

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.

Supreme Court No. S-18210

STATE OF ALASKA, DIVISION OF
ELECTIONS, LIEUTENANT
GOVERNOR KEVIN MEYER, in his
official capacity as supervisor of elections,
AND GAIL FENUMIAI, in her official
capacity of Director of the DIVISION OF
ELECTIONS,

Appellees,

Case No. 3AN-20-09532 CI

and

ALASKANS FOR BETTER ELECTIONS,
INC.,

Intervenor.

APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT OF ANCHORAGE
JUDGE GREGORY MILLER

AMICI BRIEF OF REPRESENTUS and FAIRVOTE

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<i>Wash. State Grange v. Wash. State Republican Party</i> , 552 U.S. 442 (2008)	15, 19
Other Authorities	
2020 Alaska Democratic presidential primary, Wikipedia, https://en.wikipedia.org/wiki/2020_Alaska_Democratic_presidential_primary (July 2, 2021)	13
<i>Agreement Among the States to Elect the President by National Popular Vote</i> , Nat’l Popular Vote!, https://www.nationalpopularvote.com/written-explanation (last visited Dec. 2, 2021)	10
Ahmad, I., <i>The History of Social Media [Infographic]</i> , SocialMediaToday Today (Apr. 27, 2018), https://www.socialmediatoday.com/news/the- history-of-social-media-infographic-1/522285/	12
<i>Alaska Automatic Runoff Voting Initiative Measure 1</i> , Ballotpedia, https://ballotpedia.org/Alaska_Automatic_Runoff_Voting_Initiative_M easure_1_(August_2002)	11

<i>Alaska Republicans Endorse Instant Runoff Voting Ballot Measure</i> , Fair Vote, http://archive3.fairvote.org/reforms/instant-runoff-voting/get-involved-with-rcv/introduce-organizations-to-irv/IRV-endorsements-and-model-resolutions/alaska-republicans-endorse-instant-runoff-voting-ballot-measure/ (last visited Dec. 2, 2021)	11
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<i>Explainer: Political Polarization in the United States</i> , Facing History & Ourselves, https://www.facinghistory.org/educator-resources/current-events/explainer/political-polarization-united-states (last visited Dec. 2, 2021).....	12
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<i>Issues Important to Alaskans and the AIP</i> , Alaskan Independence Party, https://www.akip.org/issues.html (last visited Dec. 2, 2021)	5
Klein,E., <i>Why We’re Polarized</i> 250 (Kindle Edition 2020)	13

<i>Laboratories of democracy</i> , Wikipedia, https://en.wikipedia.org/wiki/Laboratories_of_democracy (Oct. 24, 2021).....	10
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<i>Multi-Winner RCV</i> , Ranked Choice Voting Res. Cnt., https://www.rcvresources.org/blog-post/multi-winner-rcv (Nov. 9, 2020) (last visited Dec. 2, 2021)	11
Murse, T., <i>List of Early Voting States in America</i> , ThoughtCo., https://www.thoughtco.com/list-of-early-voting-states-3367946 (Oct. 8, 2020).....	18
<i>Political Polarization in the American Public</i> , Pew Rsch. Ctr. (June 12, 2014), https://www.pewresearch.org/politics/2014/06/12/political- polarization-in-the-american-public/ (last visited Dec. 2, 2021)	12
<i>Ranked Voting</i> , Wikipedia (Nov. 18, 2021), https://en.wikipedia.org/wiki/Ranked_voting#:~:text=Ranked%20voting %2C%20also%20known%20as,%2C%202nd%2C%203rd%2C%20etc	4
Smith, H., “Ranked Choice Voting and Participation: Impacts on Deliberative Engagement (FairVote Civility Report #7)” (June 2016), https://fairvote.app.box.com/v/DeliberativeEngagement	9
<i>State-by-State comparison of campaign finance requirements</i> , Ballotpedia, https://ballotpedia.org/State-by- state_comparison_of_campaign_finance_requirements (last visited Dec. 2, 2021).....	10
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Vote Splitting, Wikipedia,
https://en.wikipedia.org/wiki/Vote_splitting#:~:text=The%20spoiler%20effect%20is%20the,both%20or%20several%20to%20win (last visited
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I. INTERESTS OF AMICI

RepresentUs is a nonpartisan nonprofit organization founded in 2012 that unites conservatives, progressives, and everyone in between to end political corruption. It supports pro-democracy ballot initiative efforts across the country that aim to make elections fairer and more representative. RepresentUs is supported by a national network of volunteer-led chapters and works in partnership with local organizations to support election reforms like Ranked Choice Voting (“RCV”).

FairVote is a nonpartisan nonprofit organization founded in 1992 whose mission is to make democracy fair, functional, and more representative. FairVote’s mission is to promote the voices and views of every voter, grounded in the evidence that the use of fair election methods will create a government that is more representative and effective. FairVote encourages public officials, judges, and the public to explore fairer and more inclusive election methods, including RCV. FairVote has experience working with jurisdictions to implement RCV and is familiar with the emerging case law surrounding this voting system.

RepresentUs and FairVote submit this Amici Brief because they support Ballot Measure 2 and, in particular, the establishment of Ranked Choice Voting in Alaska. RepresentUs works in partnership with local organizations, such as Alaskans for Better Elections. FairVote’s local chapter FairVote Anchorage was involved in voter education in the lead-up to the vote on Ballot Measure 2. RCV is particularly suited for Alaska because it benefits independent voters and smaller parties, which Alaska has in abundance.

II. SUMMARY OF ARGUMENT

Appellants' brief misses the mark in many ways. Ranked Choice Voting is simple to understand, has numerous benefits, and any perceived drawbacks pale in comparison to its advantages. Appellants, however, focus on and misconstrue alleged negative aspects of RCV in a misguided attempt to manufacture a constitutional violation where none exists. Amici provide this brief, together with its historical overview of RCV, in support of Appellees and as a means to provide the Court with a full set of facts upon which to render its decision.

III. ARGUMENT

A. DESCRIPTION OF RANKED CHOICE VOTING

Ranked Choice Voting allows voters the option to rank candidates in order of preference. If there are four candidates, for example, a voter can select their first, second, third, and fourth choice. That voter can, of course, rank fewer than their top-four choices. Just as in single-choice systems, a candidate wins in an RCV election if she receives a majority of the first-place votes. If, however, no candidate receives over 50% of the first-place votes, the candidate with the fewest votes is eliminated. Any voters who selected that now-eliminated candidate as their first option will have their second-option votes counted. This process continues until one candidate has a majority of the remaining votes.

The winning candidate may not receive a majority of the total votes that were cast in the election. If a voter chooses not to rank every candidate and every candidate that the voter ranks is eliminated, then that voter's ballot will become "inactive," not counting as

a vote for any candidate still in the race. If enough ballots become inactive during the counting process, then a candidate can win by receiving a majority of votes on ballots that remain active, even though that candidate may not win a majority of total votes cast.

As under the single-choice system Alaska used before passing Ballot Measure 2, a candidate in an RCV election can win with either a majority of votes cast or with a plurality of votes cast. Unlike a single-choice system, however, RCV gives voters the opportunity to indicate backup choices, removing the possibility that a candidate could be elected when a majority of voters would have preferred someone else.

Everyone has done some form of RCV outside of the election context. For example, you may tell your friend to buy vanilla ice cream for you but, if the store is out of vanilla, your backup option is chocolate.

The ballot summary for Ballot Measure 2 explained in detail how the process of RCV works in practice:

This act would establish ranked-choice voting for the general election. Voters would have the option to “rank” candidates in order of choice. Voters would rank their first choice candidate as “1”, second choice candidate as “2”, and so on. Voters “1” choice would be counted first. If no candidate received a majority after counting the first-ranked votes, then the candidate with the least amount of “1” votes would be removed from counting. Those ballots that ranked the removed candidate as “1” would then be counted for the voters’ “2” ranked candidate. This process would repeat until one candidate received a majority of the remaining votes. If voters still want to choose only one candidate, they can.

Below is an example of an RCV ballot:¹

¹ See *State of Alaska Demonstration Ballot* (Nov. 2, 2021), https://www.elections.alaska.gov/doc/GenRCV_BallotSamp3.pdf.

RANKED CHOICE VOTING					
Instructions: Vote by ranking candidates of your choice. <ul style="list-style-type: none"> Rank as many or as few candidates as you like Completely fill in no more than one oval for each candidate or column For your 1st choice, fill in the oval in the 1st choice column For your 2nd choice, fill in the oval in the 2nd choice column For your 3rd choice, fill in the oval in the 3rd choice column, and so on If you make a mistake, you can ask for a new ballot 					
United States Senator					
	1st Choice	2nd Choice	3rd Choice	4th Choice	5th Choice
Heather Olson (Reg. Libertarian)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Chick Hicks (Reg. Republican)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Naomi Jackson (Nonpartisan)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Tiffany Strait (Reg. AK Indep)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Write-in:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

B. BENEFITS OF RANKED CHOICE VOTING

1. RCV Benefits Independent Parties.

Appellants suggest that “Prop. 2 will wipe out independent parties.” At. Br. at 8. To the contrary, it will benefit independent parties. The benefits of RCV for independent parties are summarized by one of the Appellants, the Alaskan Independence Party (“AIP”), on its website (expressing support for RCV, aka preferential voting²):

The AIP supports the concept of preferential voting.

In a multi-party system such as Alaska, where we have 6 parties, candidates win with a plurality not a majority. Very few candidates in Alaska are elected with even 45% of the vote let alone a clear majority.

The Preferential Voting petition allows for the voters to vote their conscience for their first choice. If no candidate receives at least 50% of the

² See Joshua Holzer, *What is Ranked Choice Voting? A political scientist explains*, The Conversation (Aug. 9, 2021), <https://theconversation.com/what-is-ranked-choice-voting-a-political-scientist-explains-165055>; see also *Ranked Voting*, Wikipedia (Nov. 18, 2021), https://en.wikipedia.org/wiki/Ranked_voting#:~:text=Ranked%20voting%2C%20also%20known%20as,%2C%202nd%2C%203rd%2C%20etc.

vote the last place finisher will be knocked out and his votes are transferred to the voters second choice.

