

CHAPTER V

BALLOTS

The written ballot made its appearance in the New England colonies very early. It was adopted for the election of the governor and deputies in Massachusetts in 1634, and continued thereafter, though the corn and bean ballot was used for a period for the election of assistants.¹ Other New England colonies within a few years followed Massachusetts and adopted written ballots. The Hartford Constitution of 1638 provided for the election of officers by written ballots² and when the government of Rhode Island was organized in 1647 the use of a written ballot was required.³ The constitutions of all of the New England states during or immediately following the Revolutionary period provided for paper ballots.

Paper ballots were not used so widely in the Middle Atlantic group of colonies. Pennsylvania provided for paper ballots in 1682 and 1683, but it appears that ballots were not actually used in all elections for some time.⁴ Delaware also used ballots for a period during the proprietary government, but when it reverted to the Crown in 1701, voting once more returned to the *viva voce* or show of hands methods.⁵ These methods were also used in New York until the adoption of the constitution of 1777, when provision was made for experimentation with the paper ballot.⁶ New Jersey in 1794 provided by statute for the election of members to the legislative

¹ Bishop, C. F., History of elections in the American colonies, p. 141.

² *Ibid.*, p. 150.

³ Rhode Island Colonial Records, Vol. I, p. 148.

⁴ McKinley, A. E., The suffrage franchise in the thirteen English colonies, p. 277.

⁵ Evans, E. C., History of the Australian ballot in the United States, p. 4 (1917).

⁶ Constitution, 1777, Secs. 6, 17.

council and to the general assembly, and sheriffs and coroners by ballot.⁷

In Southern colonies *viva voce* voting prevailed widely during the colonial period, and was not abandoned until the Revolutionary period or after.⁸

With the adoption of written ballots various abuses and frauds appeared, sometimes followed by a temporary return to *viva voce* voting or to a show of hands. A common fraud was the placing of more than one ballot in the box, and several colonies accordingly provided that the ballots should not be rolled up. With the increase in the number of officers to be elected, various states legalized the use of a printed ballot, though at first the voter was required to write out his own ballot, or to have it written out for him. In 1829 a voter of Massachusetts was denied the right to present a printed ballot to the election officers, and in the famous case of *Henshaw v. Foster*⁹ the supreme court of the state held that a printed ballot was valid. The necessity for printed ballots was obvious, for even at this early date the voter cast his ballot for fifty-five different persons.

With the legalization of the printing of the ballots, other abuses and sharp practices arose. The political parties printed their ballots upon colored paper so that they could be readily distinguished at the polls, and by this method secrecy was destroyed. Often the ballots were printed in flamboyant colors, with distinctive designs so that they could be recognized across the street. The state legislatures recognized these abuses and enacted laws to protect the secrecy of the ballot, requiring the use of white paper, or official envelopes. The latter provision, adopted in Massachusetts and Rhode Island,¹⁰ was within a few years nullified by an amendment

⁷ Evans, p. 7.

⁸ North Carolina abandoned *viva voce* voting in 1776; Maryland and Georgia in 1799; Arkansas in 1846; Missouri in 1863; and Kentucky not until 1890. See Evans, p. 5.

⁹ Pickering 312.

¹⁰ Massachusetts Acts and Res., 1851, Chap. 226; Rhode Island Laws, 1851-53, pp. 83-84.

making it optional, while the requirement that white paper be used for the ballots was ineffective, since the party organizations used different shades and thicknesses of white paper. Even where the ballots were not distinguishable, there was nothing to prevent the vote buyer from placing a ballot in the hands of the bribed voter and watching him until he placed it in the box. The elections were not secret, and bribery and intimidation were rampant throughout the country. Congressional investigations from time to time revealed this state of affairs.¹¹

Other serious abuses developed in the use of paper ballots which were prepared and distributed by the party organizations. Often fake ballots, which appeared to be of one party, but which in actuality contained only a few candidates of that party—just enough to fool the unwary—were distributed. With a large number of officers to be elected, even the discriminating and intelligent voter might be victimized by such tactics. In some elections the political organizations agreed upon a common slate and the ballots put out by both organizations were identical. Candidates whose names were not printed on these ballots stood no chance whatever of election.

The cost of printing and distributing the ballots was large, and constituted an excuse for the party organizations to raise large sums of money and to assess the candidates of the party. Often this money was used corruptly. Another defect was that the voting public was often not acquainted with the names of various candidates, nominations frequently being made upon the eve of the election. Another evil was the rowdy tactics and disorderly conduct at the polls, caused in large part by the bribery, intimidation, and drinking which went along with the use of unofficial ballots.

History of the Australian Ballot.¹² These were the principal election abuses which led to the rapid adoption of the Australian ballot in this country from 1887 to 1900. The Aus-

¹¹ Evans, pp. 10-14.

¹² The most complete account is given by Evans.

tralian ballot, as the name implies, was first adopted in Australia. The evils of the *viva voce* voting appeared in a virulent form in Australia, where elections were frequently conducted with great disorder. As early as 1851 Francis S. Dutton proposed the secret, official ballot. For several years no action was taken, but in 1857 Dutton became a member of the government of South Australia and the measure was adopted. It had already been enacted in Victoria in 1856, and was later adopted in Tasmania and New South Wales in 1858, New Zealand in 1870, Queensland in 1874, and West Australia in 1877. In England the secret ballot had been agitated for since 1830, owing to the abuses of *viva voce* voting. It was supported by such statesmen as Macauley, Bright, Cobbett, Hume, and O'Connell, but was opposed by Lord Derby, the Duke of Wellington, Lord Palmerston, and John Stuart Mill. In 1868-69 the speech from the throne advocated the creation of a committee to inquire into the conduct of elections, and such a committee was appointed, headed by the Marquis of Hartington. It inquired into election practices in various countries, including Australia, and as a result a secret ballot was enacted into law in 1872.

In the United States the adoption of the Australian ballot was advocated in a pamphlet, on "English Elections," published by the Philadelphia Civil Service Reform Association in 1882. This publication was followed in 1883 by an article from the pen of Henry George in the *North American Review*, recommending the English system as a cure for our election abuses. A bill providing for an Australian ballot was introduced in the Michigan legislature of 1885 and again in 1887, but failed of passage. A Wisconsin bill of 1887, applying to cities of over 50,000 population, was passed, but with the compromise provision that the ballots were to be printed by the party organizations and distributed by state officers. Kentucky in 1888 passed the first Australian ballot law, but it applied only to municipal elections in the city of Louisville. Even at that time the state constitution of Kentucky still re-

quired *visa voce* voting in state elections. Later in the same year Massachusetts enacted an Australian ballot law. In 1889 seven states enacted election laws providing some form of the Australian ballot,¹³ and during the next ten years it was adopted widely throughout the country.

The Form of the Ballot. The term "Australian Ballot" is generally used to designate an official ballot, printed at public expense, by public officers, containing the names of all candidates duly nominated, and distributed at the polls by the election officers.¹⁴ The principle of such a ballot is now well established. The latest adoption was by North Carolina, which enacted an Australian ballot law in 1929 for the entire state, having had only a law of limited application prior to that time. While the principle of the Australian ballot has become practically universal in this country, many variations of it have been enacted into law, and few states have followed the original Australian ballot law in all of its details. Ballot laws have been enacted in most states as a result of a compromise between the ballot reformers and the political forces opposed to any change, and as a result modifications designed to retain the strength of the political parties have been adopted. This is particularly true of the form of the ballot. The true Australian ballot contained the names of the candidates under the name of the office for which they were running, grouped together, and without party designation. The Massachusetts law of 1888 added the party designation of each candidate following his name. Because of the length of the ballot in this country it was thought that the voter would not be able to know the candidates of his party without this information on the ballot, whereas in Australia and the British Dominions, with usually only a single candidate elected at a time, this

¹³ Indiana, Minnesota, Missouri, Montana, Rhode Island, Wisconsin, and Tennessee. See Evans, Chaps. II and III, for an account of the spread of the Australian ballot in the United States.

¹⁴ In Delaware official ballots are distributed to the party organizations prior to the election and may be brought to the polls by the voter already marked.—Election Laws, Sec. 1728.

was not necessary. The next step was the Indiana law, which provided not merely party labels, but also that the candidates of each party should be grouped together in a separate column, and with a party circle at the top of each column so that the voter could vote a "straight ticket" with a single mark. The Indiana ballot also includes a party emblem at the head of the party column.

The controversy over ballot laws in this country has shifted from the question of the adoption of an official ballot, which has been definitely accepted, to the form of the ballot. Fifteen states have adopted the Massachusetts, or office group, type, while thirty-two have provided for the Indiana, or party column, type. In both groups, however, there have been important variations which will be noted below. Evans pointed out that at first the office group was more popular, and by 1891 had been adopted in nineteen states, while the party column had been adopted in only thirteen. In that year, however, Washington and Wisconsin abandoned the office group type and went over to the party column ballot, and for the next ten years there was a decided trend toward the party column ballot. Since 1900 the trend has been toward the office group type, though the party column form still prevails in two-thirds of the states. Five states have abandoned the party column type since 1900 and adopted the office group type, namely: Pennsylvania, New York, Maryland, California, and Kansas. New Jersey adopted this form in place of the separate party ballots used previously.

On the other hand, Rhode Island and Alabama have abandoned the office group type and adopted the party column type, while Texas, Connecticut, North Carolina, and Georgia, in adopting an official ballot for the first time, provided for the party column type.¹⁵ Bills providing for the office group type of ballot have been introduced in a number of legislatures within recent years. Such a bill was passed in Ohio in 1926, but was vetoed by the governor. The merits and de-

¹⁵ Evans, p. 37.

fects of each type of ballot have been set forth on many occasions. The opponents are agreed as to the effects of each type of ballot, but disagree as to which result is socially desirable. Obviously, the office group ballot is conducive to independent voting. The voter must vote separately for each officer to be elected; it is as easy to vote a "split" ticket as to vote a "straight" ticket; the voter who desires to "split" his ticket does not incur any extra danger of spoiling his ballot thereby and having it thrown out. The party column type, however, is conducive to straight party ticket voting. The voter may vote the ticket straight merely by making a single mark. If he goes further and tries to vote a "split" ticket for candidates from various parties, he does so at his peril. He incurs the danger of spoiling his ballot, which, though it may appear slight to the seasoned and informed voter, is very real to many voters. The tendency, therefore, with the party column type of ballot, is for the voter to vote the ticket straight. This encourages partisan voting and discourages consideration of the qualifications of the individual candidates.

