

THE AMERICAN BALLOT

THE AMERICAN BALLOT

BY SPENCER D. ALBRIGHT

FOREWORD

BY O. DOUGLAS WEEKS



American Council on Public Affairs
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TO MARGARET

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FOREWORD

The free election ballot is both the supreme symbol and the principal working tool of democratic government. It is the all-important material object which democracy has sought to substitute for the battle-axe or the hangman's noose both as an emblem and as a weapon in the settlement of civil disagreements. The struggle to effect and maintain the substitution has been a long and difficult one; and it has not yet ended. In a very real sense, it is an important phase of the present world conflict. Something has been gained, however, even in the countries where democracy has been tried and abandoned, for their rulers have retained the "ja" ballot as a useful device with which to create the appearance of popular approval of their authority. Thus the semblance, if not the essence, of democracy lingers in their midst.

In the remaining democracies, however, the so-called free ballot is only more or less free. Many obstacles to its use as an untrammelled medium in the expression of the voter's choice are to be found in our own country. Some are to be traced to the circumstances surrounding the procedure of casting the ballot—to machine politics, to the faults of our election laws, and to the defects of our election administration. Others require for their removal basic changes in the organization of state and local government. The long ballot, the excessive number of local areas in which elections are held, and the multiplicity of elections generally are examples in point. Complete ballot reform, therefore, must await the realization of more fundamental reforms.

Short of this, however, there are many possible improvements in the form of the ballot proper. Correction of defects on the face of the ballot has made extensive progress in the United States during the past half century. The use of the publicly printed ballot as a principal feature of the Australian ballot system, almost universally adopted between 1888 and 1900, was a fundamental gain. So in the twentieth century almost continuous amendment of the ballot laws has been the rule. Many of the changes have been for the better; but the development has been very uneven from state to state, with the result that variations in ballot forms all the way from the most indefensible to really model features may be found in present-day election law provisions.

The criteria of a good ballot form are hard to determine. Perhaps the most important consideration is that of making the ballot as easy as possible for the voter to mark, so as not to deter him from voting, and if he does vote, to reduce the possibility of his becoming confused and thus either invalidating his ballot or marking it in a manner not expressive of his true intent. Of course, it is possible to render his task too simple, which is the case in many states where the party circle appearing on the ballot overemphasizes partisanship and discourages thoughtful and independent voting. The relative merits of the party-column and office-block types of general election ballots, both of which are widely used in the United States, have been frequently discussed by students of ballot forms. Equally important are the problems of the non-partisan ballot and the proper form of the primary ballot. Lastly, the voting machine as a fool-proof and labor-saving substitute for the paper ballot and the inevitable difficulties entailed in its marking and tabulation, is a most important topic for those who are interested in

simplifying the task of voting. These and other matters must be carefully weighed on the basis of facts and experience if defensible standards are to be set up.

Dr. Albright in the present study has attacked primarily the problem of collecting and comparing in a comprehensive and careful fashion the facts in regard to the manifold ballot forms now in use in the United States both in the general and primary elections and in regard to the extent to which the voting machine has been adopted and the results attained in its use. A work of this kind has been needed for some time. In recent years the ballot has been considered in a number of books concerned with broader phases of politics and elections, but not for many years has so extensive a study of the ballot as this one appeared in print. Here are summarized the changes of the past quarter-century and particularly those of the last decade.

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PREFACE

The American ballot—symbol of our democracy—has evolved through trial-and-error methods. What it is today is principally the result of the initial use of paper ballots among the colonists, constitutional authorization for their use within the states, legal requirements as to certain practices, the introduction and growth of the direct primary, the adoption of initiative and referendum and recall laws, the invention and use of the voting machine, the introduction of the presidential short ballot, and above all, the employment of the Australian ballot.

In the nineteenth century each party printed separate strips or tickets for national, state, and local offices. With the introduction of the Australian ballot, providing a secret voting arrangement conducted under public authority, the states consolidated the party strips for each or all the levels of government. A sheet containing the names of the candidates for all jurisdictions became known as a "blanket ballot." American adaptation of the genuine Australian ballot, which contained the names of candidates without party designation, was in essence a consolidation of the old party strips. The net gains were uniformity, impartiality, secrecy, experimentation, and public responsibility for the conduct of elections.

In order to emphasize their importance, political parties have employed such devices as party columns, emblems, circles, squares, and preferred order of presentation of candidates. But some counter-moves to diminish party emphasis—notably the office-block arrangement,

removal of emblems, rotation as to position on the ballot, the open primary, and non-partisan elections—have been effective in a number of states. Although it is desirable to retain the integrity of political parties, it remains quite important that the American voters be afforded the opportunity for a high degree of independence. The ballots of the forty-eight states display the extremes of party adherence in one locality and of voter independence in another; in many places moderation prevails. In terms of ballot form and content, there is a great deal of variety.

My first study of ballots was under the guidance of Professor Harold F. Gosnell of the University of Chicago. Through the kindness of Senator Henry W. Toll, Professor Rodney L. Mott, and Professor George C. S. Benson the facilities of the American Legislators' Association afforded aid for further investigation. Encouragement in a systematic inspection of laws pertaining to ballots was given by Professor O. Douglas Weeks.

For permission to use material of mine which has previously appeared in articles, booklets, and tabulations I wish to acknowledge the courtesy of the editors of the *American Political Science Review*, the *Southwestern Social Science Quarterly*, and *The Book of the States, 1941-1942*. For numerous favors I wish to thank the staffs of the American Legislators' Association and the Council of State Governments. My thanks are due the hundreds of public officials who graciously responded to my requests for information and sample ballots. An incalculable amount of assistance has been given by my wife during the preparation of the manuscript.

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CHAPTER I

THE BACKGROUND OF THE BALLOT

To Americans the ballot means an expression of preference with regard to a candidate for office or a decision of policy, as presented to them in written or printed form. This concept is the outgrowth of practices whereby a choice was indicated by citizens in ancient states.

The word ballot is traced to the Italian *ballotta*, the diminutive of *balla*, equivalent to the English *ball*. It is defined as a noun, "a little ball used in secret voting; the method of secret voting by means of balls, printed or written slips, etc., deposited in a box or the like"; and as a verb, "to vote by ballot; also, to draw lots for."¹ The earliest record of the use of the ballot indicates that it was employed in Athens in the fifth century B.C.² The Athenians voted by a show of hands except on the question of exiling someone considered dangerous to the state, in which case a secret vote was taken on clay ballots. Excavators of the American School of Classical Studies recently uncovered 150 of these clay ballots at Athens; several of the ballots bore the name of Aristides.³ There is evidence of the use of the secret ballot in India before

¹*The New Century Dictionary*, 1938 edition.

²A. R. Spofford, "Ballot," *Cyclopaedia of Political Science*, 1881, vol. I, p. 197.

³Tom Mahoney, "Counting America's 40,000,000 Votes," *Modern Mechanix Hobbies and Inventions*, November, 1936.

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300 B.C. The Greek judges voted by ballot in giving their verdicts, using seashells, beans, balls of metal, or stones colored black for condemnation and white for acquittal. According to the Roman Gabinian Law of 139 B.C., a voter in elections of members of the *Comitia Centuriata*, was given wooden blocks, each denoting a candidate; after depositing his choice in an urn he returned the other blocks.⁴

Pliny the Younger, who lived during the reign of the Emperor Trajan about 100 A.D., writes in one of his *Epistles* that the Senate with one consent called for the ballots on the election day. In another letter he describes these ballots:

I mentioned to you in a former letter, that I apprehended the method of voting by ballot would lead to some abuse, and so it has proved. At the last election of magistrates, upon some of the tablets were written several pieces of pleasantry, and even indecencies; in one particularly, instead of the names of the candidates, was inserted the names of their supporters.⁵

During the Middle Ages all forms of voting lay in abeyance, "to be revived and rediscovered by the communes of northern Italy."⁶ By the end of the thirteenth century the Italian Communes were voting by ballot. In 1268 the written ballot was used in Venice.⁷ In Parma, in the election of treasurer, the names submitted by the nominating committee were kept secret until it was time to begin the balloting. The Communes made stringent rules against

⁴Harold F. Gosnell, "Ballot," *Encyclopedia of the Social Sciences*, 1930, vol. II, p. 410.

⁵S. B. Platner, *Selections from the Letters of the Younger Pliny*, Boston, 1884, Book IV, vol. XXV, p. 43.

⁶Arthur M. Wolfson, "The Ballot and Other Forms of Voting in the Italian Communes," *American Historical Review*, October, 1899, vol. V, no. 1, pp. 1-22.

⁷Charles Gross, "The Early History of the Ballot in England," *American Historical Review*, April, 1898, vol. III, no. 3, p. 460 (fn. 3, citing H. F. Brown, *Venice*, 1893, p. 151).

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interfering with voters, repeating, and stuffing the ballot-box.⁸

In the papal elections of the thirteenth century the cardinals wrote the names of their candidates on tablets. No ballot was revealed until the whole body had voted; then the tellers opened the ballots and read the names of the cardinals voting and the candidates for whom they had voted. The results were tabulated on tally-sheets and the candidates receiving two-thirds of the vote was declared elected.⁹

Meager sources indicate that during the sixteenth century municipal officers were elected by ballot in some English boroughs. In London, however, the ballot was well-known at that period, as demonstrated by entries in the records of the Court of Aldermen. In 1532 this body provided that "in every matter of gravity the box shall be brought into Court, and by putting in of white or black peas,¹⁰ the matter is to take effect or not"; and in 1562 it ordered that "in all matters concerning the election of aldermen, etc., which need to be written and tried by way of scrutiny, such matters shall be tried by the new gilt box, brought in by the chamberlain, whereon is written these words, 'Yea' 'Nay'." Likewise, an enactment of 1642 decreed that "from henceforth the balloting box shall be used in this Court, as formerly, to declare their opinion and resolutions in special matters to be propounded."

Charters granted by James I in 1603 permitted the universities to elect members of Parliament and the written

⁸Wolfson, *op. cit.*

⁹*Ibid.*

¹⁰Gross, *op. cit.*, p. 458. It is evident that the bean ballot was not an invention of the Puritans of New England.

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ballot or "scrutiny," long used to elect university officers, was employed.¹¹ The secret written ballot was also used in some English towns in the early seventeenth century. In 1607 James I granted Pontefract a charter regulating the election of mayor, in which each burgess was required to write on a scroll of paper the name of the candidate for whom he wished to vote, and this scroll was to be placed in a box or bag. When the result of the election had been declared by the town clerk, the scrolls were supposed to be publicly destroyed in order to prevent a scrutinizing of the handwriting.¹²

Bullets were used for balloting in some English boroughs during the seventeenth century. An ordinance at Winchester in 1656 required that the election of the mayor and other officers be determined by the use of pewter. One hundred bullets of red and white in equal proportion were provided by the Assembly, the incumbent mayor deciding what person or purpose each color should designate. The voter made his choice by secretly depositing in the ballot-box the bullet for or against the person or purpose at issue, immediately returning the other bullet to its original box.¹³

The fact that the ballot was used in England during the sixteenth and seventeenth centuries suggests that the American colonists brought the idea of secret voting from that country. However, this mode of voting was also used in parts of the Netherlands. There is this description of voting in Emden, written by Emmius in 1616:

¹¹J. F. Jameson, "Remarks," *Papers of the American Historical Association*, 1891, vol. V, p. 188.

¹²Gross, *op. cit.*, p. 460.

¹³Jameson, *op. cit.*, p. 188.

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Each one, in turn, goes alone to a table, and there, on little slips of paper, which he finds prepared in numbers, writes down the names of the four persons whom he considers best fitted to hold office for the year. Then rolling up the slip of paper he deposits it in a bottle shaped wooden box through an aperture just large enough to admit the hand. When all have voted the president draws out the papers from the box, one at a time, and in a loud voice reads out the names written on them. The secretary of the council writes down the names as they are read off taking care not to write the same names more than once. Then the papers are at once consigned to the flames . . .¹⁴

Since some of the colonists came to America after an interim in the Netherlands, there is a basis for the contention that the Dutch municipal practices served as a model in the colonies where such sojourners predominated.

In 1656, James Harrington, the English political philosopher, wrote a political romance entitled, *Oceana*, in which he elaborated a scheme of balloting.¹⁵ The electors therein described, formed in divisions, filed through the hall holding up "a pellet made of linen Rags . . . and putting it into the Box as though no man can see into which side he put it, yet any man can see that he puts in but one pellet or suffrage." After the affirmative pellets had been poured into a white bowl and the negative ones into a green bowl, they were counted.¹⁶ In his youth Harrington had traveled on the continent and had served in the army of the Prince of Orange. Later he spent some time in Venice, observing governmental practices, particularly the system of balloting (which resembled that of modern

¹⁴Douglas Campbell, "The Origin of American Institutions as Illustrated in the History of the Written Ballot," *Papers of the American Historical Association*, 1891, vol. V, p. 178.

¹⁵*The Oceana of James Harrington, and His Other Works*, London, 1700.

¹⁶Chester C. Maxey, *Political Philosophies*, New York, 1933, p. 267.

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Greece).¹⁷ His theories were a composite of ideas assimilated in his travels and of his knowledge of English methods. To promulgate his theories Harrington and his followers formed the Rota Club in 1659 with the purpose of advocating rotation in office and the introduction of the ballot.¹⁸ It is difficult to estimate Harrington's influence, but it is reasonable to assume that the colonies established by the English in the last half of the seventeenth century may have put into practice some of the ideas current in that period.

The written ballot was first employed in America by the congregation of the Salem church for the choice of a minister on July 20, 1629.¹⁹ This fact supports the contention that the written ballot emerged as the fruit produced by the development of the democratic and elective principles of the Congregational form of the Christian Church.²⁰ However, the written ballot, as found in the American colonies, cannot be said to have originated in England, Holland, Harrington's *Oceana*, or the Christian Church. It was the outgrowth of all these usages, as well as the result of a quest by the colonies for a better way than the *viva voce* method of voting.