Alaskan voters are the real winner in this instance since we have 6 political parties. Voters are encouraged to vote and not disillusioned by “throwing away” their vote for voting for their candidate of choice.³

As Appellant AIP’s website points out, the apparent simplicity of the traditional single-choice voting system can be misleading and can come at a cost. It is not simple for voters who prefer a smaller party or independent candidate. Such voters may be forced to vote strategically, sacrificing their top choice for a less-preferred candidate who seems more likely to win, to avoid their preferred candidate acting as a “spoiler.”⁴ Or voters may choose their top choice, but do so with the recognition that their vote is being “wasted” on a candidate with little chance of ultimately prevailing.

RCV eliminates the spoiler effect and concern regarding wasted votes. With RCV, smaller parties can attract more first choices of voters, with their second choices going to the lesser of two evils. *See Dudum v. Arntz*, 640 F.3d 1098, 1105 (9th Cir. 2011) (finding that voters in ranked choice systems “are more free to vote their true preferences, because

³ *See Issues Important to Alaskans and the AIP*, Alaskan Independence Party, <https://www.akip.org/issues.html> (last visited Dec. 2, 2021). *See also* Appendix (“App.”), p. 012.

⁴ *Id.* One notable example of the spoiler effect was the 2020 presidential election. Scholarly analysis shows that the Libertarian candidate, Jo Jorgenson, probably cost Donald Trump victory in at least Arizona and Georgia. *See Jonathan Cervas & Bernard Grofman, Why Donald Trump Should be a Fervent Advocate of Using Rank-Choice Voting in 2024*, at 1 (June 29, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3832051. If RCV had been enacted in these states, “it is not unreasonable to believe that...Trump would have captured two states that in fact he lost and come within 11 votes of an Electoral College victory.” *Id.* at 11.

they face less of a threat of having their votes entirely ‘wasted’”). Voters in a ranked choice system are able to express their true preferences by ranking their preferred candidate first, while also expressing a preference among the candidates they perceive as more likely to win. *See id.* at 1104 (finding that voters in ranked choice systems have “more say over who they want to represent them: if it is not to be their first choice, then they can choose a second” (citation omitted)).

2. RCV is Synergistic with a Top-4 Primary.

The design of RCV only makes sense when there are more than two candidates, such as in a top-4 election. RCV is a crucial tool to sort through four candidates. There is thus a synergistic relationship between RCV and a top-4 open primary. That is the conclusion of a recent Harvard Business School study of politics from a business perspective, by Katherine Gehl and Michael Porter.⁵ That analysis concludes that politics is working great for what the authors call the “political-industrial complex”—the “special interest groups, lobbyists, big-money donors, super PACs, think tanks, pollsters, consultants.”⁶ It is not, however, working well for most voters. Divisive representatives refuse to work across the aisle, resulting in gridlock and protecting special interests and donors. Of all the reforms proposed for our government (ending gerrymandering, reducing money in politics, setting term limits, etc.), the study authors conclude that the

⁵ *See* Katherine M. Gehl & Michael E. Porter, *The Politics Industry – How Political Innovation Can Break Partisan Gridlock and Save Our Democracy*, 7 (Harvard Business Review Press, 2020).

⁶ *Id.*

most effective and impactful is what they call “Final-Five Voting,” which is exactly Ballot Measure 2, except with four instead of five listed candidates:

For elections machinery, we propose “Final-Five Voting,” a package that (1) replaces closed, party primaries with nonpartisan open primaries that send the top five finishers to the general election, and (2) replaces [single-choice] voting in the subsequent general elections with ranked-choice voting.⁷

Gehl and Porter go on to point out the many benefits of RCV, the main benefit being the following:

Voters become the most important customer—as they should be. The general election replaces the primary as the most important election—as it should be. The winning candidate will have the broadest appeal to the most voters. Candidates will be incentivized to appeal to a larger group of voters than they did when the competition was in the primary.⁸

3. RCV Promotes Representative Outcomes.

Ranked Choice Voting ensures that a winning candidate is supported by a broader base of voters. In the single-choice system advocated by Appellants, in elections with more than two candidates, a candidate can get elected to a top executive office over the strong opposition of most voters. As noted by Appellants, Alaska has a history of electing governors with a minority of the vote.

The Alaska gubernatorial elections referenced in Exc. 219-222 reflect that the governors were elected by a plurality of the vote in 1966 (Walter Hickel, 49.99%), 1974 (Jay Hammond, 47.67%), 1978 (Jay Hammond 39.1%), 1982 (Bill Sheffield, 46.1%), 1986 (Steve Cowper, 47.3%), 1990 (Walter Hickel, 38.9%), 1994 (Tony Knowles, 41.1%), 2006 (Sarah Palin, 48.3%), and 2014 (Bill Walker, 48.1%).

⁷ *Id.* at 8.

⁸ *Id.* at 130.

At. Br. at 17 (punctuation added).

Further, RCV encourages candidates to appeal to a broader cross-section of voters. Candidates in a single-choice vote system focus on the voters who will most favor that candidate. But, in an RCV system, candidates also will want to target voters who might rank the candidate as their second or third choice. Thus, candidates have an incentive to appeal to a broader cross-section of voters and to reach out to communities and voters that they would otherwise ignore.

4. RCV Discourages Negative and Divisive Campaigning.

Single-choice voting encourages candidates to cater to narrow factions of fervent support rather than appealing to the broader electorate. When the field is split among multiple candidates, the winner may end up being a candidate opposed by a majority of voters.⁹ In such elections, candidates benefit from mudslinging and attacking their opponent instead of sharing their positive vision with voters. This can lead to increasingly toxic and polarizing campaigns.

“With RCV, candidates also compete for second choice votes from their opponents’ supporters, which lessens the incentive to run a negative campaign. In RCV contests, candidates do best when they reach out positively to as many voters as possible,

⁹ See, e.g., https://en.wikipedia.org/wiki/Vote_splitting.

including those supporting their opponents.”¹⁰ “Voters in RCV cities report more positive campaigning and greater satisfaction with their elections.”¹¹

5. RCV Protects the Vote of Military, Overseas, and Early Voters.

“Protecting the right to vote for men and women serving overseas in the armed forces or living abroad is of the highest importance. Deployed military and other overseas voters encounter particular challenges during runoff elections and presidential nominating contests, largely because of their timing.”¹² Especially in “presidential primaries and caucuses, many candidates withdraw quickly after the first few primaries, before military and overseas ballots can be counted.”¹³ The same applies to early voters. Alaska provides for early absentee voting and in-person voting up to 15 days before the election.¹⁴ With a single-choice system, a ballot marked for a candidate who has dropped out is not counted. By contrast, with RCV, if candidates drop out of a presidential contest after some votes are cast, as happened in the Alaska Democratic primary in 2020, the ranked ballot is counted for whichever remaining candidate the early voter ranked

¹⁰ *Details about Ranked Choice Voting: Benefits of Ranked Choice Voting*, FairVote, <https://www.fairvote.org/rcv#rcvbenefits> (last visited Dec. 2, 2021); *see also* Haley Smith, *Ranked Choice Voting and Participation: Impacts on Deliberative Engagement* (FairVote Civility Report #7), 9-12 (June 2016), <https://fairvote.app.box.com/v/DeliberativeEngagement>.

¹¹ *Details about Ranked Choice Voting: Benefits of Ranked Choice Voting*, *supra* note 10.

¹² *Id.*

¹³ *Id.*

¹⁴ *See* “Early and In-Person Absentee Voting,” Alaska Division of Elections, <https://www.elections.alaska.gov/Core/absenteeearlyandinpersonvoting.php> (last visited Nov. 28, 2021).

highest.

C. HISTORY OF RANKED CHOICE VOTING

Appellants state that “the 4-winner primary election, coupled with a ranked-choice general election, does not exist anywhere else, and Alaska should not be used as an experiment.” At. Br. at 11. However, the story of American democracy is one of ongoing experimentation, with the states being “laboratories of democracy.”¹⁵ For example, primary elections were first adopted by states after 1910, and until 1968, only 20 states had primary elections.¹⁶ As further example, fifteen states have enacted laws to allocate their electoral votes based on who wins the national popular vote, to be effective when states representing a majority of the electoral college enact such a law.¹⁷ States have also adopted a variety of campaign finance reforms¹⁸ and other election reforms.¹⁹

Ranked Choice Voting is not a new or experimental method. It was invented in the 1850s in Europe as a proportional representation system to be used in multi-winner

¹⁵ See *Laboratories of democracy*, Wikipedia, https://en.wikipedia.org/wiki/Laboratories_of_democracy (Oct. 24, 2021).

¹⁶ See *United States presidential primary*, Wikipedia, https://en.wikipedia.org/wiki/United_States_presidential_primary (Nov. 7, 2021).

¹⁷ See *Agreement Among the States to Elect the President by National Popular Vote*, Nat’l Popular Vote!, <https://www.nationalpopularvote.com/written-explanation> (last visited Dec. 2, 2021).

¹⁸ See *State-by-state comparison of campaign finance requirements*, Ballotpedia, https://ballotpedia.org/State-by-state_comparison_of_campaign_finance_requirements (last visited Dec. 2, 2021).