The principal support for the party column type of ballot comes from the party organizations, who view with alarm the growing independence in elections, the breakdown of the strength of the party organizations in many states, and the spread of non-partisanship in judicial, school, municipal, and now county and state elections. The party organizations have on many occasions fought proposals for the adoption of the office group ballot with all their strength. They insist the party column ballot is essential to the life of the party. This argument is based, to be sure, upon the fundamental assumption that political parties are essential in our form of government and that anything which tends to weaken or destroy the strength of the parties is unwise.

The advocates of the office group ballot, on the other hand, believe that independent voting is wholly desirable, and that the voter should be encouraged to consider the qualifications

of the individual candidates. They maintain that the party column, circle, and emblem are artificial inducements to indiscriminate voting, and that the strength of political parties should not be bolstered up by a form of ballot which penalizes the 'discriminating, independent voter who considers the qualifications of all the candidates for the several offices. They maintain further that this independence is a healthful condition of party life, for it makes the party organizations more careful of the candidates whom they nominate and tends to prevent abuses which have in the past so greatly lowered the standing of the political parties.

Regardless of the type of ballot, independent voting has become very wide-spread in this country. In 1890 it was probably true that only the occasional voter desired to vote a split ticket, while at the present time it has become the rule rather than the exception, even in states where the party column ballot operates to discourage independent voting. Since this is true, the party column ballot is now out of date and should be discontinued. Whereas it formerly inconvenienced only a relatively small proportion of voters, undoubtedly now, where it is used, it hampers the majority of voters.

Another vital consideration in the argument between the office group and the party column ballots is the development of the direct primary, the nonpartisan primary, and nonpartisan elections. In the majority of states the direct primary has become more important than the election itself, and the ballot of each party, to be sure, is of the office group type. Not only that, but the ballot used in the nonpartisan primary and the non-partisan election, which prevail very widely for municipal, judicial, school, and in a few states for county and state elections, is also of the office group type. These forms of election have been adopted, for the most part, since the adoption of the Australian ballot. The voter becomes acquainted with the office group type of ballot in these elections, and then is required to vote the party column type in other elections.

Since he must vote an office group ballot in some of the elections in all states, the use of the office group ballot throughout would tend to simplify matters.

There are a number of minor considerations which are always advanced in a controversy over the merits of these two types of ballots. The arguments against the Massachusetts type of ballot are: first, it takes too long to mark the ballot and this causes delay at the polls; second, it causes the less educated to stay away from the polls, or if they vote, to make mistakes; third, the office group ballot gives an undue advantage to the candidates standing at the head of each group; and fourth, the fatigue of marking the ballot causes a dropping off toward the bottom of the ballot. In reply it may be pointed out, first, that a sufficient number of voting booths may be provided at the polls to take care of the voters, and that, as a matter of fact, the largest precincts in the country, running up to two thousand registered voters, are to be found in Massachusetts. The second argument is purely theoretical and fanciful. Certainly it is not subject to proof or disproof. The office group ballot is, in the main, easier to vote than the party column ballot, and it is doubtful whether the loss of the vote of a person too illiterate or ignorant to mark it is a public loss. It is true that the candidate at the top stands a better chance than the candidate in a lower position, but this can be easily taken care of by rotating the names. In hotly contested elections, position on the ballot is of small importance. The dropping off of the vote for the minor offices is not caused by the position on the ballot, but rather by the fact that many voters are not informed about the candidates for minor offices, and follow the plan of not voting at all when they are uninformed. If the voter wishes to register his vote for all the nominees of his party, not knowing anything further about the candidates for minor offices, he may do so under the office group type, but he is not required to do so.

The principal arguments against the Indiana or party column ballot, aside from a consideration of the definite in-

ducement to indiscriminate straight party voting, are that it is more difficult to vote, that it results in more spoiled ballots, and that it increases the size of the ballot. The principal defense of the party column ballot, aside from its influence in bolstering up the party strength, is that many voters desire to vote a straight ticket, and it permits them to do so with a minimum of effort.

The party column ballot, with a party circle for voting a straight ticket, is a perversion of the Australian ballot. It places a premium upon blind party voting by making it difficult for the voter to cast an independent vote. With the growing use of nonpartisan elections, the use of the direct primary, the decline of partisanship in local elections, the increase (notwithstanding ballot difficulties) of independent voting, the decrease of illiterate voters, and the spread of literacy tests in several states, it can no longer be justified. The difference in voting the two types of ballots is well indicated by the instructions to voters which are required under each. The Oregon ballot, of the office group type, for example, merely directs the voter to "Mark X between the number and the name of each candidate voted for." The instructions to voters in states where the party column type of ballot is used are so long that they are ordinarily not printed on the ballot at all, but are printed upon a separate placard posted in the polling booth. It is incredible that a ballot requiring such lengthy instructions, so fraught with danger of errors, and which in practical effect partially disfranchises a large number of electors in order to strengthen political parties, can be defended and continued.

Variations from the Usual Types of Ballots. The party column ballot ordinarily carries a party circle at the top, whereby the voter may by one mark vote for all the candidates of the party. Four states, however, which have the party column ballot, do not provide for the party circle, namely: Montana, New Jersey, North Dakota, and Wyoming. The ballot in these states requires the voter to make an individual

mark for each candidate for whom he desires to vote. An examination of the ballots used in these states shows that they are about twice the size which would be required if the office group ballot were used, since always there are several party columns with but one or two candidates. The party lines are emphasized more than on the office group ballot, and split voting is somewhat more difficult.

Another variation is the office group ballot with a party circle, which may be used by the voter to vote a straight party vote. Nebraska and Pennsylvania use this type. The argument for this type of ballot is that the voter should be permitted to vote a straight ticket, if he so desires, with a minimum of effort, and that the ballot should accommodate him. At the same time, the discriminating, independent voter is not required to use a ballot which may cause him to spoil his vote. The practical results of this ballot are not the same in Pennsylvania and Nebraska. Pennsylvania voters, facing a long ballot and with strong party organizations in the state, usually vote a straight ticket. Nebraska voters, on the other hand, with a shorter ballot and weak party organizations, apparently vote split tickets as a rule. Both of these variations are preferable to the party column type, though not as desirable as the Massachusetts or office group type.

Party Emblems. Fifteen states provide for the use of a party emblem on the ballot. All of them, with the exception of New York, have the party column ballot, and the emblem is placed at the head of the party column, close to the circle for voting a straight party ticket. Obviously this is designed to make voting easy for the illiterate voter. The emblems used vary from state to state. The Democratic party uses a rooster in the act of crowing in Indiana, Kentucky, Louisiana, Oklahoma, Utah, and West Virginia; an eagle in New Mexico; the Statue of Liberty in Missouri, a plough in Delaware, a star in New Hampshire, New York, and Rhode Island, and a hand holding the American flag in Michigan. The Republi-

can party uses an eagle in Delaware, Indiana, New Hampshire, Oklahoma, Rhode Island, Utah, West Virginia, and New York; the American flag in New Mexico, an elephant in Louisiana and Missouri, a log cabin in Kentucky, and a picture of Lincoln on an American flag in Michigan. The Socialist emblem is usually two clasped hands, but an extended hand is used in Oklahoma. The Prohibition party uses a camel in Missouri, a fountain in several states, and the sun rising over a body of water in Indiana.

The use of emblems is an insult to the intelligence of the voter. It puts him in the ridiculous position of voting for birds, elephants, stars, etc. A few years ago there was formed in Cincinnati a "Birdless Ballot Association," whose cardinal principle was that there could be no improvement in government as long as voters cast their ballots for birds instead of men. The story is told in Cincinnati, where the Republican party uses an eagle and the Democratic party a rooster as emblems, of a Republican precinct captain who once instructed his voters how to vote in the following words: "Now all you fellows have to do to vote right is to put your cross under the rooster with the short legs"! In Louisville the writer was told that the illiterate negro voter does not require assistance at the polls, for he simply puts his cross under the "chicken coop" (the log cabin). For a number of years prior to 1928 the Democratic party in Michigan used a picture of Wilson on an American flag as its emblem; then it was changed to a hand holding the American flag. The national committeeman of the Democratic party explained at the time that it was thought that many voters, seeing the picture of Lincoln on the American flag over the Republican circle, and that of Wilson on the American flag over the Democratic circle, believed that they were expressing a choice between Lincoln and Wilson, and the Democrats were losing votes thereby.