¹⁷Greek balloting in the twentieth century recalls the elaborate plan proposed by Harrington. It is described by Charles Seymour and D. P. Frary in their scholarly study, *How the World Votes*, vol. II, p. 243: "On entering the polling place one [the Greek voter] is confronted by a long row of tin boxes, as many in number as the candidates. . . . The box is divided into compartments in which are two sacks, one white and one black, and bearing the name of the candidate to whom the box belongs. . . . As the elector passes down the line, he is given by the attendant at each box a lead ball, which he drops into the desired compartment. The most complete secrecy is insured by lining the compartments with cloth to prevent the sound of the falling pellet from being heard."

¹⁸Theodore W. Dwight, "James Harrington," *Political Science Quarterly*, 1887, vol. II, p. 13.

¹⁹Campbell, *op. cit.*, p. 178.

²⁰Williston Walker, "Remarks," *Papers of the American Historical Association*, 1890, vol. V, pp. 187-188.

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For the initial political use of the ballot in Massachusetts we have the authority of Governor Winthrop for the statement that in 1634 and thereafter, "the governor and deputy were elected by papers wherein their names were written."²¹ In 1643, however, assistants were elected by the corn and bean system—the corn designating the affirmative and the bean the negative vote. The act of 1647 required the town officers to seal up the votes of those freemen who remained at home and send them to the court of elections. The same act provided that the governor, deputy, major-general, treasurer, secretary, and commissioners were to be elected by writing the names of the persons on open papers, or papers once folded, "not twisted nor rouled up, that they may be the sooner perused."²² Shortly thereafter the written ballot was used in Plymouth for its general court.

The Connecticut Fundamental Orders of 1639 provided for the election of officers by written papers, and once this mode of election was introduced, it was never lost.²³ The ballot was used in Portsmouth in 1638 and the votes were "unsealed." Again, in Rhode Island, upon the organization of the colonial government in 1647 it was agreed that the election of officers should be "by papers."²⁴ To prevent the evils of ballot-box stuffing, it was provided by law in Rhode Island that each voter should write his name on the back of his voting paper, but this remedy was found to be worse than the disease.²⁵

²¹C. F. Bishop, *History of Elections in the American Colonies*, New York, 1893, p. 141.

²²E. C. Evans, *A History of the Australian Ballot System in the United States*, Chicago, 1917, p. 1.

²³Campbell, *op. cit.*, p. 178, citing Simeon E. Baldwin, "The Early History of the Ballot in Connecticut," *Papers of the American Historical Association*, 1889, vol. IV, part IV, p. 81.

²⁴Bishop, *op. cit.*, pp. 146 and 150.

²⁵Campbell, *op. cit.*, p. 178.

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According to C. F. Bishop, the first use of the word "ballot" occurred in West Jersey (he asserts that in New England reference had always been made to "papers").²⁶ In 1676 the "Concessions and Agreements" granted to West Jersey by its proprietors provided for a temporary government composed of commissioners to be elected by ballot: "And the said Elections shall be made and distinguished by balloting Trunks, to avoid noise and confusion, and not by Voices, holding up of the Hands, or otherwise howsoever."²⁷ East Jersey adopted the ballot for all elections in 1683. In the same year, William Penn's "Frame of Government" provided for elections by the written ballot, although the bean ballot was apparently used thereafter. The fact that the beans were put into hats shows, according to A. E. McKinley, that articles of head gear were used as balloting boxes in America as well as in ancient Greece.²⁸ In Delaware election practices were similar to those of Pennsylvania. Maryland used some system of balloting while it was a proprietary colony, but after 1701 it returned to *viva voce* or voting by a show of hands.²⁹

In colonial Virginia the *viva voce* method of voting is indicated by the use of the phrase "major part of voices" in 1624 and by the writs requiring personal attendance at elections. On the other hand, it is plain that some form of proxies, or "subscribing of hands," was used; sometimes this was so general that "it happeneth that few or none doe appeare personally according to the summons." Proxy voting before 1646 is revealed by a law of that

²⁶Bishop, *op. cit.*, p. 166.

²⁷A. E. McKinley, *The Suffrage Franchise in the Thirteen English Colonies in America*, Philadelphia, 1905, p. 245.

²⁸*Ibid.*, pp. 259-272.

²⁹Evans, *op. cit.*, p. 4.

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year requiring the election of Burgesses to be by a "plurality of voices and that no hand writing shall be admitted."³⁰

The most consistent use of ballots among all the colonies was to be found in South Carolina. According to McKinley:

After the adjournment on the first day, the sheriff was directed to "seal up in a paper bag or box all the votes given in that day in the presence of and with the seals of two or more of each contending party"; which is presumptive evidence that voting was performed by ballot. It is remarkable, indeed, that throughout the history of South Carolina, voting was uniformly by ballot; and from 1683 onward the ballot has been invariably used.³¹

Although the North Carolina election law dates from the mid-eighteenth century, the description dealing with the balloting closely parallels the language of much later laws: "The voter must bring in a 'Scroll of Paper, rolled up,' on which were the names of the candidates for whom he voted; the sheriff was to take the ballot, and in the presence of the inspectors put it into the box; and he and the inspectors were each to keep a separate list of the voters' names."³² Georgia, the last colony of the original thirteen, always used the English method of *viva voce*.

By the time the first constitutions of the new thirteen states were drafted, voting by written papers was an accepted method of voting. Maryland's constitution of 1776 contained the provision "shall proceed to elect by ballot." New York's constitution of 1777 empowered the legislature to pass a law "for causing all elections, thereafter to be held in this State for Senator and Representative in Assembly, to be by ballot, and directing the manner in which the same shall be conducted." The measure was

³⁰McKinley, *op. cit.*, pp. 22-26.

³¹*Ibid.*, p. 141.

³²*Ibid.*, p. 102, referring to a law of 1743.

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enacted February 13, 1787, based upon the reason given in the constitution: "whereas an opinion hath long prevailed among divers of the good people of this State that voting at elections by ballot would tend more to preserve the liberty and equal freedom of the people than voting *viva voce*; to the end therefore that a fair experiment be made, which of the two methods of voting is to be preferred."

The Massachusetts constitution of 1780, in outlining the voting procedure, required that "persons qualified to vote shall give in their votes for Governor to the Selectmen, who shall preside at such meetings; and the town-clerk, in the presence and with the assistance of the Selectmen shall, in open town meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person, against his name; and shall make a fair record of the same in the town books." The New Hampshire constitution of 1792 required a moderator in open town meeting to receive the votes and sort and count them and make a public declaration thereof.³⁵

Virginia kept her colonial method of *viva voce*, but by an act of 1785 provided that a poll be taken if the election could not be determined by view. The poll was taken thus: The sheriff chose a number of writers who took oath to record the poll impartially. Each writer was given a poll book with the name of each candidate at the head of a column. As each elector named his preferred candidate his name was written in the column of that candidate.³⁴

³⁴Constitution of Maryland, 1776, XV, XVI; Constitution of New York, 1777, VII; Constitution of Massachusetts, 1780, ch. II; Constitution of New Hampshire, 1792. David A. McKnight, *The Electoral System of the United States*, Philadelphia, 1878, Appendix, pp. 369-371.

³⁵Evans, *op. cit.*, pp. 4-5. Virginia adopted the paper ballot in 1867.

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Other states which were created before 1800 also provided for written votes—Kentucky in 1792, Vermont in 1793, and Tennessee in 1796. However, Kentucky went back to the *viva voce* method in 1799.³⁵ A Tennessee statute of 1796 defined the ballot as: "a ticket or scroll of paper, purporting to express the voter's choice, given by the voter to the officer or person holding an election, to be put into the ballot box."³⁶

In the Northwest Territory the intimidation resulting from the use of the *viva voce* method led Governor St. Clair to recommend that the ballot be substituted as the method of voting, and on December 9, 1800, the territorial legislature enacted that in all elections the manner of voting should be by ballot.³⁷ By the turn of the century most of the American states were using the paper ballot. States admitted thereafter regularly provided for its use.³⁸

Ballots in the early part of the nineteenth century were hand-written, but the laborious task which resulted from the increased number of candidates tempted some voters to accept a ballot printed by party workers. A Massachusetts voter whose printed ticket had been rejected won his case before the State Supreme Court in *Henshaw v. Foster*, in 1829, the court holding that printed votes were written votes within the meaning of the constitution.³⁹

³⁶The Kentucky Constitution of 1891 reintroduced the ballot, the secret official ballot adapted from Australia.

³⁷Tennessee Acts, 1796, ch. IX, sec. 3.

³⁸Ohio in 1802, Indiana in 1816, Michigan in 1835, Iowa in 1846, Wisconsin in 1848, and Minnesota in 1858 wrote into their first constitutions that all elections were to be by ballot. The Illinois Constitution of 1818 provided for the voice vote, but gave the legislature power to change the method (Constitution of 1847). Evans, *op. cit.*, p. 6.

³⁹California, Nebraska, Oregon, and Texas did not provide for the paper ballot in their first constitutions.

⁴⁰*Henshaw v. Foster*, 9 Pickering (Mass., 1829), 312. Maine in 1831 and Vermont in 1839 by statute, and Connecticut by constitutional amendment in 1844, authorized the use of either printed or written ballots. Evans, *op. cit.*, p. 2.

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Then the informality of balloting by slips of paper prepared by the voter himself gave way to party uniformity through ballots, printed or written, or partly printed and partly written, distributed by candidates and party workers. Following the Massachusetts ruling, party leaders began to print the tickets⁴⁰ (as the lengthening party strips, resembling railway tickets, were called) on colored paper so that they could be recognized some distance from the polling place. Thus there could be no secrecy. The abuses which grew out of these brightly colored papers led Maine, in legalizing printed tickets in 1831, to require that ballots should be printed on clean white paper, without any distinguishing mark or figure other than the names of the persons voted for and the office for which each was intended; and the use of colored ballots was forbidden.⁴¹ But party leaders took advantage of the fact that many shades of white existed, as well as different qualities of paper; consequently the states were forced to become specific as to the kind of paper employed.⁴² Alabama went so far as to prescribe the ballot dimensions in inches.⁴³ The idea that the state should furnish the ballot paper took legislative shape in California and Louisiana in the 1870's. The Louisiana law provided that "all the names of persons voted for

⁴⁰Because of their length some of these tickets were called "shoe-string ballots." When dissident party supporters tore off a part of the ticket, the remainder was called a "bob-tailed ballot."

⁴¹Evans cites *Maine Laws*, 1831, ch. 518, sec. 3.

⁴²Among the states which passed laws specifying the kind of paper for the ballots were: Connecticut, Indiana, and Virginia in 1867; Ohio and West Virginia in 1868; California, Kentucky, and Illinois in 1872; Alabama in 1875; Florida, Louisiana, and Missouri in 1877; Utah (Territory) in 1878; and Massachusetts in 1879.

⁴³The Alabama law of 1875 required that the ballots be of plain white paper, "without any figures, marks, characters or embellishments thereon, not less than two and one-half inches, nor more than three inches in width, and not less than five nor more than ten inches in length." *Laws*, 1875, p. 76.

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shall be printed on one ticket or ballot of white paper, of uniform size and quality, to be furnished by the secretary of state at a charge of five per centum over and above the actual cost of said paper."⁴⁴

Following an act of 1839 requiring the ballots to be deposited in the ballot-box, open and unfolded, Massachusetts in 1851 passed a law requiring that votes for governor, lieutenant-governor, state senators and representatives, presidential electors, and representatives in Congress be deposited in a sealed envelope. The envelopes, which were to be uniform and issued by the secretary of state to the city or town officials, were to be distributed on election day by sworn clerks. In 1851, Rhode Island also adopted an envelope law,⁴⁵ but the device soon proved to be not only cumbersome, but the pathway to new abuses. As a result, Massachusetts in 1853 and Rhode Island in 1857 made the use of the envelope optional instead of compulsory. Finally it became evident that secrecy in voting could be secured by merely folding the ballots, if they were all of uniform color and size.

With some regulation as to the kind of paper, size of the ballot, or number of tickets, the states left the printing and distributing of the ballots to the party committees or groups. Some states, such as Louisiana, found the consolidation of tickets on one ballot paper preferable to many individual tickets. There was no uniformity in the election laws except as several states hit upon the same remedy for any given abuse, until after Congress in 1872

⁴⁴*Louisiana Laws*, 1877, no. 58. Evans gives the California date as 1872.

⁴⁵*Rhode Island Laws*, 1851-53, p. 884. Utah in 1878, Connecticut in 1889, New Jersey in 1890, and Delaware in 1913 provided for official envelopes. Delaware alone retains their use at the present time.

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prescribed that all members of the House of Representatives should be chosen by secret ballot.⁴⁶

During the years when the American colonies and later the states were experimenting with methods of voting and election procedure, England was using the paper ballot in some local elections. At Wisbech, in the early part of the nineteenth century, the names of the persons nominated for "the office of capital burgesses were pasted upon a piece of paper, and each voter made a tick or scratch under the name of those whose election he desired, no person being allowed to see the poll except at the time of voting."⁴⁷ At Kingston-upon-Thames, in 1835, the names of the candidates were written upon a sheet of paper, to which each voter went alone and "scratched" the name of one of the candidates with a pen. At Chippenham, the voters signified their choice for the office of bailiff by sticking a pin in the name of one of the candidates. At Portsmouth, "scratching" and the use of the ball were combined. Each person went separately into a room and made a mark opposite the names of those aldermen whom he wished to nominate for mayor. The two having the most marks were nominated. Then each elector, having received two colored balls designating the respective nominees, "privately" placed the one of his choice in the ballot-box, dropping the remaining ball in a bag.

The use of the ballot for the election of public officers in England and Wales is first mentioned in an act of 1831, which provided that, in those parishes where the method was adopted, the vestrymen and the auditor of parish

⁴⁶Act of Feb. 2, 1872. c. 11. 17 Stat. 28: printed in *The Code of the Laws of the United States of America*, Jan. 3, 1935, p. 6.