¹⁹ See *The Canvass: States and Election Reform*, Nat’l Conf. of State Legislatures, <https://www.ncsl.org/research/elections-and-campaigns/the-canvass-all-issues-and-index.aspx> (last visited Dec. 2, 2021).

elections (e.g., elected bodies that simultaneously elect multiple candidates from the same district or at-large instead of from single-member districts).²⁰ In the 1870s, RCV was adapted to the single-winner (or instant runoff) form by William Ware, an MIT professor.²¹ Australia, Malta, and Ireland have used RCV for national elections since the early 1900s.²² Northern Ireland (1970s), New Zealand (1992), and Scotland (2007) use RCV in regional and local elections.²³ Ashtabula, Ohio was the first U.S. city to adopt RCV in 1915, and two dozen cities across six states adopted it by the early 1940s; while RCV has been adopted and repealed in many jurisdictions in the interim, it has remained in continuous use in the United States for more than a century.²⁴

A resurgence of RCV began around the turn of the 21st century. An RCV initiative was proposed in Alaska in 2002, but was defeated by voters.²⁵ Appellants allege that

²⁰ See *History of RCV*, Ranked Choice Voting Res. Ctr., https://www.rcvresources.org/history_ (last visited Dec. 2, 2021). A multi-winner election is one where more than one individual is elected for a position. Common examples in American voting systems are city council and school board elections. See *Multi-Winner RCV*, Ranked Choice Voting Res. Ctr., <https://www.rcvresources.org/blog-post/multi-winner-rcv> (Nov. 9, 2020) (last visited Dec. 2, 2021).

²¹ See “History of RCV,” *supra* note 20.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ See “Alaska Republicans Endorse Instant Runoff Voting Ballot Measure,” Fair Vote, <http://archive3.fairvote.org/reforms/instant-runoff-voting/get-involved-with-rcv/introduce-organizations-to-irv/IRV-endorsements-and-model-resolutions/alaska-republicans-endorse-instant-runoff-voting-ballot-measure/> (last visited Dec. 2, 2021). The 2002 Ballot Measure 1 would have implemented a preferential or ranked-choice voting system for state and federal elections, except governor. See *Alaska Automatic Runoff Voting Initiative Measure 1*, Ballotpedia, https://ballotpedia.org/Alaska_Automatic_Runoff_Voting_Initiative,_Measure_1_ (August

“[n]othing relevant has changed in the interim.” At. Br. at 14. They appear to focus on the single-subject issue with this comment, but this Court already determined that Ballot Measure 2 does not violate Alaska’s single-subject rule. *See Meyer v. Alaskans for Better Elections*, 465 P. 3d 477, 498-99 (Alaska 2020). Appellants ignore the most important thing that has changed: the public voted to adopt RCV.

Many other changes are evident since 2002, with some of these changes accelerating recently. Social media, with its divisiveness and effect on politics,²⁶ was in its infancy in 2002.²⁷ Politics have become increasingly divisive since then.²⁸ This is partly a result of candidates being selected by a minority of primary voters and who then refuse to compromise, resulting in gridlock.³¹ A conclusion shared by many who have studied the issue is that, “if we can’t reverse polarization ...[,] then the path forward is

t_2002) (last visited Dec. 2, 2021). The measure was defeated with 63.73% voting against the initiative.

²⁶ See Paul M. Barret, et al., *Fueling the Fire: How Social Media Intensifies U.S. Political Polarization – And What Can Be Done About It* (Sept. 2021).

²⁷ See Ifran Ahmad, *The History of Social Media [Infographic]*, SocialMediaToday (Apr. 27, 2018), <https://www.socialmediatoday.com/news/the-history-of-social-media-infographic-1/522285/>.

²⁸ See *Explainer: Political Polarization in the United States*, Facing History & Ourselves, <https://www.facinghistory.org/educator-resources/current-events/explainer/political-polarization-united-states> (last visited Dec. 2, 2021); *Political Polarization in the American Public*, Pew Rsch. Ctr. (June 12, 2014), <https://www.pewresearch.org/politics/2014/06/12/political-polarization-in-the-american-public/> (last visited Dec. 2, 2021).

³¹ See Sarah Anderson, et al., *Rejecting Compromise: Legislators’ Fear of Primary Voters*, (Cambridge University Press 2020); see also Jim Logan, *A Recipe for Gridlock*, The Current, <https://www.news.ucsb.edu/2020/019795/recipe-gridlock> (Feb. 20, 2020).

clear: we need to reform the political system so it can function amid polarization.”³²

Many have concluded that RCV is such a reform.

The Alaska Democratic party adopted RCV for the April 2020 presidential primary. Because RCV was used, votes that would be wasted in a single-choice primary instead were counted: 10.8% of the vote in the 2020 Democratic primary was for candidates who had withdrawn from the race, including 7.1% for Senator Warren. Due to RCV, those otherwise wasted votes had their second choice counted instead.³³ To follow the ice cream analogy, the losing first choice voters who wanted vanilla ice cream got their second choice, chocolate, with RCV. With single-choice voting, they would get no ice cream at all.

Numerous jurisdictions for various elections have adopted RCV over the years. As listed in the Appendix,³⁴ almost 50 cities have adopted RCV, along with the state of Maine. The Democratic party adopted RCV for various primaries in 13 states, including Alaska. The Republican party adopted RCV for various primaries in 3 states. Six states use RCV ballots to include overseas and military voters in federal and some state runoff

³² Ezra Klein, *Why We're Polarized* 250 (Kindle Edition 2020).

³³ See *2020 Alaska Democratic presidential primary*, Wikipedia, https://en.wikipedia.org/wiki/2020_Alaska_Democratic_presidential_primary (July 2, 2021).

³⁴ App., pp. 013-014.

elections.³⁵ RCV is also used by over 85 colleges and universities in the U.S. for student elections, and is used by many private organizations, including for the Oscars.³⁶

D. RANKED CHOICE VOTING DOES NOT IMPOSE AN UNCONSTITUTIONAL BURDEN ON THE VOTER'S RIGHT TO MAKE A KNOWLEDGEABLE CHOICE BETWEEN CANDIDATES

Appellants assert that their “appeal is about the Constitutionality of Proposition 2,” yet their arguments do not support this conclusion. Indeed, Appellants’ complaint that RCV allegedly “imposes an unconstitutional burden on voter’s right to make a knowledgeable choice between candidates” does not cite a single constitutional provision nor any supporting case law or other authority. Instead, Appellants manufacture various general hypotheticals that supposedly show how RCV requires voters to “vot[e] blind.” At. Br. at 15. They then conclude that this system of voting imposes an unconstitutional burden on the right to make a knowledgeable choice between candidates. Appellants are wrong.

1. Appellants Treat the Alaska Electorate as an Uninformed Group Incapable of Analyzing Possible Election Outcomes Before Casting Their Votes.

The United States Supreme Court has made clear that its “cases reflect a . . . faith in the ability of individual voters to inform themselves about campaign issues.” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 454 (2008) (citation omitted). The Court’s presumption when dealing with election-based challenges is that

³⁵ See, e.g., *Details about Ranked Choice Voting: Benefits of Ranked Choice Voting*, *supra* note 10.

³⁶ *Id.*

the electorate is “well-informed” and not easily susceptible to speculative confusion. *See id.* Appellants, however, assume that the Alaska electorate is uninformed and incapable of considering the impact their rankings have in potential later rounds.

For example, Appellants argue that RCV means that, “for the second and later rounds the voter is voting blind. The voter must vote in advance for the second and later rounds without knowing who has been eliminated and who are the remaining candidates.” At. Br. at 15-16. Further, Appellants argue that, “if a voter must choose between the remaining two or three candidates, the voter *may* choose to vote for someone that the voter *might* have given a lower ranking to in order to avoid a more unfavorable outcome.” At. Br. at 16 (emphasis added).

But the strength of RCV is that voters only need to indicate their preferences once and those preferences will indicate the voters’ will regardless of how well each candidate performs. All that voters need to be knowledgeable about is their own opinions of the candidates, and nothing more. The notion that voters might wish to change their relative rankings of candidates in successive rounds ignores the factual realities of RCV. Under this system, voters know their relative preference for each candidate regardless of who is in a particular round. While it is true that a voter might not know which candidates will make it to later rounds, this fact does not matter because voters already indicated their relative preferences through their rankings.

The traditional “ice cream” example highlights why Appellants’ concerns do not justify declaring Ballot Measure 2 facially unconstitutional. If someone is presented with

four ice-cream choices—vanilla, chocolate, strawberry, and pistachio—and asked to rank them, a potential result might be: (1) vanilla, (2) chocolate, (3) pistachio, and (4) strawberry. The individual does not know what ice cream she will receive, if any. What she knows, however, is that she will receive what she prefers out of the options available when ice cream is distributed. If, for example, this person gets chocolate, it is because vanilla was unavailable. If she receives pistachio, then it is because neither vanilla nor chocolate was available and she chose pistachio over strawberry.

The ranking gives the ice-cream selector what she prefers out of what is available, even though she cannot know in advance what the options will be. The same holds true for RCV. Appellants' manufactured hypothetical that some subset of the electorate might want to change their votes if their first- (or second- or third-choice) candidates are no longer available is speculative and irrelevant to whether or not Ballot Measure 2 is constitutional. First, there is no constitutional right to change your vote. Second, as other courts have recognized, the fact that RCV has some perceived drawbacks does not mandate its replacement by a single-choice voting system that is imperfect in other ways.

The requirement to analyze choices without knowing the outcome of each step in an election is nothing new. In single-choice voting systems, a minor party might sometimes become a “spoiler” candidate who ruins the chance of one major-party's candidate winning the election.³⁷ Voters in such situations must consider whether to vote

³⁷ See *Vote Splitting*, Wikipedia, https://en.wikipedia.org/wiki/Vote_splitting#:~:text=The%20spoiler%20effect%20is%20the,both%20or%20several%20to%20win (“The spoiler effect is the effect of vote splitting between candidates or ballot questions who often have similar ideologies. One

for the minor party candidate, knowing he or she might be a spoiler in the election. Voters deciding between the minor party candidate and their “second” choice—a major party candidate—must weigh the risks of their preferred choice essentially taking votes away from an otherwise acceptable major party candidate, with the result that an undesirable third candidate will prevail.

