado."

ARTICLE III.

DISTRIBUTION OF POWERS.

The powers of the government of this State are divided into three distinct departments—the Legislative, Executive and Judicial—and no person, or collection of persons, charged with the exercise of powers properly belonging to one of these departments, shall exercise any power properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

SEC. 1. The Executive Department shall consist of a Governor, Lieutenant Governor, Secretary of State, Auditor of State, State Treasurer, Attorney General, and Superintendent of Public Instruction, each of whom shall hold his office for the term of two years, beginning on the second Tuesday of January next after his election; *provided*, that the terms of office of those chosen at the first election held under this Constitution, shall begin on the day appointed for the first meeting of the General Assembly. The officers of the Executive Department, excepting the Lieutenant Governor, shall, during their term of offices, reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed by this Constitution or by law.

SEC. 2. The supreme executive power of the State shall be vested in the Governor, who shall take care that the laws be faithfully executed.

SEC. 3. The officers named in section one of this article, shall be chosen on the day of the general election, by the qualified electors of the State. The returns of every election for said officers shall be sealed up and transmitted to the Secretary of State, directed to the Speaker of the House of Representatives, who shall immediately, upon the organization of the House, and before proceeding to other business, open and publish the same in the presence of a majority of the members of both Houses of the General Assembly, who shall for that purpose assemble in the House of Representatives. The person having the highest number of votes for either of said offices shall be declared duly elected, but if two or more have an equal and the highest number of votes for the same office, one of them shall be chosen thereto by the two Houses, on joint ballot. Contested elections for the said offices shall be determined by the two Houses, on joint ballot, in such manner as may be prescribed by law.

CONSTITUTION

OF THE

STATE OF IDAHO.

PREAMBLE.

We, the people of the State of Idaho, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety.

SEC. 2. All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted that may not be altered, revoked or repealed by the Legislature.

SEC. 3. The State of Idaho is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

SEC. 4. The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the State; nor to permit any person, organization or association to directly or indirectly aid or abet, counsel or advise, any person to commit the crime of bigamy or polygamy, or any other crime. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent; nor shall any preference be given by law to any religious denomination or mode of worship. Bigamy and polygamy are forever prohibited in the State,

of emergency, which emergency shall be declared in the preamble or in the body of the law.

SEC. 23. Each member of the Legislature shall receive for his services a sum not exceeding five dollars per day from the commencement of the session, but such pay shall not exceed for each member, except the presiding officers, in the aggregate three hundred dollars for per diem allowances for any one session. And shall receive each the sum of ten cents per mile each way by the usual traveled route.

When convened in extra session by the Governor, they shall each receive five dollars per day; but no extra session shall continue for a longer period than twenty days, except in case of the first session of the Legislature. They shall receive such mileage as is allowed for regular sessions. The presiding officers of the Legislature shall each in virtue of his office, receive an additional compensation equal to one-half his per diem allowance as a member: *Provided,* That whenever any member of the Legislature shall travel on a free pass in coming to or returning from the session of the Legislature, the number of miles actually traveled on such pass shall be deducted from the mileage of such member.

SEC. 24. The first concern of all good government is the virtue and sobriety of the people, and the purity of the home. The Legislature should further all wise and well directed efforts for the promotion of temperance and morality.

SEC. 25. The members of the Legislature shall, before they enter upon the duties of their respective offices, take or subscribe the following oath or affirmation: "I do solemnly swear, [or affirm, as the case may be,] that I will support the Constitution of the United States and the Constitution of the State of Idaho, and that I will faithfully discharge the duties of Senator, [or Representative, as the case may be,] according to the best of my ability." And such oath may be administered by the Governor, Secretary of State, or Judge of the Supreme Court, or presiding officer of either house.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

SECTION 1. The Executive Department shall consist of a Governor, Lieutenant-Governor, Secretary of State, State Auditor, State Treasurer, Attorney-General, and Superintendent of Public Instruction, each of whom shall hold his office for two years, beginning on the first Monday in January next after his election, except as otherwise provided in this Constitution. The officers of the Executive Department, excepting the Lieutenant-Governor, shall, during their terms of office, reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed by this Constitution and as may be prescribed by law.

SEC. 2. The officers named in section one of this article shall be elected by the qualified electors of the State at the time and places of voting for members of the Legislature, and the persons, respectively, having the highest number of votes for the office voted for shall be

elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two Houses of the Legislature, at its next regular session, shall forthwith, by joint ballot, elect one of such persons for said office. The returns of election for the officers named in section one shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

SEC. 3. No person shall be eligible to the office of Governor or Lieutenant-Governor unless he shall have attained the age of thirty years at the time of his election; nor to the office of Secretary of State, State Auditor, Superintendent of Public Instruction or State Treasurer, unless he shall have attained the age of twenty-five years; nor to the office of Attorney-General unless he shall have attained the age of thirty years, and have been admitted to practice in the Supreme Court of the State or Territory of Idaho, and be in good standing at the time of his election. In addition to the qualifications above described, each of the officers named shall be a citizen of the United States and shall have resided within the State or Territory two years next preceding his election.

SEC. 4. The Governor shall be Commander-in-Chief of the military forces of the State, except when they shall be called into actual service of the United States. He shall have power to call out the militia to execute the laws, to suppress insurrection, or to repel invasion.

SEC. 5. The supreme executive power of the State shall be vested in the Governor, who shall see that the laws are faithfully executed.

SEC. 6. The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by this Constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during the recess of the Senate a vacancy occurs in any State or district office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the Senate, when he shall nominate some person to fill such office. If the office of a Justice of the Supreme or District Court, Secretary of State, State Auditor, State Treasurer, Attorney-General, or Superintendent of Public Instruction, shall be vacated by death, resignation or otherwise, it shall be the duty of the Governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law.

SEC. 7. The Governor, Secretary of State, and Attorney-General, shall constitute a Board to be known as the Board of Pardons. Said Board, or a majority thereof, shall have power to remit fines and forfeitures, and to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose in all cases of offenses against the State, except treason or conviction on impeachment. The Legislature shall by law prescribe the sessions of said Board and the manner in which application shall be made, and regulate proceedings thereon; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said Board, after a full hearing in open ses-

north of the County of Hitchcock, and be entitled to one Representative.

District No. 50. Shall consist of the Counties of Cass and Saunders, and be entitled to one Representative.

District No. 51. Shall consist of the Counties of Platte, Colfax, and Butler, and be entitled to one Representative.

District No. 52. Shall consist of the Counties of Fillmore and Clay, and be entitled to one Representative.

Article V.

EXECUTIVE DEPARTMENT

Sec. 1. The executive department shall consist of a Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Superintendent of Public Instruction, Attorney General, and Commissioner of Public Lands and Buildings, who shall each hold his office for the term of two years from the first Thursday and the first Tuesday in January next after his election, and until his successor is elected and qualified. Provided, however, that the first election of said officers shall be held on the Tuesday succeeding the first Monday in November, 876, and each succeeding election shall be held at the same relative time in each even year thereafter. The Governor, Secretary of State, Auditor of Public Accounts, and Treasurer shall reside at the seat of government during their terms of office, and keep the public records, books and papers there, and perform such duties as may be prescribed by law.

PROPOSED AMENDMENTS OF 1920

Section 1. The executive officers of the state shall be the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Commissioner of Public Lands and Buildings, Treasurer, Attorney General, Superintendent of Public Instruction and the heads of such other executive departments as may be established by law. The Legislature may provide for the placing of the above named officers as heads over such departments of government as it may by law create. The Governor, Lieutenant Governor, Attorney General, Secretary of State, Auditor of Public Accounts, Commissioner of Public Lands and Buildings and Treasurer shall be chosen at the general election held in November, 1922, and in each even numbered year thereafter, and their term of office shall be two years and until their successors shall be elected and qualified. The Superintendent of Public Instruction shall be elected in November, 1922, and every four years thereafter, and his term of office shall be four years and until his successor shall be elected and qualified. The records, books and papers of all executive officers shall be kept at the seat of government, and such officers, excepting the Lieutenant Governor, shall reside there during their respective terms of office. Officers in the executive department of the state shall perform such duties as may be provided by law. The heads of all executive departments established by law, other than those to be elected as provided herein, shall be appointed by the Governor, with the consent of a majority of all the members elected to the senate and house of representatives meeting in joint session, but officers so appointed may be removed by the Governor. Subject to the provisions of this Constitution, the heads of the various executive or civil departments shall have power to appoint, and remove, all subordinate employees in their respective departments.

NOTE

This proposed amendment is of real importance. There are four principal changes it proposes in the present constitution.

1. It permits the legislature to create new executive officers. The present constitution forbids it. (See Sec. 24—Art. IV.). The legislature ought to have the power. Many times in the past forty years the free exercise of the power to create needed new executive officers would have been a great advantage to the state.

There is only one state besides Nebraska, i. e., Arkansas, whose constitution expressly forbids its legislature to establish other executive offices than those named in that document. On the other hand several constitutions, as those of Wyoming, Virginia, and New Mexico, either directly or indirectly, authorize the legislature to create them. The remaining constitutions are silent upon the matter, but this silence is equivalent to express consent, since by virtue of it the legislature isnot restricted in its creation of new offices. Arkansas and Nebraska, therefore, stand alone in hampering their legislature by this restriction.

2. Both houses of the legislature shall vote as one body upon executive appointments made by the governor. This is a new feature. No other state has it. On the whole the experiment seems worth trying.

3. Heads of departments shall have the power to appoint and remove all subordinates in their departments. This provision was probably presented to prevent encroachments upon other departments by the governor. Its wording raises the question whether a civil service act could limit the power of the department head under this amendment.

4. The fourth point in this section makes the state superintendent a four year office, which no doubt is an improvement upon the present two year term.

There are thirty-two states in which the term of office of the Superintendent of Public Instruction is prescribed by the constitution. Only twelve of these besides Nebraska have a two-year term, whereas nineteen of them provide for a four-year term. Those with two-year terms are:

Arizona, Colorado, Georgia, Idaho, Indiana, Kansas, Nebraska, Nevada, Michigan, New Mexico, North Dakota,

1866.

Sec. 15. No member of congress, or other person holding office under the authority of this state, or the United States, shall execute the office of governor, except as herein provided.

Sec. 4. No person except a citizen of the United States, and a qualified elector of the state, shall be eligible to any office provided for by this constitution.

Sec. 3. The returns of every election, for the officers named in the foregoing section, shall be sealed up and transmitted to the seat of government by the returning officers, directed to the president of the Senate, who, during the first week of the session, shall open and publish them, and declare the result, in the presence of a majority of the members of each house of the legislature. The person having the highest number of votes shall be declared duly elected: but if any two of more shall be highest and equal in votes for the same office, one of them shall be chosen by the joint vote of both houses.

Sec. 5. Should there be no session of the legislature in January

1871.

Sec. 5. No person shall be eligible to the office of governor or lieutenant governor who shall not have attained the age of twenty-five years, and been for two years next preceding his election a citizen of the United States and of this State. Neither the governor, lieutenant governor, auditor of public accounts, secretary of state, commissioner of public lands and buildings, superintendent of public instruction, nor attorney general, shall be eligible to any other office during the period for which he shall have been elected.

Sec. 2. The treasurer shall be ineligible to the office of treasurer for two years next after the expiration of two consecutive terms for which he was elected.

Sec. 3. The officers of the executive department shall, after the first election hereinbefore provided for, be elected at the general election for members of the house of representatives to be held in the year 1872, and every two years thereafter, at such times and places as may be prescribed by law.

Sec. 4. The returns of every election for the above named officers shall be sealed up and transmitted, by the returning officers, to the secretary of state, directed to the speaker of the house of representatives, who shall, immediately after the organization of the house, and before proceeding to other business, open and publish the same in the presence of a majority of each house of the legislature, who shall for that purpose assemble in the hall of the house of representatives. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more have an equal, and the highest number of votes, the legislature shall by joint ballot choose one of

1875.

Sec. 2. No person shall be eligible to the office of governor or lieutenant governor who shall not have attained the age of thirty years, and been for two years next preceeding his election a citizen of the United States and of this State. None of the officers of the executive department shall be eligible to any other state office during the period for which they shall have been elected.

Sec. 3. The treasurer shall be ineligible to the office of treasurer, for two years next after the expiration of two consecutive terms for which he was elected.

Sec. 4. The returns of every election for the officers of the executive department shall be sealed up and transmitted by the returning officers to the Secretary of State, directed to the speaker of the House of Representatives, who shall immediately after the organization of the house, and before proceeding to other business, open and publish the same in the presence of a majority of each house of the legislature, who shall for that purpose assemble in the hall of the house of representatives. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more have an equal and the highest number of votes, the legislature shall, by joint vote, choose one of

PROPOSED AMENDMENTS OF 1920

South Carolina and South Dakota.

Those having four-year terms are: Alabama, California, Florida, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Montana, North Carolina, Ohio, Oklahoma, Pennsylvania, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Sec. 2. No person shall be eligible to the office of Governor, or Lieutenant Governor, who shall not have attained the age of thirty years, or who shall not have been for five years next preceding his election a resident and citizen of this state and a citizen of the United States. None of the officers mentioned in this article shall be eligible to any other state office during the period for which they have been elected or appointed.

NOTE

There is only one other state besides Nebraska, (Nevada), that requires only two years as a citizenship qualification for governor. All other states having a citizenship qualification require five years or more. There are eleven such states.

Many states, however, have no citizenship requirement but a residence requirement instead. Of these, eleven require less than five years and twenty-four require five years or more. A general comparison, then, shows that while twelve states (besides Nebraska) require either residence or citizenship of less than five years for governor, thirty-five require five years or more. Among the latter are:

California, Indiana, New York, North Dakota, Texas, Wyoming and Missouri.

Among those requiring less than five years are:

Colorado, Iowa, Idaho, Michigan, Montana and Oregon.

Nebraska. Contitution. [From Old Catalog]. Nebraska Constitution of 1866, 1871 & 1875 and Proposed Amendments Submitted to the People September 21, 1920. American Printing Company, 1920. The Making of Modern Law: Primary Sources, https://link.gale.com/apps/doc/DT0106447410/MMLP?u=new64731&sid=MMLP&xid=3e7083d3. Accessed 24 Oct. 2020.

ALASKA CONSTITUTIONAL CONVENTION

PART 3

Proceedings: January 10 - 16, 1956

Alaska Legislative Council

Box 2199 — Juneau, Alaska

originally to have been placed after "shall be" and then because that line was deleted it was placed down there after the words "United States", so we have actually changed the whole concept of thinking, it seems to me.

PRESIDENT EGAN: How would it read now? Would the Chief Clerk please read the section as it appears now.

CHIEF CLERK: "The governor shall be not less than thirty years of age and shall have been for at least seven years a citizen of the United States and of this state and a resident of this state seven years next preceding his election."

PRESIDENT EGAN: It is in there properly. Mr. Marston.

MARSTON: Mr. President, if we become a state right away quick, do you have to wait five years to be a citizen of this State of Alaska before we can run for governor? Who is going to be eligible for governor? Do we have to wait seven years to have a governor?

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I believe that in the transitory provisions there will be an article which provides that residence in the Territory of Alaska shall count toward residence of the State of Alaska, so I don't think we need to worry about that.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: I predict that this clause will cause more litigation than any other clause in the constitution, because I don't think you are ever going to get a governor elected because the transitory measures can't cure this dual citizenship. We can't go back and create by transitory measures anything that does not exist, and we don't have dual citizenship here in Alaska.

TAYLOR: Point of order. There is nothing before the house.

PRESIDENT EGAN: That is correct, Mr. Taylor.

BUCKALEW: I just want to say we really goofed, that is all.

PRESIDENT EGAN: Are there other amendments to Section 2? If not, are there amendments to Section 3? To Section 4?

CHIEF CLERK: Wait a minute. What about this amendment of yours, Mr. Johnson?

JOHNSON: No, I don't want it.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I have an amendment to Section 3.

PRESIDENT EGAN: Mr. Sundborg's amendment to Section 3 will be read at this time. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Section 3, line 9, strike the sentence beginning 'The person' and ending on line 11."

SUNDBORG: Mr. President, I move the adoption of the amendment.

PRESIDENT EGAN: Would the Chief Clerk please read the amendment.

CHIEF CLERK: "Strike the sentence beginning on line 9 of Section 3, beginning 'The person' and ending on line 11."

PRESIDENT EGAN: Strike the sentence?

SUNDBORG: The sentence says "The person receiving the greatest number of votes shall be the governor." I ask unanimous consent.

NORDALE: I object.

SUNDBORG: I so move.

AWES: I second the motion.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I submit that the language as we now have it, if it means anything, it means that the person running at that election who gets the greatest number of votes, no matter what he is running for, shall be the governor. If it does not mean that, it is unnecessary to have it in there because the sentence ahead of it says, "The governor shall be elected by the qualified voters of the state." If he is going to be elected by the qualified voters, obviously it follows that the man getting the most votes for that office is elected and I don't think we want to say that the person receiving the greatest number of votes shall be the governor. It might be the candidate for the United States Senate or it might be one of the legislators or something. I think it is meaningless. I stand corrected if there is a meaning to it.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: Mr. President, I would just like to say that if you want to say "the candidate for governor" I would have no objection,

but is it not possible if you leave this to the legislature they could say that the candidate receiving a majority of the votes cast, and it is conceivable that there may be three tickets in the field for governor at some future time, and why allow the possibility of requiring a majority of the votes cast to elect the governor?

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, in reading this Hawaiian report a little while ago, I'd have trouble finding this same article right now, but it did state that in some of the different states there are different methods of selecting the governor: some say that a majority of the votes cast will select the governor; others state that the highest number of votes shall select the governor, and in case there are more than two candidates that complicates the question, and this solves it right here, I mean the committee report.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Sundborg be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye"; all opposed "no". The "noes" have it and the proposed amendment has failed of adoption.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Could I have the privilege of the floor?

PRESIDENT EGAN: You may, Mr. Buckalew, if there is no objection.

(Mr. Buckalew at this time spoke on a matter of personal privilege.)

HELLENTHAL: Mr. President, point of order. When the matter was voted here that the recognition of state citizenship be made, there was no requirement at that time of seven years' citizenship in the United States. The amendment that was later offered pointed solely to the one subject, seven years' citizenship in the United States, and it did not qualify the prior action, and the prior action was merely a recognition of state citizenship with no year requirement whatsoever, so the point is ill-taken.

V. FISCHER: The same point of order. I specifically got up and asked Mr. Warren Taylor did he mean seven years' United States citizenship, seven years' Alaska citizenship, and seven years an Alaska resident, and he said "yes".

HELLENTHAL: Mr. Taylor was mistaken.

McCUTCHEON: Point of order, Mr. President. Mr. Buckalew rose on a point of personal privilege and these other people are speaking

VI

THE EXECUTIVE DEPARTMENT

A staff paper prepared by Public Administration Service for the Delegates to the Alaska Constitutional Convention

November, 1955

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or as the release of power and capacity to serve the public good. Experience has shown the folly of the exclusive use of the former premise.

The Governorship

There are certain traditional patterns that have been adopted by the American states despite variations in details. All states have as their chief executive a popularly elected governor whose term is either two or four years. The governor's executive duties are customarily to oversee the faithful execution of the laws; to grant pardons, commutations, and reprieves, normally excepting treason and impeachment cases; to serve as commander-in-chief of the militia and to grant commissions in the name of the state; and to represent the state in its dealings with other states and with the federal government. In his relations with the legislature, the governor generally reports on the condition of the state and recommends desirable legislation, signs or disapproves of measures passed by the legislature, and may adjourn the legislature when the two houses cannot agree upon adjournment. Normally the governor is empowered to convene the legislature for special sessions whenever he deems this necessary. The powers and duties of the governor as chief administrator of the state are subject to wide variations which will be commented upon in the course of this paper.