⁴⁷Gross, *op. cit.*, p. 460.

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accounts were to be elected by a written ballot, if this were demanded by any five rate-payers.⁴⁸ From time to time a nation-wide use of the secret ballot was urged by such leaders as James Mill, Sir Robert Peel, Daniel O'Connell, Lord John Russell, and Thomas Babington Macaulay. As a part of the Chartist program, O'Connell introduced a bill in 1830 to provide the secret ballot for Parliamentary elections. However, ballot reform in England was to be delayed for many more years.

In Australia, likewise, a ballot reform movement appeared. In 1851 Francis S. Dutton, a member of the legislature of South Australia, unsuccessfully fostered a bill requiring the use of an official ballot marked by the voter in secret. In 1857 William Nicholson, of Victoria, secured the passage of a similar secret ballot law which required that the official ballot should also be non-partisan. South Australia in 1858 passed Dutton's bill, and in the same year Tasmania and New South Wales enacted secret ballot laws. Adoption by New Zealand came in 1870, by Queensland in 1874, and by West Australia in 1877. This system of conducting elections by an official non-partisan ballot was first applied to candidates for the legislature, and was later extended to other public bodies; after it was introduced into municipal elections, it was finally established for rural elections in 1887.⁴⁹ A parallel to this gradual extension of the Australian system can be seen in the same piecemeal development and spread of those methods in England and the United States.

The success of the ballot reform movement in Australia gave new energy to the leaders of the movement in Eng-

⁴⁸Gross, *op. cit.*, p. 461.

⁴⁹J. H. Wigmore, *The Australian Ballot System* (2nd ed.), Boston, 1889, pp. 15-23.

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land. In 1869 the ballot was introduced at Manchester as a test, and the voting was found more expeditious than under the *viva voce* method. The Hartington Committee, appointed by Parliament, made exhaustive inquiries into election practices and principles, hearing evidence from Australia, the United States, and continental countries. Francis S. Dutton of South Australia testified before the Committee that, "The very notion of exercising coercion and improper influence absolutely died out of the country."⁵⁰ On the recommendation of the Hartington Committee, the Parliamentary and Municipal Elections Act (commonly known as the Ballot Act) was brought in on February 20, 1870; but it did not pass the House of Commons until May 30, 1872. An investigation into the working of the machinery of the Ballot Act, made four years later, proved that it was conspicuously better than the old system of oral voting.

Other countries soon adopted this secret form of balloting—Belgium in 1877, Luxembourg in 1879, and Italy in 1882. Since 1828 voting in Norway had been either *viva voce* or by a signed ballot at the choice of the elector; but in 1884 compulsory secret voting was adopted, similar to the Australian system in all respects except that the voter procured his ballot for himself before entering the polling place. The British reform in turn influenced Canada, with the result that measures embodying the principles of the Australian plan were enacted by British Columbia in 1873, by the province of Ontario in 1874, by the Dominion Parliament in 1874, by the province of Quebec in 1875, and by Manitoba in 1886.⁵¹

Following these developments, a campaign for the

⁵⁰*Ibid.*, p. 5.

⁵¹*Ibid.*, pp. 17-23.

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secret official ballot arose in the United States. Robert Schilling, editor of the Milwaukee *National Reformer*, began to advocate ballot reform in 1881. In the next year a member of the Philadelphia Civil Service Reform Association published a pamphlet entitled "English Elections"; and in 1883 Henry George expressed his approval of the Australian system in the *North American Review*. To George W. Walthew, of Lansing, Michigan, belongs the credit of having offered the first measure embodying the reform to a legislative body in the United States. Introduced in January, 1885, his bill, which was suggested by the Canadian system, was ridiculed and was defeated in the lower house of the Michigan legislature. In 1887 Judson Grenell, of Detroit, submitted a remodeled version of Walthew's bill, which passed the House but was lost in the Senate.⁵² The Wisconsin Act of 1887 provided that the voter be given the opportunity to mark and deposit his ballot in secret, but the ballots were to be furnished by the several political parties to the election officials or could be secured by the voter before the election.⁵³ During this time agitation increased in other states for the Australian system.

Ballot reform leagues were organized not only to secure enactment of a secret voting law but also to implement its enforcement. The language of the petition circulated by the New York Ballot Reform League was typical:

⁵²Wigmore, *op. cit.*, p. 24. In 1889 an unsatisfactory compromise measure was enacted.

⁵³*Wisconsin Laws*, 1887, ch. 350. This act, applying to cities of 50,000 inhabitants or over, is described by A. C. Ludington in *American Ballot Laws*, Albany, 1888-1910, pp. 76-77.

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The undersigned believe that the public interests demand the prompt enactment of a law embodying the following principles:

1st. The ballots should be printed and distributed at the public expense. (This takes away the excuse for assessing candidates.)

2d. The names of all candidates for the same office should be printed upon the same ballot. (This destroys dealing and trading between candidates, makes independent nominations possible, and makes it impossible for the name of any candidate to be withheld from the voter.)

3d. The ballot should be delivered to the voter within the polling-place on election day, by sworn public officials. (This abolishes the paid political worker.)

4th. Only ballots so delivered should be voted, the voter guaranteed absolute privacy in preparing his ballot, and the secrecy of the ballot made compulsory. (This prevents intimidation and destroys bribery at the polls.)⁵⁴

In brief, the two features usually advocated by such organizations were first, an official uniform ballot, printed at public expense, and, second, secret voting within the polling-place under official supervision.

In 1888 the Australian ballot was adopted by two states—in February Kentucky applied it to municipal elections in Louisville only; and in May, Massachusetts enacted it for use throughout the state.⁵⁵ Each law provided for the listing of candidates in alphabetical order under the office title—in Massachusetts with the party designation beside each name, but in Kentucky without party designation (as in Australia). Since the names of all candidates for a given post appeared on the same paper, the term “blanket ballot” was used to describe it.

In 1889 seven states adopted the Australian ballot—Indiana, Minnesota, Missouri, Montana, Rhode Island, Tennessee, and Wisconsin.⁵⁶ However, in only two of

⁵⁴Wigmore, *op. cit.*, p. 203.

⁵⁵*Kentucky Laws*, 1888 (Feb. 24), ch. 266 (statewide, *Laws*, 1892, ch. 65); *Massachusetts Laws*, 1888 (May 29), ch. 436.

⁵⁶Laws of 1889: Indiana, p. 157; Minnesota, ch. 3 (statewide, 1891, ch. 4); Missouri, p. 105 (statewide, 1891, p. 133); Montana, p. 135; Rhode Island, ch. 731 (complete 1890, ch. 894); Tennessee, ch. 188 (statewide, 1921, ch. 117); Wisconsin, ch. 248 (statewide, 1899, ch. 339).

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these, Indiana and Montana, was its use made statewide. In Rhode Island, only national and state offices and constitutional amendments came within the scope of the law; in the other states it was applied to certain localities. The Indiana law provided for a party-column ballot with emblems and squares for voting a straight party ticket, all party tickets being printed side by side on one “blanket ballot.” The grouping of candidates according to party and the provision for straight party voting were not characteristics of the Australian plan. The Missouri law also provided for the party-column form, but the other five states chose the office-group arrangement.

In 1890 six states and territories adopted the official secret ballot—Maryland, Mississippi, Oklahoma, Vermont, Washington, and Wyoming.⁵⁷ Of these, only Maryland and Oklahoma provided for the party-column arrangement. In Maryland statewide use did not come until 1892; but in Vermont and Washington the 1890 statutes introduced statewide application. Mississippi provided for the Australian ballot in the constitution of 1890. The Australian ballot was adopted in 1890 by the first Oklahoma Territorial Legislature and by the last Wyoming Territorial Legislature (re-enacted by the state legislature of 1891). The Wyoming constitution of 1890 (Article VI, section 11) presents a concise statement of this new system along the lines which were being widely adopted:

⁵⁷Laws of 1890: Maryland, ch. 538 (statewide 1892, ch. 236); Oklahoma (Territory), ch. 33; Vermont, no. 9; Washington, p. 400; Wyoming (Territory), ch. 80, (State) *Laws*, 1891, ch. 100. Mississippi Constitution, 1890, Art. XII, sec. 240.

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All elections shall be by ballot. The legislature shall provide by law that the names of all candidates for the same office, to be voted for at any election, shall be printed on the same ballot, at public expense, and on election day be delivered to the voters within the polling place by sworn public officers, and only such ballots so delivered shall be received and counted. But no voter shall be deprived of the privilege of writing upon the ballot used the name of any other candidate. All voters shall be guaranteed absolute privacy in the preparation of their ballots, and the secrecy of the ballot shall be made compulsory.

There were eighteen adoptions of the method in 1891—by Arizona Territory, Arkansas, California, Colorado, Delaware, Idaho, Illinois, Maine, Michigan, Nebraska, Nevada, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, and West Virginia.⁵⁸ Iowa and Texas followed suit in 1892.⁵⁹ In Texas the blanket official ballot was printed by the candidates, and it was used in a number of cities of 10,000. The Terrell Law of 1905 initiated the real Australian ballot for Texas. In 1893 Alabama and Kansas were added to the list.⁶⁰ In 1894 Virginia, in 1895 Florida and New York, and in 1896 Louisiana and Utah joined the ranks.⁶¹ These were the last states to adopt the new ballot system in the nineteenth century. It should be noted, however, that Missouri in 1897 returned to the separate party tickets (official) and did not readopt the blanket ballot until 1921.⁶²

Further changes and adoptions came in the twentieth century. Connecticut, which had adopted a semi-official

⁵⁸Laws of 1891: Arizona, no. 64, p. 83; Arkansas, no. 30, p. 32; California, ch. 130; Colorado, p. 143; Delaware, ch. 37; Idaho, p. 57; Illinois, p. 107; Maine, ch. 102; Michigan, no. 190; Nebraska, ch. 24; Nevada, ch. 40; New Hampshire, ch. 49; North Dakota, ch. 66; Ohio, ex. sess., p. 449; Oregon, p. 23; Pennsylvania, p. 349; South Dakota, ch. 57; and West Virginia, ch. 89.

⁵⁹Iowa Laws, 1892, ch. 33; Texas Laws, ex. sess., 1892, p. 13, and Laws, 1905, ex. sess., p. 520.

⁶⁰Laws of Alabama, 1893, p. 837; Kansas Laws, 1893, ch. 78.

⁶¹Virginia Laws, 1894, ch. 746; Florida Laws, 1895, no. 7; New York Laws, 1895, ch. 810; Louisiana Laws, 1896, no. 137; Utah Laws, 1896, ch. 69.

⁶²Edward M. Sait, *American Parties and Elections* (rev. ed.), New York, 1939, p. 733.

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ballot in 1889, did not accept the true Australian ballot until 1909.⁶³ The North Carolina ballot law of 1909, which applied only to New Hanover County, was extended in 1929 to all counties.⁶⁴ Though the New Mexico territorial law of 1905 allowed party printing and distributing of ballots, it could hardly be called an Australian ballot law. The New Mexico constitution of 1912 authorized the legislature to enact a law for secret voting, but it was not until the enactment of the *Election Code of 1927* that the reform was fully realized.⁶⁵ In 1911 New Jersey, a state which had adopted "a ballot reform law" in 1890, adopted the Australian ballot.⁶⁶ Delaware legislated in 1913 to permit distribution of ballots by party chairmen prior to the day of the election, voters being allowed to mark the ballots in advance. This arrangement is still in effect.⁶⁷ Georgia, in 1922, authorized counties through two successive grand juries to adopt the reform law.⁶⁸

Today, South Carolina remains the only state in which there is not even a modified form of the Australian ballot, even though the law there regulates the color of paper, the number of separate ballots, the form of proposition ballots, prohibits symbols, and specifies details as to election officials and procedure. Despite these resemblances to the Australian ballot system, the party papers in South Carolina make the state exceptional; but Delaware and Georgia are exceptions also, as described. Thus only forty-five states operate under the American variation of the Australian ballot.

⁶³Laws of Connecticut, 1909, ch. 250.

⁶⁴Laws of North Carolina, 1909, ch. 867; Laws of 1929, ch. 164.

⁶⁵Legislation was enacted in 1915, 1917, 1919, 1921, and 1923. The *Election Code of 1927* repealed much of this legislation.

⁶⁶New Jersey Laws, 1911, ch. 183.

⁶⁷Delaware Laws, 1913, Title 4, ch. 65.

⁶⁸Georgia Acts, 1922, pp. 97-106.

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In this connection two further points should be noted. Prior to 1877 the states of Australia, adopting the system, specified that ballots should be marked by scratching out the names of the undesired candidates. In that year, however, West Australia devised the cross mark (X) in a voting square, and this has been largely emulated in the United States. Another respect in which the American Australian ballot differs from its prototype arises because of its length, since there are so many elective offices in most of our states. In Australia, as well as other parts of the British Empire, the only elective places are the seats in representative bodies, as the executive and judicial posts are filled by appointment.

CHAPTER II

GOVERNMENT BY BALLOT

A survey of the American democratic process reveals a plethora of elections, for actually, each separate office or proposition voted on is an election in itself. Thus the November election is general not only in its scope of forty-eight states but also in its inclusion of from one to seventy choices to be made by each individual going to the polls. The term general election also means the final election, since a nominating procedure precedes it, by means of which major and minor parties, through primaries or conventions or both, have selected candidates to be pitted against one another. Moreover, municipal and other local elections frequently come at a different time from that designated for state and county elections. These elections are also general elections within their respective jurisdictions in the sense that they are final. Furthermore, communities may have regular though separate judicial and educational elections. There are also special elections for filling interim vacancies or for determining public policy.

From the colonial town meeting to the present, America has gradually developed a system of elections on several levels of government, for a variety of purposes, and at several dates throughout the year; electionism has become a national pastime. Our electoral processional furnishes a vast quantity of copy for newspapers and

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magazines, profitable business for printers, and much activity for political groups.