The issue of candidates changing in later rounds was addressed in an analysis of Instant Runoff Voting (“IRV”), another name for RCV, implemented in Minneapolis, Minnesota. *See Minn. Voters All. v. City of Minneapolis*, 766 N.W.2d 683, 690-91 (Minn. 2009). The Minnesota Supreme Court found that RCV “is directly analogous to the pattern of voting in a primary/general election system.” *Id.* at 690. Indeed, the Minnesota Supreme Court explained how the effect of a multi-round nonpartisan primary election (where voters go to the polls multiple times) and a single-round RCV election (where voters fill out only a single ballot) is the same:

In a nonpartisan primary election, each voter’s vote counts in determining which two candidates survive to reach the general election. In essence, those primary votes are the voters’ first-choice ranking of the candidates. As a result of the primary, all but the top two candidates are eliminated. Then, in the general election, voters who voted for candidates eliminated in the primary are allowed to cast another ballot, which necessarily will be for a different candidate—presumably, their second choice. This is no different than the counting of the second-choice votes of voters for eliminated candidates in instant runoff voting. . . . A vote in the general election still counts and affects the election, even though it is for the same candidate selected in the primary.

spoiler candidate’s presence in the election draws votes from a major candidate with similar politics, thereby causing a strong opponent of both or several to win.”) (last visited Nov. 29, 2021).

Id. at 690-91.

Moreover, Appellants' argument that a "voter must vote in advance for the second and later rounds without knowing who has been eliminated and who are the remaining candidates" (At. Br. at 15-16) fails for additional reasons. While occasional, such "blind voting" is accepted practice in many primaries and has been for a long time. Most states allow early voting, including Alaska with early in-person voting and absentee ballots.³⁸ The voter thus must cast a ballot without knowing if a candidate will drop out before the day of the election. This happened recently in the 2020 Alaska Democratic primary, when Elizabeth Warren dropped out after early voting started and before the primary election date. Many other things may change between an early vote and the election which a voter would be "blind" to, such as candidate's poll numbers due to last minute revelations or debate performances.

Whether as part of RCV or single-choice voting, the electorate must make decisions without actually knowing what the outcome will be. This is an unremarkable proposition. Appellants' complaints about RCV ignore how they overlap with those that are present in single-choice systems and, in any event, do not show how RCV unconstitutionally burdens a voter's right to make a knowledgeable choice.

³⁸ See, e.g., Tom Murse, *List of Early Voting States in America*, ThoughtCo., <https://www.thoughtco.com/list-of-early-voting-states-3367946> (Oct. 8, 2020).

2. Appellants' Policy Complaints do not Prove that Ballot Measure 2 is Facially Unconstitutional.

Appellants urge this Court to find that Ballot Measure 2 is facially unconstitutional, without saying whether they are referring to the U.S. or Alaska constitution. To succeed under the U.S. Constitution, they must show that “the law is unconstitutional in all of its applications.” *Wash. State Grange*, 552 U.S. at 449.³⁹ However, in arguing that RCV unconstitutionally burdens the right to make a knowledgeable choice among candidates, Appellants only discuss a small subset of generalized factual applications that, ultimately, come nowhere close to establishing the alleged facial unconstitutionality of this system. Indeed, Appellants’ arguments amount to nothing more than policy complaints that a multi-round run-off election is preferable to an RCV system. But such policy arguments do not demonstrate a constitutional burden on the right to vote.

No election system is perfect, and each system offers a package of advantages and disadvantages. But such “tautological observation[s] that RCV may suffer from problems, as all voting systems do” is not a proper question for the Court. *Barber v. Dunlap*, 376 F. Supp. 3d 125, 135 (D. Me. 2018). In a multi-round runoff system, for example, “voters select a single candidate in the first round of voting.” *Dudum*, 640 F.3d at 1103. If a single candidate wins a majority of the vote, the election is over. “If no candidate receives a majority of the vote, a second round of voting is held, in which

³⁹ See also *State v. ACLU of Alaska*, 204 P.3d 364, 372 (Alaska 2009) (“A holding of facial unconstitutionality generally means that there is no set of circumstances under which the statute can be applied consistent with the requirements of the constitution.”).

voters choose between . . . candidates who received the highest number of votes in the first round.” *Id.* at 1104.

There are benefits and weaknesses to this system. One benefit is that voters easily understand how their votes are tabulated and how the winning candidate is determined. *See id.* at 1103. But there are also “troublesome weaknesses,” such as “arbitrarily eliminat[ing] a candidate who might otherwise have won the election at the runoff stage” and “the expense and burden of holding two separate elections.” *Id.* at 1103-04.

On the other hand, RCV has clear advantages that Appellants studiously ignore. These include, for instance, the fact that RCV systems “can be seen as better tests of the depth of voter support for each candidate than a simple first-past-the-post plurality system.” *Id.* at 1105. Other advantages include “[r]educing the costs and inconvenience to voters, candidates, and taxpayers by holding only one election, increasing voter turnout, [and] encouraging less divisive campaigns.” *Minn. Voters All.*, 766 N.W. 2d at 697.⁴⁰ Yet RCV has some disadvantages too, such as not “allow[ing] voters to *reconsider* their choices after seeing which candidates have a chance of winning.” *Dudum*, 640 F.3d at 1105 (emphasis in original).

The advantages and disadvantages to each system do not implicate, let alone establish, a constitutional burden on the right to vote. Instead, they represent policy choices for the legislature, or in this case, the voters to consider.

⁴⁰ While *Minnesota Voters Alliance* considered benefits in a multiple-seat election, these benefits are likewise present in a single-seat election.

3. All Other Courts have Found RCV Systems Similar to Ballot Measure 2 to be Constitutional.

From as early as 1975 up to the present, no court has found RCV to be unconstitutional under the U.S. Constitution. The Constitution is silent as to any method of election for federal, state, and local races. RCV as a method of election has been upheld by multiple state supreme courts, by a federal district court in Maine, and by a unanimous panel of the Ninth Circuit Court of Appeals.

Appellants cite the Ninth Circuit decision, *Dudum*, in a footnote, mistakenly arguing that it supports the claim that RCV “create[s] a problem [] further along in the count”—i.e., after the first tabulation of votes—because “[w]hen a voter’s ballot is exhausted (becomes inactive) . . . that voter has no input in the final decision.” At. Br. at 15 n.9 (citing *Dudum*, 640 F.3d at 1112). Yet *Dudum* rejected this argument. As discussed in *Dudum*, San Francisco implemented a “restricted” RCV system that limited voters to ranking only a subset of all candidates. *Dudum*, 640 F.3d at 1101. For example, if there were ten candidates running for office, voters may only be able to rank three.

The Ninth Circuit upheld this system, rejecting constitutional challenges, including challenges based on “exhaustion,” such as Appellants raise. *Id.* at 1113. The Ninth Circuit held:

The appearance that some votes are not “counted” is just a product of how the algorithm operates for efficiency’s sake; the result would be identical were the “exhaustion” feature eliminated, and the “exhausted” ballots recorded and counted throughout the process for what they are—votes for losing candidates. As the votes from “exhausted” ballots are taken into account in the election, as much as “wasted” votes ever are, the practical burden on voters is no different than in other election systems.

Id.; *see also id.* at 1117 (holding that “important governmental interests are more than sufficient to outweigh the extremely limited burdens”). Appellants’ exhaustion concerns would be stronger in a “restricted” RCV system, where voters may not be able to rank every candidate. Yet, as just discussed, the Ninth Circuit rejected that argument. Alaska’s RCV system allows a voter to rank all candidates. Therefore, unlike in the San Francisco “restricted” RCV, a voter will have the opportunity to have his vote tabulated at every stage of the count. Any “exhaustion” would be the result of a voter’s own choice to not rank all candidates, not a constitutional burden imposed on voters by the RCV system.

In Maine, the district court upheld RCV against constitutional challenges based on Article I of the U.S. Constitution, the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment, and the First Amendment. *Baber*, 376 F. Supp. 3d 125. In response to a myriad of constitutional challenges, the court held that “[w]hether RCV is a better method for holding elections is not a question for which the Constitution holds the answer.” *Id.* at 135. The same is true in this case, where Appellants’ arguments are similarly poorly situated for constitutional resolution. The “normative questions of policy” should “be worked out in the public square and answered at the ballot box,” *id.*, and they were so worked out when Alaskan voters chose RCV.

In Minnesota, “the voters in the City of Minneapolis voted on a referendum to approve of a [ranked choice voting] methodology for municipal elections,” which passed “by a 65-35 percent margin.” *Minn. Voters All.*, 766 N.W. 2d at 685-86. The Minnesota Supreme Court rejected all constitutional challenges to the RCV system under the right to

vote, the right to political association, and the right to equal protection. Notably, the Minnesota Supreme Court rejected a similar contention to the one that Appellants make here that “some votes count more in determining the outcome of an election than others,” based on the central premise that “first-choice votes cast for continuing candidates were exhausted in the first round and have no further opportunity to affect the election.” *Id.* at 690. The Minnesota Supreme Court held that there is no “exhaustion” of votes because the vote for the continuing candidate is counted in the subsequent rounds and the voter has the ability to affect the outcome of the election. *Id.*

Courts in Massachusetts and Michigan have similarly rejected constitutional challenges to RCV. In *McSweeney v. City of Cambridge*, 665 N.E.2d 11 (Mass. 1996), the Massachusetts Supreme Court rejected challenges based on the Equal Protection Clause of the U.S. Constitution. The Massachusetts Supreme Court held:

[F]ar from seeking to infringe on each citizen’s equal franchise, [RCV] seeks more accurately to reflect voter sentiment and to provide for the representation of minority groups in the municipal council or to enlarge the possibility of a voter’s being represented therein by giving the voter an opportunity to express more than one preference among candidates. This purpose is not a derogation from the principle of equality but an attempt to reflect it with more exquisite accuracy.

Id. at 15 (alteration omitted) (internal citations omitted).

Finally, *Stephenson v. Ann Arbor Board of Canvassers*, No. 75-10166 AW (Mich. Cir. Ct. Nov. 1975), also found no constitutional violation. The court there held that “[e]ach voter has the same right at the time he casts his or her ballot” and “[e]ach voter has the same opportunity as the next voter in deciding whether or not to list numerical

preferences for his or her candidate and has the same equality of opportunity as any other voter if his or her candidate is eliminated as the lowest vote-getter, and his or her second choice preference becomes the viable vote.” App., p. 019.