Qualifications

Presumably to assure maturity, sufficient concern with and interest in the affairs of the state, and in many cases to exclude naturalized or new residents, many state constitutions provide qualification requirements of minimum age, citizenship, and residence. Almost two-thirds of the states require a minimum age of 30 years.[2] United States citizenship is also required in two-thirds of the states, some states stipulating the duration of this citizenship which ranges from 5 to 20 years prior to candidacy. About one-half of the states also stipulate state residence requirements which range from one to ten years. About one-third of the states also prohibit the governor from holding another office in the state, a federal office, and a position under a foreign power or another state.

In all states the governor is elected by popular vote. In most states the candidate receiving the highest number of votes is elected, even if that is less than the majority of the total vote. Under the two-party system, plurality elections usually give the same results as a majority requirement. But with three or more candidates, the election might go to one receiving less than an absolute majority, and a few states have special provisions for such a contingency.[3]

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[2] Eight states allow a qualified elector thereby setting the minimum age at 21; four states require 25 years of age; and Oklahoma requires a minimum of 31 years.

[3] In Maine, Massachusetts, New Hampshire, and Georgia an absolute majority is required; and if no candidate receives this majority, the election is decided by the legislature on joint ballot. The Mississippi Constitution has a peculiar provision for the election of the governor under which a majority of both the popular vote and electoral votes assigned to counties or legislative districts is required.

Terms and Succession

Governors are now elected in most states for a term of two or four years, about half of the states in each class. The states have been following a desirable tendency to lengthen the governor's term to four years.[4] It is generally considered advisable to provide a four-year period during which the governor has an opportunity to develop his policy leadership out of his experience. However, in 16 of the four-year term states, constitutions prohibit a second consecutive term.[5] Under this arrangement the influence of the governor tends to decline as the term progresses. It has become increasingly apparent that if the governor is to have at least one term of full political power, he must not be prohibited from succeeding himself. In a broader sense, such limitations contain the potential of depriving the people of the state from endorsing by reelection an acceptable and experienced man who has substantially but not totally executed desirable programs and services.

In fifteen states which elect governors on a quadrennial basis gubernatorial elections do not coincide with presidential

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[4] Within recent years Connecticut, Idaho, and New Jersey have adopted the four year term, bringing the total to 29 states. In addition, both the Hawaii and Puerto Rico constitutions provide for a four year term, as does the Model State Constitution.

[5] In eight states two successive terms are permitted or the governor is permitted to serve only a specified number of years during a prescribed period. No limitation upon succession exists in 29 states.

1820

Maine Constitution. 1820

CONSTITUTION OF MAINE
1820

WE the people of Maine, in order to establish justice, ensure tranquillity, provide for our mutual defence, promote our common welfare, and secure to ourselves and our posterity the blessings of Liberty, acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe in affording us an opportunity, so favorable to the design; and, imploring his aid and direction in its accomplishment, do agree to form ourselves into a free and independent State, by the style and title of the State of Maine, and do ordain and establish the following Constitution for the government of the same. Preamble.

ARTICLE I.

DECLARATION OF RIGHTS.

SECT. 1. All men are born equally free and independent, and have certain natural, inherent and unalienable Rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness. Natural rights.

SECT. 2. All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit; they have therefore an unalienable and indefeasible right to institute government, and to alter, reform, or totally change the same, when their safety and happiness require it. All power inherent in the people.

SECT. 3. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested or restrained in his person, liberty or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship;—and all persons demeaning themselves peaceably, as good members of the State, shall be Freedom of worship. All religious sects equal.

ARTICLE III.

DISTRIBUTION OF POWERS.

SECT. 1. The powers of this Government shall be divided into three distinct Departments, the *Legislative, Executive* and *Judicial.* Powers distributed,

SECT. 2. No person or persons, belonging to one of these Departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted. And to be kept separate.

ARTICLE IV.—PART FIRST.

LEGISLATIVE POWER—HOUSE OF REPRESENTATIVES.

SECT. 1. The Legislative power shall be vested in two distinct branches, a House of Representatives, and a Senate, each to have a negative on the other, and both to be stiled the *Legislature of Maine*, and the style of their Acts and Laws, shall be, "*Be it enacted by the Senate and House of Representatives in Legislature assembled.*" Legislative power. Style.

SECT. 2. The House of Representatives shall consist of not less than one hundred nor more than two hundred members, to be elected by the qualified electors for one year from the day next preceding the annual meeting of the Legislature. The Legislature, which shall first be convened under this Constitution, shall, on or before the fifteenth day of August in the year of our Lord one thousand eight hundred and twenty one, and the Legislature, within every subsequent period of at most ten years and at least five, cause the number of the inhabitants of the State to be ascertained, exclusive of foreigners not naturalized, and Indians not taxed. The number of Representatives shall, at the several periods of making such enumeration, be fixed and apportioned among the several counties, as near as may be, according to the number of inhabitants, having regard to the relative increase of population. The number of Representatives shall, on said first apportionment, be not less than one hundred nor more than one hundred and fifty; and, whenever the number of Representatives shall be two hundred, at the next annual meetings of elections, which shall thereafter be had, and at every subsequent period of ten years, the people shall give in their votes, whether the number of Representatives shall be increased or diminished, and if a majority of votes are in favor thereof, it shall be the House of representatives elected annually, to consist of not less than 100 nor more than 200. To be apportioned once in ten years at least. Equally among the counties.

duty of the next Legislature thereafter to increase or diminish the number by the rule hereinafter prescribed.

Apportionment among towns.

SECT. 3. Each town having fifteen hundred inhabitants may elect one representative; each town having three thousand seven hundred and fifty may elect two; each town having six thousand seven hundred and fifty may elect three; each town having ten thousand five hundred may elect four; each town having fifteen thousand may elect five, each town having twenty thousand two hundred and fifty may elect six; each town having twenty six thousand two hundred and fifty inhabitants may elect seven; but no town shall ever be entitled to more than seven representatives: and towns and plantations duly organized, not having fifteen hundred inhabitants, shall be classed, as conveniently as may be, into districts containing that number, and so as not to divide towns; and each such district may elect one representative; and, when on this apportionment the number of representatives shall be two hundred, a different apportionment shall take place upon the above principle; and, in case the fifteen hundred shall be too large or too small to apportion all the representatives to any county, it shall be so increased or diminished as to give the number of representatives according to the above rule and proportion; and whenever any town or towns, plantation or plantations not entitled to elect a representative shall determine against a classification with any other town or plantation, the Legislature may, at each apportionment of representatives, on the application of such town or plantation, authorize it to elect a representative for such portion of time and such periods, as shall be equal to its portion of representation; and the right of representation, so established, shall not be altered until the next general apportionment.

Qualifications of a representative.

SECT. 4. No person shall be a member of the House of Representatives, unless he shall, at the commencement of the period for which he is elected, have been five years a citizen of the United States, have arrived at the age of twenty one years, have been a resident in this State one year, or from the adoption of this Constitution; and, forthree months next preceding, the time of his election shall have been, and, during the period for which he is elected, shall to be a resident in the town or district which he represents.

Meetings for choice of representatives regulated.

SECT. 5. The meetings for the choice of representatives shall be warned in due course of law by the selectmen of the several towns seven days at least before the election, and the selectmen thereof shall preside impartially at such meetings, receive the votes of all the qualified electors present, sort, count and declare them in open town meeting, and in the presence of the town clerk, who shall form a list of the persons voted for, with the number of votes for each person against his name,

shall make a fair record thereof in the presence of the selectmen, and in open town meeting; and a fair copy of this list shall be attested by the selectmen and town clerk, and delivered by said selectmen to each representative within ten days next after such election. And the towns and plantations organized by law, belonging to any class herein provided, shall hold their meetings at the same time in the respective towns and plantations; and the town and plantation meetings in such towns and plantations shall be notified, held and regulated, the votes received, sorted, counted and declared in the same manner. And the assessors and clerks of plantations shall have all the powers, and be subject to all the duties, which selectmen and town clerks have, and are subject to by this Constitution. And the selectmen of such towns, and the assessors of such plantations, so classed, shall, within four days next after such meeting, meet at some place, to be prescribed and notified by the selectmen or assessors of the eldest town, or plantation, in such class, and the copies of said lists shall be then examined and compared; and in case any person shall be elected by a majority of all the votes, the selectmen or assessors shall deliver the certified copies of such lists to the person so elected, within ten days next after such election; and the clerks of towns and plantations respectively shall seal up copies of all such lists and cause them to be delivered into the Secretary's office twenty days at least before the first Wednesday in January annually; but in case no person shall have a majority of votes, the selectmen and assessors shall, as soon as may be, notify another meeting, and the same proceedings shall be had at every future meeting until an election shall have been effected: *Provided*, That the Legislature may by law prescribe a different mode of returning, examining and ascertaining the election of the representatives in such classes.

Town classed.

SECT. 6. Whenever the seat of a member shall be vacated by death, resignation, or otherwise, the vacancy may be filled by a new election.

Vacancies to be filled by new elections.

SECT. 7. The House of Representatives shall choose their Speaker, Clerk and other officers.

House to choose speaker, &c.

SECT. 8. The House of Representatives shall have the sole power of impeachment.

To have the power of impeachment.

ARTICLE IV.—PART SECOND.

SENATE.

SECT. 1. The Senate shall consist of not less than twenty, nor more than thirty-one members, elected at the same time,

Senate to consist of not less than 20 nor more than 31.

SECT. 10. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people : *Provided*, That this prohibition shall not extend to the members of the first Legislature. Members not to be appointed to certain offices. Proviso.

SECT. 11. No member of Congress, nor person holding any office under the United States, (post officers excepted) nor office of profit under this State, Justices of the Peace, Notaries Public, Coroners and officers of the militia excepted, shall have a seat in either House during his being such member of Congress, or his continuing in such office. Persons disqualified to be members.

SECT. 12. Neither House shall, during the session, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the Houses shall be sitting. Adjournments.

ARTICLE V.—PART FIRST.

EXECUTIVE POWER.

SECT. 1. The supreme executive power of this State shall be vested in a Governor. Governor,

SECT. 2. The Governor shall be elected by the qualified electors, and shall hold his office one year from the first Wednesday of January in each year. Elected for one year.

SECT. 3. The meetings for election of Governor shall be notified, held and regulated, and votes shall be received, sorted, counted, declared and recorded, in the same manner as those for Senators and Representatives. They shall be sealed and returned into the Secretary's office in the same manner, and at the same time, as those for Senators. And the Secretary of State for the time being shall, on the first Wednesday of January, then next, lay the lists before the Senate and House of Representatives to be by them examined, and, in case of a choice by a majority of all the votes returned, they shall declare and publish the same. But, if no person shall have a majority of votes, the House of Representatives shall, by ballot, from the persons having the four highest numbers of votes on the lists, if so many there be, elect two persons, and make return of their names to the Senate, of whom the Senate shall, by ballot, elect one, who shall be declared the Governor. Meetings for the choice of Governor regulated. Votes to be returned to Secretary of State's office. If there be no choice, provision in such case.

SECT. 4. The Governor shall, at the commencement of of his term, be not less than thirty years of age ; a natural born citizen of the United States, have been five years, or from Qualifications of Governor.

A HISTORY

OF THE

CONSTITUTION OF MASSACHUSETTS

BY

SAMUEL ELIOT MORISON

REPRINTED FROM THE MANUAL FOR THE CONSTITUTIONAL CONVENTION OF 1917

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SUPERVISOR OF ADMINISTRATION.

Before the month was over a joint committee was appointed to report a "more equal and just system of representation." On March 26, 1851, this committee reported a draft amendment which lowered the minimum population entitling a town to one Representative annually, and enlarged the "mean increasing number." Obviously this favored the small towns at the expense of the larger ones. The *Boston Daily Advertiser* computed that it would give 119 Representatives to 139 towns with about 140,000 inhabitants and the same number to 40 towns and cities with about 500,000 inhabitants. The amendment did not secure the necessary two-thirds majority in the House. Immediately after its failure, a bill was introduced into the Senate for taking the sense of the people on calling a constitutional convention. Like ordinary bills, this required only a bare majority of both Houses to become a law. The Whig press proclaimed it a case of *post hoc propter hoc;* the Coalition press insisted that a change in representation was only one of many desirable constitutional reforms.

The constitutional convention bill became a law on May 24, 1851, and was voted on at the regular State election on November 10. The result was 60,972 in favor, 65,846 opposed. Plymouth, Worcester, and Franklin counties were the only ones to cast a favorable vote. But, acting on the advice of Governor Boutwell, the proposition was renewed in the next Legislature. A joint special committee, which included two leading Coalitionists, Whiting Griswold and Anson Burlingame, made a long report in favor of a constitutional convention, with a new bill to that effect. The committee undertook to "point out only those parts of the Constitution, where palpable defects exist." It demanded the usual changes in the representative system; the election of more officials by the people; a limitation of legislative sessions to one hundred days; the prohibition of special acts of incorporation; "the plurality system in more of our elections;" abolition of "the present cumbersome, formal mode of organizing" the government; popular election of justices of the peace, and limitation of their term and jurisdiction; State elections on the same date as national elections; and a reservation of certain sources of income for a school fund. It believed no change in the judiciary necessary, that branch of the government having been entirely satisfactory.

The committee urged a constitutional convention as the only

mitted that women had a right to vote, but insisted that it would be a mistake for them to "enter into conflict with men, in political and governmental affairs . . . that softness and delicacy of character, and those bland enchantments which bind the world in silken chains, would be lost, and lost forever. . . ." Daniel S. Whitney of Boylston said a word on the women's side, and the question was duly shelved.[1]

Article II of Chapter IX provided for the secret ballot by requiring that all ballots (which until 1888 were printed by the various parties, and distributed before the election) be deposited in sealed envelopes furnished by the Commonwealth. A Coalition Legislature had adopted this system a year or two before in order to protect employees from compulsion; the Whig Legislature of 1853 repealed it, on the ground that it insulted the manliness and independence of the laboring men. The same line-up occurred in the Convention. The Rev. Samuel K. Lothrop of Boston asked the Convention to trust the people. Shubael P. Adams said that to his certain knowledge there was not a single moment during the presidential election of 1848 when the ballot boxes of Lowell were not closely watched by "overseers of a certain political stripe" in order to scrutinize employees' ballots. He had seen men forced to change their vote for fear of discharge. All was changed when the sealed ballot law went into effect, "for the votes all looked alike."

Article III provided, for the first time in the history of the Commonwealth, for the registration of voters.

Article VII proposed to hold State and national elections on the same date, instead of a week apart, as had been required by Amendment X.

Articles V–IX were called by the opponents of this Constitution the "plurality patch-up." For many years the constitutional requirements for a majority instead of a plurality to elect all officers had been a nuisance. So long as there were only two parties, a majority was generally secured for one candidate; but powerful third parties had been common since 1830. The choice of Governor (under Chapter I, Section I, Article III) had frequently been thrust on the Legislature. Repeated ballotings, causing unnecessary delay and expense, had often been neces-

[1] *Debates*, II, 726–738.

sary to secure a majority for other elective officials. In one case twelve ballotings took place before a candidate could be elected; and one Congressional district, for a failure to give one of these candidates a majority, remained unrepresented for the entire Congress. The plurality system for all elections had long been agitated; its necessity had been emphasized as one of the main reasons for holding the Convention, and the popular mandate thereon was clearer than on any subject save representation. The committee on elections, presided over by Henry W. Bishop of Lenox, reported in favor of the plurality system. The conservative side pressed for it, but most of the "reformers" developed a sudden tenderness for the old majority system, from which the Coalition party had greatly profited in the past. The report was recommitted to Benjamin F. Butler *et al.*, who reported the "plurality patch-up" of Chapter IX.[1] William Schouler attempted to restore it to the form of the original report (plurality for all elections), but his resolve was rejected by a vote of 159 to 160, the casting vote of President Banks deciding in the negative.[2] Chapter IX adopted the plurality system for Councillors, Senators and county officials, but maintained the majority rule for all others, "until otherwise provided by law." "You talk to me about principle", said Josiah G. Abbott, "when you have given up all principle, and all that you have got in exchange, is something to go into the legislature and trade upon. . . . That is so apparent, that it sticks out in every direction; the lion's skin is not a quarter large enough to cover something that I will not give any name to."[3]

Chapter X included everything in the Constitution on oaths, disqualifications for office, writs and commissions, only a few minor changes being adopted. Chapter XI was devoted to the militia. It was a serious attempt to strengthen and popularize that force, then in a most depressed condition, by having every officer, from major-generals down, elected by the members of the grade below. Article II provided that "All citizens of this Commonwealth liable for military service . . . shall be enrolled in the militia, and held to perform such military duty as by law may be required."

Chapter XII corresponded to Chapter V of the Constitution

[1] *Debates*, III, 86. [2] *Journal*, 240; *Debates*, III, 134. [3] *Debates*, III, 153.

have since become incorporated in the Constitution by single amendments, and as an educational force in constitutional matters the Convention justified its existence.

The Whig Legislatures of 1853 and 1854 did the Convention the compliment of adopting several of its propositions in five amendments, which were accepted by the people by a large majority at a special election on May 23, 1855. Article XIV adopted the plurality principle for all elections. Article XV shifted the State election a week ahead, to the national date. Article XVI provided for popular election of eight Councillors in single districts of equal population, and for a speedier organization of the administration at the opening of the political year, — a reform that had been urged in the Convention but not adopted. Article XVII lengthened the ballot with four minor executive officers. Article XVIII was the Convention's Proposition No. 6, forbidding the appropriation of taxes for private or sectarian schools. Article XIX permitted the Legislature to provide by law for the popular election of county officials; and the Convention's suggestion of a three-year term is now the rule.

The three amendments ratified on May 1, 1857, belong to the same group. Article XX prescribed a literary qualification for the franchise. Article XXI was one of the greatest constitutional reforms ever adopted in this State. It solved the vexatious question of representation by providing for a House of 240 members, apportioned decennially according to the number of legal voters, in representative districts electing not more than three members each. It also increased the quorum to 100 members, which in 1891 was still further increased to a majority for each branch. Article XXII extended the district system to the Senate.

Other proposed reforms in the Constitution of 1853, such as the secret ballot and registration of voters, were adopted by legislative enactment.

This group of eight amendments is what Massachusetts chose from the wave of democratic constitutional reform that swept through the United States during the middle of the nineteenth century. Popular election of minor officials and equality in representation were typical manifestations of this movement.

tants, and nineteen of them were candidates, and no man should have more than two votes; and suppose that that principle should be applied in all the towns of the Commonwealth, because the gentleman has put it forth as a general principle, and we are to discuss general principles here. I desire to know, under the operation of the majority principle, where your government is, and where your House of Representatives and Senate are? And, I ask, whether it is not better to have these men elected by two votes, when the people by their votes have adopted this principle, than to have no government at all. The gentleman says that my proposition is extravagant, but I can turn around and say that his is equally so; for there is no town in the Commonwealth of twenty-one voters that would have nineteen candidates, and elect a man by two votes.

Now, Sir, I am not so much given to theorizing as the gentleman from North Brookfield is. I know, Sir, that he looks at things very metaphysically, and sometimes argues very abstractly; but I am going to take things as they are, and I am going to show, if it is in my power, that the plurality system is the best system which we can adopt. As the gentleman from Fall River has shown, this system represents the majority of the people more nearly, and has for the last ten years, than the majority system. Let us look, for instance, at the Senate as now based. There are gentlemen in the Senate, and have been for the last ten years, who do not even represent a plurality of the county that voted for them. There are and have been men there, and there always will be so long as we keep up this majority system, who did not receive even a plurality of the votes of that county which they are elected to the legislature to represent. I want to know whether this is right, and I should like to hear the gentleman from North Brookfield explain it. We will take, for an example, the county of Middlesex, as it is now represented in the Senate; and I beg gentlemen to understand that I mean nothing personal in this illustration. There are gentlemen in the Senate from the county of Middlesex, who did not receive a plurality of votes; and how did they get into the Senate? They have got there by the operation of what the gentleman calls the beautiful system of the majority. I have assisted for several years in electing senators from the counties of Worcester, Bristol, and almost every other county in the State except Barnstable county, and she has always elected her own; and Sir, I have sometimes had some doubts or scruples whether I had a right to vote for senators from all these counties. The operation of the thing has been that instead of being elected by a majority of the people of the counties where they reside, they are elected by mere party votes, irrespective of their having had more or less, at home,—they are elected because they are on the party ticket, and they come into the legislature and are made senators. Now, I ask whether it would not be better to allow the people of the counties to elect their own senators under the plurality system, than it is to throw the question into the House of Representatives, and let us elect them. That is the question now before the Committee, and I ask gentlemen to give it their careful consideration.