One element of uniformity in the United States is the choosing of presidential electors on the first Tuesday after the first Monday in November of presidential years. The entire body of the national House of Representatives and one-third of the Senate are chosen biennially in November, except for Maine, which holds its congressional elections in September, simultaneously with the state and local elections. Most of the states take advantage of the even-year November date of national elections to choose their state and district officials and usually their county officials as well; the exceptions to this custom are Louisiana, where such elections are held in April of the even years, and Kentucky, Mississippi, and Virginia, which place them in November of the odd years. States may present propositions at their regular elections for candidates, or at primaries or special elections. In a few instances, municipal elections are held at the same time as the national, state, and district elections in November, as in Oregon. New York City reserves the odd-year November date for its municipal elections, while many other cities hold theirs in the spring. Needless to say, the primary election, which is established in all but two states, precedes the general election.

Another element of uniformity is that the constitution of each state requires that all elections by the people shall take place by ballot.¹ Some of the states supplement this

¹The Constitution of Oregon, 1857, provides: "in all elections by the people, votes shall be given openly, or viva voce, until the legislative assembly shall otherwise direct." (The legislature passed an Australian ballot law in 1891.) The Idaho section reads: "All elections by the people must be by ballot."

For the presentation of the constitutional provisions for voting machines see Chapter IV below.

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with further provisions. Arizona, California, New York, and Pennsylvania make their procedure elastic by permitting elections "by such other method as may be prescribed by law; provided, that secrecy in voting be preserved,"² The pertinent section in the constitutions of Michigan, Minnesota, New York, and Wisconsin adds: "... except for such town officers as may be directed by law to be otherwise chosen."³ The constitutions of Arkansas, Colorado, and Missouri require that every ballot shall be numbered; and those of South Dakota and of Texas direct the legislature to provide that ballots be numbered in order to prevent and detect fraud.⁴ Louisiana, South Carolina, and Virginia provide that the ballots shall never be counted in secret.⁵ Eight states empower the legislature to enact such laws as shall carry the section into effect or shall secure to every elector absolute secrecy in preparing and depositing his ballot.⁶

For the numerous elections at different dates ballots must be printed. During the nineteenth century, the voter was bewildered by the separate party strips for national, state, and local offices, respectively. With the coming of the Australian ballot, the party tickets for each level of government were consolidated, and in half

²Arizona Constitution, 1912, Art. VII, sec. 1; California Constitution, 1879, Art. II, sec. 5; New York Constitution, 1894, Art. II, sec. 5; and Pennsylvania Constitution, 1873, Art. VIII, sec. 4 (as amended 1901).

³Michigan Constitution, 1908, Art. III, sec. 7; Minnesota Constitution, 1857, Art. VII, sec. 6; New York Constitution, 1894, Art. II, sec. 5; and Wisconsin Constitution, 1848, Art. III, sec. 3.

⁴Arkansas Constitution, 1874, Art. III, sec. 3; Colorado Constitution, 1876, Art. VII, sec. 8 (as amended 1906); Missouri Constitution, 1875, Art. VIII, sec. 3; South Dakota Constitution, 1889, Art. VII, sec. 3; and Texas Constitution, 1875, Art. VI, sec. 4 (as amended 1891).

⁵Louisiana Constitution, 1898, Art. 203; South Carolina Constitution, 1895, Art. II, sec. 1; and Virginia Constitution, 1902, Art. II, sec. 27.

⁶Delaware, Florida, Idaho, Kentucky, North Dakota, Oklahoma, Washington, and Wyoming.

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of the states this was done for all levels, the ballot thus becoming known as the blanket ballot. The true Australian ballot is a secret voting arrangement on a single sheet of paper; but the American adaptation of it in states which segregate local from national and state politics, referendum measures from candidate ballots, or non-political offices from political, permits the voter to receive several ballots at a given polling place. The term "ticket," which formerly meant party strip, may now signify either a "party slate" or the ballot handed to the voter.

In twenty-five states today the voter marks a consolidated general election ballot embracing all the offices and propositions to be voted on.⁷ The latest state to join this group is Montana, which in 1939 changed from a party-column ballot with separate judicial and proposition ballots to a consolidated office-group ballot.⁸

In seventeen states the voter at the November election marks a blanket ballot carrying the major portion of the load. These states vary with regard to what is omitted from the blanket ballot. Separate ballots are used as follows: in Delaware and Nebraska,⁹ for constitutional amendments; in Georgia, Iowa, Michigan, Missouri, and New Mexico, for propositions; in Illinois, for local questions and local judicial candidates; in Kansas, Minnesota, and North Dakota, for local officers and propositions; in New York, for presidential electors and proposi-

⁷Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Jersey, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Washington, and West Virginia.

⁸*Laws of Montana*, 1939, ch. 81.

⁹*Laws of Nebraska*, 1935, chs. 76, 112, and 75. The non-political ballot for judicial, educational, and state legislative offices and the referendum measures ballot were consolidated with the blanket ballot.

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tions; in Idaho (since 1933),¹⁰ Ohio, South Dakota, and Wyoming, for all judicial offices and all propositions (Montana belonged to this group from 1937 to 1939).¹¹ In 1940, however, Ohio added a separate presidential ballot. In 1937 South Dakota combined two separate ballots, the educational and the judicial, into one "Non-Political Ballot,"¹² confronting the voter with three ballots only. In Wisconsin, in addition to the blanket ballot, there are three separate ballots: one for presidential electors, one for judicial officers, and one for propositions.¹³

In three states the load is distributed. In Indiana there are four ballots—a national, a state, a local, and a state-wide proposition. The law in North Carolina calls for seven separate ballots, but in 1931 it was provided that the state or the county board of elections may, in their discretion, combine any one or more of the separate ballots.¹⁴ The Vermont voter handles the largest number of separate ballots, which may be as many as eight.

The three remaining states are distinctive. Since the November election in Maine is solely for presidential electors, in September the state votes on a blanket candidate ballot and on a referendum ballot. In Virginia the general election in the even year is exclusively national (Presidential electors, senator, and representative), and in the odd year there is a blanket candidate ballot and a separate proposition ballot.¹⁵ Nothing resembling a

¹⁰*Laws of Idaho*, 1933, ch. 36, provided for a separate judicial ballot.

¹¹*Laws of Montana*, 1937, ch. 193, put the judicial candidates on a separate ballot, removing them from a non-partisan block at the bottom of the blanket ballot where *Laws of 1935*, ch. 182, had put them.

¹²*Laws of South Dakota*, 1937, ch. 121. In *Laws of 1939*, ch. 82, the "Non-Political Ballot" of 1937 was made to include certain offices in unorganized counties.

¹³*Statutes of Wisconsin*, 1937, Title II, 6.23.

¹⁴*North Carolina Laws*, 1931, ch. 254, sec. 12.

¹⁵*Election Laws of Virginia*, 1938, ch. 9, secs. 153, 197a.

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blanket ballot appears in South Carolina with its "party papers," although the law restricts to three the number of separate papers each party may issue: one for federal offices, a second for other offices, and a third for propositions.¹⁶

The states which set up separate referendum ballots have thereby sought to divorce them from partisanship. Other states secure a non-partisan effect by the position given propositions on the blanket ballot. Washington places referenda in a block at the top of the ballot;¹⁷ New Jersey prints all statewide propositions at the top and all "Public Questions" at the bottom of the ballot.¹⁸ In 1935 Nebraska put initiative and referendum measures on the blanket ballot (leaving constitutional amendments on a separate ballot) to be printed "above and preceding all party names."¹⁹

The usual provision requires that propositions shall be printed after the lists of candidates. This may mean the bottom of the ballot or the right column, or both. The states using the space at the bottom are Arizona, Louisiana,²⁰ New Jersey, Pennsylvania,²¹ Rhode Island, Tennessee, Texas, Utah, and West Virginia.²² The Louisiana law is unusual in requiring that "such question shall be printed upon the ballot after the list of candidates under

¹⁶*South Carolina, The Election Law*, ed. of 1938, sec. 2304.

¹⁷*General Election Laws of Washington*, 1938, ch. 7, sec. 139.

¹⁸*Revised Statutes of New Jersey*, 1937, 19:14-14, 19:14-15.

¹⁹*Laws of Nebraska*, 1935, p. 260.

In 1931 Nebraska had removed propositions and amendments from the blanket ballot and had repealed the provision which allowed the printing on the ballot of the recommendation of parties as to their stand on public questions. *Laws of Nebraska*, 1931, chs. 53, 56, and 52, respectively.

²⁰*Louisiana General Election Law*, 1936, sec. 63.

²¹*Laws of Pennsylvania*, 1937, no. 320, repealed the 1929 provision for separate ballots.

²²The Law in West Virginia is non-committal, but examination of actual ballots reveals that propositions are printed at the bottom.

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each party device." Those states using the right column are Alabama, California, Colorado, Connecticut, Florida, Massachusetts, and Nevada. The Connecticut law is unique in that it requires two columns on the right of the ballot, the first containing a statement of each question with a "yes" and a voting space underneath, the second a repetition of each question with a "no" and a similar voting space.²³ The states using the space at the bottom or right are Georgia, Maryland, Mississippi, Montana, and New Hampshire. In the main, those states using the bottom of the ballot require party-columns, while those employing the right use office-groups.

There are several which place propositions on other parts of the blanket ballot.²⁴ For statewide propositions, Illinois uses the left margin, requiring local propositions to be printed on a separate ballot.²⁵ The center column of the Arkansas office-group ballot is devoted to state constitutional and legislative referenda, and the last column (between county officers and township justices) to county questions.²⁶ In Oregon the propositions are placed between political and non-partisan candidate units.²⁷ Delaware does not submit propositions to the voters, except to determine whether a constitutional convention is to be held.²⁸

The desire to free the judicial, the educational, or the legislative offices from partisan politics and to separate local issues from national issues had led seven states to

²³*Connecticut Election Laws*, 1936, Part III, sec. 609.

²⁴Kentucky does not specify where propositions shall be placed on the blanket ballot. *Kentucky Election Laws*, 1936, Art. III, sec. 1459.

²⁵*Illinois Laws*, 1931, p. 567, amending sec. 16 of the Australian Ballot Law of 1891.

²⁶*Arkansas Digest of Statutes*, 1937, ch. 55, 4674.

²⁷*Oregon Election Laws*, 1938, ch. 14, 36-1404.

²⁸Delaware Constitution of 1897, Art. XVI, sec. 5.

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print separate non-political ballots²⁹ and five states to give candidates for these offices separate treatment on the blanket ballot. Arizona centers judicial offices at the top of the ballot, and Washington does the same at the bottom.³⁰ Nebraska prints a "Non-Political Ticket" containing judicial, educational, and legislative candidates between the congressional and the county tickets; and after the referendum measures Oregon prints a judiciary ballot and an educational ballot.³¹ Montana, on its new consolidated office-group ballot, labels the non-partisan candidates "Nominated Without Party Designation." If the candidates for these offices are truly non-partisan it makes little difference whether their names are printed on a separate ballot or in a block on the blanket ballot.

One of the characteristics of the Australian ballot is that it must be a secret ballot. Without uniformity as to quality and color of paper, ink, and printing, the ballot could not be secret. This was realized even before the advent of the ballot system which originated in Australia. A number of the states had prescribed uniformity in some of these details and some had even fixed the dimensions of the ballot.³² There are twenty-nine states today requiring that the ballots be printed in black ink on a good quality of white paper,³³ and six more states that call for

²⁹Idaho, Minnesota, North Dakota, Ohio, South Dakota, Wisconsin, and Wyoming.

³⁰*Revised Code of Arizona*, 1928, sec. 1198; *Washington Revised Statutes* (Remington), sec. 5212.

³¹*Nebraska Laws*, 1939, ch. 34, p. 173; *Oregon Laws*, 1931, ch. 347, pp. 609-610, and *Laws*, 1935, ch. 182.

³²Alabama specified that the ballots must be "of plain white paper, without any figures, marks, characters or embellishments thereon, not less than two and one-half inches, nor more than three inches in width, and not less than five nor more than ten inches in length." *Alabama Laws*, 1875, p. 76, as amended by *Laws*, 1876, p. 103.

³³The law in Georgia, Mississippi, and Tennessee is silent, but in fact the ballot in each state is of good quality white paper and printed in black ink.

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white paper. The Iowa law, specifying that "the ballots shall be on plain white paper, through which printing or writing cannot be read", is representative of the wording in many of the states.³⁴ The phraseology of the New York law is the most detailed of all the states:

Official ballots shall be printed in black ink, on book paper of good quality free from ground wood, five hundred sheets of which twenty-five by thirty-eight inches in size shall weigh sixty pounds and shall test for that size and weight at least twenty points on a Morrison tester All ballots of the same kind for the same polling place shall be of precisely the same size, quality and shade of paper, and of precisely the kind and arrangement of type and tint of ink.³⁵

Colorado and Delaware merely specify the same quality and tint of paper; Arkansas requires uniform ballots in plain type; North Carolina decrees that the printing be plain and legible.³⁶ In three states the paper is furnished by the secretary of state—in Kentucky, a designated quality of white book paper; in Nevada and California, a tinted water-marked paper.³⁷ Furthermore, in the latter state the secret water-mark must not be repeated, except for local elections, within fourteen years; and in Nevada not within eight years. The separate ballot for public measures in Iowa "for the same polling place shall be of the same size, similarly printed, upon yellow colored paper." Maine, one of the states specifying clean white paper without distinguishing marks, added a provision in 1929 requiring a tinted paper for proposition ballots, the tint to be determined by the secretary of state.³⁸

³⁴*Election Laws of Iowa*, 1938, secs. 775 and 767.

³⁵*Consolidated Laws of New York*, 1930, ch. 17, Art. 5, sec. 104.

³⁶*Colorado Statutes Annotated*, 1935, sec. 197; *Delaware Revised Code*, 1935, ch. 60, 1814, sec. 5; *Arkansas Digest of Statutes*, 1937, ch. 55, 4755; *North Carolina Election Laws*, 1937, sec. 127 (a-9).