Appellants here raise similar complaints under the guise of constitutional concerns that courts have repeatedly rejected. Appellants’ arguments are not moored by any constitutional analysis or case law support. In fact, the long history of constitutional challenges to RCV exclusively supports the constitutionality of RCV. This Court should not deviate from those holdings.

IV. CONCLUSION

For the reasons set forth herein, the judgment entered by the trial court should be upheld.

Respectfully submitted, this 6 day of December, 2021.

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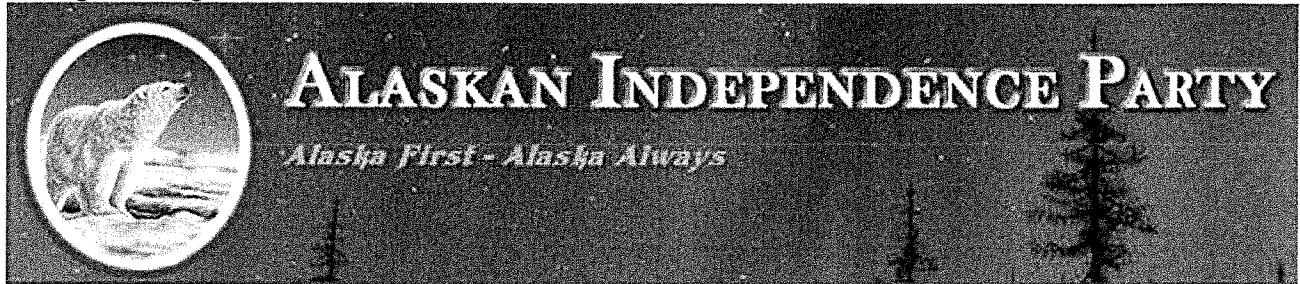
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APPENDIX

"A free people ought not only to be armed and disciplined, but they should have sufficient arms and ammunition to maintain a status of independence from any who might attempt to abuse them, which would include their own government. "

~George Washington



Issues Important to Alaskans and the AIP

The Information below farther explains our stand on many of the issues in our **platform** and beyond. Feel free to ask questions or post comments to the AIP by email or in our **forum**.

Topics also mentioned in our platform:

- [Constitution](#)
- [State Constitutional Convention](#)
- [Federal Land Ownership](#)
- [Alaska PFD](#)
- [Land Access & Homesteading](#)
- [Education](#)
- [Family](#)
- [State's Rights](#)
- [Property Rights & Homesteading](#)
- [Bureaucratic Regulations](#)
- [Judges & Atty. General](#)
- [Gun Rights/control](#)
- [Privatization of Gov't Services](#)
- [Jurors Rights](#)
- [Initiative & Referendum](#)
- [Property Taxes](#)
- [Secret Activities](#)
- [Roadways and Trails](#)
- [Gov't Immunity](#)
- [Gov't Borrowing](#)
- [Jobs](#)

Topics not mentioned in the platform (identified in RED):

- [AGIA](#)
- [Logging](#)
- [Statehood](#)
- [Federal Elections](#)
- [Environment](#)
- [Property Tax Limitation Petition](#)
- [Mining](#)
- [Subsistence](#)
- [Abortion](#)
- [BP ARCO Merger](#)
- [Natural Resources](#)
- [2000 Resolutions](#)
- [Fishing](#)
- [Agriculture](#)
- [Jones Act](#)
- [Oil Export](#)
- [Preferential Voting](#)

All Alaska Gas Line

The AIP supports the All Alaska Gas line, AGIA - LNG project. It is a good plan and voted on by Alaskan's. It will serve to build the infrastructure necessary for in-state use of Alaska's gas resource before more of our resources are shipped elsewhere. It is a true building of Alaska first for Alaskan's first.

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Constitution

The AIP believes full compliance with the constitutions of the United States of America and the State of Alaska is necessary.

Today's Judges interpret what they want and it usually reflects their personal bias. We believe that the only way to effect full compliance is to read the documents and interpret them literally.

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State's Rights

The AIP supports and defends states' rights, individual rights, and the Equal Footing Doctrine as guaranteed by the constitutions of the United States of America and the state of Alaska.

The 10th Amendment to the US Constitution is the limitation of the federal government from infringing on what is the State's responsibility and what is theirs.

Individual rights: everybody has the right to be "stupid" and it is not the government's responsibility to protect us from ourselves.

Equal Footing means that all states are equal. Unfortunately, Alaska is treated as a colony and not an equal state in the union. Alaska is the only state where subsurface rights are owned by the government. It is also the only state where the federal government controls hunting and fishing.

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Initiative & Referendum

The AIP supports the liberalization of initiative and referendum procedures to hold legislatures accountable to the will of the people.

Today it is very difficult to get a petition onto the ballot. The law makers in Juneau are placing more roadblocks in front of the people's initiative process. The present lieutenant governor, Fran Ulmer, has unilaterally held up petitions which were presented to be placed on the ballot, she has either delayed them or flat out rejected them because she disagrees with the process.

Instead of making it harder to vote on an issue, we should have an easier route to take it to the voters. As long as the capitol is in Juneau, away from the population, it will be difficult to regain control of our government.

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State Constitutional Convention

The AIP supports the call for and convening of a State Constitutional Convention to address the flaws in the existing State Constitution.

The present constitution seems to be more of a charter than an actual constitution. It seems to be fluid document and the language has changed from one printing to the next without a vote of the people.

The biggest flaw we have in the present constitution is that it is a pure socialist document. Private property and individual rights are sacrificed to the collective government as a whole.

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Property Rights & Homesteading

The AIP supports amending the Constitution of the State of Alaska so as to re-establish the rights of all Alaskan residents to entry upon all public lands within the state, and to acquire private property interest there in, under fair and reasonable conditions. Such property interest shall include surface and sub-surface patent.

Alaska is the only state of the United States where landowners are prohibited from owning our subsurface rights.

99.7% of Alaska is owned by a government of some sort, be it Federal, State, Municipal, City, Borough or Native. What limited private property we hold has limited access.

Homesteading is the only reasonable way for the government to open the land to private ownership and development. Alaska had only limited homesteading programs which were discontinued years ago.

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Property Taxes

The AIP supports a constitutional amendment abolishing and prohibiting all property taxes.

When a person pays property tax, the land owner never truly owns it. It can go back to the government for non payment of "rent."

A person buys an item once and should pay only one time for it.

When you buy an item in the store you never have to pay a continual tax for just the right to continue to possess it. Property should be the same way.

The AIP has been active in the collection of signatures for the property tax limitation which will be on November 2000 ballot. We thank Uwe Kalenka and his efforts and encourage Alaskans to vote to limit government.

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Federal Land Ownership

The AIP seeks the complete repatriation of the public lands, held by the federal government, to the state and people of Alaska in conformance with Article 1, Section 8, Clause 17, of the federal constitution.

Alaska is almost entirely owned by the government. 99.7% of the state is owned by government. The federal government owns the majority of the land mass of Alaska.

Since statehood, The federal government has withdrawn areas greater than the size of Texas from development and disposal.

The federal constitution only authorizes certain uses for federally held land. Wilderness designation is not one of them.

The Alaskan Statehood Compact required the Federal Government to return the land it held to the state of Alaska and in turn her people. This has never happened.

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Bureaucratic Regulations

The AIP wishes to prohibit all bureaucratic regulations and rulings purporting to have the effect of law, except that which shall be approved by the elected legislature.

Laws are enacted by the legislature AS. But when you need to deal with the bureaucracy, you see that what you have to obey is ACC "statutes."

The regulations were created by the unelected bureaucrats, reviewed by unelected bureaucrats, enforced by unelected bureaucrats, and imposed on the masses as LAW.

Regulations are not law and can't be enforced as law.

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Secret Activities

The AIP opposes with rare exception, any secret activities or expenditures of funds of any government agency - state, federal or international.

An open book is what the AIP wants the government to be. We want the expenses and expenditures to be public.

Why does the government insist on operating in secret. The AIP believes this practice must stop.

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Alaska PFD

The AIP wishes to preserve and protect the Alaska Permanent Fund, earnings, and individual Permanent Fund Dividends.

WE VOTED NO on Sept 15, 1999.

We supported the NO vote to make sure the legislature keeps their hands off the PFD.

Alaskan receive a PFD and a payoff because we are prohibited to own subsurface rights.

When the legislature continues to not understand the word **NO** it is time to change the legislature. Remember those who wish to steal your money, your kids money and grand kids money. Tell them it is time to find a new job.

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Judges and Attorney General

The AIP supports the direct popular election of the attorney general, all judges, and magistrates.

Our constitution calls for the appointment of judges, magistrates and the AG - another one of the flaws in our constitution.

If the AG were elected, he would be responsible to the people. The Babbitt Suit would not have been dropped. The elected AG would have no choice but to stand up for Alaska or answer to the people of the state.

Judges and magistrates would have to be more responsible to the people. Rogue decisions by out of touch judges who can't be stopped will be remembered longer and the decisions will have to be defended in the court of the public.

Pedophilic judges will have no choice but to be accountable for their actions. Everyone remembers the one judge who we make inference to who chose to resign rather than become the object of a failure to retain election that we have now.

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Roadways and Trails

The AIP supports the development of unrestricted, statewide, surface transportation and utility corridors as needed by the public or any individual.

We need access in Alaska. Almost the entire state is non accessible.

If Alaska is to develop our economy we have to have roads. With roads villages and communities will be able to expand their economies. Land can be developed. Jobs can be created.

When you look at the Rand McNally road atlas for Alaska ALL the roads are there. Most states and lands have secondary highways, Alaska does not. The last road which was built in Alaska was the Dalton Highway.

Hickel and Coghill tried to reopen the road to Cordova. The federal Government stopped this. (Cordova was the place of an Anti-Tax Protest in the early 1900s and could this be continual retribution against Cordova for the dumping way back when?

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Land Access

The AIP supports Alaska affirms and asserts every possible right-of-way established under R.S. 2477 of July 26, 1866, before its repeal by the Federal Land Management Policy Act of October 21, 1976.