The principle is just the same with regard to the governor. Year before last, and last year, we had a governor who did not receive a plurality of the votes of the people of the Commonwealth. The gentleman who had a plurality was not made governor, while the gentleman who had twenty thousand less votes was made governor; and how was this effected? It was done by a party vote in this hall. I do not say that this was not constitutionally right, for in all probability I should have done the same thing if I had been in similar circumstances; but I want to have the Constitution so amended that this matter shall be taken out of the hands of the legislature, and let the people decide at the polls who shall be governor, and who shall be senators, instead of placing the burden on the members of the legislature from the county of Suffolk to say who shall be senators from the county of Berkshire, as is sometimes the case now. Sir, I think that from the present state of things in this respect arises a great evil, and one which we have met here for the purpose of remedying. It is my opinion that the people would be very much disappointed if we were to submit a new constitution to them without embodying in it the plurality principle; and I agree with the report of the committee last year in regard to the subject of expense. There is no legislature in the whole country that is so long delayed in the early part of its session, about going to work, as the legislature of Massachusetts; and this delay all arises from the cumbrous machinery in the Constitution, with regard to the organization of the government. In the first place, Mr. President, after we come here we have to appoint a committee to count the votes, and it takes them a good while to do that. Then in the other branch they have got to see who are senators, and it takes them a good while to do that. After having found out how many vacancies there are in the Senate, they are reported to the House, and there is a day appointed when those members of the Senate who are elected shall come here and the vacancies in the Senate shall be filled. All this time, Sir, we have no governor elected, and

after being in session something like eight or ten days upon an average—I think it was ten days this year—we finally find out who the governor is; and then we know also, in a great many cases, that the man who is governor has not received so large a number of the votes of the people as another man has who is not chosen. Now, Sir, such being the effect of the old system, and seeing the evil of frequent elections in our congressional districts, this legislature have applied a remedy so far as they had the constitutional power to apply it—they have applied it to the election of members of Congress; and I put the question to every gentleman here, whether the operation of that law has not been satisfactory and salutary to the people of the Commonwealth, and whether it be not better that our congressional delegation should be full all the time, than that three-tenths of it, and sometimes four-tenths of it should be kept out of congress for a whole session. The people saw that there was an evil, and they applied a remedy; and now we have our congressional delegation full. I believe, Sir, that there is no law which the legislature have passed for many years that is so satifactory to the people as the law with regard to the election of members of Congress by a plurality vote. If the principle is a good one for the election of members of Congress, it is equally good for the election of members of the House of Representatives or of governor; but they could not apply it in these cases because there was a constitutional difficulty in the way. We now have the question before us just as the legislature had it before them. That measure was passed by the popular branch of the legislature for six successive years, I believe, and it was not until the seventh that it was adopted by the other branch—showing that the popular will was in favor of it, and after a time the other branch had to yield to the popular will.

The gentleman from North Brookfield attempted to illustrate his theory by a supposed case of a vessel sa ling from Boston to California; and he said that they agreed in the outset that a plurality should decide disputed questions among them. But, Sir, how did they agree? Did they agree by a plurality or did they agree by a majority? I take it that a majority of them made this agreement, just the same as a majority of the people of this Commonwealth have agreed that a plurality of the Senate shall elect a governor when there is no choice by the people—no matter whether he has the highest or the lowest number of votes. And, Sir, if we adopt the plurality principle in our constitution and send it to the people, and a majority of the people agree to it, it will not then be a law of the minority or a law of the plurality, but it will be the will of the majority. It will be a part of the fundamental law, agreed to by the people just as they agreed to exclude minors, women and idiots from a participation in the elective franchise. If the question be proposed to them whether they will agree that the plurality shall decide these elections, and the majority agree to that, the decision of the plurality is the will of the majority. This is merely devising an expedient to relieve ourselves of a difficulty which has long perplexed us. Now, Sir, to return to the illustration of the gentleman, suppose that after the vessel of which he speaks had got outside, the crew or passengers had begun to quarrel, and they agree that the majority shall decide where they shall go; but after they get to sea there is a small party who want to have their way, and another small party who want to have their way, and a third party who want to have their way—making three nearly equal divisions. It is very evident that on the majority system neither party could do what they wished, and between them all they could not go anywhere, and the ship would in all probability be cast away. Or suppose that a majority agreed to go to the coast of Africa and catch slaves, and the minority disagreed to it. Would not the moral guilt rest upon the majority just as much as upon the plurality in the case to which the gentleman has referred? It is merely adding one on one side and taking one off of another side. It is nothing after all but the morality of numbers, instead of the morality of morals. Now, Mr. President, I go for the morality of morals.

Among other things, the gentleman said, if I understood him, that he was in favor of having frequent elections—he thought they added to the morals of the people and did a great deal of good, inasmuch as they brought the farmers together, so that they could swap horses.

Mr. WALKER, (in his seat.) I said, oxen. [Laughter.]

Mr. SCHOULER. Well, Sir, it does not make much difference whether it be horses or oxen. Now if this is a correct view of the subject, we might hold our elections once a month, and instead of having a market day, we could have an election day. Instead of having an annual fair in the fall for the exhibition of cattle, we might have all this on election days, and perhaps this would accommodate our farming friends very well. He thought, as I understood him, that it would be an advantage to have elections once a month. Now, Sir, I do not think so—I think it would be a great disadvantage. I think if we have yearly elections, that is sufficiently often for the people to come together to vote, and

they ought then to decide the question without bringing it into the halls of the capitol.

It is for the people to decide whom they shall have for governors, who shall be their senators and representatives; and those questions should be kept outside of this hall.

The gentleman speaks about the immoralities of other States where the plurality system prevails. He might also speak of the immoralities of his own State under the majority system. I have seen some things in this capitol, to which I doubt whether he can find a parallel in any State where the plurality system is adopted. But I do not wish to bring into this Convention any of those matters in reference to other States. I believe that all these difficulties have arisen from the fact that the election of all the great officers of our government—the governor, treasurer, and others—is virtually taken out of the hands of the people and thrown into the hands of the small body of men who annually assemble here. I wish in our new Constitution to provide that all these great matters shall be settled by the people, and outside of the walls of this capitol, and I believe that object can only be accomplished by adopting, in all elections, the plurality system.

Mr. BALL, of Upton. I am not disposed to intrude my opinions upon the Convention, but I have one or two thoughts in reference to this matter, which I desire to express. As far as I have listened to the discussion, I have heard no attempt made to prove that the system of majority elections is not democratic, and that it is not the true system. Nor have I heard any attempt to prove that the plurality system was more nearly in accordance with the true principles of democracy. Here, then, is the proper starting point—to ascertain which is the true principle. We believe that elections by a majority of the voters, as now established, is that true principle, and it has not been denied. Now, gentlemen propose to make a change, on some certain suppositions in regard to the action of the plurality principle. And what is it? It is that the officers who shall be elected under the plurality system, will, on the whole, have as many votes as they now have under the majority principle. Then what is gained? There is nothing gained; and if so, is it well to alter the Constitution without gaining something? What is to be gained? We are told that we shall thereby rid ourselves of this cumbersome government, and that if we continue to adhere to the plan of requiring a majority to elect, by and by we may find ourselves in that situation in which the ship of state will be foundered for want of a government to rule. Is there even a distant probability of such an occurrence? You may make extravagant suppositions against the workings of any system, and if you argue against its safety or expediency upon those suppositions, you may argue down any principles, either in morals or in politics. Has the practical working of the present system ever resulted in that? Has there ever been a time when we have been left without a government? So far from it, there has never been a time when any trouble in regard to the government has arisen from that source. To be sure, it has sometimes been necessary to hold a number of elections, but that matter rests with the people themselves, and I have never known of an instance in the rural districts where the people have found fault because they were obliged to go to the polls from time to time in order to give expression to their will.

I am opposed to the proposition before the Convention, and I hope and trust that gentlemen are willing, as they professed themselves to be yesterday, to advance rather than go backward. And if we do not advance by adopting this change, why alter the Constitution? Shall we be advancing by adopting this course? Gentlemen have talked here about extending the basis of representation as to the Senate, and they wanted it to include the whole people, and give them all a voice, and shall we to-day say that the minority instead of the majority shall rule? I was in favor of extending the basis of the Senate, and I am to-day in favor of having the majority, and not the minority, rule.

Mr. FRENCH, of Stoughton. Before I am called upon to vote upon this question, I have one word to say. I have listened to the arguments thus far advanced, and have endeavored, as far as I could, to weigh them. I have heard nothing as yet to convince me that so great a change as is now proposed, should be made in reference to the fundamental principle of our government. Was not this government originally based upon the principle that a majority should govern? I know we have been progressing in our ideas of government, and probably we are a great deal wiser than our predecessors; but if I understand the arguments which have been advanced, the adoption of the plurality system will not obviate the difficulties under which we are now laboring, and will not prevent the minority from ruling. I never expected to see the time when an attempt would be made in Massachusetts to change the basis of representation in the Constitution, so that the minority should rule. But it is said by the gentleman upon my left, (Mr. Schouler,) that the Legislature, Senate, Governor and other officers cannot be elected by a majority. Well, Sir, if

they cannot be elected by a majority, let them not be elected by a minority; and if nobody can be elected by a majority, perhaps it will be well for the State, for one year, that nobody should be elected. [Laughter.] I am not sure that we do not have much more legislation than the State needs, for I find that when the political tables are changed, when one party is turned out of power, and another party comes in, that the first thing which the in-coming party does is to upset everything which has been done by the previous legislature, and so we do not get ahead at all.

I sincerely hope that the good sense of this Convention will be satisfied that our fathers acted wisely when they adopted the principle that the majority should rule.

Mr. DAVIS, of Plymouth. I was in hopes that this question would not be taken before some member of the Committee that reported the amendment, had explained more fully to the Convention the reasons which induced them to recommend so great a change in the Constitution. I do not rise for the purpose of expressing my views, at this time, upon the question before the Convention, but, as a member of it, to call upon that Committee, or some one of them, to give to this Convention, fully and fairly, the reasons which induced them to adopt and recommend that Report.

Mr. CHURCHILL, of Milton. As no other gentleman seems to be prepared to present his views to the Convention, and as the question is about to be taken, I will occupy a few minutes in stating my reasons for opposing the adoption of this Report. It appears to me, that the effect of adopting the plurality system will be, virtually, to disfranchise all third and small parties. Suppose a town in this Commonwealth is divided into three parties, one of which casts fifty-one votes, another fifty, and the other forty-nine. Now, the adoption of the plurality principle, not only throws out of consideration this smaller party, and renders their appearance at the polls utterly and entirely useless, but it says to them that, as the questions at the polls are to be settled by a small plurality, your vote can have no effect, and you must be driven into the ranks of one or the other great parties, for if you adhere to your independent organization, your votes will have no influence upon the final result. I say it tends to disfranchise all those small parties which do not give up their organization, and join themselves to the two leading parties of the Commonwealth. Has this Convention a right to say, by their action, that forever hereafter, the parties of this Commonwealth shall embody themselves under two standards, and under only two, and thus drive the people to the choice between two evils? The only argument I have heard advanced in its favor, is that of expediency.

The system of the majority seems to rest upon principle—upon the fullest expression of the sentiments and opinions of all the people of the Commonwealth; but the plurality system goes upon expediency—upon saving time and money. Now, as the question has narrowed itself down to that of principle or expediency, with the light I have heretofore been able to obtain, so far as I now can judge, I shall go in favor of the majority, which is founded upon principle, and against the plurality system contained in the Report before us, which is based upon the ground of expediency.

Mr. KEYES, for Abington. Mr. Chairman, I intimated when before up, in reference to this question, that I thought this discussion would last for several days, and I certainly hoped it would last a little longer than it is now likely to. I recollect some three years ago, when this principle was alluded to, and when attempts were made in some cases to adopt the plurality system, that it awoke a very strong feeling among the people, all over the State, and that the newspaper press, and, especially that in the city—with one exception perhaps—were aroused with fear, by this strange and extraordinary innovation. Among all the precedents which we have been called on to follow, or to which we have been referred, in the Convention of 1820, not one has been brought forward to support the plurality system. Such a thing was not then thought of at all. It was supposed that the majority system was the system of the Revolution; and it may have been conquered, for ought I know, in the battles of the Revolution. It was then held to be somewhat sacred. But it shows the downward tendency of opinion, and the rapidity with which we move, when we, in a Convention like this, composed of men of all political parties, with every shade of political opinion, without having given even one day's discussion to it, will sit with so much apparent indifference, and allow such a subject to be disposed of. It is possible, however, that all minds are made up upon it; that the opinions of all have been perfected; that it is unnecessary to discuss it further, and that we are ready to take the final vote upon it.

Now, Sir, as a member of the Senate of this Commonwealth, when the subject was before that body, I constantly opposed this innovation, although, many of those with whom I usually acted in reference to most questions, went in favor of it. But, nevertheless, the plurality system was, at that time, to some extent adopted. Of its consequences I am not the judge. Indeed,

I care nothing about the consequences. I think, if it be right that the majority shall rule, we ought to stand by that principle and not allow it to be winked out of sight in this Convention altogether. A question upon which so much depends, should not, at least, be passed silently by as a matter of no consequence.

Mr. Chairman, the subject of party influence is a somewhat delicate one to allude to in this connection, but as it has been mentioned by others, I trust I shall be excused for alluding to it. It is a fact well known, that all reforms proceed from small beginnings. The idea may, perhaps, originate in the mind of a single man, in his closet, dreaming over what another man has said a thousand years before; there, the thought has arisen in his mind to make some great and important steps in advance; to make some important reform in science, politics or religion. Himself, as well as his doctrine, has been received by the world with sneers, with insolence and derision; but, with the true spirit of martyrdom and heroism, he continues undaunted, till at last the world adopts his reforms. All the inventions and reforms in the arts and sciences, as well as in politics and religion, have been founded, and have proceeded in this manner. I look upon these third parties, therefore, as something not to be disregarded; composed, perhaps, originally of a single man, around this small nucleus, a few of his comrades and sympathizing friends will cluster, increasing till the little band organize and go to the polls amid the derisive sneers of the crowd; and they go on increasing till at last, like heroes, they lead the world to triumph and victory.

Well, Sir, our majority system has been the patron of this class of men. It may be that we do not all think that these third parties are for the benefit of the Commonwealth. It may be that some of us think, they deserve the treatment they have at first received; that the world would have been better off if they had been crushed in their infancy. But, Sir, although this Convention is composed of men of all parties, yet I trust, that for the moment, they have forgotten all party distinctions. I certainly know of no party man to oppose. I think nothing of party, and care not a fig for the might of any party opposed to me, nor of any hostility which they may manifest, towards the party to which I belong, in consequence of any supposed strength which they possess. I do not think there has been a period for half a century, when party animosity has so died out for want of material to feed upon, as at this very day in the Commonwealth of Massachusetts. But, if we will step out of the circle in which we exist, it will be found that in times past, these small minority parties, struggling on for a time, as if under a cloud, side by side with the great parties of the day, and afterwards triumphing upon their own hooks, or infusing themselves into the other parties, have been the life-giving and controlling spirit of the people of Massachusetts. And, Sir, if Massachusetts is different from the other States of the Union, this has made her different.

Now, these examples which have been brought forward from the other States, instead of inducing me to adopt the system which they recommend, are the strongest possible arguments, to my mind, why we should not adopt it. Whatever may have been the cry in relation to the politics of Massachusetts; and, however much we may have abused each other at home, we all know that the history of Massachusetts gives abundant testimony to the whole country, that the politics and the politicians of our State are far superior to those of any other State in the Union. We have a government which has commanded the respect and esteem of every other State. All this grows out of these very difficulties in our elections, of which gentlemen so much complain. It has grown in part, out of our corporate representation, which has made even the smallest town in the State feel an interest in our public affairs. It has kept them acquainted with the action of the legislature, and with the laws adopted. It has kept even, every man in every school district acquainted with the progress of the government and of the legislature, all the time. But, if you diminish or take away this interest in their annual elections, you will render them careless, heedless, and indifferent, and finally ignorant as to the conduct of their government. But I am travelling out of the range of my subject, for I did not intend to allude to this matter on this occasion. I think these difficulties and inconveniences must be borne with.

Now, Sir, in reference to what has been said of a plurality electing the officers under the majority system, I do not hold it to be the fact. A man expresses his opinion just as much by staying away from the polls as by going there. If the election becomes of so little importance as not to induce him to go to the polls, he expresses his opinion by staying away, and if for the same reason, a portion of the inhabitants of a town stay at home, the candidate who is elected, is elected by the will of the majority, just as much as if every man went to the polls and cast his vote; for every man who stays at home, stays, because the question at issue is not of sufficient importance, or, because the difference in the candidates is not of sufficient importance to bring him out; therefore, the majority principle is maintained

precisely as much as if every man were at the polls.

Now, one word, in reference to the idea that these numerous elections cause unnecessary trouble. Sir, there is no law sending men to the polls, which causes unnecessary trouble. Men are well paid for such trouble, and if they are not, it certainly is no trouble for them to stay at home. Suppose they do stay at home, the election finally takes place, and it is a majority election. Those who are elected will not be taunted with being minority candidates; they carry with them the majority principle, and the majority respectability. It cannot be thrown in their faces that they are the representatives of a small minority, chosen perhaps, by accident, and that whatever they utter may be directly contrary to the wishes of the people they represent.

But, Sir, I did not come here to make a speech upon this subject. I have thought nothing of it, until I saw it in these rules this afternoon; but I should not think I had wasted the afternoon, if, without enlightening the mind of any one in reference to this subject, I had served to postpone a little longer the decision. I should like to hear further upon this subject before I am called upon to give my vote in relation to it. I think our fellow-citizens will desire that we should consider this subject more maturely before we make so important an interpolation into the system adopted by our fathers. I should like to hear whether there are arguments which can be advanced which should induce me to change my opinion in this matter, for I hold myself in reference to this as in reference to all other subjects—open to conviction. And I am ready to change my opinion forty times a-day, if necessary, to come to what I believe a correct conclusion.

Mr. HOLDER, of Lynn. I have listened to the various arguments which have been made upon this question with great attention, and it is with some little reluctance that I rise to make a very few remarks at this time. I was in hopes that the question would not have been taken for a few days; but as I perceive that gentlemen are already beginning to manifest an anxiety to vote upon this subject, I wish to say a few words. The great argument that has been advanced against the Report of the Committee is, that a part of the people would be disfranchised—the third party or some other. I do not believe in that doctrine. In this Yankee land, when we find any obstacle in our way, we are always ready to overcome it, and adapt ourselves to the exigencies of the case. If the plurality system is an obstacle in the way of those who vote with the third party, I venture to say that they will overcome it. I am anxious, for one, to preserve every democratic sentiment which is contained in the Constitution, and I believe the people of this State expect that we shall make progress in the facilities for carrying on the right kind of a government. Progress and democracy are one. I do not believe that the people desire to go to the polls so often as seven or eight times a year, as may often happen, and has occurred within the present and former years. I think that such frequent elections rather have a tendency to array men against men in bitter enmity; and the great political and true feeling of democracy loses its value in consequence. By the incorporation of the plurality system into our Constitution, I have no doubt that we shall dispense with these frequent elections, which produce so much bitter and exasperated feeling, and that our elections will be rendered, in consequence, comparatively quiet and calm. If I thought that the adoption of this system would encroach upon any democratic principle, I would be the last man to support it. It would have suited me best to have adopted the plurality system after one trial; but rather than make no progress, I shall, for one, vote for the Report as it comes from the Committee.