The absurdity of the use of emblems is well illustrated by

SAMPLE BALLOT

<p>For Councilmen FIRST WARD VOTE FOR TWO</p>  <p>AL FRANK EL FRED <input type="checkbox"/></p>	 <p>AL FRANK EL FRED <input type="checkbox"/></p>	<p>For Councilmen FOURTH WARD VOTE FOR TWO</p>  <p>W. T. WARD <input type="checkbox"/></p>	 <p>W. T. WARD <input type="checkbox"/></p>	<p>BOND ISSUE</p> <p>Will you in favor of the City of Maysville incurring an indebtedness in order to issue \$20,000 face value and interest and sinking bonds, providing same, bearing interest at the rate of five per annum payable in semi-annual installments, and having an annual tax of twenty cents (\$20.00) on all real estate as well as unimproved property in the City of Maysville, for the purpose of such bonds, consisting of the creation of a concrete bridge or viaduct over the Maysville Creek, at or near the site of the present bridge and for the drainage and construction of a road and special sewerage system for the City of Maysville?</p> <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p>
<p>For Councilmen THIRD WARD VOTE FOR TWO</p>  <p>CHAR. F. WARD <input type="checkbox"/></p>  <p>JOHN H. CLARK JR. <input type="checkbox"/></p>	<p>For Councilmen THIRD WARD VOTE FOR TWO</p>  <p>C. D. HIGGINS <input type="checkbox"/></p>  <p>EDWARD H. ENDREWS <input type="checkbox"/></p>	<p>For Councilmen SIXTH WARD VOTE FOR TWO</p>  <p>W. X. HENES <input type="checkbox"/></p>	<p>For Councilmen SIXTH WARD VOTE FOR TWO</p>  <p>LEE WILLIAMS <input type="checkbox"/></p>	
 <p>JAMES FRONT JR. <input type="checkbox"/></p>	 <p>GEO. C. HEYNE <input type="checkbox"/></p>	<p>For Councilmen FIFTH WARD VOTE FOR TWO</p>  <p>CHARLES R. PAUL <input type="checkbox"/></p>	 <p>LEE WILLIAMS <input type="checkbox"/></p>	
<p>For Councilmen SECOND WARD VOTE FOR TWO</p>  <p>JOHN FANSLER <input type="checkbox"/></p>  <p>JAMES HUCKLEY <input type="checkbox"/></p>	 <p>A. CLINNEY <input type="checkbox"/></p>  <p>BRECK L. GRAY <input type="checkbox"/></p>	<p>For Councilmen FIFTH WARD VOTE FOR TWO</p>  <p>CHAR. H. DAVIS <input type="checkbox"/></p>	 <p>GEO. W. GRAY <input type="checkbox"/></p>	

PICTORIAL BALLOT USED IN MAYSVILLE, KENTUCKY, MUNICIPAL ELECTION

the ballot used, reproduced on the opposite page, in a municipal election in Kentucky, where each candidate is permitted to have an emblem printed over his name.

Use of Party, Residence, Occupation, etc., on the Ballot. The ballot must always contain the names of the candidates. In partisan elections it contains also the party designations, except in four Southern states (Florida, Virginia, Tennessee, and Mississippi). In these states the partisan voter must know the candidates of his party before he goes to the polls. In these states, except in Tennessee, however, the Democratic candidates are always printed at the top of the list, and the Democratic voter may follow a rule of thumb in marking his ballot. It would seem that the use of such a ballot, particularly when party organizations and primary elections are authorized by law, is designed to gain a partisan advantage and to make voting more difficult for the ignorant and illiterate, particularly the negro voter. It is significant to note, however, that the original Australian ballot and the ballots used in England and Canada do not contain party designations. The number of candidates, however, is so small, that the voter has no trouble in knowing who are the candidates of each party.

In the party column states, the general practice is to list the name of the party at the top of each column, without any party designation after the name of each candidate, but Indiana and Vermont display the name of the party at both places. The office group ballot states, with the exceptions listed above, print the name of the party after the name of the candidate.

In addition to the name of the candidate there may be printed also his address and occupation. Eight states provide for the addition of the address,¹⁶ and Minnesota permits the addition of the occupation and residence if two or more candidates for the same office have the same surnames. In some

¹⁶ Kansas, Maine, Maryland, Massachusetts, Rhode Island, South Dakota, Vermont, West Virginia.

X of the Canadian provinces the occupation and address are given, and this practice obtains in England. It is not particularly important whether the address is given or not. The election law should provide, however, as it does in Minnesota, that when the names of two candidates for the same office are similar or identical the address and occupation may be added in order to help the voter identify each candidate. A political trick occasionally used is to nominate against a prominent public officer some unknown person having the same or similar name. This was used against Senator George W. Norris of Nebraska in 1930. If the address and occupation can be added in such cases, this political trickery can be prevented. Another method would permit a candidate for re-election to use the word "incumbent" after his name in such cases.

A number of states provide also for some phrase or slogan to be added to the name of the candidate. Ordinarily this is confined to nonpartisan elections; for example, in Wisconsin, the candidates for judicial positions have printed after their names under the statutory authorization the slogan, "A Nonpartisan Judiciary."¹⁷ This is uniformly printed after the name of every judicial candidate. It serves no useful purpose, except perhaps to emphasize the nonpartisan aspect of the election. In Oregon, however, the candidate in the direct primary election may add a slogan or shibboleth to his name, not exceeding twelve words. The practical operation of this may be illustrated by the following typical statements printed on the ballot:

Experienced legislator; fighting always for constructive and against selfish and pernicious laws.

Present state senator; my legislative record is your guarantee of capable service.

For re-election.

Lower taxes on homes; will strive to improve conditions for wage-earners.

Stability, economy and honesty in government; only sane, constructive legislation.

¹⁷ Wisconsin Statutes, Sec. 6.24.

Reduce public expenditures; fewer new laws.

A bigger and better Oregon.

Less laws; less taxes; more economy.

Present sheriff, I stand on my record. Public welfare first always.

A new broom.

You can gamble on O. V. Gamble.

Of all that's good Oregon has the best. Let's go.

Am not with the merger crowd; for reduction telephone rates; honest government.

During the war period the shibboleths on the ballots indicated the prevailing patriotism. One candidate for commissioner of labor stated: "Will use one hundred dollars of salary monthly to purchase liberty bonds." A candidate for water superintendent printed after his name: "Economy and efficiency; world democracy; our fight; win the war." It would seem that such slogans serve little or no purpose. Certainly the voter who made his choice upon the basis of such statements would be quite unsophisticated. Such generalities as honesty, efficiency, patriotism, economy, lower taxes, business administration, bigger and better Oregon are commonly used.

Placing Names of Candidates on the Ballot. The adoption of the Australian ballot required official certification of candidates to the officer charged with printing ballots, and the whole problem of nominating candidates became vastly more important than formerly. It was not by chance that the movement for the direct primary started a few years after the spread of the Australian ballot. The provision of an official ballot involved necessarily some regulation of the nominating process. The immediate problem of placing the names of candidates on the ballot is related very closely to the larger and more significant problem of the nomination of candidates—the controversy over the relative merits and defects of the direct primary, the party convention, and nonpartisan primaries. The problem of the direct primary versus the convention system of nominations turns largely upon the con-

sideration of whether the nomination should be determined by the party organization or by the voters of the party. This highly controversial question, which has raged for the last two decades, promises to continue as a leading public issue for some time to come, but it is not included within the scope of this study. The literature on the subject is voluminous.¹⁸

There are three principal considerations in connection with the procedure for certifying candidates to the officer in charge of printing the ballots in primary and non-partisan elections, namely: (1) The procedure should be simple and direct, to the end that no serious candidate or person supported by a substantial group of the voters will be debarred or thrown out on a technicality; (2) it should effectively restrict the election to really serious contenders, preventing the cluttering up of the ballot with self seeking advertisers who have no chance of election and no hope of winning; and (3) abuses of one kind and another, unnecessary expense, and bother should be reduced to a minimum. In the general, partisan election, however, the problem is somewhat different. The candidates for this election have been nominated either by convention or by direct primary, though provision is also usually made for independent nominations. The treatment of minor or new political parties and independent candidates constitutes the principal administrative problem here.

The simplest method of nomination is that of permitting the candidate to file a statement of candidacy, which is used in Delaware, Indiana, Oklahoma, and West Virginia.¹⁹ Ten other states—Florida, Idaho, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Montana, North Carolina, and Washington—require a filing fee in addition to the declaration by the candidate. In the remaining states the method generally used is that of a petition signed by a specified num-

¹⁸ See the excellent work by Charles E. Merriam and Louise Overacker, *Primary elections* (New York), with a complete bibliography.

¹⁹ The laws of the several states for the placing of names on the ballot in primary election are summarized in Merriam and Overacker, p. 75 ff.

ber or percentage of the voters, though two states—Ohio and Virginia—require a filing fee in addition; six states—Kansas, Nebraska, Nevada, New Hampshire, Oregon, and Texas—permit the use of either a declaration of candidacy or a petition. A number of states using the petition method require an acceptance by the candidate.

These methods are used in direct primaries and in non-partisan primaries and elections. In partisan elections the candidates nominated in the preceding direct primary, or by partisan conventions, are certified to the officer in charge of printing the ballot by the appropriate party or public official. Provision is made in most states for independent candidates or third parties to secure a place on the ballot in one of the above methods. In nonpartisan elections, preceded by a nonpartisan primary, only the successful candidates in the nonpartisan primary are printed on the ballot, no provision being made for independent candidacies.

The operation of these various methods requires discussion at this point. The first method—that of declaration of candidacy, unaccompanied by a filing fee or a petition—has resulted frequently in a large number of candidates, often necessitating the nomination or election, as the case may be, of a candidate supported by only a small percentage of the voters. This has been particularly true of Indiana. Under this method there is nothing to discourage frivolous and crank candidates from filing.

The requirement of a fee in addition to the declaration of candidacy is fairly common in this country, though uniformly the fee required is so nominal that it serves little or no purpose. Ohio, for example, requires a fee of only one half per cent of the annual salary of the office sought,²⁰ Washington and Idaho, only one per cent,²¹ while in a number of states, including Oregon, Maryland, Minnesota, and others, a scale is provided by state law, but the amounts provided are small,

²⁰ Election Laws, 1930, Secs. 4785-73.

²¹ Idaho Election Laws, 1930, Sec. 546; Washington Rem. Code, Sec. 5182.

usually ranging from one to ten dollars for local offices, and from fifty to one hundred dollars for state offices. In Minnesota, for example, a candidate for governor must pay a filing fee of fifty dollars, though he may have to expend fifty thousand dollars in his race for the nomination. It would hardly seem likely that a fee as small as this or a ten-dollar fee for county or city officers, would serve to deter any candidates.