³⁷*Kentucky Acts*, 1938, ch. 31, sec. 1; *California Election Laws*, 1936, sec. 1196; *Laws of Nevada*, 1917, no. 358.

³⁸*Laws of Maine*, 1939, ch. 25, amending *Revised Statutes*, 1930, ch. 8, sec. 2.

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Ballots of several colors are still found in four states. The Wisconsin hues are limited to white, light blue, and pink.³⁹ Indiana prescribes cherry red for the presidential ballot, pink for the senatorial and state offices, white for the county ballot, and yellow for the township ballot.⁴⁰ In 1935 and 1939 Vermont made changes in the colors of its seven candidate ballots; the result is that each voter is handed ballots of yellow, blue, tan, pink, green, buff, and red.⁴¹ In Indiana and Vermont the individual boxes in which the ballots are deposited must be painted to match their respective ballots. Minnesota requires a white paper for statewide ballots and pink, red, lavender, and India tint for separate ballots.⁴²

In half the states the size of the ballot is either unspecified by law or left to the discretion of the officer charged with printing, as in Mississippi. Since the number of candidates and propositions varies at each election the dimensions of the ballot fluctuate accordingly. There are several patterns used in the laws of the states regulating the size of the ballot. Delaware is representative of the states having a minimum of regulations, specifying merely "uniform size"; Oregon is typical of a few states, requiring "the same size in the same county"; North Dakota reflects several other states, calling for "sufficient width to contain all the tickets"; Tennessee is representative of those states that specifically limit width but not length to "not less than eleven nor more than thirteen

³⁹*Election Laws of Wisconsin*, 1937, 6.23.

⁴⁰*Election Laws of Indiana*, 1938, ch. 10, sec. 261.

⁴¹*Vermont Acts*, 1939, no. 5, sec. 4, requires: "ballots for United States senator on yellow paper; ballots for representative to Congress on blue paper; ballots for justices on tan paper, Acts, 1935, no. 9, sec. 1, changed from red; ballots for electors on pink paper; ballots for state officers on green paper; ballots for county officers on buff paper; ballots for town representative on red paper."

⁴²*Minnesota Election Laws*, 1938, ch. VII, secs. 276-280.

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inches wide"; Washington is an example of those limiting the width of columns to "two and five-eighths inches"; California typifies those naming a maximum length "not to exceed twenty-four inches in length"; and Pennsylvania reflects the few giving minimum dimensions: "at least six inches long and four inches wide." Massachusetts is the only state giving maximum and minimum dimensions of the folded ballot—"not less than four and one-half nor more than five inches in width and not less than six nor more than thirteen and one-half inches in length."⁴³ In 1939 Nebraska narrowed the width of the column, thereby reducing the dimensions of the ballots.⁴⁴

The majority of the states make no specifications as to the sizes of type, leaving it to the election officers to regulate the color of the paper and ink and the size of the ballot to insure uniformity. The Montana law insists on sameness in type: "All of the official ballots of the same sort, prepared by any officer or board for the same balloting place, shall be precisely the same size, arrangement, quality and tint of paper, and kind of type, and shall be printed in black ink of the same tint, so that when the stubs, numbered as aforesaid, shall be detached therefrom it shall be impossible to distinguish any one of the ballots from the other ballots of the same sort, and the names of all candidates printed upon the ballot shall be in type of the same size and character."⁴⁵ Nearly a third of the states are specific as to the type to be used for the party name, the office titles, the names of candidates, or for the statement of the propositions.⁴⁶

⁴³*Massachusetts General Laws Relating to Primaries, Caucuses and Elections*, 1938, ch. 54, sec. 44.

⁴⁴*Nebraska Laws*, 1939, ch. 34.

⁴⁵*Election Laws of Montana*, 1938, sec. 685.

⁴⁶Among the states specifying type are Maryland, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Utah, Virginia, Washington, and West Virginia.

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Another requirement of the Australian ballot is its official character—that it contain the names of all the candidates who are properly certified and no others, and that it be printed and distributed by the authorities charged with those responsibilities. In most of the states an official endorsement must be printed or stamped on the back of every ballot so as to appear when the ballot is folded.⁴⁷ This endorsement consists of the words "Official Ballot," followed by the designation of the polling place for which the ballot is prepared, the date of the election, and a facsimile of the signature of the officer or officers charged with printing. The four states, Idaho, Montana, Nebraska, and North Dakota, using the stamp require that it be changed at each general election and kept secret by the officers furnishing and using it.⁴⁸ Some states, like North Carolina, show the official character of the ballot by designating the place and date on the face of the ballot (using the stub or the judges' initials or signature as identification after the voter has marked the ballot).

The ballots in all states must be folded before being deposited. In some of the states the law requires that the folding be done at the time of printing. The wording of the Louisiana law is typical:

Before distribution the ballots shall be so folded in marked creases that their width and length will be of convenient size for insertion into the ballot box . . . all ballots when printed shall be folded as hereinbefore provided, and fastened together with convenient numbers in packages, books, and blocks in such manner that each ballot may be detached and removed separately.⁴⁹

⁴⁷The law in Maine reads: "All ballots . . . shall be printed upon the outside so that 'Official Ballot for' shall appear on all sides of the folded ballot." *Maine Elections*, 1937, ch. 8, sec. 2.

⁴⁸*Idaho Election Laws*, 1937-38, 33-801; *Election Laws of Montana*, 1938, sec. 695; *Election Laws of Nebraska*, 1938, 32-705; and *Election Laws of North Dakota*, 1930, sec. 985.

⁴⁹*Louisiana General Election Law*, as amended to 1935, secs. 64, 66.

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In other states the folding is done by the election official before he hands the ballot to the voter. The procedure in Idaho is prescribed in this manner:

Every ballot used at any general election must, before it is handed to the voter, be folded by the Distributing Clerk along the line separating the two columns on said ballot and stamped on the outside with the official election stamp. After the ballot has been marked by the voter, it shall be folded in the same manner so as to conceal its contents and to expose the impression of the official election stamp on the back.⁵⁰

The official endorsement, however, does not insure that the ballot the voter deposits in the box is the one he received from the election clerk if so much as a single official ballot comes into the hands of a party worker. This one stolen ballot can start an endless chain. It can be marked outside the polling place by the party boss and handed to a new voter who enters the polling place, receives an official ballot, retires to the booth and pockets the new ballot, deposits in the ballot-box the marked ballot that he brought in, and leaves the polling place. The pocketed ballot is in turn marked and handed to another bought voter. Commonly called "the Tasmanian Dodge," this trick is circumvented by twenty-five states which call for some form of stub. Several of these states specify that the ballots are to be bound in books with a perforated line the length or width of the ballot, separating the ballot from the stub which remains in the book as does the stub in a check-book. The number on each ballot must be the same as that on the corresponding stub, and the ballot and stubs have to be numbered consecutively in each county. Other states, which specify that the ballot is to be folded before it is distributed, follow a procedure similar to that of Nevada.⁵¹ There, the number of the ballot

⁵⁰*Idaho Election Laws*, 1937-38, sec. 33-809.

⁵¹*Election Laws of Nevada*, 1938, secs. 36, 42.

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is entered upon the registry list opposite the name of the voter receiving it; after the voter has marked his ballot and folded it in secret he delivers it to the inspector who announces the name of the voter and the number of the ballot; if the number in the registry list agrees with the number of the ballot, the inspector separates the stub bearing the number from the ballot, and deposits the ballot in the ballot-box; thereupon the stub and number are immediately destroyed,

There are eighteen states which provide for a single stub.⁵² Kentucky requires the name and address and number on the stub at the top of the ballot; until 1936 the same information was duplicated on a second stub at the bottom of the ballot.⁵³ In Connecticut the part above the perforated line must be of sufficient depth to allow instructions to voters to be printed thereon.⁵⁴ In Maryland the law with regard to the stub is as follows: "Upon said coupon shall be printed the words 'Voter's Name', with a line drawn thereunder for writing said name, and under the said line the words 'Number of Voter' followed by a blank space for the insertion of number."⁵⁵

Seven states requires a double stub—California, Colorado, Nevada, Ohio, Oklahoma, Oregon, and Pennsylvania. In Oregon the ballots are numbered consecutively on the face of both stubs, by the first clerk, commencing with number 1 in each precinct for each series of ballots, and both stubs of the same ballot bear the same number. The first clerk tears off the left stub before handing the

⁵²Alabama, Arizona, Connecticut, Florida, Georgia, Idaho, Kansas, Kentucky, Maryland, Michigan, Missouri, Montana, New Jersey, New Mexico, New York, Tennessee, Utah, and Washington.

⁵³*Acts of Kentucky*, 1936, ch. 46, p. 136.

⁵⁴*Election Laws of Connecticut*, 1936, Part III, sec. 608.

⁵⁵*Election Laws of Maryland*, 1938, ch. 95, sec. 65.

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ballot to the voter; the chairman tears off the second stub after the voter has marked and folded his ballot.⁵⁶ After the judge has compared the two stubs he strings them on a strong thread. The Oklahoma ballot carries a stub for full details as to the voter's name, address, number, and a line for recording a possible challenge. After these facts have been filled in, the ballot is detached from the first stub and handed to the voter. The second stub, which bears the same number as the first, is detached when the voter returns the ballot.⁵⁷ In California the caution "Mark Crosses (X) On Ballot Only With Rubber Stamp; Never With Pen or Pencil" is on a perforated stub, across the top of the ballot, which is folded back to be exposed when the ballot is folded. The ballot is printed on the same leaf with a stub containing only the number of the ballot. When the voter returns the marked ballot, the inspector tears off the perforated upper left corner.⁵⁸ The Colorado ballot with its black corner is unique. The first stub remains in the stub-book when the ballot is given to the voter; the second is removed after the number of the marked ballot is compared with the one in the stub-book; then the judge writes the number from the stubs on the back of the black corner and pastes it down, to be unsealed only in case of contest.⁵⁹ In 1931 Pennsylvania provided for stubs to prevent chain voting, and Ohio lettered the stubs A and B and rewrote the procedure.⁶⁰

Another device for identifying the ballot to be deposited as the ballot received by the voter is the initialling or signing of the ballot on the back by one or more judges

⁵⁶*Oregon Election Laws*, 1938, 36-1603, 36-1604, 36-1605, 36-1608.

⁵⁷*Oklahoma Statutes*, 1931, sec. 7522.

⁵⁸*California Election Laws*, 1936, secs. 1197, 6, and 1205.

⁵⁹*Election Laws of Colorado*, 1938, ch. 59, secs. 197, 200, 229.

⁶⁰*Pennsylvania Laws*, 1931, no. 215; and *Ohio Laws*, 1931, sec. 4785-110a.

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or clerks. This practice may be traced to English and Canadian election procedure. In 1931 Michigan wrote into its law that ballots before being presented to voters were to be initialled by a designated clerk or inspector.⁶¹ The law of Utah says that the "judge shall indorse his initials on the stub."⁶² Minnesota and Missouri require the initials of two judges, Missouri specifying further that the two judges must be of different parties.⁶³ Texas specifies that the voter is to receive "one official ballot on the blank side of which the presiding judge shall have previously written his signature."⁶⁴ In 1932 Kentucky added the provision that no ballot was to be counted that did not have the signature of the judge on the back of the ballot.⁶⁵ West Virginia requires the clerk to sign his name on the back of each ballot, and Wisconsin requires his name or initials.⁶⁶ Nebraska specifies that two judges of the election board must write their names in ink.⁶⁷ All initials or signatures must be on the back of the ballot or on the stub to prevent any examination of the inside of the ballot.

In 1935 Arkansas passed a Duplicate Ballot Law, sometimes called the "Pure Election Law," requiring the use of a duplicate ballot attached to the original by a perforated line at the fold on the left of the ballot. It is marked simultaneously with the original through a carbon paper; it differs from the original only in the line at the bottom for the voter's signature. After the voter

⁶¹*Michigan Acts*, 1931, no. 200.

⁶²*Utah Election Laws*, 1938, 25-6-17. The Florida law also combines the stub and the initialling by the judge: *General Election Laws of Florida*, 1938, sec. 322.

⁶³*Minnesota Election Laws*, 1938, sec. 306; and *Missouri Election Laws*, 1938, sec. 10309.

⁶⁴*Texas Election Laws*, 1936, Art. 3008.

⁶⁵*Kentucky Acts*, 1932, ch. 82.

⁶⁶*West Virginia Election Laws*, 1938, Art. 5, sec. 18; *Wisconsin Election Laws*, 1937, 6.36.

⁶⁷*Election Laws of Nebraska*, 1938, 32-705.

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has marked the ballot and signed the duplicate, he tears them apart, folds each, and hands both to the judge who deposits each in the proper ballot-box. The box of duplicate ballots remains unopened except in case of a contested election. An act of 1939 requires that duplicate ballots be preserved by the County Treasurer for two years, in case there is no contest. If there is a contest the duplicates are subject to court order.⁶⁸

Most of the states call for the printing of sample, specimen, or educational ballots. In a few states the method used for this purpose is to take official ballots and designate them as samples by writing in ink across the face or by stamping them in large red letters. However, most of the states specify that duplicates of the official ballot be printed on colored paper, usually of cheaper quality, headed "Sample Ballot." These educational ballots are usually without the official endorsement on the back and often without the stub. No vote registered on a sample ballot can be counted.

Since most of the states allow voting by absentees, ballots must be provided for this purpose. There are various practices in this connection. Montana uses the regular ballot, specifying that "The ballot or ballots to be delivered or marked by such absent voter shall be one of the regular official ballots to be used at such election, and of each kind of such official ballots if there be more than one kind to be voted, beginning with ballot one and following consecutively, according to the number of applications for such absent voter ballots."⁶⁹ Colorado uses a ballot "in the same form as ordinary ballots for the same election or primary except that it shall be headed

⁶⁸*Arkansas Laws*, 1935, Act 123 (*Pope's Digest*, 1937, sec. 4759); *Laws*, 1939, Act. 33, p. 64.

⁶⁹*Election Laws of Montana*, 1938, sec. 724.