Mr. HYDE, of Sturbridge. The only apology I have to offer for troubling the Convention at this late hour, is, that certain members have been called upon to explain the views of the Committee. I regret that the chairman of the Committee is not present. I do not intend to occupy the attention of the Convention long; but I can scarcely do less than give some of the reasons which actuated this Committee in making the Report which we have presented to the Convention. The Committee were nearly unanimous in their Report, as has been before stated; and they thought that this Commonwealth would be better represented, and more directly represented under the plurality than under the majority system. There are several reasons which led them to that conclusion. It seems to have been taken for granted by gentlemen who have opposed the Report of the Committee, that, in all cases, if the plurality system were adopted, the minority would rule, and not the majority. That seems to me to be a mistake altogether. If the plurality system is adopted, it does not follow as a natural consequence that the majority will not still rule; and I contend that they will in most cases. For instance, when there are but two candidates for the same office, the majority must prevail. It is impossible that the plurality principle should apply. That principle can only apply where it will relieve the people from the burdens and difficulties of the election where there are several candidates, or more than two. With the majority system, it

is difficult, in all cases, and in some impossible to secure the election of any candidate who is set up. Gentlemen will understand, in this Convention, that the majority system does not require a majority of all the qualified voters; it only requires a majority of those present and voting at any one election. Now, I contend, and this was the view of the Committee, that, as a whole, the officers elected will receive a greater number of votes, under the plurality system, than under the majority system. Where there are but two candidates, the majority will elect; and where there are more than two, they must have an election; and frequently, in order to obtain that election, it is necessary that the plurality system shall be applied. It is not often the case, and probably has never happened in this Commonwealth, that there are more than two large parties. The people in this State are ordinarily divided into two rival and opposing parties. Sometimes a third party is interposed. Those who form such a party have a perfect right to do it, and they are to be respected. They have the same right, in proportion to numbers, as any number of persons whatever, no matter on what principle the division may take place. But we have seen that where the third party is strenuous, the people come to the polls time after time, and, after all, there is no election. Look at the effect in the town elections, where we elect our representatives. The more trials there are to elect, the more divided they become, and the more firmly they adhere to their distinctive principles, and an election is almost entirely impossible. You may try it to almost any extent, as it has been done for the election of members of congress, and fail after all. I recollect, that where we have tried for a period of one whole congress, for two years, we failed to choose a representative. The people saw it, and they obviated it by making a law, that if there was no election at the first trial, a plurality should elect. Was not that a wise law? Does it not work favorably? I have heard of no objection to it. If it works well in one instance, why will it not in others? I believe that, under the plurality system, the towns would be represented more perfectly than it is possible to have it done under the majority system.

I will refer to another principle which actuated the Committee. It may be thought a novel idea, but I have no doubt of its correctness; and that is, if the plurality system is adopted, we shall be represented by better men than if they are elected by the majority system. How is it now? Any man who can get a majority of the votes must be chosen. Why is he chosen? The question has not been for many years, who is the best man, who will most ably represent the people, and discharge his duties in the legislature of the Commonwealth; not who is most firm, bold and fearless in action, and honest in purpose. Such are not the men who are selected. If a man has been already in office, he has pretty likely given offence to somebody, and he will fail to secure all the votes, and of course he will not be selected as a candidate. A man suitable for office has not unfrequently warm friends, and sometimes bitter enemies. When the parties come to canvass for the election, they understand that they must get some man who will secure a majority of the votes, or he will not be made the candidate. The man who is the most popular must be the nominee. They frequently throw aside the man who is best qualified to represent them, and take a man who will command the greatest number of votes. Sometimes he is the best man, to be sure, but not always. The candidate in the small towns, is often a negative man, a man who has never done anything to make either friends or enemies; and so a man who will secure the votes becomes the candidate, and is elected, when, if the plurality system prevailed, a better man would have been the candidate, and filled the office.

Then, after the first trial, what is the consequence? If there are continued trials, as has been the case very frequently in this State, the people will not attend the polls fully after one or two of the first trials. After there have been various meetings on several days, and there has been no election, the people become disgusted with some of the proceedings and fall off in numbers; and the man who is finally elected by a majority, would not have received even a plurality on the first day of trial, if the plurality system had prevailed. The number of votes which constitute a majority at last, would not have made a plurality at first.

Another reason which operated upon the minds of the Committee was, that they believed the tendency of the plurality system would be to secure a larger vote, that it would extend the right of suffrage. They viewed it in this light; they believed that if this principle were to become a part of the Constitution, the people would all know that every officer, State, Town, and County officer, even all elected by ballot, would necessarily be elected on the first trial, except in extreme cases when there happened to be a tie, and that expecting an election to take place, they would congregate in greater numbers at the polls. I think they would canvass the merits of their respective candidates more closely, and I believe they would press the election with more vigor, and feel a deeper interest. Knowing they had to spend but one day, and that that day

would secure to them an election, they would be pretty anxious to get as many votes as they could for their candidate.

The gentleman from North Brookfield, (Mr. Walker,) supposed an instance of a town having twenty voters and nineteen candidates, where the man who obtained two votes would be elected. That could never happen. It would be an extreme case. What town, county, state, or nation is there in which there could be nineteen parties known? There could be no such thing. It is impossible that there should be so many parties; there never could be more than three or four at the most. If any towns or counties, large or small, contained many more divisions of the voters, they would not be parties; they would not be entitled to the name or respect of parties, they would be mere clans. Would they not, when thus divided into such a number of factions, be inclined to settle down finally on the plurality system. The Committee were, after all, almost unanimous in the opinion that the theory of majorities ruling—a correct doctrine in a great degree—was more potent in theory than in practice. The Committee believed that, practically, the officers elected would get a greater number of votes at the polls, as a general rule, than if the majority system prevailed. I think if gentlemen will reflect and consider how the majority system has operated for a few years past, and even up to the present time, they must necessarily be convinced that the officers elected will receive as great, or even a greater number of votes from the application of the plurality system, than they do now receive under the operation of the majority system. These are a few of the reasons which actuated the Committee. As it is now late, I will not occupy the time of the Convention any further.

Mr. WARD, of Newton. As I presume the question will not be taken now, I will move that the Commitee rise, report progress, and ask leave to sit again.

The motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the Chair of the Convention, the Chairman reported that the Committee of the Whole had had under consideration the report and resolves on the subject of election by plurality, and had made some progress, but had not come to any conclusion thereon, and asked leave to sit again.

Leave was granted.

Mr. WILSON, of Natick. I rise for the purpose of moving that when this Convention adjourn, it adjourn to meet on Thursday morning at ten o'clock. I make this motion at the request of some members of the House of Representatives who assure me that the House will, to-morrow, make their final adjournment, but it will be necessary for them to have the use of this Hall to-morrow in the afternoon. I hope, therefore, the Convention will agree to the motion which I now make, that when the Convention adjourn, it adjourn to meet at ten o'clock, A. M., on Thursday. We shall then have quiet and undisturbed possession.

The motion was agreed to.

On motion by Mr. THOMPSON, of Charlestown, the Convention, at five minutes to six o'clock, adjourned.

THURSDAY, May 26, 1853.

The Convention met pursuant to adjournment, and was called to order at 10 o'clock, A. M.

Prayer by the Chaplain.

The Journal of Tuesday was read and approved.

Order Concerning Books.

The order submitted on Tuesday, by Mr. Churchill, providing that no book or other printed matter, not strictly appertaining to the business of the session, thereafter to be transacted, shall be purchased or subscribed for, for the use of the members of the legislature, was adopted.

Mr. LELAND, of Holliston, moved to take up from the table the resolution heretofore offered by the gentleman from Otis, (Mr. Sumner,) concerning the printing of resolves and orders.

The motion was agreed to.

The resolution having been read by the Secretary,

Mr. LELAND said he hoped the resolution would be agreed to by the Convention. At present, as it appeared to him, there was considerable confusion existing in respect to these orders and resolves.

Mr. HOOPER, of Fall River. I made a suggestion to the mover of this proposition at the time when it was offered, under the impression that these orders and resolves were not published in such a manner that members can readily refer to them. But I find that they are all printed in the official report of the proceedings and debates of the Convention, and every member, therefore, has ready access to them. I shall, therefore, be opposed to the adoption of this resolution, as incurring an unnecessary expense.

Mr. SUMNER, for Otis. It is true, probably, that these several orders and resolves are pub-

lished in the official report of the proceedings of the Convention, but I apprehend it is not correct to suppose that these orders and resolves are therefore in the hands of each and all of the members of the Convention, for there is some delay in the publication of those reports. I think, Sir, that almost all gentlemen on the various Committees have experienced more or less inconvenience from not having before them, in a compact form, the several resolutions and orders that have from time to time been adopted. It is a matter of convenience, and to some extent, of necessity, in point of fact, that we should have these orders and resolves in a collective form.

The question was then taken upon the adoption of the order, and it was, without a division, decided in the affirmative.

COMMITTEE OF THE WHOLE.

On motion of Mr. HALL, of Haverhill. The Convention resolved itself into a Committee of the Whole, Mr. Sumner, for Marshfield, in the Chair, and proceeded to consider the first subject on the calendar, being the report and resolves on the subject of—

Elections by Plurality.

Mr. WARD, of Newton, addressed the Committee. He said: When I made the motion, at the last sitting of the Convention, that the Committee rise, report progress and ask leave to sit again, I did not do it so much for the purpose of availing myself of the privilege of occupying the floor, as that the further consideration of the subject might be postponed, and the discussion continued at another time; but availing myself of the privilege to which I am entitled, I shall now proceed to make some remarks in reference to the arguments that have been used by gentlemen who have participated in the debate in relation to this subject.

The question is, as reported by the Committee, that it is expedient so to amend the Constitution, that in all elections by the people of the officers named therein, the person having the highest number of votes shall be deemed and declared to be duly elected. That is the question that is presented to us by the Report of the Committee. And, Sir, a question of greater magnitude is not likely to come before this body. It is a question of the very highest import; it is whether elections by the people shall be governed by pluralities or by a majority of the votes. The Report proposes to alter the Constitution in this respect, and to make a departure from long established usage. Sir, there is danger of our attempting too much; we could not do a greater wrong, than to attempt to reform too much. It will have an injurious effect upon the minds of the people, when they come to act upon the Constitution, which is to be submitted to them. I think the people do not desire that many amendments should be made. And, Sir, my belief is, that they do not desire this one. And it seems to me that it is not consistent with our duty here, that we should adopt this Report. I say we should not adopt it for this reason. We have adopted the basis of population for representation.

We have extended our basis of representation to the utmost length that is practicable, and now shall we sanction a principle that abridges the freedom of elections, for I hold that it is the right of every voter to so cast his vote that it shall tell. It has always been a fundamental principle of this government, that elections shall be decided by a majority, and I hold that it is a just principle. If, sometimes the minority rules, it should not alter the principle. Principles are eternal, deviations from them are but temporary, and in an enlighted community, of but short duration. A principle that is just in itself, should not be sacrificed to expediency. I admit that the majority principle, carried out in practice, is not unfrequently attended with much difficulty. It occasions expense and loss of time, but I would ask had we not better bear with that, than to sanction a principle that deprives the voter of the power to give effect to his vote.

We will suppose a case, that the voter conscientiously believes that the leading prominent candidates are, none of them, suitable persons to be elected; that their nomination is a nomination "not fit to be made." What can he do? What should he do? One of two things: he must either vote for a man who is unfit for the office, or if he vote for the man of his choice, it must be without the least probability of his vote counting anything more than a piece of blank paper. I ask whether this is not virtually depriving the voter of the right of suffrage? I say virtually, for, on the one hand, his vote is nothing if he votes according to his choice, and on the other, to make his vote available, he must cast it against his convictions of what duty requires.

We are, Sir, a people of progress, and it behooves us carefully to examine the ground before we make a change; before we take a step. I do not think that the Convention, or the people will deem it necessary, that this Report should be accepted, and the Constitution amended according to it. More especially am I of that opinion, because the Report not only does not recognize in any event the majority principle, but it excludes it on the first trial to elect. Now I think to substitute

the plurality principle for the majority vote, though it may affect the election on the first trial, it is equally true, that it will nevertheless not rid us of the evils of a minority government. But I do say, and I do conscientiously believe, that it will serve to perpetuate the evil of a minority government. I shall not at this time trouble the Convention further.

Mr. HALL, of Haverhill. I desire to say a few words in justification of the vote I shall be called upon to give upon the question before the Committee. Upon that question I shall probably differ from some gentlemen in this Convention, of the party with which I usually vote, and I desire to say what I have to say at this time for the purpose of asking the Committee, in considering this question, to consider it in reference to another question which is directly connected with it—I mean the election of all or nearly all of the county and district officers by the direct voice of the people. I happened to be upon the committee that had this matter under consideration in relation to the election of the officers of the Commonwealth proper as well as the county and district officers. The committee had several sessions and debated this matter; several orders have been sent to that committee, one or two asking that additional officers be recognized in the Constitution; one, by the gentleman from Worcester, asking that all officers now named in the Constitution be elected by the people; another, by the gentleman from Montague, asking the committee to add to these all district and county officers and elect them by districts; another, by the gentleman from Millbury, asking that the election of justices of the peace should also be added, which, in fact, covers the whole ground of recognized officers to be elected by the direct vote of the people. Now, I may be permitted, in this connection, to say, that I think, in debating this question of electing by plurality, it is proper to allude to these other questions, and that they should be debated in connection with it, so far as may be allowable under the rules of the Convention. Now, my vote would be affected upon this question—were I in favor of the majority principle—by the decision of the question as to the extent, if that could be ascertained, to which they would go in determining how many officers they would direct to be elected by the people. It may not be improper for me to make a general statement in regard to the action of the committee, that from the best information which they possessed in reference to this question, they determined that the election should be by the plurality direct upon the first ballot. How the majority of the committee would go provided there was no election by plurality, I cannot say; I can only speak for myself, and as far as my vote is concerned, however the majority of the committee may go, I cannot go for electing all these various officers by a direct vote of the people. But, Sir, as a principle, I am in favor of electing officers by the people; as a principle, I desire to go as far as may be considered practical and practicable for the election of all state and county officers by the direct vote of the people. But it appears to me that the majority of the Convention —I care not of what party, for I do not consider this a party question—cannot go for electing, in the manner proposed, this long list of officers—Secretary of the State, Treasurer and Receiver-General, State Auditor, Attorney-General, Sheriffs, Coroners, Register of Probate, Judges of Probate, Commissioner of Insolvency, Register of Deeds, County Treasurer, County Commissioner, District Attorney, Clerk of the Court, Notaries Public, and Justices of the Peace.

Here is the whole catalogue of subjects which have been referred to the committee, for them to consider the expediency of having all these officers elected by the people; and if I may be allowed to express an opinion on that matter, in this connection, I will say that I consider it a safe principle to adopt, that the elections of all state, county, and district officers, so far as practicable, should be left to the people of the Commonwealth. Believing in that principle, and believing the selection and election of public officers *safe* with the people, I desire to adopt some mode in which we can carry it out in practice for the election of these various officers. As was stated the other day, this is not entirely a matter of convenience. It is a question of time—it is a question of money, for time is money. People are unwilling to turn out day after day, and ballot over and over again, without any probability of an election; and this is found to be the practical result of the present system of voting in this Commonwealth. I hope, therefore, that gentlemen, in debating this question, will debate it in reference to the other question—of how many of these officers, if not all of them, should be elected by the people. Perhaps I should not go as far in this matter as some gentlemen with whom I am associated; but if the principle is a correct one, as advocated by some gentlemen on Tuesday last, it has an important bearing on the question immediately before us. Let us for a moment look at the manner in which our elections are now conducted. On the first day, as we all know, the various parties bring out their voters; they spend their time in rallying their friends, and not only that,

but if all stories are true, they spend money, and sometimes a good deal of money. On the first ballot we have, in any general election, what may be said to be a fair and full expression of the wishes of the people; but it frequently happens that nobody is elected. Now, my friend from North Brookfield says that the majority principle is the best principle, because the great question with him is, Who shall govern? But the result is, that on the first ballot, when there is the fullest expression of the voice of the people, there is no election—there is nobody to govern. Then they proceed to ballot again and again, and after four or five trials there is still no election. Then the question may well be asked, who shall govern? I answer, Mr. Chairman, the greatest number voting for the same officer should govern. But what is the result of the theory of the gentleman from North Brookfield? It is that, finally, an election is had by perhaps not more than one-tenth part of those who actually voted on the first ballot; and in many cases a man is chosen who received less votes on the first ballot than several of his competitors. Thus, while you preserve the majority principle, the practical result is that a man is chosen who does not even have a plurality at the time when you have the fullest expression of the will of the people. It has been said that convenience should be thrown aside entirely; but here we see the result of that. The people become tired, and they stay home; does the majority then govern? No, Sir. A single handful of voters govern, who have had more patience and perseverance than the others; and they thus gain the ascendancy because they have tired out the majority of the voters of the Commonwealth. Gentlemen know very well that this is the practical result of this system.

My friend from Lawrence says that after two or three unsuccessful attempts to elect a man, it would be, perhaps, best to adopt the plurality system. But is not his principle worth anything, that he proposes to abandon it after two or three trials? If the principle is a good one, it should be adhered to, no matter how many trials were necessary in order to have an election; but if not, if it is worth so little that it may be abandoned after the first two or three trials, why shall we encumber ourselves with it at all?

I think, as was remarked the other day, that the adoption of the plurality system would give us the best men on the first trial, because on that system every man would know that on the first trial somebody would be chosen. It would be an extreme case if two men should have precisely the same number of votes. Then each voter will say to himself, "I have my own choice about this matter, but it is certain that one of these two will be chosen, and which of them is the best man? I would rather have Mr. A. than Mr. B., and would rather have Mr. B. than Mr. C." With this distinct understanding, I think the best man would be pretty sure to be chosen; while on the majority system, the votes would be divided among some other parties and some other candidates, because there would be some who did not exactly like either of them.

As I said just now, I desire to act upon this subject with reference to the other subject to which I have referred,—that the elections of state, county and district officers should be by the people. I would not, perhaps, go to that extent which some would; I would not have our judges, our justices of the peace, or our notaries public elected by the people; but I say that so far as *practicable*, I desire it, and that all the voters of this Commonwealth shall be permitted to express one opinion in elections where there is a full expression of the will of the people, as to those who shall take part in administering the affairs of the Commonwealth, in order that we may elect our best men. I believe these two subjects are intimately connected, and I have, therefore, sought this early opportunity to submit these views to the Convention, in order that our action upon the question before us may be influenced by a consideration of the whole matter depending upon it. I hope the resolve on your table will pass.