In Canada (following the English practice), on the other hand, the fees required for nomination for public office are usually substantial. For candidates for the Dominion Parliament the filing fee is two hundred dollars.²² This fee is used also for candidates for the provincial parliament in Manitoba, while Alberta and Saskatchewan require a filing fee of one hundred dollars for the same office, and Ontario and British Columbia permit nomination by petition, without filing fee. It should be added, however, that in municipal elections the more common practice is to provide for nomination by petition rather than nomination by declaration accompanied by a fee. The substantial fee is refunded to the candidate if he is elected or if he polls a vote half as large as that of the candidate who is elected. This system apparently works very well in Canada. It does not prevent any serious contender from running, nor does it result in any technical disbarments. It does operate to keep off the cranks and self-advertisers from the ballot. It is not at all unusual in Canada for candidates to be unopposed, in which case no poll is conducted, the single candidate being declared elected. Candidacies in municipal elections, where fees are not customarily required, are more numerous, though probably not as numerous as in the United States.

The third method, and the one most widely used in this country, is that of a nominating petition. No general rule can be laid down as to the number of signers required, except that

²² Dominion Elections Act, Sec. 40.

the number is almost always very low, not serving to discourage frivolous candidacies or to make difficult the placing of a name on the ballot. In a number of states the requirement of the number of signers is expressed in a percentage of the voters of the party, but in other states a fixed scale is provided for candidates in various jurisdictions. In Wisconsin, for example, candidates for state offices must secure at least one per cent of the voters of the party to sign their nomination papers (using the last general election to determine the number of voters of the party), but candidates for Representative in Congress must secure two per cent, and candidates in cities and counties must secure three per cent. Illinois, on the other hand, provides that state-wide candidates must submit a petition signed by a minimum of one thousand electors with a smaller number for local candidates.

In general, any qualified elector, whether registered or not, is permitted to sign a nomination petition. Ordinarily the printed form for nomination petitions contains a statement at the top to the effect that the signers are qualified electors and support the candidacy of the person nominated. A few states, notably Ohio under its recently enacted election code, require that signers of the petition shall be registered voters, and provide for throwing out all other names.²³ Where it is not required that the signers be registered voters, there is no practicable way to check up on the validity of the signatures or the qualifications of the persons signing. The nominating petition in most states contains an affidavit form to be filled out by the person securing the signatures, to the effect that the persons signed in his presence, and that to the best of his knowledge and belief they are qualified electors.

These formalities do not prevent abuses in the securing of signatures for nominating petitions. The greatest abuses, to be sure, are found in connection with the petitions for placing initiative and referendum propositions on the ballot, for

²³ Election Laws, Secs. 4785-34.

the required number of signers is usually quite high and the temptation to forge nomination papers and thus avoid the expense and trouble of securing signers is far greater. It is a matter of common knowledge that initiative and referendum petitions in many states where they are not checked against the registration lists are full of forgeries and fictitious names and addresses. This situation has prevailed in Cleveland for years, and, as a matter of fact, the series of charter elections which have been held since 1925 have been called by such defective petitions. The latest petition, the Danceau-Walz petition, was given careful scrutiny by the Citizens League and the findings were set forth in its bulletin as follows:²⁴

When the Danceau-Walz petition was filed last June, with a blare of trumpets and a declaration of the advocates that the people were demanding a change in the form of government, the League made its usual cursory examination before the petition was referred to the city clerk for investigation as to its sufficiency. A letter was then sent to the council committee pointing out that the petition was permeated with fraud and was one of the worst that has been filed with the council. Confident that the petition was full of fraud and irregularities the League obtained consent of the council to test a large number of the separate petition papers by comparing the petition signatures with the actual signatures on the permanent registration records in the Board of Election offices. This took several weeks of tedious work.

The League gave 127 petition papers a closer scrutiny than had been given by the clerk. Out of this number the League presented clear cases of fraud and forgeries in 101 of the petition papers. A test of a number of other typical papers showed that a host of names were signed from addresses which did not exist. The League employed a handwriting expert who examined 102 other petition papers and reported:

"From the examination I have made, I would say that there are hundreds and perhaps thousands of signatures on these 102 petition papers examined that are not genuine signatures."

COUNCIL ORDERS RE-EXAMINATION

The League's findings were reported to the council committee which instructed the city clerk to test out the League's findings. He

²⁴ *Greater Cleveland*, February 1931.

found that his own conclusions tallied with about 90 per cent of the League's findings, threw out 70 more petition papers containing 4,225 names and then reported to the council committee that the 238 papers which he examined showed:

	Signatures
Registered voters	7,396
Non-registered persons	5,929
Fraudulent and defectives	10,735

The remedy for such frauds in nominating petitions is to require that every signer shall be a registered voter, and to check the petitions against the registration records. This, however, is not only expensive, but is practically impossible in some of the larger cities. In Portland, Oregon, the state law requires the county clerk to check a minimum of two hundred names daily, and he has declined to check more than that number unless the clerical expense is paid for by the petitioners. Actual experience in that city, with an efficient office force and a card system of records, shows that it costs approximately seven cents per name to check the signatures on the petitions with the registration records. Owing to the fact that the petitions are not secured by precincts, but voters are requested to sign, irrespective of their residence, the clerical work involved in checking them with the registration records is very substantial. It would be difficult or impossible in many jurisdictions to check a large number of petitions in the limited time allowed. But if no check at all is made, experience indicates that the petition as a device to safeguard the ballot against frivolous candidacies or unsupported propositions is fundamentally defective.

Another important consideration in connection with the petition process is the willingness of the voter to sign almost any petition. Even where the signatures are bona fide, and are made by qualified electors, the significance which should be attached to them is an open question. It is generally known that the signers of a nominating petition do not feel obligated to support the candidate, but merely sign because they are requested to do so. It is easier for the citizen to sign such a

paper than to explain his reason for not signing. Candidates seeking nomination usually find it very easy to secure the required number of signers with small expense and bother. In many states, where there is no check up made, the candidate, if he so desires, may submit a petition with many forged names, but this is ordinarily unnecessary because of the small number of signers required. There is usually some expense attached to the routine work of securing the necessary number of signers, which depends upon the number of signatures required. Where it is not prohibited by law, it is customary for candidates or persons interested in initiative and referendum propositions to employ workers to secure such signatures, paying them a fee of five to ten cents per name. The worker then approaches the voter with a plea to sign so that he can collect the fee, without regard to the merits of the candidate or the issue. Indeed, it is not unusual for such signature collectors to ask the citizen to sign several of the petitions at one time; particularly is this true of initiative and referendum petitions.

The only conclusion which can be drawn from these practices is that the petition system as a basis for placing candidates or propositions on the ballot is fundamentally defective. If the petition is checked to ascertain whether the signatures are genuine and the signers are qualified voters, the cost is high, both for the petitioner and for the election office. If it is not checked, it is liable to be fraudulent, particularly if the number of signers required is large. But even where the signatures are genuine, the petition may have little significance, and in many instances it does not indicate any considerable support of the candidate or the proposition.

A few years ago the Commonwealth Club of San Francisco proposed the so-called sponsor system of nominations. This is somewhat similar to the petition system, but operates quite differently. The committee of the Commonwealth Club appointed to study nominating methods reasoned that with our long ballot, particularly in large cities, the voter has little to

guide him at the polls. His problem at the direct primary election or the non-partisan election, where there are no party labels to follow, is particularly difficult. It is, of course, absurd to assume that the average voter has any personal knowledge or acquaintance with the hundreds of candidates, and such other information as he may glean from the newspapers is confined to the most prominent candidates. Political meetings he no longer attends. In San Francisco an official election pamphlet is used and the candidate may there set forth his qualifications and claims for support. Many candidates in the past have listed their prominent supporters or sponsors, and this has served to inform the voter of the backers of each candidate. It was thought that this was a useful device, which might well be used in the nominating process. The city charter of San Francisco and the state election laws have been amended to provide for the sponsor system of nomination, but the number of sponsors provided—from twenty to one hundred, depending upon whether it is a state or local office—is so large that the beneficial effect of the system would seem to be lost. If the voter could learn who are the, say, ten citizens supporting or sponsoring each candidate, he might be able to use this information in making his choice, but if the number is to be from twenty to one hundred, the value of the device is largely nullified through the sheer length of the list of sponsors.

It should be borne in mind, however, that the list of sponsors is not printed on the ballot. It is generally printed in the official election pamphlet. The sponsor system emphasizes the persons supporting the candidate, while the petition system obscures them. The sponsor system is designed to assist the voter in making his choices by letting him know who the backers are of each candidate, while the petition system is designed rather to guarantee that there are a few voters who will support the candidate. It may be objected that the sponsor system will give an undue power and influence to persons widely known, who may virtually control elections by reason

of the importance attached to their support. This is hardly tenable. It is unlikely that such weight will be given to the names of the sponsors of the candidates. In fact, it is quite likely that the practical operation of the system will result in too little attention being paid to the names of the sponsors. A strong defense may be made for the sponsor system. In the appointment of persons to responsible private positions the recommendations of persons whose opinions may be relied upon has a very important influence. The discriminating and well informed voter to-day looks more to the backers of the candidate than to anything else. Other information is apt to be fragmentary, prejudiced, or false. The sponsors vouch for the integrity and ability of their candidate, and, if proper traditions are built up with the system, and if it is emphasized, it may go far toward making an unintelligible ballot intelligible.

The petition system of nominating, widely used in this country, is seriously defective. It results in a ballot, necessarily long because of the number of positions to be filled, being unnecessarily long because of the number of frivolous and negligible candidates, who have no hope or thought of election. It is further defective because of the expense attached, the abuses which prevail, and the willingness of the public to sign such petitions indiscriminately. It does not fulfill a single requirement of a sound nominating system. It is an obsolete procedure, ill adapted to present conditions. The declaration of candidacy system is only slightly better. It opens wide the ballot, subjecting it to numerous candidacies, though it does not produce the abuses of the petition system in other regards, and may not be manipulated by eliminating candidates on technical grounds. The requirements are so simple that the duty of the election office is largely ministerial in character, and the occasion for throwing out petitions upon technicalities is avoided. The requirement of a filing fee, as now provided in a number of states, is of little value, for the amount required is in all cases nominal,

and no provision is made for a return of the fee to the candidate who polls a reasonably large vote.