FOR PRESIDENTIAL ELECTORS
(Personal Vote For)

MRS. C. E. HEPNER Democrat
 MRS. H. S. INGRAM Democrat
 RAYMOND M. WYB Democrat
 THOMAS H. PRYOR, SR. Democrat
 HENRY OBERDORF Democrat
 VIRGIL WILLIAMS Democrat
 DR. R. L. SMITH Democrat
 C. CURRINGHAM Democrat
 GUSTAVE JONES Democrat

WALLACE TOWNSEND Republican
 L. BARBER Republican
 MARTIN A. EBLEE Republican
 T. S. GRAYSON Republican
 GEORGE L. MAILLORY Republican
 CHARLES R. BLACK Republican
 JUDSON N. HOUT, SR. Republican
 HUGH TRECEB Republican
 GERO COBB Republican

GEORGE H. COUCH Socialist

MRS. RUBY WELTON Prohibitionist
 T. J. Pester Prohibitionist

FOR CONGRESS—7TH CONGRESS
3rd Congressional District
(Vote For One)

CLYDE T. ELLIS Democrat
 CLAUDE M. WILLIAMS Republican

FOR ASSOCIATE JUSTICE SUPREME COURT
(Vote for One)

J. S. HOLT Democrat

FOR GOVERNOR
(Vote for One)

HOMER M. ADKINS Democrat
 HARLEY C. STUMP Republican
 WALTER S. MCNUITT Independent

FOR LIEUTENANT GOVERNOR
(Vote for One)

BOB BAILEY Democrat

FOR SECRETARY OF STATE
(Vote for One)

C. O. "Crip" HALL Democrat

FOR AUDITOR OF STATE
(Vote for One)

J. OSCAR HUMPHREY Democrat

FOR STATE TREASURER
(Vote for One)

EARL PAGE Democrat

FOR ATTORNEY GENERAL
(Vote for One)

JACK HOLT Democrat

FOR COMMISSIONER STATE LANDS
(Vote for One)

OTIS PAGE Democrat

PROSECUTING ATTORNEY
4th Judicial District
(Vote for One)

JOHN E. BUTT Democrat

ACTS AND AMENDMENTS
Proposed Constitutional Amendment
(Legislative)
(Regulate Double Primary Law)
An Amendment to repeal certain provisions of Amendment No. 20; Providing for repeal of Double Primary Law and to certain Amendments under the provisions of this amendment to remain unchanged.

FOR AMENDMENT NO. 20
AGAINST AMENDMENT NO. 20

Proposed Constitutional Amendment
No. 21
(Legislative)
(Pledging Certain Revenues for Debt Redemption)
An Amendment pledging that the State of Arkansas will never reduce its revenues from Motor Vehicle Fuel and Registrations below \$2,500,000.00 for payment of principal and interest on refunding bonds issued after January 1, 1935, after setting aside 25% for maintenance of highways.

FOR AMENDMENT NO. 21
AGAINST AMENDMENT NO. 21

Proposed Constitutional Amendment
No. 22
(Legislative)
(Personal Property Exemption)
An Amendment to exempt certain personal property from taxation; for a married person exemption of \$100.00 and for a single person exemption of \$50.00, exclusive of wearing apparel.

FOR AMENDMENT NO. 22
AGAINST AMENDMENT NO. 22

Proposed Constitutional Amendment
No. 23
(Initiative)
(Public Library Maintenance)
An Amendment to authorize cities having a population of not less than 5,000 to levy and collect, upon a majority vote at a general city election, a tax on real and personal property of not exceeding one mill on the dollar of the assessed value thereof for the purpose of maintaining City Public Libraries.

FOR AMENDMENT NO. 23
AGAINST AMENDMENT NO. 23

Proposed Constitutional Amendment
No. 24
(Initiative)
(Police and Firemen Functions)
An Amendment authorizing legal voters of any city of the first and second class to vote a tax not to exceed two mills on the dollar upon the real and personal property of such city for the purpose of paying Police and Firemen Retirement Salaries and Pensions.

FOR AMENDMENT NO. 24
AGAINST AMENDMENT NO. 24

Proposed Constitutional Amendment
No. 25
(Initiative)
(Game and Fish Commission)
An Amendment to establish a Game and Fish Commission; fix its powers and duties; provide for selection of members; and for other purposes.

FOR AMENDMENT NO. 25
AGAINST AMENDMENT NO. 25

Proposed Constitutional Amendment
No. 26
(Initiative)
(Retirement Old Age Pension Plan)
An Amendment providing for a State Pension Commission; an Honorary Pension Commission; providing for the selection of the members and their terms of office; and providing that the revenues are to be derived from one-third of the horse and dog racing taxes and the pool ball and slot machine taxes; 45% of the sales tax and \$200,000.00 obtained from liquor revenues, and for other purposes.

FOR AMENDMENT NO. 26
AGAINST AMENDMENT NO. 26

ACT NO. 4
Referred Act No. 4 of the 1939 Special Session of the Legislature
An Act to liberate the Revenue of Central Refunding Bonds of the State of Arkansas; to fix the maximum amount thereof; and for other purposes.

FOR ACT NO. 4
AGAINST ACT NO. 4

ACT NO. 214
Referred Act No. 214 of the 1939 Regular Session of the Legislature
An Act providing that all actions for damages of accidents or deaths must be brought in the county in which the accident or death occurs or in the county where the person injured or killed resided at the time of the injury; and providing that series of summons may be held on any party to such accident and for other purposes.

FOR ACT NO. 214
AGAINST ACT NO. 214

ACT NO. 219
Referred Act No. 219 of the 1939 Regular Session of the Legislature
An Act to provide for the payment of compensation for injuries to, or death of, their employees; to prescribe the amount of compensation and to whom it shall be paid; to secure the payment of compensation; to establish a Workmen's Compensation Commission to administer this Act, and providing funds for the administration of this Act.

FOR ACT NO. 219
AGAINST ACT NO. 219

PROPOSED INITIATIVE ACT
(Proposed by Initiative Petition)
ACT NO. 1
An Act to provide for the payment of employers of compensation for injuries to, or death of, their employees; to prescribe the amount of compensation and to whom it shall be paid; to establish a state fund; to authorize for prorating of expenses between the state's fund and self-insurers; to provide for administration of this Act by the Industrial Board heretofore established in the Department of Labor, to allow employees to elect to submit their claims to the Industrial Board or the Circuit Court, and for other purposes.

FOR ACT NO. 1
AGAINST ACT NO. 1

FOR REPRESENTATIVE
(Vote for Two)

JOHN W. CLOER Democrat
 J. FRANK HOLMES Democrat
 ULYS A. LOVELL Republican

FOR COUNTY JUDGE
(Vote for One)

I. R. ROTHROCK Democrat
 ORIP L. WILSON Republican

FOR SHERIFF
(Vote for One)

ARTHUR B. DAVIDSON Democrat
 HUBERT HESTER Republican

FOR COUNTY COLLECTOR
(Vote for One)

WITT CARTER Democrat

FOR CIRCUIT CLERK
(Vote for One)

WALLACE V. SHOPNER Democrat
 JOE CAMPBELL Republican

FOR COUNTY CLERK
(Vote for One)

D. L. MOORE Democrat
 R. E. SHAW Republican

FOR COUNTY TREASURER
(Vote for One)

MINNIE BRONSON Democrat

FOR COUNTY ASSESSOR
(Vote for One)

GEO. F. CAUDLE Democrat

FOR COUNTY CORONER
(Vote for One)

GLEN M. RIGGS Democrat
 DR. B. F. McALLISTER Republican

THREE MILL ROAD TAX
FOR THREE MILL ROAD TAX
AGAINST THREE MILL ROAD TAX

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'Official Absent Voter's Ballot'.⁷⁰ Utah employs an official ballot with the words "absent-voter ballot" printed on the stub, the law requiring that "there shall be prepared and printed a sufficient number of official ballots to be known as absent-voter ballots, which shall be prepared and printed in the same form, and shall be of the same size and texture, and shall contain the same matter, as the regular official ballot, except that they shall have printed on the stub ... the words 'absent-voter ballot.'"⁷¹

Oklahoma uses an official ballot on the stub of which the officer issuing the ballot writes "Absentee Ballot," in accordance with this clause: "Said Secretary of the County Election Board shall issue one ballot from each book of ballots, to be used in the elector's precinct at the said election, and shall enter upon the stub, attached to said ballots, the information required by law, and, in addition thereto, shall write across the stub the words, 'Absentee Ballot,' with the date of issuance marked thereunder."⁷² Rhode Island uses an official ballot with the words "absentee voters" incorporated as part of the endorsement on the back of the ballot.⁷³

Many of the states have extended the privilege of absentee voting to disabled persons. The states uniformly supply this type of absent voter ballot either by mail or in person in an official envelope, and by law regulate the dispensing, the act of voting, and the canvass.

⁷⁰Election Laws of Colorado, 1938, sec. 220.

⁷¹Laws of Utah, 1929, p. 97, sec. 3.

⁷²Laws of Oklahoma, 1937, ch. 29, Art. 3, sec. 2.

⁷³Public Laws of Rhode Island, 1932, ch. 1863, sec. 5(1).

The Arkansas ballot on the previous page is novel in that its duplicate character is a check on the accuracy and integrity of the count in case of a contested election. It is typical of a number of ballots in other states with respect to such features as office-group arrangement, the inclusion of propositions between general and local candidates, brevity of instructions, and the plan of voting for presidential electors individually with the names of candidates for president and vice president omitted. Considering its heavy load of offices and propositions, it demonstrates ballot economy.

CHAPTER III

BALLOT PATTERNS

The content and arrangement of the face of the paper ballot used in general elections differ in each of the forty-eight states. Each state has chosen one of two patterns by which to arrange its ballot—the party-column pattern or the office-group pattern. The thirty states which have chosen the former may have all or some of the characteristics which are peculiar to that pattern—the column for each party, the emblems or vignettes, the party square or circle for voting a straight ticket, the voting space by the name of each candidate, and the use of the cross mark (X) for marking. Fourteen of these states employ all such characteristics; they are Alabama, Delaware, Indiana, Kentucky, Louisiana, Michigan, Missouri, New Hampshire, New Mexico, Ohio, Oklahoma, Rhode Island, Utah, and West Virginia.

There are eleven other states that possess all the characteristics of the party-column pattern except the emblems or vignettes; these are Arizona, Connecticut, Idaho, Illinois, Iowa, Maine, North Carolina, South Dakota, Vermont, Washington, and Wisconsin. Two of the party-column states—Georgia and Texas—do not have the party emblems or the individual voting squares: a split ticket is voted by crossing out the names of the opponents

of the desired candidates, and the straight ticket is marked in Georgia in the party circle but in Texas by drawing vertical lines through all columns not desired. The remaining party-column states—New Jersey, North Dakota, and Wyoming—do not have emblems and do not provide for straight-ticket voting. No two of these thirty states use ballots that are exactly alike. Varying from state to state are the size of the sheet, the style of printing, the number of parties, the position of office titles, the position and amount of instructions to the voters, and the number and position of propositions.

Seventeen states have chosen the office-group pattern; they are Arkansas, California, Colorado, Florida, Kansas, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New York, Oregon, Pennsylvania, Tennessee, and Virginia. All of these states dispense with party emblems, except New York, and with straight-ticket voting, except Pennsylvania. The marking in all of these office-group states is done by the cross mark (X) except in Arkansas, which requires that all undesired material shall be crossed out. Thirteen of the states provide a voting square adjacent to the name of each candidate; the exceptions are Oregon where the X is placed between a number and the name of the candidate, and Florida and Tennessee where the X is marked in the open space next to each name voted for. The arrangement of the office-group ballot is such that all the candidates for a given office are printed in a block, usually with the party label after each name, but in Florida, Mississippi, Tennessee, and Virginia with no party labels (although, with the exception of Tennessee, it is understood that the Democratic candidates are always placed first). The latest recruit for the office-group pattern is

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Montana which abandoned the party-column in 1939.¹ Some of these states have a hybrid ballot arrangement, with the party-column or the office-group pattern predominating. Arizona, New Jersey, and Wisconsin provide separate columns for the parties which qualify as such under the state laws, and lump in a single column in office-group style all persons who have been nominated by groups (which may qualify as parties in some states) or who are running as independents.² On the other hand, North Dakota, which has no emblems and no straight-ticket provision, supplies a column for candidates of each minor party nominated by petition and a column for all other independent candidates; and heads each of these columns "Individual Nominations."³ This arrangement is necessary since the left column of the ballot contains the office titles which govern all the columns, and the law specifies that candidates shall be placed on the same line with the offices for which they are nominated. The result in North Dakota is to produce considerable waste space. The New Hampshire ballot law grants a separate column for any party or any group nominated by petition but adds the proviso "that, in case only a part of a full list of candidates is nominated under a political designation, two or more such lists may be arranged whenever practicable in the same column."⁴

¹Laws of Montana, 1939, ch. 81.
²Laws of Arizona, 1939, ch. 23; Election Laws of New Jersey, 1938, 19: 14-10; Election Laws of Wisconsin, 1937, 6.23.
³Election Laws of North Dakota, 1930, sec. 959.
⁴Public Laws of New Hampshire, 1937, ch. 26, sec. 4.

The Oregon ballot reproduced on the next page illustrates the office-group pattern. Note that it dispenses with party emblems and straight-ticket voting.

STUB
TO BE TORN OFF BY THE CHAIRMAN

STUB
TO BE TORN OFF BY THE FIBRY CLERK

OFFICIAL BALLOT FOR SALEM NO. 1 PRECINCT

MARION COUNTY, OREGON, TUESDAY, NOVEMBER 3, 1936.