Mr. GRAY, of Boston. I shall need the indulgence of the Committee if I should repeat what may have been said already, as I was unavoidably absent when the debate on this subject was opened; and for the same reason, I may answer very imperfectly the arguments of those gentlemen who have taken a position opposite to that which I shall take, as I can only judge of them from the replies to them to which I have listened. I am very glad, Sir, that upon this occasion, and more especially upon the occasion when this question was brought up in the legislature, it has been brought up free from all party aspect; gentlemen of opposite political doctrines have considered and discussed it without any reference to party lines. Now it may be that in the course of my remarks I may use the word "parties," or may refer to parties; but I wish it to be understood, that if I do so, I refer to the political parties now existing merely in a historical sense, without passing any judgment as to the merits of the doctrines of any of them. I suppose, Sir, that we shall all agree that it is desirable that in the election of officers by the people, there should be as much unanimity as possible. There have been countries, and I believe Poland was one of them, where entire una-

nimity was required upon the part of the electors, and of course elections could never be fairly carried on with such a provision. There are public bodies which require two-thirds of all the voters in order to make an election, and I believe the Pope holds his seat upon that principle. The general principle is, however, that a majority of the people—by which we all mean a majority of the voters who actually take a part in voting—shall have power to elect public officers; and we would have that majority where it is practicable. But, Sir, we all know that it is not always practicable to have a majority; and the question is, how shall we approximate the nearest to it? The people hold elections for governor; and the theory of our Constitution always has been that the governor should be elected by the people and not by the representatives of the people; but we know that at the present day it is found that a majority of the people do not unite upon any one candidate. What is the dictate of common sense in that state of things? If a majority of the people cannot be obtained in favor of any individual, the next thing is to approximate the nearest we can to it. If we cannot have a majority, let us have that number of votes which best represents it? and what is that number? I agree with the gentleman from Haverhill, in what seemed to be the general tenor of his remarks; that number is the largest number who vote for any one individual, and, therefore, the only practical conclusion to which we can come will be the plurality principle. That principle has been adopted in the greater part of the States, who are sufficiently republican in every sense of the word, and I suppose all will admit that they are sufficiently democratic in their notions to satisfy even the strongest lover of democracy.

Now, Sir, as we are making a Constitution for practice, in order to see the practical operation of the majority principle, let us revert to the teachings of our previous experience; and what do we find? Until very lately, a majority has been required to determine all elections; and we will just look at its operation in the case of members of congress. After a violent struggle,—as I have said before, not at all a party struggle,—after a most earnest contest, the legislature were driven into the adoption of the plurality principle as decisive of the election of members of congress, after a single trial; but to that point I will refer presently. What was the state of things previously? Gentlemen may recollect that at one time three seats were vacant in our congressional delegation; and this state of things lasted during a whole congress, if I remember right. Suppose that in the apportionment of representatives, that congress had said, "The State of Massachusetts, although numerically entitled to ten representatives, shall be cut down to seven," what should we have said to that? There could be but one answer; and yet, Sir, the legislature suffered this to be done by our own people, and upon what principle was it justified? I have heard gentlemen say upon this floor, that rather than have a representative whom they disliked, they preferred that their district should be unrepresented. Well, Sir, it was a consistent part of their doctrine; it was where their argument led them, and it will lead us to that in any case if we adopt the majority principle. Gentlemen say that the majority must rule; but the majority will pronounce in favor of no one—that is to say, the majority will have nobody to rule. At this point, the people step in and say, "We will have a magistrate—we want to be represented." Some people may say that if they cannot have the man of their choice, rather than to have the opposing candidate elected, they prefer that the State should have no governor. I have no doubt there are individuals who say this, and perhaps they say it more than they think it; but I do not suppose that we who propose this Constitution to the people, are of that opinion, nor do I suppose that the people who are to ratify this Constitution before it goes into effect, will agree to any such sentiment. Suppose the majority of the people of a district should say that they would have no representative in congress, to what would that lead? If every district should say so, it would stop the wheels of government—it would be nullification. We are, therefore, bound to start with the position, if we are to have anything but anarchy, that we must have magistrates; and it was upon this view of the case that the plurality principle with regard to members of congress was adopted.

Now, Sir, it is of no consequence—and I beg gentlemen, if they have this idea in their minds, to dismiss it—what party would be benefited or injured by the adoption of the plurality principle; for the actual history of the matter will show that if the plurality law had been adopted two years before it was—which would not have been one day sooner than it ought to have been—the political effect of it on the parties as they then existed would have been just the reverse of what it was when it was adopted. I hope we shall consent to dismiss all considerations of that kind. The theory of our government has been, from the beginning down to the present time, that the governor should be elected by the people; that is, to use an expression which savors a little of Hibernicism, that the governor should be elected on general ticket at our elections of chief magistrate,

The framers added this section to the constitution via a 1992 constitutional amendment that the voters ratified on November 3 of that year by a margin of 215,040 to 142,130. The first paragraph provides four-year terms for the five general officers, effective in 1994, thereby doubling their tenure. The 1973 Constitutional Convention had advanced this provision, but the voters narrowly rejected it on November 6, 1973, with 55,998 against and 52,332 in favor. The 1986 open convention proposed four-year terms for both general officers and members of the General Assembly, coupling the extension with a recall provision. The voters rejected that change by a wider margin because of its attempt to lengthen legislators' tenure. By the deletion of legislators from the provision, the 1992 amendment fared much better.

The terms of the state officers set by this section have changed significantly over the course of time. The Charter of 1663 allowed general officers one-year terms, a tenure that the constitution of 1843 reaffirmed. Not until the ratification of Article of Amendment XVI on November 7, 1911, by a vote of 27,149 to 14,176 did general officers and legislators receive a two-year term.

The last sentence of paragraph 1 contains a final feature of the 1992 amendment as it pertains to term and tenure. Based on the Twenty-second Amendment to the federal Constitution, it bars a person from serving consecutively in the same general office for more than two full terms, "excluding any partial term of less than 2 years previously served." This term limitation does not apply to legislators, however, because their term of office was not lengthened.

The final four paragraphs of Section 1 set forth with specificity a procedure for the recall of general officers (but not legislators). The lengthening of the term of office to four years primarily accounts for this change. The recall process, however, has its limits. No general officer can be the object of a recall petition unless "indicted or informed against [i.e., a criminal information brought by the attorney general] for a felony, convicted of a misdemeanor, or against whom a finding of probable cause of violation of the code of ethics has been made by the ethics commission." The petition requires the signatures of 3 percent of the total number of votes cast in the last preceding general election for that office to begin the process and 15 percent of that number to force a special election at which "the issue of removing said office holder and the grounds therefore shall be placed before the electors of the state." Petitioners have 90 days from the issuance of the 3 percent petition by the state board of elections to accumulate the required verified signatures.

SECTION 2. Election by plurality. In all elections held by the people for state, city, town, ward or district officers, the person or candidate receiving the largest number of votes cast shall be declared elected.

Section 2 specifically provides that in both primary and general elections for state office, candidates can win an election only if they receive the largest number

or a plurality of the votes cast. See *Metts v. Murphy,* 363 F. 3d 8 (1st Cir. 2003). Hence, by receiving a majority of the votes, the candidate will be declared winner of the election. See *id.*

The plurality provision originated as Article of Amendment X adopted on November 18, 1893, by the overwhelming margin of 26,703 to 3,331—the most decisive ratification of an amendment in Rhode Island's constitutional history. The emphatic nature of the vote was due to four years (1889–1893) of electoral "no choice" in the race for governor under the existing majority election requirement. This annual impasse was the result of the presence of a third party (the Prohibition party) in the races for several state offices.

In 1889 Democratic reformer "Honest" John Davis outpolled Republican Herbert W. Ladd by 4,419 votes, but the General Assembly's grand committee gave the nod to Ladd under the procedures established by Article VIII, Sections 7 and 10. In 1890 Davis was again the high vote-getter against Ladd, and this time he was chosen governor by the grand committee because of an increased number of House Democrats. In 1891 Davis again outpolled Ladd, but the legislators picked the Republican. In 1892 Republican D. Russell Brown beat Democrat William Wardwell with a narrow majority of 243 ballots, but in 1893 no one obtained a majority. When the Republican senate and the Democratic House reached an impasse, the ballots were not officially counted, there was no election, and Brown carried over.

Since the plurality election requirement applied to legislators as well as general officers, there were numerous second or "by-elections" held that caused changes in the composition of the grand committee. Eventually the returns from by-elections resulted in a grand committee of 60 Republicans, counting the lieutenant governor, and 59 Democrats. At this juncture the Democratic House expelled two Republican members-elect under the provisions of the old Article IV, Section 6, giving the Democrats control of the grand committee. The House then sent an invitation to the Republican senate to join it in grand committee to count the votes for governor and other general officers. The senate declined the invitation and voted to adjourn "owing to irreconcilable differences" with the House. When the house ignored the senate action, incumbent Governor Brown prorogued the General Assembly under the provisions of Article VII, Section 6, of the 1843 constitution, so the popular votes cast in the 1893 election were never counted.

The House then asked the supreme court for its opinion of the legality of the adjournment of the legislature by the governor. Assuming that the governor had prorogued the General Assembly before the resolution asking for an opinion had been passed, the court answered first that it was under no obligation to take notice of the resolution because it had not been "passed by the House of Representatives." Waiving the question as to the legality of the resolution because of "the gravity of the situation. . . . and the importance of the principles involved," the court assumed the right and duty to answer: (1) that circumstances, such as

"a palpable violation of the Constitution by the expulsion of members contrary to its provisions, whereby the character of the grand committee is changed," might warrant the senate in its vote to adjourn for more than two days before proceeding to the imperative duty of counting the vote; (2) that the determination of the fact of a disagreement as to the time and place of adjournment rested with the governor exclusively and was not subject to review by the court; and (3) that the governor had the power to prorogue the assembly without restriction as to the condition of business pending before it—he, and not the court, had the authority to make that decision. *In re Legislative Adjournment,* 18 R.I. 824 (1893).

The 1893 deadlock caused by the majority-vote requirement also spawned several supreme court opinions relative to General Assembly elections, namely, *In re the Ballot Marks,* 18 R.I. 822 (1893); *In re North Smithfield Election,* 18 R.I. 817 (1893); and *State v. Town Council of South Kingstown,* 18 R.I. 258 (1893). The only detailed analysis of this election fiasco is Charles Carroll, *Rhode Island: Three Centuries of Democracy,* 2:660–65.

Article of Amendment XI eliminated this serious defect in the state's election laws—one which had not been rectified by the constitution of 1843, even though similar governmental crises had occurred in 1806, 1832, and 1839. After 1843, "no choice" popular balloting marked the elections of 1846, 1875, and 1876.

SECTION 3. Filling vacancy by the General Assembly when elected officers cannot serve—Election when there is no plurality. When the governor-elect shall die, remove from the state, refuse to serve, become insane, or be otherwise incapacitated, the lieutenant governor-elect shall be qualified as governor at the beginning of the term for which the governor was elected. When both the governor and lieutenant governor-elect, or either the lieutenant governor, secretary of state, attorney-general, or general treasurer-elect, are so incapacitated, or when there has been a failure to elect any one or more of the officers mentioned in this section, the general assembly shall upon its organization meet in grand committee and elect some person or persons to fill the office or offices, as the case may be, for which such incapacity exists or as to which such failure to elect occurred. When the general assembly shall elect any of said officers because of the failure of any person to receive a plurality of the votes cast, the election in each case shall be made from the persons who received the same and largest number of votes.

This section was added to the 1843 Rhode Island Constitution by Article of Amendment XI, Section 3, entitled "Elections and Terms of Officers." It was ratified by the voters on November 6, 1900, by a margin of 24,351 to 11,959. This amendment provided for the filling of certain offices because of vacancy or incapacity. *In re Railroad Commissioner,* 28 RI 602, 67 A.802 (1907). Gender references were replaced with neutral language in 1986 when the section received its present constitutional position.

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HISTORY OF MAINE

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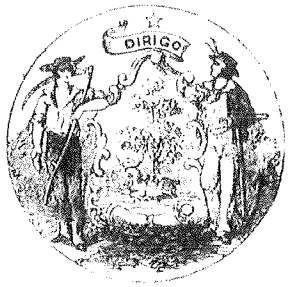

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CHAPTER XXI

GREENBACK MOVEMENT—DISPUTED ELECTION

The campaign of 1878 in Maine was fought on a new issue, that of Greenbackism. The hard times following the panic of 1873 had caused a great cry for more money. The government was preparing to resume specie payments on January 1, 1879. It was claimed that this would make money harder to get, and a demand arose in many parts of the country for a postponement of resumption and the issue of greenbacks to a large amount. Maine, situated at the extremity of the Union, often feels great movements late, and for her the greenback wave reached its height when it was receding in other States. The chief propagator, or perhaps one should say propagators of Greenbackism in Maine were Solon Chase, of Turner, and "them steers."

Before the Civil War, Mr. Chase had been a Whig, then for a time he acted with the Democrats. During the war he was twice elected to the State Legislature by the Republicans. He supported Andrew Johnson and was appointed by him a collector of internal revenue, but after holding the office for about six months was obliged to vacate it because the Senate would not confirm his appointment. He then returned to the Democratic party. In 1875 he was a delegate to the Democratic convention and offered a resolution in favor of soft money, which was voted down by a large majority.

Mr. Chase then established a Greenback paper and helped form a Greenback party, which in 1876 nominated Almon Gage for Governor and polled 520 votes. In 1877 a much better showing was made, the Greenbackers polling over 5,000 votes. Their success was largely due to Mr. Chase's own efforts, aided by the same circumstances which made for Greenback success throughout the country. "Uncle Solon," as Mr. Chase was often called, drove over the State in an ox team, telling the farmers how they had been abused and plundered by the money power. Pointing to "them steers" he would explain that they had cost him $100, and that he would be glad to sell them for $50. Mr. Chase was a clever man, whose appearance and language were precisely such as to appeal to the farmers. To many of his opponents his manners seemed those of a demagogue, and his arguments those of a simpleton. But he was clearly acquiring great influence, and the Republicans were much alarmed. Many of them urged that some concessions be made, but others insisted that the party should stand firm for sound money, and this view prevailed. The convention declared that there must be no steps sidewise or backward in the matter of specie payments, and denounced a fluctuating currency.

Although Governor Connor had served the customary three years, he

was renominated without opposition. It seemed the safest thing to do. Apparently other names which had been suggested had met with small response from the people. But if there was little enthusiasm there promised to be no lack of candidates, there was rivalry between the eastern and the western parts of the State, and the managers probably felt that the party had a hard battle before it, and that it would be dangerous to go into the fight with any faction disappointed and sore. All or nearly all could unite on Connor without serious mortification, and accordingly he was nominated.

The Republican convention met late. The Greenbackers and the Democrats had already unfurled their banners and placed their candidates in the field. The Greenback convention met on June 4. They declared their opposition to every measure looking to the resumption of specie payments and to the issuing of government bonds, and demanded that the money hoarded for resumption be used to pay outstanding bonds. They, however, denounced "the red flag of communism imported from Europe which asks for an equal division of property." They also called for biennial sessions of the Legislature, and the abolition of imprisonment for debt. For Governor the Greenbackers nominated Joseph L. Smith, a successful lumber man of Old Town. The Kennebec *Journal* made the very pertinent remark that Mr. Smith was a bondholder, that it made no objection to him on that account if he obtained his bonds honestly, which it supposed he did, but that it would like to know how Greenbackers could honestly vote for such a bondholder and coupon clipper.

The Democratic convention met on June 18. They declared against the further issue of bonds which were privileged in matters of taxation. On the financial question they advocated one currency for all, which should be redeemable, and stated that they were opposed to "the present national banking system," and that they favored "the gradual substitution of greenbacks for national bank bills." They declared themselves in favor of biennial sessions of the Legislature, and of the abolition of the Council. For a candidate, following the example of the Greenbackers, they chose a convert, Dr. Alonzo W. Garcelon, of Lewiston. He was nominated on the first ballot by a vote of 220 to 119 for various other candidates. The leading unsuccessful candidate was F. W. Hill, of Exeter, who received 49 votes.

Alonzo Garcelon was born on May 6, 1813, at Lewiston, Maine. He graduated from Bowdoin in 1836, and from the Ohio Medical College in 1839. He was hospital surgeon of Maine in 1861, and chief surgeon in 1864. He had served in the Maine House and Senate, and was mayor of Lewiston in 1871. In 1868 Dr. Garcelon, who had formerly been a Republican, accepted the Democratic nomination for Congress, but was defeated by Samuel P. Morrill.

The Greenbackers made a vigorous campaign. Solon Chase and his steers were much in evidence. The Republicans, with the exception of

persons putting the questions as a legal Legislature, but that they felt that they would be omitting an important service which might fairly be expected of them if they failed to state why they could not answer the questions. They then gave reasons in the line of their previous decisions that the Republican Legislature was legal. They said that the fact that no notice of the session of the legal Legislature had been given to the minority was not material. "The minority were not excluded. The organization was made in a public manner. The minority were at the time claiming to be, and are still claiming to be, the lawful Legislature. It is not to be presumed that they would have abandoned that organization at that time had notice been given. We do not think that the want of notice invalidates the organization of January the 12th. There may be irregularities in the manner in which such organizations were formed; but the voice of the people is not on that account to be stifled, nor the true government to fail to be maintained. No essential defects anywhere exist, but only such departures from ordinary forms as circumstances compelled."

Early on the following day the Augusta and Gardiner companies were relieved from duty. In the afternoon the Fusion Legislature met and adjourned until August 1. Some of the more radical claimed that they would meet on that day and begin an active campaign, the object being to secure the electoral vote. But the general feeling was that that Legislature would never meet again, that the adjournment to a fixed day was taken to let the counted-in members down easy, they having given a good deal of trouble. On the morning of January the 30th, the last troops were sent home. Many Fusionists on that and the preceding day joined the regular Legislature; of the Senators only two remained absent.[10] Late in the afternoon of the 31st, P. A. Sawyer, the Fusionists' Secretary of State, appeared at the secretary's office and surrendered under protest the State seal, the election returns, the Council record, and the reports on election returns for 1879.

A joint committee was appointed by the Legislature to investigate the treatment of the election returns, and the attempt to defeat the will of the people, and also any undue or illegal expenditure of the public money. Governor Garcelon was subpoenaed and testified before the committee; Councillor Moody appeared voluntarily. The other members of the Council and P. A. Sawyer declined or failed to attend. The committee reported that there had been a conspiracy to count out Republicans and count in Fusionists. All the Republican members of the committee signed the report. Two of the Fusionist members stated that "the undersigned regret that the members of the Council have not seen fit to appear and explain the irregularities which seem to exist. The evidence being uncontradicted, the undersigned cannot make a denial of the facts proved by it and can only withhold their

[10] A new valuation of the State was to be made that year and it was most important for the various localities that their representatives should attend to look out for their interests.

the Jew, and declaring that he would never be satisfied till he had reduced the masses to poverty. The resolutions reported by the platform committee were of the usual Greenback type. They attacked the alleged increase of the bonded indebtedness of the country, and made the convention state "that we favor the unlimited coinage of gold and silver, to be supplemented by a full legal tender paper money sufficient to transact the business of the country." Nelson Dingley pointed out in the Lewiston *Journal* that the convention did not say whether the paper money was to be redeemable in coin, the matter being left uncertain so as to win the Democrats without affronting the Greenbackers. The money planks had not been put at the head of the resolutions, and Solon Chase moved that they be placed there. There appeared to be a suspicion that something wrong was being smuggled into the platform. Mr. Dingley says: "Everybody was mad. For the first time in history, it is said, Solon Chase violated one of the commandments."[1] The *Argus* in its account of the convention said that "once, just as the disorder grew fairly terrific, Chandler's band struck up the 'Angel of Peace,' and a comparative quiet was restored."

For Governor the convention renominated Mr. Smith. Probably a majority of the delegates preferred Solon Chase, but the leaders thought that his nomination would not be wise. They promised to send him to the United States Senate, and Mr. Chase, who had no particular desire for the governorship, resolutely refused to be a candidate for that office.