A combination of the sponsor system and the requirement of a substantial fee, to be refunded in case the candidate poll, say, twenty-five per cent of the vote cast for the office, would seem better adapted to the requirements than the existing provisions. The number of sponsors should be strictly limited so that they will not become meaningless. It may be anticipated that each candidate will secure the maximum number of sponsors, lest it may be thought that he was unable to secure the full number. For local offices the number might well be limited to ten, while for state-wide offices it might be advisable to permit a slightly larger number. The filing fee should be fixed upon the basis of either the importance and honor of the office, or else upon the compensation. Candidates for the United States Senate and for governor in populous states might be required to make a deposit of, say, one thousand dollars, while candidates for other state offices and for Representative in Congress might be required to pay a filing fee of five hundred dollars. Candidates for the state legislature, following the practice in the Canadian provinces, should be required to pay a filing fee of one hundred to five hundred dollars, depending upon the population of the state and the salary paid. The filing fee for local office should be somewhat in proportion. If one were to attempt a general rule on the subject, instead of one per cent of the annual compensation of the office, as is now provided by several states, ten per cent should be required. It may appear that these suggested filing fees are too high, but it should be borne in mind that the fee is to be returned to all candidates who poll a substantial vote, even though not elected. The serious candidate would not be deterred from entering the race because of the requirement of a deposit. A substantial filing fee would not only shorten the ballot and thus simplify the task of the voter, but it would also substantially reduce the cost of printing ballots and simplify the task of the election of officers.

The present laws, which permit frivolous and self seeking or advertising candidates, confessedly without hope of election, to impose themselves upon the electorate, are little short of preposterous.

Provisions for Candidates Not Named on the Ballot. All but seven states provide for, or permit, the elector to vote for persons who have not been nominated, and whose names are not printed on the ballot.²⁵ This is usually accomplished by providing for writing in the name of the person in a designated space on the ballot, though in a few states specific provision is made for the use of pasters as an alternative,²⁶ and in some other states pasters may be used, though not specifically authorized by law.²⁷ To be able to vote for any person regardless of whether the name of such person is printed on the ballot, is often looked upon as a matter of right of the voter; and in some states, the courts have held that the suffrage implies this right.²⁸ Practically, however, this right is of no value except when exercised in a concerted movement, when it sometimes results in the nomination or election of the candidate. It should be pointed out, though, that this is infrequent, and the candidate whose name is not printed on the ballot stands little chance of election or nomination, as the case may be. Write-in candidacies are usually put forward under one of several contingencies: the election officers may corruptly and technically throw out the nomination papers of one or more candidates, thus keeping them off the ballot; one of the leading candidates may die or withdraw after it is too

²⁵ Delaware, Georgia, Maryland, Nevada, Oklahoma, South Carolina, and South Dakota.

²⁶ Indiana, Maine, Montana, New Jersey, North Dakota, Washington, and some others.

²⁷ In Massachusetts, Pennsylvania, and other states where the law permits the voter to "insert" name of person not on the ballot.

²⁸ State v. Dillon, 32 Fla. 545; Bowers v. Smith, 111 Mo. 45; Sanver v. Patton, 155 Ill. 553; De Walt v. Bartley, 146 Pa. St., 529; Schuler v. Hogan, 168 Ill. 369; Cook v. State, 90 Tenn. 407; State v. Anderson, 100 Wis. 573; Bradley v. Shaw, 133 N.Y. 493. Contra: Chamberlin v. Wood, 56 L.R.A. 187 (S.D. 1901).

late to fill the vacancy on the ballot; a candidate of retiring disposition may refuse to announce his candidacy, but may offer to serve or to run, as the case may be, if nominated or elected by write-in votes; and, finally, a vacancy in a public office may occur when it is too late to make any nominations to be placed upon the ballot.

It is apparent that most of these conditions which make write-in candidacies necessary might be remedied by statutory provisions. The nominating of candidates by means of petitions signed by qualified voters is subject to grave abuses in several regards, including the throwing out of candidacies upon technicalities for political purposes. The remedy is nomination by declaration of the candidate, accompanied by a reasonable fee, to restrict the race to serious contenders. Under this procedure the duty of the officer who receives such declarations is purely ministerial. There is no occasion for nomination papers to be thrown out. Provision is usually made to fill the vacancy caused by the death of a candidate. This is practically always true of party nominations, but ordinarily no provision is made to substitute a candidate in a nonpartisan election or direct primary. Under the sponsor system of nomination, the sponsors should be permitted to fill the vacancy, even up to the day before the election, thus practically eliminating the danger of an election's being frustrated by an eleventh-hour death. The sponsor system would also provide a dignified way by which the candidate of retiring disposition could be placed upon the ballot without undue embarrassment on his part. Vacancies which occur too late for nominations to be made in the regular way should not be filled by election, but by appointment until the succeeding election.²⁹

²⁹ In the 1930 election in the State of Washington, for example, one justice-ship on the supreme court and one local judgeship in King County became vacant after the close of the time for making nominations, and both positions had to be filled by write-in votes, without any official nominations. The results were not desirable. Numerous candidates appeared on the scene, and the vote was light for these offices. There was no opportunity to limit the number of candidates.

If suitable provisions are made in the election law there is little or no need for the write-in vote. Even under existing statutes the number of such votes is extremely small. Many capable election officers have raised the query as to whether they might not be prohibited entirely. Provision for write-in votes makes the use of voting machines more difficult, permits advertisers and humorists to write in their own name, and also lengthens the ballot. Nevertheless, the courts in many states have held that the voter has a right to vote for any person for any office, and hence a legislative attempt to restrict him to those duly nominated would not be held valid. It should be recognized, however, that this right is of little value, and the necessity for its use by serious minded voters should be avoided as far as possible.

Curiously enough, some states prohibit the voter from writing in any name on the ballot, but permit the use of pasters or stickers to accomplish the same purpose,³⁰ while other states prohibit the use of stickers, except to fill eleventh-hour vacancies after the ballots have been printed (when they must be put on the ballot by the election officers), but permit the voter to write-in on the ballot.³¹ A few states permit both methods to be used. If the voter is to be permitted to vote for a person whose name is not printed on the ballot, it matters little whether he may do it by writing in or by using a sticker. It would seem that he should be permitted to use either method. It may be argued, to be sure, that if he is permitted to write-in, he may vote for himself for a minor office, thereby identifying the ballot for the political watcher who has bribed him. This consideration is too remote to carry much weight. Bribery is not done that way.

Twenty states specifically provide for the use of stickers by the election authorities as a means of filling a vacancy after the ballots have been printed.³² Even without statutory

³⁰ Indiana, for example.

³¹ Wisconsin, for example.

³² Delaware, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, New Mexico, New York, North Dakota, Ohio, Oregon, Texas, Vermont, Washington, Wisconsin, and Wyoming.

authority, however, the practice could be followed in other states. This is unimportant for the voter, inasmuch as the ballot when he receives it has much the same appearance as any other ballot, and the use of a sticker is merely to avoid the necessity of printing a new run of ballots. A few states specifically authorize either the printing of new ballots or the use of stickers under such conditions.³³

When the voter writes in a name or attaches a sticker to the ballot, the question is always raised as to whether it is necessary for him to make a cross in the proper place also, or whether the mere writing-in of the name or the use of a sticker is not sufficient to indicate his intention to vote for such person. Fourteen states do not require the use of a cross mark, the mere writing-in being taken as sufficient, but the remaining states require the voter to make his cross mark as for other candidates. The better practice is not to require the cross mark. It frequently happens that the voter, after writing-in a name, thinks that that is sufficient. If a cross is necessary, this must be impressed upon him over and over again, making the use of the write-in procedure all the more difficult. A few states require the voter to strike through the names of other candidates and write-in the name of the person for whom he would vote.³⁴

States which permit the voter to write-in ordinarily provide a blank line or space for that purpose, but this is not true in a few states.³⁵ If the office group ballot is used, as it always is in nonpartisan elections and direct primary elections, as well as the final elections in fifteen states, the blank line is placed immediately below the name of the last candidate in each office group. In elections where party column ballots are used, two practices obtain; in some states a blank line is placed below the name of each candidate of each party,³⁶ while in most states blank spaces or lines are provided in a

³³ Iowa, for example.

³⁴ Georgia, Missouri, Texas, and Virginia.

³⁵ Illinois, for example.

³⁶ Arizona, Arkansas, Iowa, Kentucky, Maine, Montana, Ohio, Vermont, Wisconsin, and Wyoming.

separate column on the right side of the ballot.³⁷ The office group ballot, with a space below the name of the last candidate in each group, is obviously superior in this regard.

The Order of Offices, Parties, and Candidates. A number of states specify the order in which the candidates for the various offices shall be printed on the ballot, beginning practically uniformly with the presidential candidates or electors, members of Congress, state officers, county officers, city officers, and, finally, precinct or other local officers. The order, as will be observed, is a geographical one, from the largest district to the smallest, and with the chief officers first in each district. This is an orderly arrangement and no fault can be found with it. It is a matter of small importance. In a number of states, however, separate ballots are provided for referendum propositions and judicial candidates, and frequently state officers are printed on a separate ballot from that used for county or city officers. If proportional representation is used, a separate ballot is required.