ROADS

Most highways and roads in the other states started as trails.

The federal government has stopped people from accessing their lands and properties over historical use trails. What we were able to drive to in years past now cant be accessed anymore.

RS2477 access roads are the beginning of our road system. Since most land here is owned by the federal government, the federal government can stop access and development in perpetuity by refusing to allow the trails to cross "their" land even though we as Alaskans have used these trails for years.

The road to Kantishna is one example of their arrogance and attempts to destroy private property in Alaska.

Almost every member of the Alaska Reclamation Crew who drove to Kantishna without Federal permits were members of the AIP.

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Gun Rights/Control

The AIP supports the right of the individual to keep and bear arms.

Gun control is hitting your target.

Amendment II of the federal constitution and Article 1, section 19 of Alaska's Constitution does not limit who can own a firearm. It does not define what type of guns can be owned.

In Alaska's original Constitution, the INDIVIDUAL did not have the right to keep and bear arms.

The AIP was responsible in bringing the issue to the fore front getting this amendment which guarantees the INDIVIDUAL this right, passed and for stopping bad amendments from ever reaching the ballot.

A certain legislator introduced a bad amendment and thanks to AIP activists, he no longer holds public office and has retired from the political scene.

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Gov't Immunity

The AIP supports the complete abolition of the concept of sovereign or governmental immunity, so as to restore accountability for public servants.

When a bureaucrat, government employee or elected official does you harm there is no recourse for the individual because they hide behind the concept of "sovereign immunity."

The AIP abhors this concept and believes that all are responsible for their actions. If they are acting as a government official they can't do you harm without taking responsibility.

If someone causes you direct harm you should be able to sue them individually regardless of their employment or position.

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Education

The AIP supports the rights of parents to privately or home school their children and to provide them individually the right to access to a proportional share of all money provided for educational purposes as an unrestricted grant for such purposes.

Vouchers YES!

Education of the children is a parental responsibility and right.

The AIP believes that if you chose to educate your children in a non government school you should be able to receive a portion of the money that the state is required by its constitution.

As long as the state is required to pay to educate the children, the state has to obey the parent's choice if they choose to use a non-government school.

We must respect parental rights.

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Privatization of Gov't Services

The AIP supports the privatization of government services.

When the government does something the cost is always higher than if the private sector provides the services.

In order to keep costs down the AIP believes we should privatize as much government services as possible.

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Gov't Borrowing

The AIP opposes the borrowing of money by government for any purposes other than for capital improvements.

Why does the government need to borrow, just to operate day to day?

When an individual has a reduction in income he does whatever is necessary to live within his means.

The AIP believes the government has to obey the same concepts.

Bankruptcy should not be an option for government and it will occur as long as the legislature can outspend drunken sailors, (no offense to the navy!)

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Family

The AIP supports strengthening the traditional family and support individual accountability without government interference or regulation.

Parents are responsible to raise their children.

The Government punishes parents for disciplining their kids. Abuse is a never ending threat.

The government punishes parents if they choose their child's curriculum if it is not administered in a government school.

Family values are what made this land great and when we lose them our land is lost.

The government has no business in telling you how to raise your child.

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Jurors Rights

The AIP supports the right of jurors to judge the law as well as the facts, according to their conscience.

The jury has the most important vote of anyone.

It is a jurors right and responsibility to vote to acquit if they feel the law is unjust.

This is one of the greatest concepts of common law. A jury of your peers. Not a jury of government rubber stamps.

A judge's role is to be a referee. The jury is supposed to interpret the law.

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Jobs

The AIP supports "Jobs for Alaskans...First!"

If you work in Alaska you should live in Alaska.

Alaska's number one export is our children.

Without jobs here it will continue to be our biggest export.

Only Private Enterprise creates wealth.

Only 17% of the labor force in Alaska works for private enterprise. You can not have a sustainable economy whereon works for the government.

Alaskans should have first crack at the good jobs here. We should not have to compete with people who do not live or love Alaska like we do.

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Logging

Trees are a renewable resource. We can log without raping the land.

We can develop this Agricultural product and create new high end jobs here in Alaska.

If we were to finish our logs into timber products and finished good we can create more wealth here in Alaska.

If we just export raw logs we let others create wealth at Alaska's expense.

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Mining

If it can't be grown it must be mined.

The AIP supports mining operations here in Alaska.

The small miner has been placed out of business by federal regulations and land lock ups.

Mining is a responsible way to develop and diversify our economy.

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Fishing

The AIP supports Fishing!

More fish is caught in Alaskans waters than anywhere else in the United States.

Alaska must be able to control the resource in order to maintain and sustain a respectable and responsible yield.

Limited entry Commercial Fishing permits need to be returned to Alaska and either sold to Alaskans or just taken off the market.

Sport Fishing is an economic boom. When a King is caught on hook and line it brings more money into the economy than just placing a salmon steak on the market.

Commercial Fishing ventures which take almost all of the catch must respect the sport and personal use usage of Alaskan fish.

The AIP supported the fish initiative which would reserve up to 5% of the total catch to the individual sport and personal users.

Spawning grounds and escapement must be managed to maintain the best use of our Alaskan Fish.

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Statehood

Please see the [goal](#) of the AIP.

Alaska has never been an equal state.

Feds create and enforce laws which are only in effect in Alaska.

Many in the AIP support INDEPENDENCE. Some support COMMONWEALTH and others support STATEHOOD.

It is the AIP's wish to get a true plebiscite according to international law, where only legal Alaskan citizens vote. The question on the ballot is in the language of the people. (Federal military and their dependents are not legal citizens and will not be allowed to vote in this plebiscite.)

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Subsistence

The AIP supports subsistence. BUT Subsistence is more than just hunting and fishing.

Although aboriginal hunting and fishing rights were abolished by ANCSA. ANILCA is a federal law which basically reinstated these rights, contrary to Alaska's constitution.

Alaska's Constitution was adopted, ratified and in effect long before ANILCA was created.

ANILCA needs to conform with the Alaskan Constitution, not the other way around.

Regardless of what a law says or doesn't say, SUBSISTENCE hunting and fishing will take place. where ever there is a hungry man or woman, people will take fish or game to feed themselves.

The AIP will never support an effort to limit who can feed themselves and who can not.

[A formal subsistence paper was adopted at the 2000 Convention.](#)

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Agriculture

The AIP supports agriculture and agricultural activities.

Alaska used to feed ourselves. Not anymore.

Federal regulations from the state department dated as far back as 1961 states that "Alaskan Agriculture shall never compete with lower 48 sources."

Alaska produces some of the largest veggies in the world. Yet our produce can not be found in lower 48 markets.

Potatoes, Cabbage, Squash, Berries, Lettuce, Carrots, Radishes to name a few grow well in our climate and should be encouraged.

Reindeer, and game ranching should also be encouraged. The AIP supports reindeer and game ranching for Alaskans regardless of the racist federal laws prohibiting it.

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Federal Elections

The AIP has never supported a Presidential candidate.

We have been courted and requested by numerous candidates in the past who wish to use our party as a vehicle to get on the ballot. We are Not RENT A PARTY and will not support a candidate who treats us as such.

We have had candidates in the past who chose to run for US Congress and US Senator. The AIP has requested these individuals to run for a local ALASKA office.

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Abortion

The AIP is now a prolife party, please visit the 2020 platform change. After fifty years of legalized abortion in Alaska, this failed experiment has not given us what it promised.

Any party that directs its citizens toward a more hopeful future should call for the protection of human life from conception to natural death.

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Jones Act

The AIP supports the repeal of the Jones Act.

The Jones Act discriminates against Alaska and Hawaii in particular by requiring all shipment of goods into Alaska from US ports to use US flagged ships. This increases the cost of the delivered goods to us in Alaska.

The net effect of this law is that items originating from New York state can not use Canadian railroads to get here faster overland.

If it was coming by sea US ships are required causing an increase in the shipping costs.

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Environment

The AIP supports the environment.

We live in Alaska. Because we live here we can not poison ourselves out of existence.

We are pragmatics. Development is necessary and our health is not for sale.

Even dogs don't defecate where they eat or sleep.

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BP ARCO Merger

The AIP supports the lawsuits filed by Alaskans opposing this monopolistic take over of Alaskan resources.

The lawsuit text can be found at [Backbone](#) and we suggest you review it.

If the merger goes through, over 72% of Alaska's revenues will come from one source: BP. It is our position that Alaska should control Alaska not having the price of oil dictated to us by a foreign entity.

We are encouraged that even the FTC recognizes that this merger is BAD for Alaska.

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Oil Export Ban

The AIP supports the exportation of Alaskan Oil to foreign states.

Alaskan North Slope crude was prohibited by federal law for exportation until recently.

It was the AIP who brought this discriminatory federal law to the Alaskan people. Alaska was singled out by this unconstitutional limitation.

The Oil Export ban has cost the people of Alaska Millions if not billions of dollars by forcing Alaska to receive below fair market value for our resource.

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Property Tax Limitation Petition

The AIP supports the Property Tax Limitation Petition.

It was circulated by AIP members at the 1999 state fair and received as much support for this limitation on government as the Save the PFD effort.

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Natural Resource Development

The AIP supports the development of our natural resources.

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Preferential Voting

The AIP supports the concept of preferential voting.

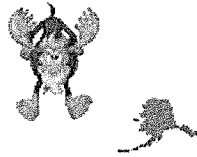
In a multi-party system such as Alaska, where we have 6 parties, candidates win with a plurality not a majority. Very few candidates in Alaska are elected with even 45% of the vote let alone a clear majority.

The Preferential Voting petition allows for the voters to vote their conscience for their first choice. If no candidate receives at least 50% of the vote the last place finisher will be knocked out and his votes are transferred to the voters second choice.

Alaskan voters are the real winner in this instance since we have 6 political parties. Voters are encouraged to vote and not disillusioned by "throwing away" their vote for voting for their candidate of choice.