The Republican convention met at Bangor on June 2. There was considerable uncertainty as to who would be the nominee. The candidate who at first commanded the greatest support was W. W. Thomas, of Portland, later Minister to Sweden and Norway for fifteen years, the longest period of service as minister at a single post of any American diplomat. Mr. Thomas was the special candidate of the younger men of the party, and the older leaders were said to feel that he had pushed himself forward instead of waiting, as he should have done, to be advanced at the proper time by his seniors. Mr. Thomas was from Portland, and though this gave him a strong local following, it was perhaps a disadvantage, for the East was restless, somewhat disaffected, and earnestly demanding that its claims be recognized. The *Argus* stated that the night before the convention, J. H. Manley, a kind of vice-manager of the party under Blaine, Llewellyn Powers, of Houlton, who had been a Representative in Congress and who was a very influential politician, and other leaders, had come out of a committee room declaring that the nomination of an eastern man was necessary to revive or rather resurrect the party in that section. On the morning that the convention met, the *Whig* pointed out that in twenty-five years the Republican nomination for Governor had gone to Kennebec or west of Kennebec, twenty-two years, and respectfully submitted "that good feeling, sound justice and the highest expediency require that the East shall have the candidacy this year if the East shall offer a good man."

[1] Dingley, "Dingley," 149-150.

But could the East agree on any man, good or otherwise? At a meeting of the delegates from the congressional district made up of Penobscot, Piscataquis and Aroostook counties, it was found impossible to unite upon a candidate. Lyndon Oak, of Garland, was mentioned, but expressed himself as unwilling to stand. "At this point," said the *Whig*, "Mr. Ham, of Corinth, a worthy farmer and a delegate, in a very earnest speech presented the name of Mr. Davis. On an informal ballot the votes were found to be divided between Mr. Davis and Hon. Eugene Hale. It was then determined, as only a part of the delegates had been present, to present the name of Mr. Davis to the convention on behalf of his friends." Mr. Hale was also an eastern candidate, coming from the congressional district containing Hancock, Waldo and Washington counties. Besides Messrs. Thomas, Davis and Hale, ex-Governors Dingley and A. P. Morrill were brought forward as candidates. The former gentleman refused to allow the use of his name, but Mr. Morrill received considerable support in the convention. The first ballot stood: W. W. Thomas, 303; D. F. Davis, 245; Eugene Hale, 245; Anson P. Morrill, 194; W. W. Virgin, 179; scattering, 18.

The chairman of the convention was F. A. Pike, of Calais, who had supported Greeley in 1872 and had run that year as an independent candidate for Congress against Eugene Hale. But in 1879 reconciliation was the watchword, and the State committee had chosen Mr. Pike to preside over the convention, Mr. Hale urging his selection on account of his "very eminent qualifications." Mr. Rounds, of Calais, in behalf of the Washington county delegation, now presented the name of F. A. Pike as a candidate for Governor.

The second ballot stood: Davis, 430; Thomas, 333; Hale, 219; Virgin, 62; Pike, 39; scattering, 88. The names of Morrill and Virgin were then withdrawn, and on the third ballot Davis was nominated by a vote of 844 to 174 for Thomas and 23 scattering.

The news of the nomination of Davis was received in much the same manner as that of the nomination of Hunton had been exactly fifty years before. The Lewiston *Journal* said: "The more it is considered, we are satisfied public opinion will concur in the wisdom of the nomination. To be sure, Mr. Davis is a comparatively young man, about thirty-five years of age, and therefore not so well known in the western part of the State as some older man would have been. But the fact that he has not been so prominent in public life as some older men, will be an element of strength rather than weakness, with the popular demand for a new man fresh from the people. The young men of the State will feel honored in the selection of a nominee from their ranks. Neither is Mr. Davis without public experience. He has served several terms in the Legislature with distinguished success, and was regarded as one of the clearest-headed and most eloquent members of both House and Senate. At the bar he has already won a reputation for ability and good judgment, rarely attained by so young a man."

The *Argus* quoted most of this rather apologetic endorsement with the comment: "The *Journal* would have made itself plainer and have said the same thing if it had worded the paragraph like this: 'Mr. Davis is a young man who has never done anything worth speaking of, but thank God he has not got a record'." It also perpetrated the following "Limerick":

"Now here's to Daniel F. Davis,
The Hamlin-Blaine *rara avis*.
Only Hamlin and Blaine,
In the whole State of Maine,
Knew there was a Daniel F. Davis."[2]

The Democratic convention met at Bangor on July 1. Governor Garcelon was renominated by acclamation. The *Whig* asserted that it had been intended to nominate Madigan, of Aroostook, or Watts, of Thomaston, but that Garcelon refused to withdraw, and that, fearing a split and a scandal, the leaders decided to give the Governor the usual renomination and to conceal the opposition by avoiding a formal ballot. The platform declared in favor of the free and unlimited coinage of silver and of a currency of gold, silver and paper, to be kept at par with coin at all times. The committee on resolutions had said nothing about prohibition, but one of them offered a resolution prepared by that staunch anti-prohibitionist, James F. Rawson, of Bangor, in favor of a local option license law. This caused much excitement and confusion, but at last a vote on adding Mr. Rawson's plank was taken by a show of hands and the motion was defeated by a great majority.

The campaign was an extremely hot one. There was a general understanding that Smith was the real anti-Republican candidate, and that the nomination of Garcelon was little more than a form. In many districts the Greenbackers and Democrats coalesced and a "Fusion" ticket was nominated. It was said that Eben F. Pillsbury had agreed that Smith should be Governor, and that in return Smith had promised to support him for the United States Senate. The Republicans did their best to make the Democrats and the Greenbackers believe that each was being sold out by the other. In this they had some success. Mr. White, the chairman of the Greenback committee, resigned his position, being dissatisfied, it was claimed, with the way the Democrats were annexing the Greenbackers. Two newspapers went over to the Republicans. That leading Democratic paper, the *Republican Journal*, of Belfast, now became "Republican." The *Journal* had been established in 1829 and had retained its old name, although the founding of a new Republican party had made it extremely inappropriate. During the Civil War it had acted with the Copperhead wing of the Democratic party, but its editor, Mr. Simpson, now admitted that his past action had often been mistaken, declared that there was no excuse whatever for the stand which the Democrats had taken on the financial question, and announced that he could no longer affiliate with them. The

[2] *Argus*, June 24, 28, 1879.

Aroostook Valley Sunrise, which had joined the Greenbackers the year before, returned to its old allegiance, the owner frankly confessing that the resumption of specie payments, the returning prosperity of the country and the conduct of the Greenback-Democratic Legislature, had convinced him of his error in deserting the Republicans.

There was much stump speaking. Solon Chase and "them steers" went up and down the State with great effect. Many Greenbacker speakers were brought to Maine from other States. Wendell Phillips wrote to Solon Chase expressing his sympathy with the Greenback movement. For the Republicans, Messrs. Hamlin, Blaine, Frye, Hale and Dingley spoke continually. That uncompromising stalwart, Zachariah Chandler, came to Maine, as did General Garfield, the Republican leader in the House of Representatives, and Senator Allison of Iowa, then only beginning his long service in the United States Senate, but already known for his grasp of financial problems. Secretary John Sherman, the hero of resumption, spoke at Portland, Lewiston, Augusta, Waterville and Bangor. Another man whose fame was still to come, visited Maine to preach the gospel of sound money. The *Whig* of August 22 mentioned that "the Hon. Wm. McKinley, Jr., of Ohio, delivered an able address at Warren, Tuesday evening. The meeting was large and enthusiastic."

As in the previous years, there was no election by the people, Mr. Davis' vote just falling short of a majority. The official count gave Davis 68,967 votes, Smith 47,643, Garcelon 21,851, Bion Bradbury 264, scattering, 81.

At first there was no doubt that the Republicans had carried the Legislature and that Daniel F. Davis would be the next Governor of Maine. The *Whig* rejoiced, claiming "a remarkable and signal victory." It said: "It has taken two or three years in other States, and some much longer, to secure such a reaction against demagoguism." The *Argus* expressed surprise at the result and claimed that it was due to intimidation and bribery. It soon became evident that such talk was not merely the usual angry excuse of beaten and disappointed men. The Maine Democrats had neither forgotten nor forgiven what they regarded as Hayes' theft of the presidency, and one of their leaders told a Republican, "you cheated us in the count for President, but we have the returning board here in Maine." There was a rumor that definite charges of bribery would be made, and the Governor and Council asked to decide that certain Republicans elected to the Legislature on the face of the returns were not entitled to their seats. The constitution provided that specified officers of towns and plantations should make a list of votes in open meeting, and that copies duly attested should be sealed in open town meeting and sent to the office of the Secretary of State. Similar provisions were made in regard to the votes of cities. It was further provided that the Governor and Council should examine the lists, and twenty days before the first Wednesday in January should issue a summons "to such persons as shall appear to be elected, to

attend and take their seats. But all such lists shall be laid before the House of Representatives on the first Wednesday of January annually, and they shall finally determine who are elected."

It was manifest that the constitution gave the Governor and Council no authority to go behind the votes actually cast and count out Republican candidates on the ground of intimidation and bribery, and this plan, if such had really been formed, was quietly abandoned. But it was reported that the same result could be secured in another way. The town officers were seldom lawyers, often they were comparatively uneducated and ignorant men, and it was by no means unlikely that many had failed to comply exactly with the directions of the constitution in regard to the manner of recording and reporting votes. It was rumored that the Governor and Council would avail themselves to the utmost of these errors, that the Republicans would be given no opportunity to correct them, as a law of 1877, amended in 1878, allowed them to do, until the Governor and Council had issued the summonses to the persons who appeared to them to be elected, after which they would claim that their powers in the matter were exhausted. The Legislature rendered Fusion by these means would choose Smith Governor, and elect Fusionists to the Council and to the other executive offices. The Republicans alleged that the question at issue was not merely who should hold a few State offices for a year, but that arrangements would be made for a similar fraud in 1880; that another stolen Legislature would elect a Democrat to succeed Senator Hamlin, whose term would expire on March 4, 1881; and that the present Legislature would take the right of choosing presidential electors from the people and vest it in the Legislature of 1881, which, after being duly purged, if necessary, would choose Democratic electors for President.

As time passed and the Governor and Council took no action on the returns, anxiety increased. It was understood that there would be a meeting of the Council on November 17, and Mr. Blaine requested the State committee, of which he was chairman, the committee for the succeeding year, and various leading Republicans, to meet him at Augusta. Among those who came in response to his call were Senator Hamlin, Congressmen Reed and Lindsey, and ex-Governors A. P. and L. M. Morrill, Washburn, Perham and Dingley. A committee of sixteen, one from each county, headed by ex-Governor Dingley, proceeded to the council chamber. On reaching the ante-chamber they were informed that the Council would not be in session that afternoon, but Governor Garcelon admitted Mr. Dingley for an unofficial and private conversation. Mr. Dingley then returned to his committee, and a sub-committee consisting of Mr. Dingley, Congressman Lindsey and L. A. Emery, formerly Attorney General and later Chief Justice of Maine, waited on the Governor. Mr. Garcelon informed them that opportunity would be given for examining the returns, that the twenty days allowed for this purpose by statute would not be considered to have begun until the Council had reported its tabulations, and that this rule

would be entered in the record of the proceedings of the Council. In conclusion he said, "Ample opportunity will be given to correct any errors in the returns which can be corrected under the statutes. If any returns are fatally defective you must take the consequences."

A meeting of the Council was held and they approved the report of their committee on elections, and voted that the twenty days allowed for inspection of the returns should begin to run on that day. The next day two Republican candidates for the Senate applied by themselves and by counsel for permission to examine the returns, but received no answer. The Republicans then informed Chief Justice Appleton that they should apply for a mandamus directing the Governor and Council to allow access to the returns, and Judge Appleton prepared to assemble the whole court that he might have the advice of the full bench in so important a matter. But meantime the Governor and Council gave notice that they would be in session from December 1 to December 13 for the purpose of examining the returns, and that candidates claiming irregularities would have reasonable opportunity to be heard by themselves or counsel. The Republicans then stated that they would not press for an immediate decision on the application for a mandamus, but would wait until the first regular court, which would be held by Judge Virgin at Fryeburg on December 2.

Various attempts to examine legislative returns were made by Republican candidates and their counsel without success. On December 10 and 11 the question of issuing a mandamus was argued before Judge Virgin, the hearing, by mutual agreement, being held in the Senate Chamber at Augusta, instead of at the court house in Fryeburg. The writ was sought against Mr. Gove, the Secretary of State, and the legal custodian of the State papers. Mr. Gove replied that the returns were not in his possession; his counsel also argued that the law of 1877, which allowed correction of the returns, was unconstitutional, that the applicant had no right to see the returns, nor had the Governor and Council the right to make the corrections desired, and that therefore there was no cause for issuing the writ. Judge Virgin, after privately consulting with Judges Barrows and Symonds, rendered a decision in favor of the defendant. He held that the applicant had a constitutional right to examine the returns at a proper time and in a proper manner, and that a mandamus might issue against the Secretary of State, but that it was the duty of the Governor and Council to examine the returns to discover who appeared to be elected, that their right must take precedence of the applicant's right of examination, and that the time necessary for the execution of the duty of the Governor and Council was a matter of executive discretion and therefore not within the jurisdiction of the court. The decision was of little practical importance, for the Democrats had completely given way in the matter of the secrecy of the returns, and from the day of the hearing they had been open to examination.

On December 17 the Governor and Council announced the result of

their examination of the returns. The reports of the local officers gave a Republican majority of seven in the Senate and twenty-nine in the House. The Governor and Council found a total Fusion majority of seventeen, with twelve vacancies. In all cases of change the action was taken on merely technical grounds. Five Representatives and one Senator lost their seats because of an alleged failure to sign or to seal the returns in open town meeting; seven Representatives and two Senators were counted out because returns were not signed by a majority of all the aldermen; five Representatives and three Senators were denied an election because the Portland officials returned certain votes as scattering, the constitution requiring the names of all persons voted for to be given, with the number of votes received by each. In no case could the failure to credit any person with these votes have affected the result. There were five Representatives lost to the Republicans because the candidate's name was not given in full, but with initials, and these votes were held to be for a different person. A Representative was counted out on the ground that his ballots had a distinguishing mark and were therefore illegal; another lost a seat because it was alleged that the votes of the town of Cherryfield were illegal by reason of one of the selectmen being an alien. One Representative lost his seat because of an alleged double return, another because it was alleged that the signatures of three selectmen were all written by one of their number. Two Representatives were refused seats because of a wrong spelling of their names, and two because the town clerks did not attest the returns. The Republicans might have admitted that the latter was a fatal defect in itself, but claimed that the clerks should have been allowed to correct the papers.

The excitement now became intense. Meetings of protest were held throughout the State. The country districts were even more stirred than the cities. Many of the clergy denounced the fraud, as they deemed it, which was being perpetrated. The *Whig* of December 29 reported that "Rev. H. W. Tilden, pastor of the Baptist church in Augusta, lectured Saturday evening on the great crime. He wished to see everything possible done to avert the danger. The question was, shall we be denied the right of suffrage. But he said, no, never! At whatever cost the people knew their rights and would never yield. Mob violence would settle nothing whatever, but open, systematic war would if it must be had."

Governor Garcelon was a citizen of Lewiston, but ministers of the city likened his conduct to that of one who steals a pocketbook. The chairman of the Council, John B. Foster, was a resident of Bangor. Some of the leading clergymen of the city, including Professor Sewall, of the Bangor Theological Seminary, and Mr. Foster's own pastor, Rev. Dr. Field, denounced the action of the Governor and Council.

The Democrats held great meetings which defended the course of the Governor and Council. Mr. Garcelon said that he was prouder of his action in the matter of the count than of anything he ever did in his life. The Democrats argued that they had acted only as the law required. The

Argus said: "There is probably not a case passed upon by the Governor and Council which any respectable lawyer would not say, taken by itself, was decided rightly according to law. It is only when so many fatally defective returns are found that any are impelled to protest against the sweeping result. But is this really any argument against obeying the law? On the contrary, is it not one imperative reason for enforcing the law, lest otherwise we might come to have a Legislature so illegally constituted as to render of doubtful validity the laws it might pass? The defects exhibited by the returns this year are simply astonishing. It is high time for election officers to have an effective administration, to attend to their duties properly, and for towns to see to it that they have officers who know their duties and are careful to perform them as the constitution requires."

The Democrats proclaimed with great glee that they were following Republican precedents. They made especial use of the Burleigh-Madigan case. By the returns from Aroostook for the election of 1877 it appeared that Parker P. Burleigh had been elected Senator from that county. His opponent, Edmund C. Madigan, challenged his election, on the ground, among others, that Mr. Burleigh was not eligible, not being a resident of the county. Four of the councillors wished to give Mr. Madigan a certificate of election for this reason, Governor Connor and three councillors believed Mr. Burleigh to have been legally elected. A compromise was agreed to and the facts were reported to the Senate without a decision in favor of either party. Here was a precedent for considering matters which did not appear on the face of the returns. The action of the Senate also gave great comfort to the Democrats. The Republicans counted in Burleigh by throwing out the vote of Van Buren because the list of voters was not attested by the clerk of the plantation, although the envelope in which the returns came had a blank attestation as to its contents which was duly filled in. Undoubedly the will of the people of Van Buren had been defeated by Republicans just as the Democrats were doing in numerous instances in 1879, but the Republican members of the Senate committee on the case had quoted with approval an opinion of the Maine Supreme Court stating that "the design of a republican government is not merely that the people should express their will at the polls, but that it should be legally and constitutionally expressed."

To complete the joy of the Democrats, the second name signed to this report was that of Daniel F. Davis. The Democrats also asserted that in 1862 the Senators elected by the people of Washington county had been counted out by a technicality and that for twenty years many Democratic members of the Legislature and county officers had lost their seats, but that no Republican had been deprived of his. Henry M. Pishon made affidavit that he had been a clerk in the office of the Secretary of State for eight years and that at the request of councillors he had often sent returns back to town clerks to make specified corrections. Mark Harden, who had been messenger to Garcelon's Council and had held the same position

in four Republican administrations, swore that he knew that the Republicans had often sent returns back for correction, that omissions had been rectified without even sending back the returns, and that a check-list had been purposely lost in order to throw out the vote of a plantation.

The Republicans did their best to distinguish between the Burleigh-Madigan case and those of 1879, and said that if in single instances Republicans had reversed elections on technical grounds, they had never done this when it would have changed the whole political complexion of the State.[1]

Men of both sides manifested an intention to use force. The warlike speech of Rev. Mr. Tilden has already been quoted. More serious was a statement attributed to Hannibal Hamlin in an interview with a representative of the Boston *Traveller*. He was reported to have stated that until the act was done he could not believe that the Democrats would resort to so revolutionary a proceeding as a count out. "If they do usurp the laws of the State, I favor going to the State House and take the revolutionists by the nap of the neck and pitch them into the stream, and I will be one to go and assist."

The Democrats answered Republican threats and even mere criticisms with cries of treason. Eben F. Pillsbury, who had been a copperhead in the war and who was suspected of inciting or at least encouraging the resistance to the draft at Kingfield, now in the columns of his paper, the *Standard*, had much to say of loyalty.

In Penobscot county Benjamin H. Mace had been elected sheriff for the ensuing year. Not waiting until his term began, on December 26 he issued a notice that he should consider it among the duties of his office "to present before the grand jury at the coming criminal term, for indictment all those who may participate in any political mob or commit the overt act of high treason, and also those who may incite to such felonies, whether they are professed ministers of the gospel or editors of political papers." The future sheriff had doubtless been excited by the events of the preceding day. On Christmas morning the Governor had sent a clerk in the adjutant-general's office, named French, with a verbal order to the commander of the State arsenal at Bangor to deliver to him a large quantity of arms and ammunition. Rumors of the order got abroad in Bangor and caused such excitement that the Mayor and several prominent citizens went to the Penobscot Exchange Hotel to see the adjutant-general, who was reported to be stopping there. Not finding him, they proceeded to the arsenal, which was locked, but from persons near by it was learned that two teams loaded with guns and ammunition had just left for the depot. Returning at once to the city, they found the teams stopped on Kenduskeag bridge by a great crowd. Mayor Brown informed French that he could not guarantee the safety of the property, and that French must take the

[1] Perhaps this was for the reason that Rev. Mr. Spurgeon gave for his own denomination's never having been guilty of persecution, they never had the chance.

responsibility of further provoking the people. Mr. French was unwilling to do this and ordered the arms back to the arsenal.