In the states which use party column ballots the order in which the parties are placed on the ballot, from left to right, is determined in the following ways: (1) Alphabetical,³⁸ (2) definitely fixed by state law,³⁹ (3) in order of the vote received by the party for some particular office at the last regular election,⁴⁰ (4) determined by the officer charged with printing the ballot,⁴¹ and (5) by lot.⁴² The first column is most desired, but the advantage gained thereby is not great. When the order is definitely fixed by the state legislature, as it is in a number of states, the party in power is always given the first column.

³⁷ Alabama, Connecticut, Idaho, Rhode Island, Texas, Utah, and others.

³⁸ Alabama, Arizona, Arkansas, and Wisconsin.

³⁹ Delaware, New Mexico, Oklahoma, Rhode Island, Vermont, and Washington.

⁴⁰ Connecticut, Indiana, Kentucky, Missouri, Michigan, New Hampshire, North Dakota, Ohio, South Dakota, West Virginia, and Wyoming.

⁴¹ Illinois, Iowa, Montana, and Utah.

⁴² New Jersey.

Much more important is the order in which the names of the candidates appear in office group ballots. This is particularly true in direct primary and nonpartisan elections, and is of most importance in cases where several persons are to be elected to the same office; for example, a number of councilmen elected from the city at large. It is not at all flattering to the intelligence of the American voter that the position at the top of a list of candidates is of material help to the candidate thus favored, but such is the case, especially for minor positions. It has been reported to the writer that in Oregon a few years ago, as a result of the use of an alphabetical arrangement, both in primary elections and in the final election, with the candidate at the top of the lists of the several counties having the advantage, many offices were filled by persons whose names began with the letters A and B and a few with W. It seems that a few voters, to be different, would go to the bottom of the list after exhausting the names of candidates for whom they had a real choice. The legislature therefore changed the law and provided for rotation of names.

Various examinations of returns where the names are not rotated seem to indicate that the order is not important in hotly contested elections. If the voter has his mind made up when he goes into the booth, the order in which he finds the names will not influence him. But if he does not know for whom to vote, and is impelled to vote anyway, for some reason or another, he is more likely to mark his ballot for the candidates at the top than for those lower down the list.

In order to overcome the advantage of superior positions on the ballot, many states provide for rotation of the names. Some states make no such provision, using an alphabetical arrangement, while still others leave the determination of the order to the officer in charge of printing the ballot, or specify that the order shall be determined by lot or by the time at which the nominating petitions are received. As a matter of fact, many states provide one method of determin-

ing the order for some offices and another for other offices. Twelve states use a strictly alphabetical arrangement for certain elections. This has simplicity and economy in printing the ballots to commend it. It gives to candidates whose surnames begin with the first letters of the alphabet an obvious and sometimes an appreciable advantage. Where the names are rotated, one of several methods may be used. As many sets of ballots may be printed as there are candidates for any office, and the ballots for each precinct picked up from various sets and bound together, so that each ballot is different from the previous one. This results in absolute fairness to the candidates, but the cost of printing is increased, and, more important, the difficulty of counting is greatly increased and mistakes are more apt to be made. Where rotation within each precinct is required, voting machines, which obviously have only one set up for each precinct, can not be used. Such rotation is neither necessary nor desirable. The same end can be secured with less expense and trouble.

Another method is to provide that the names shall be rotated from precinct to precinct. Starting with an alphabetical arrangement for the first precinct, the top candidate of each office group is placed at the bottom for the second precinct, and each other candidate moved up one place, and this process is kept up from precinct to precinct. Instead of rotating by precincts, sometimes provision is made for rotation by wards or assembly districts, and in some states certain offices rotate by one district and other offices by other districts. The printer often has a complicated task to work out the order of the names in the various precincts. Inasmuch as the end to be gained is merely that each candidate shall share alike every position on the ballot, this can be secured merely by providing that the ballots shall be rotated sufficiently to attain this purpose. For example, suppose in a city election there are five candidates for a given office, and five hundred precincts. If one set up is used for the first hundred precincts, another for the second hundred, and so on, each candidate will fare

equally with all the rest, and only five sets of ballots will be required. There should be no occasion for rotating the names of candidates for state offices at all within a county, the rotation being taken care of by a different order in the several counties. Some states provide that the names shall be rotated only when there are three or more candidates for the office,⁴³ and other states provide that candidates for units less than a county in size will not have their names rotated.⁴⁴

In the states which use the office group ballot for the regular partisan elections the more common arrangement is to fix a definite order for the placing of the candidates of the various parties, either alphabetically according to the first letter of the surname,⁴⁵ or by parties in the order of the vote received at the last general election,⁴⁶ but several states provide for rotation also in this election.⁴⁷ The best practice would seem to be the rotation of the names, although it is not a particularly important matter. The uninformed voter is more likely to rely upon the party designations than upon position.

In states with the office group ballot, the names of independent candidates in partisan elections are usually placed at the bottom of the list, and in party column ballot states, to the right in a separate column. Many states are unduly lenient in permitting third parties to be represented upon the ballot, with the result that the ballot is sometimes cluttered up with so-called party columns, having in fact only one or two candidates in each column. The best example was a recent judicial election in Chicago, in which there were some thirty separate party columns—a ridiculous procedure which could have been easily avoided by permitting such candidates to run in a general independent column.

Another problem is whether the name of any candidate may appear on the ballot twice for the same office. Nine-

⁴³ Montana.

⁴⁴ Iowa, for example.

⁴⁵ Colorado, Maryland, Massachusetts, Nevada, and Tennessee.

⁴⁶ Minnesota, Nebraska, New York, and Pennsylvania.

⁴⁷ California, Kansas, Nebraska (part), Minnesota (certain offices).

teen states specifically prohibit any name from appearing on the ballot more than once for the same office, but in all probability other states prohibit such practice by implication. States with the office group ballot in partisan elections are not faced with this problem, for there would be no point in printing a candidate's name twice in immediate succession, but there is the problem as to whether a candidate may have more than one party designation after his name. Six of the office group ballot states permit the candidate to have after his name on the ballot the name of as many parties as may have nominated him, while Massachusetts requires him to select which designation he will use, and Oregon requires the candidate to use only the party designation of the party in which he is registered. In California it is a common practice for candidates in the Republican primary to solicit write-in votes in the Democratic primary, so that if they capture the nomination in both primaries, the election will be virtually closed. It is accordingly very common for a candidate to be the nominee of both political parties, but to prevent a defeated candidate from running against the nominee of his own party, the state law provides that a candidate defeated for nomination in his own party primary cannot be the nominee of another political party. In New York, where party emblems are used with every candidate in partisan elections, the candidate who is nominated by more than one political party has the emblem of each party printed after his name.

Instructions to Voters. The need for some instructions to voters with our long and complicated ballot, particularly the party column type, is universally recognized, and provided for by law in almost every state. The instructions to voters generally used take one of several forms; namely, printed instructions on the ballot, a card of instructions which is posted at the polling places and inside the voting booths, and a set of instructions which is included in the advertisement of the ballot in newspapers shortly before the election. There is, to

be sure, provision in most states also for the assistance of voters at the polls by election officers or others, a matter which is treated separately.⁴⁸ Where voting machines are used certain additional methods of instructing voters are generally provided, particularly when machines are first adopted.

Practical experience indicates a real necessity for instructions of some kind to the voters. Voting, after all, is not a simple matter with our long and complicated ballot, and the average voter cannot remember from one election to another the rules for marking the ballot. The laws in various states are different, and with our mobility of population, instructions are essential to take care of voters who move from one state to another. In some states the ballot must be marked with a lead pencil, while in other states this is not permitted; in some states a rubber stamp must be used, while in other states this is not the practice; in a few states the voter must strike through the names of persons for whom he would vote, but in other states his ballot would be thrown out if he did so. The most effective work of political organizations often consists in the careful instructions which they give to their voters. Undoubtedly there are many voters who stay away from the polls because of timidity about voting, fearing that they may make some mistake which would embarrass them. Other voters unquestionably find voting unpleasant because of uncertainty about the proper procedure, and are unwilling to inquire and thus show their ignorance. The instructions generally used at the present time are poorly designed to help the voter cast his ballot correctly. For the most part they are too detailed and involved.

In about half of the states some brief instructions are printed on the face of the ballot. This practice is excellent. It should be uniformly provided in every state and for every election. The particular wording of the instructions printed on the ballot, however, could be easily improved. The following instructions printed on the ballots are typical:

⁴⁸ See below, Chap. VI.

California

INSTRUCTIONS TO VOTERS: To vote for a candidate of your selection, stamp a cross (X) in the voting square next to the right of the name of such candidate. Where two or more candidates for the same office are to be elected, stamp a cross (X) after the names of all the candidates for that office for whom you desire to vote, not to exceed, however, the number of candidates who are to be elected. To vote for a person not on the ballot, write the name of such person under the title of the office in the blank space left for that purpose. To vote on any question, proposition or constitutional amendment, stamp a cross (X) in the voting square after the word "Yes" or after the word "No." All marks except the cross (X) are forbidden. All distinguishing marks or erasures are forbidden and make the ballot void. If you wrongly stamp, tear or deface the ballot, return it to the inspector of election and obtain another.

Colorado and Massachusetts

To vote for a person, make a cross mark (X) in the square at the right of his name.

Missouri

To vote a "straight" party ticket, place a cross mark (X) in the circle immediately below the party name at the top of the ticket.

To vote a "split" ticket, place a cross mark (X) in the circle immediately below one party name, and put the cross marks (X) in the squares at the left of the names of candidates voted for on other tickets.

A "split" ticket may also be voted by eliminating the cross mark (X) in the circle under the party name, and placing cross marks (X) in the squares at the left of the names of candidates voted for. If ticket is voted in this way votes will be counted only for those candidates in front of whose names the cross mark (X) appears.

To vote for a candidate whose name does not appear on the printed ballot, draw a line through the printed name of the candidate for such office and write below that name the name of the person for whom the voter desires to vote and place a cross mark (X) in the square at the left of such name.

Minnesota

Put a cross mark (X) opposite the name of each candidate you wish to vote for in the squares indicated by the arrow.