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PROUD TO BE ALASKAN



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[Lynette Clark, Chair](#)

Jurisdictions that Adopted Ranked Choice Voting

Cities

2000. San Leandro, California (Adopted as option in 2000, used since 2010 for mayor and city council).

2002. RCV adopted in Basalt, Colorado (mayor), Carbondale, Colorado (mayor), San Francisco, California (mayor, city attorney, Board of Supervisors and five additional citywide executive offices).

2004. Berkeley, California (mayor, city council and city auditor).

2006. Oakland, California (18 city offices, including mayor and city council), Minneapolis, Minnesota (22 city offices, including mayor and city council). Takoma Park, Maryland (mayor and city council).

2008. Telluride, Colorado (mayor), Santa Fe, New Mexico (mayor, city council, and municipal judge).

2009. St. Paul, Minnesota (mayor and city council),

2010. Portland, Maine (mayor; expanded in 2020 to city council and school board).

2016. Benton County, Oregon (commissioner, sheriff).

2018. Las Cruces, New Mexico (mayor and city council), St. Louis Park, Minnesota (mayor and city council), Amherst, Massachusetts.

2019. New York City (mayor, citywide offices, borough presidents and city council), Easthampton, Massachusetts (mayor and city council), Eastpointe, Michigan (city council).

2020. Bloomington, Minnesota (mayor and city council), Minnetonka, Minnesota (mayor and city council), Albany, California (city council and school board), Boulder, Colorado (mayor), Eureka, California (mayor and city council), Palm Desert, California (city council).

2021. 23 cities in Utah, Broomfield, Colorado (mayor and city council), Burlington, Vermont (city council), Westbrook, Maine (mayor and city council).

States

2016. Maine.

2020. Alaska.

Primaries

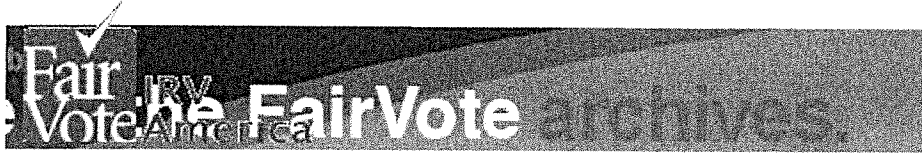
The Democratic party adopted RCV for various primaries in Alaska, Delaware, Hawaii, Nevada, Wyoming, Kansas, Iowa, Minnesota, New Mexico, Nebraska, New Mexico, Oklahoma, Utah.

The Republican party adopted RCV for various primaries in Indiana, Utah and Virginia.¹

Six states use RCV ballots to include overseas and military voters in federal and some state runoff elections: Alabama, Arkansas, Georgia, Louisiana, Mississippi, and South Carolina.²

¹ See *Details About Ranked Choice Voting*, FairVote, <https://www.fairvote.org/rcv> (last visited Dec. 2, 2021).

² See, e.g., *id.*



Visit Our New Website:
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[Ballot Questions](#)

[Resolutions](#)

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[Legal Guidelines & Litigation](#)

[Montgomery County, MD, Vacancies Lobbying Packet](#)

Stephenson v Ann Arbor Board of Canvassers

IRV Animation

See how instant runoff voting works

November 1975

[Actual charter language that was the subject of this court case]

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

IRV in the News... ▼

Right to Vote Initiative

IRV America

Program for Representative Government

Presidential Election Reform Program

Democracy SoS

Voting & Democracy Research Center

JAMES E. STEPHENSON,
Plaintiff,

FILE NO. 75—10166 AW

ANN ARBOR BOARD OF CITY CANVAS-
SERS and JEROME S. WEISS,
Defendant,

v

ALBERT H. WHEELER, JAMES M. DAHL,
DOROTHY L. CAHN, MARJORIE C. BRAZER,
LeROY CAPPAERT, DEBORA H. FREEMAN,
MARY HELEN S. GILBERT, CHESTER FELDMAN
and HENRIETTA FELDMAN, individually
and as a Class,
Intervening Defendants.

OPINION OF THE COURT

The City of Ann Arbor, Michigan, on April 7, 1975 held an election for the offices of Mayor and City Councilman. The election of council persons was determined by the plurality system of voting, i.e., the candidate with the most votes was declared the winner.

The Mayor's race was conducted pursuant to a duly adopted Charter Amendment, Section 13.12(b), Ann Arbor City Charter, where by a "Preferential Voting System" was employed. This particular type of preferential voting has been termed the "Ware System" or "Majority Preferential Vote" also referred to as the "M.P.V. System." [1]

The Ann Arbor voters in the November 5, 1974 general election added Section 13.12(b) to their City

Charter. The amendment was adopted by a majority of the voters.

Under the "Ware System" of preferential voting, where there are two or more candidates for the office in question, the voter has the right to indicate on his paper ballot, a first and second choice or as many choices in a descending numerical order as there are candidates. If five candidates were listed on the ballot, then each voter would have the right to indicate by number, his or her first, second, third, fourth and fifth choice. The ballot explanation informed the voter to mark his first choice with the number "1", and his second choice with a number "2" and third choice with a number "3" (Ballot, Exhibit No Two).

Thus, the voter indicated by number who his or her next selection would be if his or her first choice was not in the race, or was eliminated from the race under the "Ware" or "M.P.V. System."

Under the "Ware" or "M.P.V. System" as is set forth in the Ann Arbor Charter Amendment, the candidate with the lowest number of votes is dropped or eliminated from consideration (where there are three or more candidates) and the second choice preferences from the ballots cast for the eliminated candidate, are then counted and distributed to the remaining candidates according to the second indicated preference on each ballot.

In the April 7, 1975 Ann Arbor Mayoria¹ election, there were three candidates listed on the paper ballots. They were Carol Ernst, James E. Stephenson and Albert Wheeler.

The results of the election were as follows:

First Preference Votes for Stephenson	14,453
First Preference Votes for Wheeler	11,815
First Preference Votes for Ernst	3,181
First Preference votes for Miscellaneous Write-in Candidates	52

Total Valid First Preference Votes 29,501

No Candidate, whether listed on the paper ballot or by write-in vote received a majority of the valid votes cast as required by the Ann Arbor Charter Amendment.

Following the procedures outlined in the Charter Amendment, write-in candidates, and the ballot candidate with the least number of votes (Ernst) were dropped or eliminated, and the second choice votes wherein they were "First Preference" were counted and distributed among the remaining candidates. Note that because some voters elected not to exercise the option of choosing a second preference, the total number of Valid countable votes was 29,262.

That count of the "Second Preference" Votes from the Ernst ballots and distribution of them among the two candidates resulted in the following vote totals:

Wheeler	14,684
Stephenson	14,563

In view of the fact that the Charter Amendment required that a majority of the total countable vote was necessary in order for a candidate to be elected, and the total countable vote being 29,262, a majority of the vote was 14,631 plus one, or 14,632.

Candidate Wheeler having received 14,684 votes, after the second preference choices were counted from the eliminated candidate's ballots, thus received a majority of the valid countable votes cast and was declared the winner.

Plaintiff Stephenson brought suit, challenging the Constitutionality of the Preferential Voting system established by the Charter Amendment. As part of that action, Plaintiff Stephenson seeks in a Motion for Summary Judgment, a declaration by this Court, that the Charter Amendment is unconstitutional because it violates the equal protection clauses of the 14th Amendment to the Constitution of the United States, and Article 1, Section II, of the Michigan Constitution of 1963.

For purposes of the summary judgment motion the parties hereto agreed that no genuine issue of fact exists, only issues of law. The Court agrees that no genuine issue of fact is before it for consideration and the issue is one of law as raised by the pleadings. Pending decision on this motion, the Court stayed a recount filed by the Plaintiff Stephenson.

The City of Ann Arbor has the duty to insure equal protection of the franchise right to each voter. The equal protection clause of the Fourteenth Amendment to the U.S. Constitution so mandates now that political subdivisions are brought within its coverage by decision of the United States Supreme Court. *Avery v Midland County*, 390 US 474, 88 S Ct 1114; 20 L Ed 45 (1968).

The equality of voting effectiveness is safeguarded by this Amendment. *Reynolds v Simms*, 374 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964); *Wesberry v Sanders*, 376 US 1; 84 S Ct 526; 11 L Ed 481 (1964).

The Michigan Constitution of 1963 additionally guarantees equal protection of the law. Article I, Section 2. And that guarantee likewise extends to the voting franchise.

In view of these provisions and the U.S. Supreme Court interpretation of the guarantees therein provided, does the City of Ann Arbor's Preferential Voting System for the office of Mayor afford equal protection to each voter?

If so, then the Charter Amendment providing for the Preferential Voting System is constitutional. If not, it is unconstitutional. The Michigan Constitution provides that a City has the power and authority to frame, adopt and amend its charter. Article VII, Section 22.

Under the Home Rule Act, MCLA 117.3; MSA 5.2073(a) voting in a municipal election may be partisan, nonpartisan or preferential ballot, or by any other legal method of voting.

The Michigan Statutes do not provide a definition of preferential voting, and only in this oblique manner is mention made of preferential voting. Nevertheless, because preferential voting is authorized in the Home Rule, a form of preferential voting is permissible under that enabling Act.

The voters of the City of Ann Arbor by majority vote November 5, 1974, decided that a form of preferential voting in the Mayorial Contest should be a part of that City's Charter. There is no question that this Charter amendment was adopted in a proper manner and is a part of the Charter and must, therefore, be followed unless the method of preferential voting employed creates inequities and inequalities among the voters and runs afoul of the equal protection guarantees.

The crux of Plaintiff Stephenson's claim of unconstitutionality is that preferential voting under this Charter amendment creates a classification that restricts the franchise of certain voters and thus treats them unequally.

This claimed classification results from certain voters having their second choice ballots counted while the second choice of other voters whose candidate remains in the race, are not so counted. This creates separate classes of voters and affords the vote of some, more weight than others, Plaintiff asserts.

Plaintiff claims there is no "compelling state reason or interest" for creating such classifications, that would render this preferential voting system constitutional.