The Republicans were in a difficult situation. They felt that the Governor meant to bring force to the aid of fraud, and that his action directly tended toward civil war, but he had an undoubted legal right to move the State arms, and public opinion would condemn those who should first resort to violence. Indeed, the Republicans felt that the Governor might be trying to provoke them to disorder for this very reason. In Lewiston a "dodger" was got out headed "Riot in Bangor." Eben F. Pillsbury issued a *Standard Extra,* and headed his account of the affair of the arms, "Open Rebellion in Bangor." The Bangor Republicans, therefore, determined to pursue an entirely peaceable course. A letter signed by ex-mayors and other prominent citizens was sent to the Governor protesting against his order, but stating that "we shall endeavor to the extent of our ability, to prevent any action which should (would?) impair our good fame as law-abiding citizens." An executive committee issued a similar statement urging the people not to resist any lawful movement of State property by the Governor.

In Augusta, efforts were made to induce Mr. Garcelon to abandon his purpose of bringing arms to the State House. The mayor of the city, Mr. Nash, assured him that he had enrolled two hundred special policemen, good men of different political parties, and that they could and would preserve the peace, and urged that the calling out of the militia or the gathering of arms would disturb the public mind, that if one side should arm the other would do so also, and that with both parties armed a conflict might ensue which all would deeply deplore. On the following day an Augusta committee of public safety called on the Governor and expressed their concurrence with Mayor Nash and their readiness to support him, and begged the Governor not to move the arms from Bangor. He, however, insisted on doing so in order to test the sincerity of the people of the city in promising to obey the law. But he was understood by the committee to promise that the arms should not be brought to Augusta unless need arise.[1] On December 30, 120 rifles and 20,000 rounds of ball cartridge were, on an order from Governor Garcelon, taken from the Bangor arsenal by the direction of the adjutant-general and forwarded to the Governor at Augusta. There were large crowds in the streets through which the teams passed, and the bells of some of the churches were tolled, but no attempt was made to interfere with the transfer.

The State had not been brought in danger of civil war without earnest attempts at a settlement by compromise. Councillor Foster had been called to Chicago by the illness of a daughter. On arriving in the city he wrote

[1] The Governor afterward stated on oath that he understood that the additional policemen were Republicans, that it was feared that they would take possession of the State House and exclude the Democrats from it, and that he promised not to bring the arms to Augusta on obtaining satisfactory assurance (which he did not receive) that the new police should be composed of men of both parties in substantially equal numbers.

to the Governor that the political situation in Maine was the prevailing topic of conversation everywhere, that the action of the Governor and Council was generally misjudged, and that he was afraid that they were not fully sustained even by the Democrats. Mr. Foster declared that the Governor and Council had done perfectly right, that they had no equity powers, but that the Legislature had, and could exercise them, without reflecting in the least on the Council's action. "We fully understand (if we do not take into account the frauds which are said to have been committed in the election) that the Republicans would have had the organization of the Legislature if the returns had been legal, that equity gives them the advantage. Would it not be right and also politic, looking to the future of the party, for the Legislature to exercise that power which we did not possess, and deal equitably?"

On December 30 a letter appeared in the *Argus* written by a Greenbacker, advising that the Legislature summoned by the Governor meet, organize, and settle disputed elections before choosing State officers. He said that the moderate Republicans wished to join the Legislature, and that their number would be increased if a moderate course were pursued. The *Argus* approved this plan.

There was a natural arbiter specially provided by the Constitution of the State, which required the Supreme Court to give its opinion upon points of law and on solemn occasions, if called on by the Governor, Council, Senate or House. The Republicans were most anxious to obtain its intervention. The *Whig* had suggested that under the circumstances the court would be warranted in stating its opinion without being asked. It was proposed to have the members of the Senate request an opinion. The Greenbackers, on the other hand, would have nothing to do with the courts. Councillor Fogg's paper, the *Greenback Chronicle*, said in its issue of December 5: "Perhaps Messrs. Baker and Baker are not aware, however, that if the judges of the Supreme Court had issued a mandamus against the Governor and Council, that body would have taken no more notice of it than a mandamus issued by seven jackasses in Australia. The Supreme Court is a very august body, but it has no more power over the Governor than the ghost of Solomon." The Greenbackers probably objected to an appeal to the court, in part for the reason that the *Whig* had given against the establishment of an electoral commission in 1877, that it was exchanging a certainty for an uncertainty. Radicals seldom have great reverence for courts, which they consider unduly conservative, and all judicial authority had suffered from the action of the judges on the electoral commission each one of whom voted with his party on every vital question where there was a reasonable doubt. Some of the Democrats, however, wished the court to be appealed to. William L. Putnam, for many years the able and honored judge of the United States Circuit Court, publicly declared in favor of such a course. Many of the leading Protestant clergy of Portland, with the Episcopalian bishop at their head, requested

the Governor to consult the court. Two of his most eminent predecessors made a like request. Leading Republicans had appointed a committee with Lot M. Morrill as chairman to advise the members of the Legislature. At their desire Mr. Morrill wrote an extremely polite letter to the Governor, urgently requesting him to submit the matters at issue to the Supreme Court. He alleged that the court had always been impartial in such matters, and cited the decision just rendered by the Republican Judge Virgin against the demand of the Republicans for a writ of mandamus. In conclusion Mr. Morrill said: "I address your Excellency, not simply as an individual anxious for the peace and good order of the State, but as the chairman of a committee of the Republican party, all of whom are desirous, above all things, to avoid every possible disturbance of the public tranquility, and reconcile the popular discontent."

The Governor replied on the following day that he considered the public excitement due to "a systematic attack of vituperation and slander upon the Executive Department, not only without parallel, but without cause." He added, however, that it was the duty of every good citizen to allay the excitement as far as he was able and, referring to the request that he should appeal to the Supreme Court, he said, "Nothing would give me greater pleasure than an authoritative opinion upon points involved in the present condition of affairs, and also upon such as may be likely to arise. Please indicate the points that occur to you, which have not already been adjudicated upon, and I doubt not we may be able to secure a satisfactory solution of doubtful complications or, if not satisfactory, at least such as may be deemed authoritative."

Mr. Morrill consulted his committee and submitted a list of questions which he suggested be put to the court. In the accompanying letter he said: "When your Excellency asks me to indicate the points that have not already been adjudicated, I reply that such an attempt would be valueless and indeed foreign to the whole scope and purpose of this peaceful mode of adjustment. Your Excellency must be aware that there is oftentimes as much dispute between lawyers as to what has been adjudicated by the Court, as there is touching that which has been enacted by the Legislature. I cannot close without urging upon your Excellency the propriety of going forward in the course which in your communication you have indicated your willingness to adopt. It has never in the history of our State happened to any of its chief magistrates to have it in his power to do so much for the peace and good order of society as your Excellency enjoys today."

It was reported that the Governor would refuse Mr. Morrill's request on the grounds that the opinion of the court, if against the action of the Governor and Council, would come too late, as the Constitution required that the notices of election be issued twenty days before the meeting of the Legislature, and that if wrong had been done the (counted in) Legislature would correct it. In his account of the interview of the Augusta com-

mittee of safety with the Governor, the *Whig* correspondent wrote: "The conversation turned on the proposition to submit certain questions to the Supreme Court. The Governor said he had very hard work to read Governor Morrill's letter. His Excellency's attention was called to the fact that it had been printed in the newspapers. He said he did not read the newspapers. He should go to Portland and obtain further legal advice before deciding to submit the question." He finally determined to submit questions differing from Mr. Morrill's. The Governor's were more on matters of abstract law. Mr. Morrill's had dealt much with concrete facts, mentioning towns whose returns had been passed on by the Governor and Council. The judges promptly replied in a unanimous opinion supporting the Republican contentions at every point. The court proclaimed as a guiding principle that the will of the people should not be defeated by technicalities or the errors of officers who must of necessity be plain men.' It also laid much stress on the lack of power of the Governor and Council to know officially matters not stated in the returns, and declared that various constitutional and legal provisions regarding the making up of returns were directory only and that compliance with them was not necessary to **the** validity of the returns. It stated that the provision allowing a defective return to be amended by the record was in aid of the purpose of the Constitution and valid. The judges said that the question whether the use of verbal evidence for this purpose as provided for by another part of the law was constitutional was not before them, and that on that point they expressed no opinion.

The Democrats at first appeared stunned by the decision, but they soon rallied and determined to continue in the course they had planned. It seemed that when Governor Garcelon's term expired the State would be without a Governor, and there might follow rival Legislatures and Governors and civil war. Governor Garcelon was much alarmed lest the Republicans should seize the State House and he turned to General Chamberlain for help. The general had not accompanied the band of ex-Governors and other Republican leaders in their visit to Augusta in November, and it was reported that he had said that he had not gone because he could not see that he had any business there. The day after Mr. Morrill's appeal to the Governor to ask the opinion of the Supreme Court, General Chamberlain telegraphed Governor Garcelon, "The proposition to submit the disputed questions to the Court is eminently wise. Such a course would be honorable to you as Governor of the State, the highest officer of its peace. All good citizens would sustain you in it." He followed the telegram by a letter to the same effect. He declined a request of Mr. Blaine to get up an indignation meeting at Brunswick, saying that he thought that enough had been done to impress on the Governor the state of public feeling, that now efforts

°This seems inconsistent with an earlier opinion, which said: "It is to be regretted that votes are lost through the ignorance or carelessness of town officers, but the obvious remedy is to choose such as know their duty, and knowingly will legally perform it."

should be made to calm excitement, and that in no case should resort be had to violence.

The Governor wrote a personal letter to General Chamberlain, urging him to come at once to Augusta. On January 5 he issued an order constituting the various counties of the State "the first division of the militia," and placing General Chamberlain in command. He also issued the following remarkable special order: "Major-General Joshua L. Chamberlain is authorized and directed to protect the public property and institutions of the State until my successor is duly qualified." On the following day, Tuesday, January 6, General Chamberlain assumed command under the general order, and on January 8 published both orders and announced that he should act under them. General Chamberlain believed that Mr. Garcelon's measures for defense would endanger rather than preserve the peace, his special guards or police or whatever they should be called, were accordingly discharged, the arms and ammunition taken from the arsenal at Bangor were returned, and the protection of the State House was entrusted to the special police of Augusta. The General, however, took further precautions; the people were reminded that military companies could not be organized to bear arms without legal authorization, the captains of the existing militia companies were told to obey no orders that did not emanate directly or indirectly from General Chamberlain, arrangements were made with the railroads to bring troops immediately to Augusta should he order it, and with the telegraph companies to give precedence to his dispatches.

When the Legislature assembled, the proceedings in the Senate were fairly quiet. Mr. Locke, of Portland, who had been selected by the Republicans as their candidate for President, protested against the Senate's proceeding, but the secretary refused to entertain the motion. The Governor was sent for and the members, including the Republicans, were duly qualified. The Senate then organized, electing an elderly gentleman of no special note, James D. Lamson, of Freedom, president. The Republicans refused to vote for officers or accept positions on committees, but they voted on an order presented by Mr. Locke that a committee of seven be appointed to consider the election of members, and the order was passed by a vote of 20 to 18.

In the House there was much more excitement. The assistant clerk of the last House called the meeting to order. There were few Republicans officially present. Their plan was to break a quorum, and as three Fusionists were understood to have refused to assist in the contemplated "fraud" by attending, they felt that they could prevent the organization of the House. After the calling of the roll Representative Eugene Hale moved that members from the cities excluded from representation by the action of the Governor and Council be admitted. He delivered a long and able speech in defense of his motion but objection was made, and the assistant clerk declared the motion out of order and refused to put it to vote. The

Republicans refrained from further action, and the Democrats sent notice to the Governor and Council that a quorum was present and ready to be qualified. The Governor and Council appeared and the Governor proceeded to qualify the members. He then announced that 76 members, the exact number needed to make a quorum, had taken and subscribed the oaths. This announcement was received with delighted applause by the Fusionists, and with astonishment by the Republicans. Governor Garcelon said that he put into the hands of the House the opinion of the Supreme Court as well as the petition of gentlemen from certain cities claiming seats, and invoked careful consideration of the same. "Three cheers were given for Governor Garcelon, followed by prolonged hisses." The House organized and transacted certain business, Mr. Hale continually raising the point of no quorum but without success, and at 3.30 p. m. the House adjourned. The battle had been an unexpected victory for the Democrats. The Republicans had felt sure that a quorum would not qualify, and they declared that there had been fraud in the count and forgery in making up the roll.[8] They pointed to the fact that the highest number of votes cast in the election was 74, (on the choice of a clerk), and Mr. Hale, who had qualified under protest, that he might make motions and raise points of order, and there would be one less than a quorum. If, however, the Speaker did not vote when the clerk was elected, then there would appear to have been 75 Fusionists in the House, which, with Mr. Hale, would make a quorum.

On the following day Mr. Hale secured an amendment of the journal so as to show that no quorum had voted. The Republican Representatives now decided that they wished to be qualified, and recognizing Mr. Lamson as Acting Governor proceeded to the Council Chamber and sent for Mr. Lamson to come and qualify them, but he declined to do so for the present on the ground that he was not certain of the extent of his powers. The next day he gave a written reply stating that legal gentlemen had serious doubt whether there was such a "vacancy" in the office of Governor as the Constitution intended should be filled by the President of the Senate. Mr. Lamson concluded with the statement that being unwilling to exercise doubtful authority, he must respectfully decline administering the oaths.

The situation suggests that of fifty years before, when the National Republicans declared that Elder Hall was Acting Governor, but it needed an opinion of the Supreme Court to induce him to take the office. There was not on this occasion danger of the Democrats losing their Senate if they lost their President, but probably they wished to prevent the Republican Representatives from qualifying, and so get rid of a numerous and active minority. Almost immediately, however, each party reversed its position. The Democrats had doubtless awakened to the advantage of having one of their number in the Governor's chair, and much pressure was put on General Chamberlain to obtain his recognition of Lamson. Ex-

[8] A demand was made in vain that the names of the persons enrolled as taking the oath be read.

Senator Bradbury, who had behaved with moderation and had openly blamed the refusal in the fall to open the returns to inspection, now in a personal interview argued with great earnestness and force that Lamson was legally Acting Governor. Mr. Lamson made both verbal and written demands on the general for recognition. Some of Chamberlain's own friends, who were also staunch Republicans, advised him to consult one of the judges of the Supreme Court who was near at hand, and that gentleman replied that the only safe way was to recognize Mr. Lamson's claim. But the general refused. He took the ground that he had been ordered not to execute the laws, but to protect the institutions of the State, one of which was election by the people, that formal law might permit outrageous injustice which could be only redressed by revolution, and that he would recognize no Governor or Legislature without a decision of the Supreme Court in their favor; meanwhile he would keep the peace. The rule was applied to Republicans as well as Democrats. When a little later Senator Locke, who had been elected President by the Republicans of the Senate, including those deprived of seats, informed General Chamberlain that he was about to assume the office of Acting Governor, the general replied that his election was at least irregular and that he could not be recognized. Joseph R. Bodwell, the owner of large granite quarries, appeared at the capitol with some fifty of his employees, armed with pistols, but General Chamberlain induced him to promise to send them home. It is said, however, that most of them were quietly kept in Augusta.

Mr. Dingley states in his life of his father that: "Some of the members of the Republican advisory committee were in favor of a resort to arms. Mr. Blaine was among them; and he was somewhat out of patience with General Chamberlain because the latter did not use force at the outset. Thomas W. Hyde was sent by Mr. Blaine to General Chamberlain to inform the latter that the Republican leaders had decided 'to pitch the Fusionists out of the window.'"[1] "Tom," said the general, "you are as dear to me as my own son. But I will permit you to do nothing of the kind. I am going to preserve the peace. I want you and Mr. Blaine and the others to keep away from this building."

The Republicans were not the only men who endangered the peace. There was a plot to kidnap General Chamberlain and hide him in some back town. The general discovered a plan in case of any slight violence on the part of the Republicans to burn the Blaine mansion and kill the owner.

On January 12 important steps were taken by both sides. In the morning the Fusion Legislature met and qualified Mr. Lamson as Acting Governor. The Republican "Legislature" met in a more dramatic fashion. The plan had been arranged suddenly and with great secrecy. Late in the afternoon the Republican members began dropping into the State House in little groups of two or three. Two members, Professor Young of Bowdoin,

[1] Dingley, "Dingley," 169.

and Mr. Weeks, later elected Speaker, obtained permission from General Chamberlin to use the halls. While he was writing the order, the Fusion superintendent of public buildings, Bradford F. Lancaster, rushed into the general's office, crying out that a mob was about to break into Representative Hall. In no way pacified by the assurance that the mob was composed of members elect, Lancaster declared that they should not go in and, snatching the keys from the door-keeper, ran off. At the request of General Chamberlain, Mayor Nash, who had been sent for, opened the door; the undaunted Lancaster reappeared, entered the hall with the members, and bolted with the gas lighter, but he was pursued, the lighter recaptured, and the chamber duly illuminated. The Republican members qualified before the clerk of courts of Kennebec county, elected officers, appointed a committee to prepare questions to be submitted to the Supreme Court, and, remembering that possession is nine points of the law, proceeded to hold the fort, being strengthened by a well spread lunch in one of the committee rooms. At two-fifteen in the morning the committee reported a list of questions and the House adjourned until the 17th. The Republican Senate found the doors of the chamber unlocked, walked in and organized. Mr. Locke was chosen President, and a committee appointed to consider the matter of presenting questions to the Supreme Court. The Senate then adjourned to the 17th.

The same night General Chamberlain wrote to Chief Justice Appleton that he believed that if the court would recognize Lamson he saw a way out. General Chamberlain made the matter public a year later. He said that he only meant a quasi recognition by answering the questions Lamson might put, and it was urged in the general's defense that thoroughgoing Republicans believed that it would be necessary to recognize Lamson finally, and that only at the last moment did the Republicans decide to organize the Legislature themselves and submit questions to the court. General Chamberlain's letter was published, and it may be interpreted as asking a complete, or as seeking only a partial recognition. On January 13 Mr. Lamson sent a statement to the Supreme Court that he had assumed the office of Acting Governor. On the 15th he directed Sheriff Libby of Kennebec to dismiss his deputies who were guarding the public buildings, but the sheriff, who was a Republican, refused. On the 16th the Fusion Legislature, which had voted in additional members who claimed the seats of certified Republicans, elected Smith Governor, chose other State officers and inaugurated Smith. The same day Lamson gave General Chamberlain a written guarantee that the Republicans could meet on the following afternoon in the chambers of the House and Senate without interference. On this day also the Supreme Court replied to the questions of the Republican Legislature by a decision in its favor. The judges stated that the opinion as to the method of counting the returns asked for by Governor Garcelon was an authoritative determination of the law, which it was the duty of the Governor and Council to obey. They declared that a

law allowing only members with certificates from the Governor and Council to take part in the organization of their respective houses, was clearly unconstitutional because it aimed to control the right of each House to determine the election of its members by imposing on it until there had been a full organization a majority fixed by the Governor and Council. They further declared that if improperly certificated members were needed to make a quorum and if a protest was made against their taking part, the organization of the House was illegal and void. Referring to a previous decision of the court that the Senate could organize with less than a quorum, the court held that the ruling was proper when by reason of a requirement of an absolute majority less than a quorum might have been elected, but that the decision could not apply when a quorum had been chosen and that if less than a quorum voted for Speaker and there was nothing on the record to show that a quorum was present and acting, the election was void. They decided that the oath of office of Senators and Representatives might in case of necessity be administered by any magistrate, although the constitution requires it to be taken before the Governor and Council since the essential matter is the oath and not the person administering it, that a President of the Senate chosen by virtue of improperly certificated members cannot become Acting Governor, because he was never properly chosen President of the Senate; that circumstances might exist rendering an organization like that of the Republican House and Senate legal, and that if the returns of the vote for Governor were inaccessible to the Legislature they might substitute certified copies of the record.