New York

1. Mark only with a pencil having black lead.
2. To vote for a candidate whose name is printed on this ballot

make a single cross X mark in one of the squares to the right of an emblem opposite his name.

3. To vote for a person whose name is not printed on this ballot write his name on a blank line under the names of the candidates for that office.
4. Any other mark than the cross X mark used for the purpose of voting or any erasure made on this ballot is unlawful.
5. If you tear, or deface, or wrongly mark this ballot, return it and obtain another.

Wisconsin

If you desire to vote an entire party ticket for state, congressional, legislative and county offices make a cross (X) or other mark in the circle (O) under the party designation at the head of the ballot. If you desire to vote for particular persons with regard to party, mark in the squares at the right of the name of the candidate for whom you desire to vote, if it be there, or write any name that you wish to vote for in the proper place.

The instructions in Massachusetts, Colorado, and Minnesota illustrate how simple instructions printed on the ballot may be, particularly in states with the office group ballot. The instructions in other office group ballot states are usually about the same. On the other hand, the instructions in Missouri and Wisconsin show the complexity of voting the party column ballot. A number of states print no instructions whatever on the ballot,⁴⁹ while a few states print only instructions covering the voting of a straight party ticket, usually printing this adjoining or around the party circle.⁵⁰ The instructions to voters are usually set forth in the statute, though minor variations are necessary and permissible from one election to another. A few states merely provide that the officers in charge of printing the ballots shall print suitable instructions on how to mark the ballot, how to obtain assistance, and how to obtain another ballot if one is spoiled.

The ideal instructions to voters to be printed on the ballot should be brief, and still complete enough for the average

⁴⁹ Alabama, Arizona, Arkansas, Delaware, Illinois, Kentucky, Maine, Maryland, Mississippi, Oklahoma, Tennessee, Texas, and Utah.

⁵⁰ Georgia, Indiana, Louisiana, Nebraska, New Hampshire, Ohio, Rhode Island, and West Virginia.

person. If the instructions are too long, they will defeat their own purpose. They should cover the method of marking the ballot, the instrument to be used if there are particular requirements, how to obtain a new ballot if one is spoiled, how to write-in, and one or two of the most important "don'ts." The following instructions set forth what the author believes to be satisfactory with these requirements in mind:

Model instructions to voters for an office group ballot:

1. Mark this ballot with a pen or pencil. Place a cross (X) in the square by the name of the persons for whom you wish to vote.
2. Do not make any other mark or erase any mark. If you spoil your ballot, return it and get another.
3. You may write in the name of any other person for whom you desire to vote.

Model Instructions to voters for a party column ballot:

1. Mark this ballot with a pen or pencil. To vote a straight party ticket, place a cross (X) in the party circle.
2. You may vote a split ticket in either of two ways: (1) vote for each person separately by placing a cross (X) in the square by his name, or (2) place a cross (X) in your party circle and then vote individually for candidates in other party columns by placing a cross (X) in the squares by their names.
3. Do not make any other mark or erase any mark. If you spoil your ballot, return it and get another.
4. You may write in the name of any other person for whom you desire to vote.

The instructions should be printed conspicuously upon the ballot at the top, and not at the bottom, as is the practice in some states. The instructions given above for use in office group ballots, it should be pointed out, apply to nonpartisan and direct primary elections, as well as to final partisan elections where this form of ballot is used.

Printed cards of instructions as now generally provided are useless. They are inordinately long and detailed, containing copious quotations from the penalty sections of the election laws. They are so forbidding that undoubtedly they are rarely ever read. They might as well be printed in Chinese. Nevertheless, printed cards of instructions, posted in the voting booths and at the polls, might be useful. They should be used for material too lengthy to be printed on the ballot. No use has been made in this country of sample fictitious ballots, printed to show the correct way to mark a ballot. This method has been used with great success in proportional representation elections in Calgary. The value of a typical ballot correctly marked is that the voter can see at a glance how to mark a ballot, which is much more effective than printed instructions. If party column ballots are used, several samples should be printed to show a straight ticket and the two ways of voting a split ticket. The sample ballots should also show a name written in for some office, and also votes cast on referendum propositions. The practice of printing penal sections of the election code should be discontinued, but a summary statement might be made of a few of the most important penal provisions, particularly those dealing with electioneering at the polls.

Sample Ballots and Ballot Advertising. It is generally recognized that provision should be made to enable the voter to examine the ballot before the day of the election. It is a common experience for the voter to discover, in marking the ballot, the names of many candidates on it of whom he has never heard, to find that he is called upon to vote for a number of officers that he did not know previously were to be elected, and to find several referendum questions of which he had not heard. He is called upon to vote for these candidates and upon these propositions within a few minutes' time, and there is no opportunity whatever for him to secure information upon which to base his vote. There are two methods

used to permit the voter to examine the ballot before the day of the election; namely, sample ballots, which are made available to the public, and usually posted in each precinct; and advertising the ballot in newspapers shortly before the election.

Sample ballots are specifically provided by law in two-thirds of the states, but are probably provided without specific statutory authorization in most of the other states. Several uses are made of them. In California and New Jersey a sample ballot is mailed to every registered voter. This is the ideal arrangement, though it involves considerable expense. In many instances, however, the cost is not much greater than advertising the ballot in newspapers. Under new systems of registration it is becoming common for registration officers to install addressograph or similar equipment, which enables them to mail out material to the voter at small cost. It is usually provided by law that sample ballots shall be posted in each precinct, ordinarily at the polling place, that a specified number shall be sent to the polls, and that the election office shall distribute them to the general public. The last provision means, to be sure, that party workers call for the ballots, mark them, and distribute them to the voters. While this practice is to be commended, perhaps, it does not uniformly reach every voter. The Republican organization of Douglas County, Nebraska (in which the city of Omaha is situated), has followed the practice of mailing to every voter a sample ballot, reduced in size so that when folded once it will fit into an ordinary envelope. This ballot is not marked for the Republican nominees, but the voter is told how to vote for the Republican party, invited to inspect the ballot, mark it according to his own wishes, and take it to the polls with him. The cost is slight. The size of the sample ballot is such that the voter may readily mark it at home, put it in his pocket, and use it in the voting booth. This practice is to be commended. It should be provided by state law, and such

Make Up Your Ballot NOW

This Memorandum Ballot is sent you by the Republican Committee for your convenience.

Before you vote, please give the same consideration and scrutiny to the qualifications of the candidates that you would if you were employing them personally.

You can vote the Republican ticket by marking a cross in the Party Circle.

Election Tuesday, Nov. 6, 1928
8:00 A. M. to 8:00 P. M.

Memorandum Ballot

To Vote a Straight Ticket Make Cross within your Party Circle

- REPUBLICAN
- DEMOCRAT
- SOCIALIST

PRESIDENTIAL TICKET

Vote in ONE square only

- | | | |
|--------------------------|------------------------------|------------|
| <input type="checkbox"/> | { HERBERT HOOVER.....Pres. | } Rep. |
| | { CHARLES CURTIS.....V-Pres. | |
| <input type="checkbox"/> | { ALFRED E. SMITH.....Pres. | } Dem. |
| | { JOSEPH T. ROBINSON V-Pres. | |
| <input type="checkbox"/> | { NORMAN THOMAS...Pres. | } Soc'ist. |
| | { JAMES H. MAURER...V-Pres. | |

NATIONAL TICKET

Vote for ONE For U. S. Senator

- R. B. HOWELL.....Republican
- RICHARD L. METCALFE...Democrat
-

STATE TICKET

Vote for ONE For Governor

- ARTHUR J. WEAVER.....Republican
- CHARLES W. BRYAN.....Democrat
- F. PHILLIP HAFFNER.....Socialist
-

Vote for ONE For Lieutenant Governor

- GEO. A. WILLIAMS.....Republican
- FRANK A. DUTTON.....Democrat
- SAMUEL LERNER.....Socialist
-

ballots should be mailed out at public expense. This would save a great deal of bother at the polls, enable the voter to vote more quickly and intelligently, and save the cost of advertising the ballot in the newspapers. A part of the Omaha memorandum ballot is reproduced here as an illustration.

Sample ballots are generally printed upon colored paper to distinguish them from the official ballot, and are usually labeled "Sample Ballot." The number is frequently prescribed by law, often so many to each precinct, or ten or twenty per cent of the number of registered voters. These

ballots are printed at the same time as the official ballots, and the cost is slight. As ordinarily distributed, however, they are not effective in providing the voter with a ballot prior to the day of the election. Few voters call at the election office to inspect a copy or to secure a sample ballot, and the posting in the precincts is probably of small value.

Another practice followed in a few states is to publish a facsimile copy of the ballot in one or more newspapers a week or more prior to the election.⁵¹ This practice is to be commended. It probably is not as effective in reaching the electorate as a direct mailing of a sample ballot, but it is ordinarily less expensive. If there is any useful advertisement in connection with elections, certainly the official ballot is one. It is well known that a great deal of money is foolishly spent upon advertisements made necessary by statutory provisions; such, for example, as the advertisement that an election is to take place and the enumeration of the officers to be elected, which is provided in many states, the advertisement of a list of the polling places throughout the city, or, even worse an advertisement of the boundary lines of precincts. In some states the election statutes foolishly specify an excessive number of times which the advertisement must be run, or the inclusion of lengthy instructions to voters and a list of the polling places. The usual practice is to print the ballot in full size, or nearly in full size, which also seems to be unnecessary. Another criticism of the advertising practice is that of running the advertisements in minor newspapers with small circulation, for political reasons. The better practice would be to require the advertisement in newspapers of the largest circulation, regardless of party lines.