MARK X BETWEEN THE NUMBER AND NAME OF EACH GROUP, CANDIDATE, OR ANSWER VOTED FOR

UNITED STATES		PRECINCT	
<p>MARK X BETWEEN THE NUMBER AND NAME OF EACH GROUP, CANDIDATE, OR ANSWER VOTED FOR</p> <p>UNITED STATES</p> <p>MARK X BETWEEN THE NUMBER AND NAME OF EACH GROUP, CANDIDATE, OR ANSWER VOTED FOR</p> <p>REPUBLICAN CANDIDATES</p> <p>13 For President ALFRED M. LAFORCE For Vice-President FRANK BROW For Secretary of War JOHN C. HANCOCK For Treasurer of the United States WILLIAM F. FALLS For Postmaster General STEWART WALKER For U. S. Circuit Court</p> <p>DEMOCRATIC CANDIDATES</p> <p>18 For President FRANKLIN D. ROOSEVELT For Vice-President JOHN W. GAN For Secretary of War EDWARD BREMER For Treasurer of the United States WILLIAM F. FALLS For Postmaster General STEWART WALKER For U. S. Circuit Court</p> <p>INDEPENDENT CANDIDATES</p> <p>16 For President THOMAS THOMAS For Vice-President GEORGE A. WILSON For Secretary of War EDWARD BREMER For Treasurer of the United States WILLIAM F. FALLS For Postmaster General STEWART WALKER For U. S. Circuit Court</p> <p>INDEPENDENT CANDIDATES</p> <p>15 For President WILLIAM LEWIS For Vice-President THOMAS G. BRIDG For Secretary of War FRANK C. FLETCHER For Treasurer of the United States WILLIAM F. FALLS For Postmaster General STEWART WALKER For U. S. Circuit Court</p> <p>SOCIALIST LABOR CANDIDATES</p> <p>10 For President JERRY W. ALLEN For Vice-President HENRY J. THOMPSON For Secretary of War EDWARD BREMER For Treasurer of the United States WILLIAM F. FALLS For Postmaster General STEWART WALKER For U. S. Circuit Court</p>		<p>PRECINCT</p> <p>FOR JUSTICE OF THE PEACE SALEM DISTRICT VOTE FOR ONE</p> <p>58 W. B. BAYDEN</p> <p>59 WILLIAM M. HINNEY</p> <p>FOR CONSTABLE SALEM DISTRICT VOTE FOR ONE</p> <p>60 EARL ADAMS</p> <p>61 HERMAN A. BROWN</p> <p>Constitutional Amendments and Other Questions Submitted To Voters of the State at Large</p> <p>REFERENDUM OFFERED BY PETITION OF THE PEOPLE</p> <p>1. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>2. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>3. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>4. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>5. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>6. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>7. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>8. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>9. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>10. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>11. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>12. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>13. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>14. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>15. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>16. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>17. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>18. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>19. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>20. AMENDING THE CONSTITUTION BY THE PEOPLE</p> <p>21. 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<p>STATE</p> <p>FOR STATE ATTORNEY VOTE FOR ONE</p> <p>17 HENRY H. HARRIS</p> <p>18 WALTER HARRIS</p> <p>19 CHAS. L. HARRIS</p> <p>20 CLARENCE HARRIS</p> <p>21 ALBERT HARRIS</p> <p>FOR DISTRICT ATTORNEY VOTE FOR ONE</p> <p>22 WALTER HARRIS</p> <p>23 ALBERT HARRIS</p> <p>FOR COUNTY COMMISSIONER VOTE FOR ONE</p> <p>24 WALTER HARRIS</p> <p>25 ALBERT HARRIS</p> <p>FOR COUNTY CLERK VOTE FOR ONE</p> <p>26 WALTER HARRIS</p> <p>27 ALBERT HARRIS</p> <p>FOR COUNTY TREASURER VOTE FOR ONE</p> <p>28 WALTER HARRIS</p> <p>29 ALBERT HARRIS</p> <p>FOR COUNTY SHERIFF VOTE FOR ONE</p> <p>30 WALTER HARRIS</p> <p>31 ALBERT HARRIS</p> <p>FOR COUNTY JUDGE VOTE FOR ONE</p> <p>32 WALTER HARRIS</p> <p>33 ALBERT HARRIS</p> <p>FOR COUNTY SUPERVISOR VOTE FOR ONE</p> <p>34 WALTER HARRIS</p> <p>35 ALBERT HARRIS</p> <p>FOR COUNTY SCHOOL SUPERINTENDENT VOTE FOR ONE</p> <p>36 WALTER HARRIS</p> <p>37 ALBERT HARRIS</p>		<p>OFFICIAL JUDICIAL BALLOT FOR Salem No. 1 Precinct</p> <p>Marion County, Oregon, General Election, Tuesday, November 3, 1936.</p> <p>PLATE A OF 2 OF THE SQUARE BETWEEN THE NUMBERS AND THE NAME OF EACH CANDIDATE</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>13 [] JAMES W. CAMPBELL</p> <p>14 [] HENRY H. HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>15 [] WALTER HARRIS</p> <p>16 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>17 [] WALTER HARRIS</p> <p>18 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>19 [] WALTER HARRIS</p> <p>20 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>21 [] WALTER HARRIS</p> <p>22 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>23 [] WALTER HARRIS</p> <p>24 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>25 [] WALTER HARRIS</p> <p>26 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>27 [] WALTER HARRIS</p> <p>28 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>29 [] WALTER HARRIS</p> <p>30 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>31 [] WALTER HARRIS</p> <p>32 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>33 [] WALTER HARRIS</p> <p>34 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>35 [] WALTER HARRIS</p> <p>36 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>37 [] WALTER HARRIS</p> <p>38 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>39 [] WALTER HARRIS</p> <p>40 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>41 [] WALTER HARRIS</p> <p>42 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>43 [] WALTER HARRIS</p> <p>44 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>45 [] WALTER HARRIS</p> <p>46 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>47 [] WALTER HARRIS</p> <p>48 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>49 [] WALTER HARRIS</p> <p>50 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>51 [] WALTER HARRIS</p> <p>52 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>53 [] WALTER HARRIS</p> <p>54 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>55 [] WALTER HARRIS</p> <p>56 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>57 [] WALTER HARRIS</p> <p>58 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>59 [] WALTER HARRIS</p> <p>60 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>61 [] WALTER HARRIS</p> <p>62 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>63 [] WALTER HARRIS</p> <p>64 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>65 [] WALTER HARRIS</p> <p>66 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>67 [] WALTER HARRIS</p> <p>68 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>69 [] WALTER HARRIS</p> <p>70 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>71 [] WALTER HARRIS</p> <p>72 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>73 [] WALTER HARRIS</p> <p>74 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>75 [] WALTER HARRIS</p> <p>76 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>77 [] WALTER HARRIS</p> <p>78 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>79 [] WALTER HARRIS</p> <p>80 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>81 [] WALTER HARRIS</p> <p>82 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>83 [] WALTER HARRIS</p> <p>84 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>85 [] WALTER HARRIS</p> <p>86 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>87 [] WALTER HARRIS</p> <p>88 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>89 [] WALTER HARRIS</p> <p>90 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>91 [] WALTER HARRIS</p> <p>92 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>93 [] WALTER HARRIS</p> <p>94 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>95 [] WALTER HARRIS</p> <p>96 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>97 [] WALTER HARRIS</p> <p>98 [] ALBERT HARRIS</p> <p>FOR JUDGE OF THE SUPREME COURT</p> <p>99 [] WALTER HARRIS</p> <p>100 [] ALBERT HARRIS</p>	

BALLOT PATTERNS

TABLE SHOWING RELATION OF EMBLEM AND STRAIGHT
TICKET PROVISION TO BALLOT FORMS*

Classification	Party-Column States	Office-Group States	Total
States having straight ticket and emblems	Alabama, Delaware, Indiana, Kentucky, Louisiana, Michigan, Missouri, New Hampshire, New Mexico, Ohio, Oklahoma, Rhode Island, Utah, West Virginia	None	Total 0 14
States having straight ticket without emblems	Arizona, Connecticut, Georgia, Idaho, Illinois, Iowa, Maine, North Carolina, South Dakota, Texas, Vermont, Washington, Wisconsin	Pennsylvania	Total 1 14
States having emblems without straight ticket	None	New York	Total 1 1
States having neither straight ticket nor emblems	New Jersey, North Dakota, Wyoming	Arkansas, California, Colorado, Florida, Kansas, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, Oregon, Tennessee, Virginia	Total 3 15 18
Total	30	17	47

*South Carolina is not included since it uses only party papers.

Another hybrid form is found in party-column states which have a non-partisan office-group block on the blanket ballot, such as in Washington, or on a separate ballot as in North Dakota. On the other hand, New York uses the office-group pattern for its blanket ballot and the

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party-column pattern for a separate presidential electors ballot. In 1933 Nebraska dropped the party circle from its office-group ballot, leaving Pennsylvania as the only office-group state which permits straight-ticket voting.⁵

Economy and clarity enter into ballot printing in small ways—for example, with regard to the position of the office title and the number of times it must be printed. For office-group ballots the listing of office title at the beginning of the block or series of candidates for any given office is sufficient.⁷ The single exception is Minnesota, which prints each line thus: Office title—Candidate—Party. But in party-column ballots there is the alternative of repeating the title before each candidate in each column and before the blank spaces in the extra column, or indicating the office at the left side only. Twenty-five states repeat the office title with each name and vacant line. The wording of the Texas law is typical of the provision in these states:

When a party has not nominated a full ticket, the titles of those nominated shall be in position opposite the same office in a full ticket, and the titles of the officers shall be printed in the corresponding positions in spaces where no nominations have been made. In the blank columns and independent columns, the titles of the offices shall be printed in all blank spaces to correspond with a full ticket.⁶

Four states—Alabama, Arizona, North Dakota, and Wyoming—print the titles in the left margin only, but Michigan provides a double caution by using both methods.⁷

The location of the voting space for individual candidates is to the right of the name in twenty-four states;

⁵*Laws of Nebraska*, 1933, ch. 54.

⁶*Texas Election Laws*, 1932, Art. 2980.

⁷*Michigan Acts*, 1939, no. 262, adds a blank column for the write-in, which was not provided for on the 1938 ballot.

BALLOT PATTERNS

and to the left in twenty states.⁸ In thirty-eight states the voting space is a square; in two states, parentheses; in two states, circles; in one state, an open area; and in one state, between a number and the name of the candidate.

The write-in, a concession to independent voting, is a term which describes the insertion by the voter of one or more names not printed on the ballot. It is provided for on the ballot in one of two ways—by a blank column containing office-titles, lines, and usually voting squares (limited to the party-column pattern), or by a line (or lines, if more than one are to be selected) at the end of each office-block or series. Arizona is the only state which provides the blank column at the right of the ballot and blank lines in each party-column.⁹ Eleven states, all using the party-column pattern, print a blank column for the write-in.¹⁰ The wording of the Utah law is typical of the provision made by states supplying the blank columns: "At the right of the ballot there must be left a blank ticket, enough to contain as many written names of candidates as there are persons to be elected, in which shall be printed the names of the offices to be filled as in the other tickets."¹¹

In New Jersey the "personal choice" column is placed in the center of the ballot, between the major party columns and the office-group columns containing minor party candidates and independent candidates. Connecticut allows the writing in of a name in party-columns when the office is marked "No Nomination."¹² In Louis-

⁸Arkansas, Georgia, South Carolina, and Texas provide no voting space by the name of each candidate; Virginia added the voting space in 1936.

⁹*Arizona Election Laws*, 1937, sec. 1198, and *Arizona Laws*, 1939, ch. 23.

¹⁰Alabama, Connecticut, Idaho, Iowa, Louisiana, Michigan (1939), New Hampshire, New Jersey, Rhode Island, Texas, and Utah.

¹¹*General Election Laws of Utah*, 1938, 25-6-20.

¹²*Election Laws of Connecticut*, 1936, Part III, sec. 608.

To vote a straight ticket, make a cross (X) in the square at the head of the party column of your choice. To vote for a person whose name is printed on the ballot, make a cross (X) in the square at the right of the name of said person. To vote for a person whose name is not printed on the ballot, write or paste his name in the blank space provided for that purpose and make a cross (X) in the square at the right of the name of said person. Each voter in marking his ballot shall confine his marks to the number of candidates to be nominated for each office. In case he marks more than one candidate for the same office his vote shall be considered defective so far as it concerns that particular office.

REPUBLICAN PARTY		
<input type="checkbox"/>		
For Senators		Vote for two
Walter Hard, Manchester		
Edward A. Tobin, Bennington		
For State's Attorney		Vote for one
George H. Plumb, Bennington		
For Sheriff		Vote for one
Clyde Peck, Bennington		
For Assistant Judges of the County Court		Vote for five
Edmond LaFranchise, Bennington		
William C. Peck, Bennington		
For High Bailiff, County of Bennington		Vote for one
James Gibney, Bennington		
For Judge of Probate, District of Bennington		Vote for one
Mary H. Adams, Bennington		

DEMOCRATIC PARTY		
<input type="checkbox"/>		
For Senators		Vote for two
Smith T. Harris, Shaftsbury		
William M. Sweets, Manchester		
For State's Attorney		Vote for one
John L. Whalen, Arlington		
For Sheriff		Vote for one
James Gormley, Dorset		
For Assistant Judges of the County Court		Vote for five
Mark A. Kenyon, Bennington		
Homer Lesure, Readsboro		
For High Bailiff, County of Bennington		Vote for one
Frank J. Kervan, Bennington		
For Judge of Probate, District of Bennington		Vote for one

BALLOT PATTERNS

iana names may be written in only of those persons who have filed, ten days before the election, consenting to become candidates;¹³ passed in 1934, the law in that state seeks to prevent the insertion of the voter's own name, a fictitious name, the name of a person not eligible to hold office, or the name of a person not willing to accept the office.