On Saturday, the 17th, the Republican Legislature assembled at the usual places of meeting, the House sent to the Senate the names of Daniel F. Davis and Bion Bradbury,[8] and the Senate at once elected Mr. Davis Governor. A council was also elected. In the evening a joint convention was held and Mr. Davis qualified. General Chamberlain recognized him as Governor, and announced that he considered his special duties at an end.

The Republican Legislature met again on Monday, and the matter of electing an adjutant-general and a treasurer was taken up. The Republicans found themselves in an embarrassing position. They had nominated as adjutant-general, Major Gallagher, the pension clerk in the adjutant-general's office, and for treasurer, John W. Folger, a clerk in the Treasurer's office who, though a Fusion appointee, had acted with the Republicans. But neither were men of weight, and there was a general feeling that in the present circumstances stronger men should be chosen. A caucus was held before the meeting of the Legislature, and a committee was appointed to confer with Major Gallagher. They reported that he had agreed to leave the matter in the hands of his friends. It was proposed to postpone action till the evening. But at another caucus, Mr. Hale said that there were grave reasons why the adjutant-general's office should be

[8]Bion Bradbury had received 264 votes, thus making him a constitutional candidate.

filled that day "by some gentleman of responsibility and who is in full accord with the branches of government. We are on the verge of events of importance," he said, "and in the case of anything happening between now and night, it was necessary to have a permanent head in the adjutant-general's office."[9] The caucus reconsidered its nomination and by a vote of 70 to 8, General George L. Beal was elected by the Legislature. No treasurer was chosen. Another most important question was, Should the Fusion Legislature be allowed to meet in the State House? They had adjourned to four o'clock Monday afternoon. The Governor decided to exclude them from the State House, and when they appeared about four o'clock they found the iron gates closed and guarded by police. On demanding entrance they were refused by Mayor Nash in the name of Governor Davis, as there was no business being transacted in any of the departments. "Speaker" Talbot mounted the coping surrounding the grounds and called the "House" to order; the "House" heard the journal read, and adjourned to meet at ten o'clock the next morning. President Lamson then mounted the coping and called the "Senate" to order, and that body adjourned to the same time and place as the "House." The meeting was duly held and there was much talk but little action.

The Republicans elected a State treasurer. Their Legislature recessed for an hour that a caucus might be held, and Folger voluntarily withdrew that a man of greater age and more financial experience might be chosen; the caucus passed a resolution complimenting him in the highest terms, and nominated Samuel A. Holbrook, who was, of course, elected.

On Friday, the 23d, Governor Davis became convinced that the situation was changing for the worse. The Fusion Secretary of State, deputy-secretary under Garcelon, had carried off the State seal and persisted in refusing to give it up. Ex-Councillor Fogg's paper, the *Greenback-Labor Chronicle*, was declaring that the State House must be taken though it cost a thousand lives, and what was far more serious, there were reports of recruiting and drilling in every county in the State and in Augusta. In the evening of the 23d, Mayor Nash informed Governor Davis that he feared that his police could not defend the State House "against such force as the public enemies seem to be willing and able to bring against it." Accordingly the Augusta militia company, the Capitol Guards, were called out and at midnight they entered the State House. A little later the Gardiner Light Infantry joined them. In the early morning of Saturday, the 24th, the Auburn Light Infantry and the Androscoggin Light Artillery arrived, the latter bringing a gatling gun manned by fourteen men. On the same day the Fusion Legislature voted to submit certain questions to the court. On the 27th the court replied that they could not recognize the

[9] The Fusionists accused General Chamberlain of bad faith. "Governor" Lamson, Captain Channing and "Adjutant-General" Folsom swore that they heard the General promise that if the Fusionists would let the Republicans hold a caucus in the Legislative Chambers the rooms should be clear for the Fusionists on Monday. General Chamberlain stated that his promise was for Saturday.

persons putting the questions as a legal Legislature, but that they felt that they would be omitting an important service which might fairly be expected of them if they failed to state why they could not answer the questions. They then gave reasons in the line of their previous decisions that the Republican Legislature was legal. They said that the fact that no notice of the session of the legal Legislature had been given to the minority was not material. "The minority were not excluded. The organization was made in a public manner. The minority were at the time claiming to be, and are still claiming to be, the lawful Legislature. It is not to be presumed that they would have abandoned that organization at that time had notice been given. We do not think that the want of notice invalidates the organization of January the 12th. There may be irregularities in the manner in which such organizations were formed; but the voice of the people is not on that account to be stifled, nor the true government to fail to be maintained. No essential defects anywhere exist, but only such departures from ordinary forms as circumstances compelled."

Early on the following day the Augusta and Gardiner companies were relieved from duty. In the afternoon the Fusion Legislature met and adjourned until August 1. Some of the more radical claimed that they would meet on that day and begin an active campaign, the object being to secure the electoral vote. But the general feeling was that that Legislature would never meet again, that the adjournment to a fixed day was taken to let the counted-in members down easy, they having given a good deal of trouble. On the morning of January the 30th, the last troops were sent home. Many Fusionists on that and the preceding day joined the regular Legislature; of the Senators only two remained absent." Late in the afternoon of the 31st, P. A. Sawyer, the Fusionists' Secretary of State, appeared at the secretary's office and surrendered under protest the State seal, the election returns, the Council record, and the reports on election returns for 1879.

A joint committee was appointed by the Legislature to investigate the treatment of the election returns, and the attempt to defeat the will of the people, and also any undue or illegal expenditure of the public money. Governor Garcelon was subpoenaed and testified before the committee; Councillor Moody appeared voluntarily. The other members of the Council and P. A. Sawyer declined or failed to attend. The committee reported that there had been a conspiracy to count out Republicans and count in Fusionists. All the Republican members of the committee signed the report. Two of the Fusionist members stated that "the undersigned regret that the members of the Council have not seen fit to appear and explain the irregularities which seem to exist. The evidence being uncontradicted, the undersigned cannot make a denial of the facts proved by it and can only withhold their

"A new valuation of the State was to be made that year and it was most important for the various localities that their representatives should attend to look out for their interests.

THE

Connecticut Constitution

BY

MELBERT B. CARY

NEW HAVEN:
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1900

To the People of Connecticut

If we examine the history of the State for the past twenty years, we find the practical working of this rule has been as follows:

	Vote for Governor.			Legislature.	
	Dem.	Rep.	Officers seated.	Senate.	House.
1880	64,293	67,070	Rep.	Rep.	Rep.
1882	59,014	54,853	Dem.	Rep.	Rep.
1884	67,910	66,274	Rep.	Rep.	Rep.
1886	58,818	56,920	Rep.	Rep.	Rep.
1888	75,074	73,659	Rep.	Rep.	Rep.
1890	67,658	63,975	Rep.	Dem.	Rep.
1892	82,787	76,745	Dem.	Tie	Rep.
1894	66,287	83,975	Rep.	Rep.	Rep.
1896	56,524	108,807	Rep.	Rep.	Rep.
1898	64,227	81,015	Rep.	Rep.	Rep.

During this period of twenty years, including ten general elections, the elections of governor by the people were only six, viz.:

1880.....Bigelow	(Rep.)
1882.....Waller	(Dem.)
1892.....Morris	(Dem.)
1894.....Coffin	(Rep.)
1896.....Cooke	(Rep.)
1898.....Lounsbury	(Rep.)

Whereas the figures show, in the years 1884, 1886, 1888 and 1890 the democratic candidate had a plurality over the republican ranging from over 1,000 to over 3,000 votes, but in every case, either by the action or the non-action of the legislature, the democrats were deprived of the office.

Concerning this antiquated provision of the State constitution and the injustice of its work, the late Gov. Morris, in his message to the general assembly in January, 1893, expressed the following views:

"If we are to retain popular government in Connecticut the constitution should be so changed that the votes of the people, as cast on election day, should have their full effect. It is seldom that the executive officers of this State are those who have received a plurality of the people's votes. In forty of the forty-four States of the Union a plurality vote elects the State officers. In every State admitted into the Union during the present century a plurality vote elects. In this State the plurality vote elects the Presidental elector, members of Congress, State Senators and Representatives, Sheriffs, and Judges of Probate. No good reason can be shown why the executive officers of the State should not be elected by a plurality vote. In no other way can the votes of the people be given their full effect. The law as it is habitually works injustice, and a law that habitually works injustice cannot be respected. It may be obeyed because it is a law, but the whole moral effect of the law is lost when it cannot be respected as well as obeyed."

More than 700 other officers in the State are elected by the plurality rule, the only exception being in the case of State officers, and it is impossible to give any valid reason why the same rule should not apply to them. It is fortunate that although some of the partizan leaders have endeavored to make this a party question, they have not succeeded, because nearly all of the republican papers of the State have refused to regard it as such and are strenuous and outspoken in their advocacy of a change. The same may be said of many of the most prominent and influential members of the party.

In order to show most clearly that the position taken upon this question is by no means partizan, an editorial is reproduced from the Ansonia *Sentinel,* one of the leading republican journals of the State, and one that does not hesitate forcibly and freely to express

CHAPTER 12

Social Choice and Pluralitylike Electoral Systems

Peter C. Fishburn

The purpose of this chapter is to consider the analysis of alternative electoral systems for large-scale elections, especially those in which more than two viable candidates compete for a single office. Our discussion is motivated by two axioms of political behavior. (1) Different election procedures can affect not only the conduct and outcomes of elections, but might also influence basic political structures. (2) Politically powerful individuals are often wary of proposed electoral changes and will strongly oppose proposed changes that they perceive to be inimical to their interests. I call attention to two implications of these axioms.

First, in a society whose powerful individuals or political parties are more or less satisfied with present electoral procedures, it is extremely difficult to institute significant changes in these procedures. This conclusion is borne out by historical evidence. For example, the electoral college method of choosing a president of the United States has remained intact for many decades despite periodic attempts to change the presidential election system. Another example is provided by two three-candidate senatorial elections in New York. In 1970, James Buckley defeated Charles Goodell and Richard Ottinger by a plurality of 39% to 24 and 37%, respectively, despite the likelihood that either Goodell or Ottinger would have beaten Buckley in a direct majority

contest between the two (Stratmann, 1974; Brams and Fishburn, 1978, 1983). Although many observers were dissatisfied with the plurality voting method used in that election, the system was not changed. Then, in 1980, Alphonse D'Amato defeated Elizabeth Holtzman and Jacob Javits by a plurality of 45% to 44 and 11%, respectively, though the polls indicated that Holtzman would have easily beaten D'Amato if Javits had not been a candidate.

The second implication of axioms (1) and (2) is that if a proposed change is to have a significant chance of being adopted, it must be examined from a number of perspectives and shown to be superior to the status quo system for most, if not all, of these perspectives. Otherwise, powers who are comfortable with the present system and, rightly or wrongly, fear the effects of the proposed change, will often be able to sway the tide their way.

Elsewhere (Fishburn, 1983) I have identified twelve dimensions of election procedures that deserve close examination in any serious attempt to supplant one electoral system by another. I will review several of these briefly so as to give an idea of what is entailed by the task of comparing different systems.' The next section of this paper then notes several pluralitylike electoral systems that either enjoy widespread use or could be serious contenders to present systems. In particular, I focus on plurality, plurality-with-runoff, and approval voting, although other methods will be mentioned. I then discuss selected dimensions among the twelve on which these pluralitylike systems have been compared. The highlighted dimensions involve candidate and voter strategies, evaluative factors of aggregation procedures, and effects on institutions.

Ballots, or vote-expression mechanisms, can affect elections. Obvious examples are open versus secret ballots and voting machines versus paper ballots. Less obvious factors are the order in which candidates are listed on ballots and, for sequential-elimination procedures, the order in which candidates are voted on. The *ballot response profile* identifies how ballots are recorded for tallying. More complex election procedures often require more detailed response profiles for the purpose of computing the winner. The *bnllot aggregator* defines the specific counting procedure that is used to determine the winner from the ballot response profile. For practical reasons, aggregators must not allow ties unless they also have tie-breaking provisions.

Casual reflection shows that the various aspects of election procedures can intertwine in numerous ways. In particular, the ballot aggregator can directly affect candidate and voter strategies, ballot form and responsible profile, and costs and may well interact with the other

dimensions. The ensuing discussion is organized around different balloting and aggregation methods.

Plurality and Related Systems

A plurality system is one in which each eligible voter either abstains from voting, or votes for one candidate. The candidate with the most votes wins. Since ties are extremely rare in large-scale elections conducted by plurality and closely related systems, they will be ignored here.

The only system besides plurality that is used extensively in the United States is the two-ballot plurality-with-runoff system (also known as the double-ballot system). The first ballot is like the plurality ballot. If one candidate gets at least 40% (or perhaps 50%) of the votes on the first ballot, then the candidate with the most votes wins, and there is no runoff. Otherwise, there is a simple-majority runoff ballot between the two candidates who receive the most votes on the first ballot. This system appears most often in primary elections where three or more candidates compete for a place on the ballot in the general election.

Plurality and plurality-with-runoff are sometimes referred to as nonranked systems since neither asks voters to rank-order candidates on the first (or only) ballot. By contrast, preferential voting systems (including the method of single-transferable votes, which is used for some major elections in Australia, Ireland, and South Africa) requires voters to order the candidates from most preferred to least preferred. Its ballot response profile shows how many voters have each best-to-worst order of candidates. In some situations, preferential voting is used to elect two or more candidates to seats in a legislature on the basis of the ballot response profile by means of a sequence of vote transfers as described, for example, in Fishburn and Brams (1983) and Hare (1861). If only one candidate is to be elected and if there are only two or three viable candidates among the nominees, then majority-preferential voting is virtually tantamount to plurality-with-runoff. The obvious differences are that preferential voting requires voters to order the candidates and never needs a second ballot. Excepting these differences, later remarks about plurality-with-runoff also apply to preferential voting for a single office when there are three or fewer strong contenders.

I shall focus henceforth on nonranked systems, in part because they are so widely used and in part because they are simple for voters to understand. Moreover, they are the most elementary systems from

ALASKA CONSTITUTIONAL CONVENTION

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FIFTY-SECOND DAY

PRESIDENT EGAN: The Convention will come to order. We have with us this morning Reverend Wilson of the Assembly of God Church in Fairbanks. Reverend Wilson will give our daily invocation.

REVEREND WILSON: Our God and Heavenly Father, we thank Thee for thy grace that Thou hast so wonderfully bestowed upon us in the giving of Thy own Son Jesus Christ our Lord that those who believe upon Him might be saved. We thank Thee not only for Thy grace, but Thy special favor. Thy patience and mercies toward us, we thank Thee that Thou hast especially blessed and helped in this Convention. We pray that the grace of God shall continue upon each one. Guide the deliberations of this day. Thou hast said, "The meek will he teach his way, the meek will he guide in judgment." Grant that special favor, that special grace of God resting upon every deliberation of the day, that the wisdom of God shall be manifest and this constitution when completed, that it shall be acceptable and pleasing in the sight of God Almighty. May we be able to live a quiet and peaceful life in all godliness and honesty. May that which is accomplished in government be acceptable and honorable to Thee. Amen.

PRESIDENT EGAN: The Chief Clerk may call the roll.

(The Chief Clerk called the roll at this time.)

CHIEF CLERK: One absent.

PRESIDENT EGAN: A quorum is present. The Convention will proceed with its regular order of business. Mrs. Sweeney.

SWEENEY: Mr. President, I would like to suggest again that all delegates remain seated until the President has introduced the minister of the morning.

PRESIDENT EGAN: The President would like to state that it was really not the delegates' fault this morning. The President went a little too fast. Does the special Committee to read the journal have a report to make at this time?

WHITE: The Committee has read the journal for the 48th Convention day and recommends the following corrections: Page 1, line 1, change "1955" to "1956". Bottom line, same page, same correction. Page 2, first paragraph after the roll, second line, insert "Mr." before "V. Rivers". Page 3, fourth paragraph, add at the end of the last sentence: "There being no objection, it was so ordered."

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, this raises an interesting point. Perhaps we could say he should have such duties in aid of the governor as may be prescribed by law. When we come to that, we'll think of it some more.

PRESIDENT EGAN: Mr. Armstrong.

ARMSTRONG: Mr. President, in looking through this manual for Hawaii it appears to me that there are very very few states that take constitutional provision for defining the limit of powers and duties of executive officers, and it says they are to be provided by law. On the other hand, too, I notice there are 38 of the states that elect their secretaries of state, which seems to indicate that they feel that is a strong measure. I just give that as a rough survey of these facts as they are established here, but when it says, "limits of powers and duties of executive officers" again and again it says, "no definition in the constitution -- to be provided by law."

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. President, I think that if we have an elected secretary of state we must be sure that he is a good man to fill the position of governor, and I think that as has been pointed out, there might be a danger that the governor who desires to be elected may very well choose somebody representing a different faction in the party rather than the same faction to fill out his thinking, just so as to attract additional voters. It would seem to me that a better way of electing and hearing them prior to the primary would be to take the top man who may run in the primary for governor in a particular party, take the top man who ran for secretary of state and then pair them for the general election, and the chances are that you will get a secretary of state who represents the same faction as the governor, and in that case the people have had a chance to already express their opinion. When we otherwise talk of an elective secretary of state we are actually, the people don't have the opportunity to vote for the secretary of state. All they are doing is voting for the governor and the other person just happens to be on the ticket. What I would like to point out, and I would like to know if you agree, that the language as stated in Section 6 refers to elected, line 20 for instance: "He shall be elected at the same time and for the same term as the governor, and the election procedure prescribed by law shall provide that the electors, in casting their vote for governor shall also be deemed to be casting their vote for the candidate for secretary of state shown on the ballot as running jointly with the respective candidate for governor." Actually,

that would appear to leave the way open for the legislature to prescribe a separate primary for the two and pair them for the general election.

V. RIVERS: That is the thinking of the Committee Chairman, that this does leave the way open. I believe in the Committee we discussed that they run jointly through the primary and the general election. This wording would appear to me to leave it open to be prescribed by the act that was adopted in regard to the legislation. Maybe all the Committee would not agree with me on that, I am speaking from my own opinion.

NORDALE: My conception was that they would run just as the President of the United States and the Vice President run. I think when you invest a governor with as much power as this is and the full responsibility that you should not run the risk of electing his partner who might have very, very opposite views on many things, even though he might belong to the same political party. If you are going to carry it to an extreme, you will have to divorce them from the same party.

V. FISCHER: Actually, as I tried to point out, I think you are liable to get the person who agrees more with the governor if you take the top man who ran in the political primary. I would like to point out when we elect the President of the United States and the Vice President, these have not gone through the primary process, they have only been nominated by a political convention as a pair. This is a perfect example of where the people never have a chance to vote for the Vice President. Actually, they are voting for the President; very seldom is very much attention given to the Vice President.

V. RIVERS: Mr. President, I agree with Mr. Fischer that this section does leave open the method which the law would prescribe, at least that is my personal opinion, so the legislature could decide as to how the nominations would be made as I see it.

COOPER: Mr. President, this is really not a question, it is just merely an enlargement upon the word. The same interest or same faction within a party -- I personally believe that two individuals having the very same thoughts or within the same faction within the party, such as Mr. Fischer pointed out, is not good. You have one of these elective officials tied to the shirttails of the other. One of the two will be weaker. Which one of the two I do not know. The secretary of state will be subordinate to the governor. The fact is that one of the two officials could represent another faction or a minor faction within the same party.

V. FISCHER: Point of order, Mr. President. This is not a debate. This is merely a discussion and it seems to me this