Printing. Many states provide by law the number of ballots to be printed, usually in proportion to the number of registered voters or the number of votes cast at a recent election. Massachusetts, for example, provides that not less than sixty

⁵¹ For example, Minnesota, Iowa, Michigan, and Wisconsin.

shall be printed for each fifty voters or fraction thereof; Ohio and Michigan, twenty-five per cent more than the number of votes cast at the last election; and Maryland provides that there shall be printed as many ballots as there are registered voters, plus twenty-five per cent, which shall be held in reserve. These statutory provisions take no cognizance of the enormous variation in the percentage of eligible voters who vote in different elections. The states which fix the number of ballots to be printed on the vote cast at a preceding election follow a fluctuating basis, which may often be too large and in some elections too few. The number to be printed varies greatly from state to state. Some states provide that one ballot shall be printed for each registered voter,⁵² others provide a slightly larger number,⁵³ while still others provide for as many as double the number of registered voters,⁵⁴ and Delaware tops them all by providing for the printing of fifteen ballots for each voter, part of which are turned over to the political parties. This unusual law is to be explained only by reason of the fact that ballots are distributed prior to the day of the election in Delaware, and the voter is permitted to mark his ballot and bring it with him when he comes to the polls. A few states provide that "a sufficient number" of ballots shall be printed, leaving the actual determination to the officers in charge of printing the ballots.⁵⁵ This would seem to be wise in view of the variation from election to election, and at the same time it incurs little danger that the supply printed will run short.

Another problem in connection with the printing of ballots is the use of a single blanket ballot versus the use of several ballots. Many states provide for the use of two or more ballots at the same election, though a number of states, for example, California and Oregon, follow the practice of print-

⁵² Oklahoma.

⁵³ Many states.

⁵⁴ Alabama, Florida, Illinois, South Dakota, Utah, Vermont, and Virginia. Arkansas and West Virginia provide for three times as many ballots as there were votes cast in the last election.

⁵⁵ Kansas, Louisiana, and Mississippi.

ing the entire ticket upon a single ballot. At least twenty states provide that constitutional amendments shall be submitted to the voters on a separate ballot. Six states provide for a separate presidential ballot.⁵⁶ Many states provide for separate judicial and nonpartisan ballots, when voted upon at the same time as partisan elections. A few states provide separate ballots for each group of officers, such as national, state, county, and city. New Mexico provides that if more than one constitutional amendment or question is to be submitted to popular vote, each constitutional amendment or other question shall be printed upon a separate ballot. Ohio and South Dakota require a separate ballot for questions other than constitutional amendments.

The use of separate ballots is carried to the extreme in some states, where the number used at a particular election may run as high as five to eight. There is some merit to placing the constitutional amendments and other referendum propositions on a separate ballot, particularly where the party column ballot is used. If the ballot is large it is somewhat more convenient to have two ballots instead of one very large one. Some years ago Illinois provided for separate ballots as a means of stimulating voting upon referendum questions. The Illinois election commission recommended in 1931 that the referendum questions should be put back on the general ballot, with the thought that it would increase the vote cast upon them. The practice in Louisiana, and perhaps some other states, of printing constitutional amendments under the party column, provided the party has taken a position on them, so that a straight party vote is a vote in favor of the amendment, is questionable, to say the least.

There is also considerable merit in the use of separate ballots for judicial, presidential, and nonpartisan elections, when held at the same time with partisan elections of the state and county. The printing of a separate presidential ballot helps to divorce state politics from national politics. The better

⁵⁶ New York, North Carolina, Ohio, Vermont, and Wisconsin.

practice is to hold state and county elections at another time. Similarly there is much to be said for using a separate ballot for judicial and other nonpartisan elections, as a means of separating them from the partisan elections. However, care should be taken not to burden the voter with too many ballots. Unless there are reasons to the contrary, the practice of using a single ballot at each election is preferable.

The ballots are ordinarily printed by the city or county officer in charge of elections. Several states, however, provide for the printing of state ballots by the state itself, and delivery of such ballots to the local officers. In Canada the provincial government supplies the local returning officer with ballot papers, which are printed locally, but the paper is uniform throughout the province. State laws usually provide for the letting of the contract for printing the ballots to the lowest bidder or to the lowest responsible bidder, after sealed bids with suitable bonds have been received. In a few states this is written into the election laws, but even when absent, general provisions regulating the letting of contracts and the purchasing of supplies by county officers are applicable to elections. Nevertheless, these provisions do not always secure bona fide competition in the printing of ballots. The cost of ballots, as well as other election supplies, is often excessive owing to favoritism and politics in the letting of contracts.

Presidential Electors and the Ballot. In some states the ballot has within recent years been simplified and shortened by eliminating the names of the candidates for presidential electors and the substituting therefor the names of the candidates for President and Vice President of the several parties. The majority of states still cling to the old system of printing the names of the candidates for presidential electors on the ballot, but as time goes by this practice will be discontinued by state after state. The election of a President and Vice President in the United States is indirect in form, though direct in reality. The voter is not concerned with the candidates for

electors. He expects them to vote for the nominees of the party, and in voting for them he casts his ballot indirectly for the nominees for President and Vice President. The candidates for electors are not persons known throughout the state. Without the party labels the voter would be hopelessly lost. Many states, recognizing this, have grouped the candidates for electors of each party together with the names of the candidates of the party for President and Vice President, and have permitted the voter to vote for all the candidates for electors in bloc. A few states go further and require the voter to vote for the group in bloc, preventing the voting for them individually or splitting a vote between two political parties—an obviously absurd vote. The next step is to take the names of the candidates for electors off the ballot entirely, and substitute therefor the names of the candidates for President and Vice President. Six states had enacted such laws before 1930; namely, Nebraska (1917), Iowa (1919), Wisconsin (1925), Illinois (1927), and Ohio and Michigan (1929).

This practice is obviously desirable, inasmuch as it materially shortens the ballot, reduces the cost of printing, and simplifies voting. The only question which may be validly raised about its use is that of constitutionality. The Federal Constitution specifically grants to the state legislatures the power to determine the method by which presidential electors shall be selected in Article 2, Section 1, as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress.

But the Constitution goes on to empower Congress to determine the day upon which the electors shall be chosen, as follows:

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

In accordance with this power, Congress has provided that the electors

Shall be appointed in each state on the Tuesday next after the first Monday in November in every fourth year succeeding every election of a President and Vice-President.⁵⁷

These are the only provisions in national law dealing with the election of presidential electors. The power of the states to determine the method of election has been clearly set forth by the United States Supreme Court in *McPherson v. Blackmer*,⁵⁸ Chief Justice Fuller delivering the opinion as follows:

The appointment of these electors is thus placed absolutely and wholly with the legislatures of the several states. They may be chosen by the legislatures, or the legislature may provide that they shall be elected by the state at large, or in districts, as other members of Congress, which was the case formerly in many states; and it is, no doubt, competent for the legislature to authorize the governor, or the supreme court of the state, or any other agent of its will, to appoint these electors. This power is conferred upon the legislatures of the states by the Constitution of the United States and cannot be taken away from them or modified by their state constitution any more than can their power to elect senators of the United States. Whatever provisions may be made by statute, or by the state constitution to choose electors by the people, there is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away or abdicated.

It is significant that in the early history of the country presidential electors were generally appointed by the legislature, though after 1832 they were uniformly elected by popular vote, except in South Carolina. This state continued the practice of the legislature appointing the presidential electors until after 1860. There can be no constitutional question about the recent development of taking the names of the candidates for electors off the ballot and providing that a vote cast for the candidates for President and Vice President of each party shall be counted for the candidates for presidential electors of that party, whose names are filed with the secretary of state.

⁵⁷ U. S. Code Annotated, Title 3, Par. 1.

⁵⁸ 146 U.S. 1, 34 (1892).

The present practice in electing presidential electors varies greatly. Eight states require the voter to cast his ballot individually for the presidential electors, not permitting a group vote.⁵⁹ Only two of these states print the names of the candidates for President and Vice President on the ballot.⁶⁰ In this group, Florida, Mississippi, and South Carolina do not indicate on the ballot the party designation of the candidates, though the Democratic candidates are always placed first and are grouped together. This practice is indefensible.

A second group of twenty-three states permit the electors to be voted for either individually or as a group.⁶¹ Twelve of these states print the names of the candidates for President and Vice President on the ballot,⁶² but the others do not. A third group of twelve states require the voter to cast his ballot for the candidates of a political party as a group, without provision for split or individual voting.⁶³ In all of these states the names of the candidates for President and Vice President are also printed on the ballot. The fourth and last group of six states, already enumerated, take the names of the candidates for presidential electors off the ballot and substitute therefor the names of the candidates for President and Vice President. In these states the voter is instructed that a vote cast for the nominees of a political party for President and Vice President will be counted for the nominees of the party for presidential electors. He is not permitted, however, and for obvious reasons, to vote separately for President and Vice President, the two names being uniformly bracketed together and only one voting square provided. The Iowa statute providing for the

⁵⁹ Florida, Montana, Mississippi, Nevada, North Carolina, South Carolina, and Tennessee.

⁶⁰ Nevada and Tennessee.

⁶¹ Alabama, Connecticut, Delaware, Idaho, Indiana, Kentucky, Louisiana, New Hampshire, New Mexico, Washington, Georgia, Maine, Missouri, New York, Texas, Utah, Vermont, West Virginia, New Jersey, California, Maryland, Pennsylvania, and Colorado.

⁶² Georgia, Maine, Missouri, New York, Texas, Utah, Vermont, West Virginia, New Jersey, Maryland, Pennsylvania, and Colorado.

⁶³ Arizona, Arkansas, Massachusetts, North Dakota, Oklahoma, Oregon, Kansas, Minnesota, Rhode Island, South Dakota, Virginia, and Wyoming.

election of presidential electors may be quoted as typical of the group.

A vote for the candidates of any political party or group of petitioners for president and vice president of the United States, shall be conclusively deemed to be a vote for each candidate nominated in each district and in the state at large by said party, or group of petitioners, for presidential electors and shall be so counted and recorded for such electors.⁶⁴

⁶⁴ Election Laws, Sec. 965.