In *Hill v Stone*, 95 S Ct 1637 (1975) , 43 LW 4576, and *Kramer v Union Hill School District*, 395 OS 621, 89 S Ct 1886 (1969), the U.S. Supreme Court stated that a classification may not restrict the franchise on grounds other than residence, age and citizenship unless a compelling state interest was shown.

An examination of these cases reveals classifications of voting rights based on ownership versus nonownership of real property and apportionment of voting districts. Nothing in the Charter Amendment itself speaks to classifications of voters as in the *aforecited* cases. The Charter Amendment does not discriminate patently or latently against some segment of voters.

All voters for the office of Mayor possessed the same rights that is, the right to, or right not to, select and list their preferences in numerical order.

All voters possessed the right at the same time (election day) to decide who their second choice etc., candidate would be if their first choice were eliminated from the race.

No voter was restricted in his right. Each voted with this same understanding that his second and third choice preferences could be counted if his or her first choice was the candidate with the least number of votes.

No classification was established by the Charter Amendment or City of Ann Arbor to discriminate

against any voter or group of voters--all voters possessed the same rights.

Whatever classification that could be said to have existed, created itself, when a voter had his or her first choice candidate eliminated from the race for having the lowest number of votes after it was ascertained that no candidate possessed a majority of the total vote.

In that context, the second preference vote of a voter became viable as his first preference was eliminated from consideration.

That voter in substance still has only one vote that is counted, his or her first choice having been eliminated. His second preference vote is counted the same as the votes for the first two candidates. Such a voter does not have his vote counted twice--it counts only once and if that first preference no longer remains and is eliminated from consideration, his or her second preference is the "counted" vote. Voters for the top two candidates still have their vote counted for their first choice.

There is no deliberate scheme or practice that classifies voters under this system of voting. Each voter has the same right at the time he casts his or her ballot. Each voter has his or her ballot counted once in any count that determines whether one candidate has a majority of the votes. Each voter has the same opportunity as the next voter in deciding whether or not to list numerical preferences for his or her candidate and has the same equality of opportunity as any other voter if his or her candidate is eliminated as the lowest vote-getter, and his or her second choice preference becomes the viable vote.

This Court further finds nothing unconstitutional in the Charter Amendment that requires the winning candidate to have a majority of the votes cast in an election for the office of Mayor. Much has been said and written on the subject of a winning candidate for office, assuming that office with the backing (by votes) of less than a majority of those voting. Who can say that the voters of Ann Arbor do not know what they want, by their mandate that the Mayor of the City be elected by a majority of the voters. Far better to have the People's will expressed more adequately in, this fashion, than to wonder what would have been the results of a run-off election not provided for.

The fact that the Charter Amendment in question consolidates two elections into one, does not of itself create a classification nor discriminate against any group of voters. It possesses a monetary savings to the municipality in question and is not a factor to be overlooked.

Basic to all, is the right of self determination by the Ann Arbor voters. Their Charter Amendment was voted into effect by a majority of those voting November 5, 1974. The fact that "Ware" or preferential voting system is "different" from the system of voting we have come to know in this State, does not affect its validity.

This Court finds no classification of voters or their rights, created under this system of preferential voting, as the U.S. Supreme Court found in *Hill v Kramer*, supra.

Under the Michigan Constitution, Article VII, Section 22, the City of Ann Arbor has "the power and authority to frame, adopt and amend its charter". The provisions of Michigan's Constitution as concerns municipalities are to be liberally construed, in their favor, Section 34.

Thus, it is clear that the City of Ann Arbor could and did amend its charter to provide for a system of voting permitted by state statute, MCLA 117.3; MSA 5.2073(a). So long as that system of voting meets constitutional requirements, however "different" it may seem to some, it is a permissible form of voting.

Examined from every angle and tested against the standards of *Hill v Stone*, supra, this Court finds no classification or suspect classification of voters or their rights that would violate the equal protection clauses of either the United States or Michigan Constitutions. Nor can there be found any infringement of a fundamental right of any voter of the City of Ann Arbor in the exercise or operation of this voting system. All voters possess the same right to vote, to list numerical preferences and are subject to the same possibility of having their first preference eliminated and second or third etc., preference then counted in order to achieve the election of their Mayor by a majority of the total countable votes cast in the election.

The Court also finds no merit to Plaintiff's claim that certain voters have an opportunity to change their minds and their votes while others do not have that right under this "M.P.V." System. Each voter has an equal opportunity and right at the time he or she casts his or her ballot election day. The fact that each person voting lists different orders of preference does not mean that some voters have greater rights than others. Each voter is on an equal footing with the next voter as to whether his first preference, second preference etc. will remain in the "elimination process". It is the equal right to list preferences and the equal opportunity to be eliminated or to stay in the running that accords each voter the same rights, not the possibilities of whose first or second preference may or may not stay in the counting. Each voter is given the same rights at the same time, that is, the time of casting his or her ballot. It is then that a voter may "change his or her mind" by consciously deciding who his or her first, second or third preference is for the office of Mayor. Thus, at the time of vote casting, each voter who chooses to make more than one preferential selection, in effect exercises his or her mental process of changing his or her mind, as the voter decides that a certain candidate meets his tests for Mayor in the event his or her first choice does not remain in the the running. This Court finds no constitutional infringement or prohibition against changing one's mind in this fashion, inasmuch as each voter is given the same right to do so at the same time and each voter's ballot is given the equal right to

be counted in the same manner as any other voter's ballot. Each voter has the same rights as the next one. Nothing in the "M.P.V." system weighs one voter's rights over the other. The M.P.V. system, thus has the same effect as a run-off election, except that it consolidates it into one election.

Plaintiff has failed to demonstrate any true classification restricting the franchise of certain voters. Even if such a classification were found, this Court finds that a compelling state interest exists that would permit a classification in vote counting under such a M.P.V. system, as the City of Ann Arbor provides in its charter. The State does possess a great interest in speedy determination of elections, reduced election costs, involvement of a greater base of voters, affording greater voice in government by minorities and having the elected officer-holder be one who is the choice of a majority of the voters.

The argument by Plaintiff that the M.P.V. system employed here, violates the "one-man, one-vote" requirement of *Baker v Carr*, 369 US 186; B2 S Ct 691; *Reynolds v Simms*, supra, and *Wesberry v Sanders*, supra, likewise fails when the tests of those cases are applied to the manner and method this M.P.V. system employed to determine the winner. Again, each voter is given the same equal opportunity at the time he or she casts his ballot. His or her vote is not "weighed differently" from any other votes in the election. Each voter will have one of his or her preferences counted if he or she elects to make more than one preference. The fact that a few voters may decide not to make more than one preference does not render the system unconstitutional. It is a choice or right possessed that the voter may or may not exercise.

To count every second preferential vote as Plaintiff urges, would make the system self-defeating and in essence would encourage voters not to make a second or third choice, since it would work to defeat that voter's first choice. In "M.P.V.", the second choice of a voter is not counted unless his or her first choice is eliminated from the election first.

An examination of the one-man, one-vote cases discloses that the Court was concerned with certain voter's votes being weighted more than other voters. A voter in one district would have one vote for a particular office while a voter in another district would have two votes for a similar office in the same Representative Body, due to the second voting area only having half the population of the first area. This situation violated equal protection rights guaranteed to all voters under the United States Constitution. What violated equal protection there, was the inequitable effect of giving some voters two votes and other voters only one vote for their representative to the same representative body.

Under the "M.P.V. System", however, no one person or voter has more than one effective vote for one office. No voter's vote can be counted more than once for the same candidate. In the final analysis, no voter is given greater weight in his or her vote over the vote of

another voter, although to understand this does require a conceptual understanding of how the effect of a "M.P.V. System" is like that of a run-off election. The form of majority preferential voting employed in the City of Ann Arbor's election of its Mayor does not violate the one-man, one-vote mandate nor does it deprive anyone of equal protection rights under the Michigan or United States Constitutions.

Plaintiff cited *Wattles Ex Rel Johnson v Upjohn*, 211 Mich 514, 179 NW 335 as authority for its claim that Preferential Voting is unconstitutional. While *Wattles* was decided under the 1908 Michigan Constitution, the crux of the matter is that the facts in the present case are clearly distinguishable from *Wattles*. In *Wattles*, the Court was dealing with a multiple office situation involving proportional representation. The Preferential System employed was the "Hare" System, which is clearly different from the "Ware" or "M.P.V." System used in Ann Arbor.

This difference is well set forth in *Representation of Minorities In An At Large Election in City and Village Governments under Michigan Law*, by Leon H. Weaver, M.S.U., at pages 43-47.

Likewise, in *Maynard v Board of Canvassers*, 84 Mich 228; 47 NW 756, the system of voting struck down by the Court was not the "Ware" or "M.P.V. System" but a cumulative voting system that clearly violated equal protection of voting rights. See also 29 C.J.S. Elections, page 53.

The Michigan Courts, heretofore, have not ruled on the constitutionality of the "Ware" or "Majority Preferential Voting" system as was employed by the City of Ann Arbor in its Mayorial race.

For the reasons set forth herein, and because of the obligation of this Court to scrutinize carefully any attack on the constitutionality of a State statute and self-determination rights this Court finds and determines the "Ware" or "Majority Preferential Voting" System as adopted and employed in the Ann Arbor Mayorial race to be constitutional and not violative of the equal protection clauses of the United States or Michigan Constitutions.

Accordingly then, the Summary Judgment Motion of the Defendants herein is granted and the Summary Judgment Motion of the Plaintiff is denied.

Counsel for the Defendant, Albert H. Wheeler et al shall within 10 days prepare the Judgment pursuant to this Opinion and have the same approved as to form by counsel for the Plaintiff and present the same to the Court for signature. In the event of disagreement or failure to agree upon the form of the Judgment settlement of it shall be noticed for hearing within the same period of time.

This being a question of public import and precedent, no costs or attorney fees are awarded Either party.

James G. Fleming
Circuit Judge

[1] "The Majority Preferential Vote in Michigan Cities",
an unpublished article by Dr. Leon H. Weaver, Michigan
State University, East Lansing, Michigan.