Blank lines must be printed on the ballot in twenty-four states (the majority of which use the office-group ballot). Mississippi specifies that the blank lines are to be used only in case of the death of the candidates.¹⁴ In 1924 Maryland eliminated the blank lines, but in 1937 restored them, following the decision of the state court of appeals in the case of *Jackson v. Norris*.¹⁵ The laws of two office-group states, Tennessee and Virginia, and of six party-column states—Illinois, Indiana, Kentucky, North Carolina, Ohio, and Washington¹⁶—allow the write-in but do not provide blank lines. Florida added blank lines in 1931;¹⁷ but Kentucky, in 1938,¹⁸ and North

¹³*Louisiana Acts*, 1934, Act 80, amending *Louisiana Acts*, 1916, Act 130, and amending the Constitution, Art. VIII, sec. 15.
¹⁴Mississippi, *Digest of Election Laws*, 1935, p. 13: "It has been held by the courts that a voter may write the name of one who has not been nominated and whose name does not appear on the official printed ballot, only in case of the death of a candidate whose name does appear on the ballot."
¹⁵*Maryland Laws*, 1937, ch. 95, sec. 62, amending *Laws*, 1924, ch. 581, sec. 54; *Jackson v. Norris*, 195 Atl. 576 (Maryland, 1937).
¹⁶In Washington the lines are printed only in the non-partisan judicial ticket.
¹⁷*Florida Laws*, 1931, ch. 14657.
¹⁸*Kentucky Laws*, 1938, ch. 31.

As the illustration on the previous page indicates, Vermont sets up separate ballots for various purposes, with different colors required. Note the fullness of instructions and the appropriate number of spaces allowed for optional write-in. The reverse side of the ballot contains an endorsement provision for certifying that the ballot was marked with the assistance of the clerks.

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Carolina, in 1931,¹⁰ omitted the lines for the write-in.

Delaware forbids the write-in, declaring that "if any name be written on any ballot the ballot shall be void and not counted."²⁰ Nevada's prohibition is worded thus: "Any ballot upon which appears names, words, or marks, written or printed, except as in this act provided, shall not be counted."²¹ Indiana requires a complete ticket paster if a write-in is attempted;²² this full printed ticket must be fitted exactly into position in line with the office titles and must be attached so neatly that the added bulk will not be evident when the ballot is folded. Four states—Georgia, South Carolina, South Dakota, and Oklahoma—make no provisions in their laws for a write-in; in the latter state, moreover, when the question came up in 1922, the Attorney-General ruled the practice out.

PARTIES AND CANDIDATES ON THE BALLOT

The order of parties on the ballot, whether in party-column or office-group states, is determined in one of the following ways: alphabetical arrangement; the size of the vote in the last preceding election; the particular sequence specified in the law; a drawing by lot; or the discretion of the officers charged with ballot printing, whether by a mandate of the law or by silence. In the party-column states, the order of candidates presents no

¹⁰North Carolina Laws, 1931, ch. 254.

²⁰Delaware General Election Laws, 1936, ch. 1858, sec. 49.








²¹The Election Laws of Nevada, 1938, Act of 1917, sec. 48.

²²Revised Statutes of Indiana, 1933, vol. 1, sec. 29-1126. For the voter's use of printed stickers or pasters see the discussion of markings, pp. 69-70 below.

The New Mexico ballot on the next page presents a graphic example of the party-column arrangement. Note that all explanatory terms appear in English and Spanish.

INSTRUCTIONS: Mark with pen and ink or indelible pencil a cross in the O under the party name and emblem of the party for all or most of whose candidates you wish to vote, and if you wish to vote for any candidate other than a candidate appearing in the column under such O with a cross in the first line to the right of the name of the candidate in any other column for whom you wish to vote, make a cross in the first line to the right of the name of the candidate in any other column for a person whose name appears in the column for write-in. If you do not wish to make a cross in any circle you may make a cross in the first line to the right of the name of each candidate or person for whom you wish to vote.

INSTRUCCIONES: Marque con pluma y tinta o lápiz de tinta una cruz en el O bajo el nombre del partido por cuyos candidatos o la mayor parte de cuyos candidatos desee votar, y si desea votar por cualquier candidato cuyo nombre no aparece en la columna bajo tal O marque una cruz en el primer espacio al lado derecho del nombre del candidato en cualquier otra columna por quien Ud. desea votar por una persona cuyo nombre no aparece en la columna para el "write-in" o en la columna de oficina en cualquier columna y haga una cruz en el primer espacio al lado derecho del nombre de cada candidato o persona por quien Ud. desea votar.

	Republican Ticket Boleto Republicano	<input type="checkbox"/>	FOR PRESIDENTIAL ELECTORS PARA ELECTORES PRESIDENCIALES	<input type="checkbox"/>	W. C. PORTERFIELD MRS. ED. A. CAROON JOSE C. RIVERA	FOR UNDER STATES SENATOR PARA SUBSECRETARIO DE LOS ESTADOS UNIDOS	<input type="checkbox"/>	CARL A. HUTCH ERNESTA EVERELY
	Democratic Ticket Boleto Democrata	<input type="checkbox"/>	FOR PRESIDENTIAL ELECTORS PARA ELECTORES PRESIDENCIALES	<input type="checkbox"/>	AMELIA VILLARICH CLAUDE WOODLWORTH V. V. TAYLOR	FOR UNDER STATES SENATOR PARA SUBSECRETARIO DE LOS ESTADOS UNIDOS	<input type="checkbox"/>	CARL A. HUTCH
	Socialist Ticket Boleto Socialista	<input type="checkbox"/>	FOR PRESIDENTIAL ELECTORS PARA ELECTORES PRESIDENCIALES	<input type="checkbox"/>	CLAUDE B. BLACKBURN HAME S. HUNGAN JOHN WILLIAMS	FOR CANDIDATES SENATOR PARA CANDIDATOS DE LOS ESTADOS UNIDOS	<input type="checkbox"/>	FOR UNDER STATES SENATOR PARA SUBSECRETARIO DE LOS ESTADOS UNIDOS
	Union Ticket Boleto Unionista	<input type="checkbox"/>	FOR PRESIDENTIAL ELECTORS PARA ELECTORES PRESIDENCIALES	<input type="checkbox"/>	ARTHUR W. CAMERON PAUL FEMINGER J. H. PAGE	FOR UNDER STATES SENATOR PARA SUBSECRETARIO DE LOS ESTADOS UNIDOS	<input type="checkbox"/>	FOR UNDER STATES SENATOR PARA SUBSECRETARIO DE LOS ESTADOS UNIDOS
	Communist Ticket Boleto Comunista	<input type="checkbox"/>	FOR PRESIDENTIAL ELECTORS PARA ELECTORES PRESIDENCIALES	<input type="checkbox"/>	ISAAC M. BAUREG FRANK L. HERSANSBEE L. B. GOOD	FOR UNDER STATES SENATOR PARA SUBSECRETARIO DE LOS ESTADOS UNIDOS	<input type="checkbox"/>	FOR UNDER STATES SENATOR PARA SUBSECRETARIO DE LOS ESTADOS UNIDOS
	Prohibition Ticket Boleto Prohিবicionista	<input type="checkbox"/>	FOR PRESIDENTIAL ELECTORS PARA ELECTORES PRESIDENCIALES	<input type="checkbox"/>	HENRY D. WRIGHT C. O. MARIHORE S. P. CRUICK	FOR UNDER STATES SENATOR PARA SUBSECRETARIO DE LOS ESTADOS UNIDOS	<input type="checkbox"/>	FOR UNDER STATES SENATOR PARA SUBSECRETARIO DE LOS ESTADOS UNIDOS
	Farmer-Labor Ticket Boleto Agricultor-Obrero	<input type="checkbox"/>	FOR PRESIDENTIAL ELECTORS PARA ELECTORES PRESIDENCIALES	<input type="checkbox"/>	FOR UNDER STATES SENATOR PARA SUBSECRETARIO DE LOS ESTADOS UNIDOS	<input type="checkbox"/>	FOR UNDER STATES SENATOR PARA SUBSECRETARIO DE LOS ESTADOS UNIDOS	

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great problem; often in the office-group states the order of parties determines the order of candidates, but in some of these the candidates are arranged alphabetically.

The alphabetical arrangement of parties on the party-column ballot holds for Alabama,²³ Arizona,²⁴ and Wisconsin.²⁵ The alphabetical order of candidates is the rule in Kansas, Maryland, Massachusetts, Nevada, Oregon,²⁶ and Tennessee (all office-group states). In Colorado²⁷ and Montana²⁸ the major parties are alphabetized. In California the name of the incumbent must be first; other candidates for the same office are alphabetized and rotated.²⁹ The North Dakota law requires that in case of plural candidacies in the party column the names must be alphabetized and alternated.³⁰

The most frequent device for determining the order of parties is the size of the vote in the last preceding election, as in Nebraska, New Hampshire, and Pennsylvania. In other states the basis for determining such vote varies: In Connecticut, Missouri, New York, Ohio, and South Dakota it is the vote for governor; in Michigan the vote for lieutenant-governor; in Indiana the vote for secretary of state; in Washington and West Virginia the presidential vote; in Wyoming the vote for its single representative in Congress; in North Dakota the statewide congressional vote; and in Minnesota the average vote of the candidates of each party.

²³*Alabama Code of 1928*, ch. 19, sec. 469 (379).

²⁴*Arizona Revised Code of 1928*, ch. 22, Art. 4, sec. 1197.

²⁵*Wisconsin Election Laws, 1937*, 6.23.

²⁶*Oregon Laws, 1937*, ch. 141, provides that names of candidates on the general election ballot shall be rotated if more than one is to be elected to a given office.

²⁷*Election Laws of Colorado, 1938*, Art. 1, sec. 198.

²⁸*Montana Laws, 1939*, ch. 81.

²⁹*California Election Laws, 1936*, sec. 1197.

³⁰*Election Laws of North Dakota, 1930*, sec. 959.

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The law of some states names the party order. Thus Delaware and Oklahoma require the Democratic party first and the Republican party second; New Mexico, Rhode Island, and Vermont put the Republican party first and the Democratic second.³¹ The minor parties in Delaware and in Vermont are arranged by the clerk, in New Mexico in order of filing, in Oklahoma Socialist third and others according to the size of their vote in the last general election, in Rhode Island by the officer charged with printing.

New Jersey is the only state resorting to lot in arranging parties on the general election ballot.³² South Carolina, with its party papers, has no problem of the order of parties.

The arranging of parties and of candidates on the ballot is delegated to the election authorities or ballot-printing officers in Florida, Illinois, Iowa, Kentucky, Mississippi, North Carolina, and Utah. By the silence of the law the matter is left to the authorities in Arkansas, Georgia, Idaho, Louisiana, Maine, Texas, and Virginia. The most likely result in these states is that the candidates of the predominant political party receive first position.

Shortly after the states began adopting the Australian ballot, revision of the law in numerous states limited the frequency of a candidate's name appearing on the ballot. The usual provision, if legislation touched this subject, was to the effect that a candidate's name could appear on the ballot only once, and if nominated by more than one

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party, the candidate must choose the party designation under which his name was to appear. A typical provision is that of South Dakota:

The name of no candidate shall appear more than once on the ballot for the same office; provided, that if any candidate be nominated by more than one political party for the same office, such candidate may choose the nomination he will accept.³³

In New York, when a candidate is nominated by more than one political organization, the party names and emblems of all the nominating groups are placed by his name, with the order of priority based on the number of votes cast for governor by each organization at the preceding gubernatorial election.³⁴ In Texas, it should be noted, a person may run for different offices at the same time, the law providing that "The name of no candidate shall appear more than once upon the official ballot, except as a candidate for two or more offices permitted by the Constitution to be held by the same person."³⁵

A law to the effect that the name of a candidate for a given office should appear only once on the ballot was repealed in Utah in 1933³⁶ and passed in Maryland in 1937.³⁷ Vermont is the only state found whose law allows the name to appear in more than one party ticket,³⁸ though in the twenty states silent on the point it is assumed that such plural candidacies might be allowed.³⁹

The most common identification of candidates is the party designation, which may be the party column or the

³¹*Delaware Registration, Primary, and General Election Laws*, 1936, 1814, sec. 5; *Oklahoma Statutes*, 1931, sec. 5719; *New Mexico 1927 Election Code*, sec. 306; *Rhode Island Public Laws*, 1905, ch. 1229 (statewide use of voting machine has made paper ballot laws obsolete); *Vermont Public Laws Relating to Elections*, 1934, sec. 221.

³²*New Jersey Elections*, 1938, 19:14-12.

³³*South Dakota General Election Laws*, 1938, sec. 7241.

³⁴*Consolidated Laws of New York*, ch. 17, sec. 105.

³⁵*Texas Election Laws*, 1932, Art. 2978.

³⁶*Laws of Utah*, 1933, ch. 19.

³⁷*Maryland Acts*, 1937, ch. 141.

³⁸*Public Laws of Vermont*, 1934, 4:14-220.

³⁹Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Maine, Mississippi, Missouri, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia.

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party label. Indiana and Vermont identify each candidate by both the party column and the party label—Indiana printing the abbreviation of the party in each voting square, and Vermont placing the party label beside the name of each candidate. On the mixed type of ballot—such as that found in the New Jersey plan for recognized political groups—the headings for party-columns identify the candidates for major parties, while the labels identify candidates nominated by petition. Some states cling to the more nearly genuine Australian ballot by not designating parties in any way; in Florida, Mississippi, and Virginia, this method gives a political advantage to the predominant party. In Tennessee the candidates are arranged alphabetically without a label⁴⁰ and in South Carolina the party papers have no label.

To avoid confusion arising from similar surnames Massachusetts provides that "To the name of a candidate for a state or city office who is an elected incumbent thereof and who is one of two or more candidates therefor bearing the same or a similar surname, there shall be added in the same space the words Candidate for Re-Election."⁴¹ For persons having the same or similar names a Michigan law of 1937 permits the additional statement of occupation or residence, while Minnesota requires that both be given.⁴² California provides one of the following designations, at the option of the candidate:

(a) Words designating the city, county, district or state office which the candidate then holds.

(b) If the candidate be a candidate for the same office which he then holds, the word "incumbent."

(c) The word designating the profession, vocation or occupation of the candidate.⁴³

⁴⁰*Tennessee Election Laws*, 1922, ch. 11, sec. 162.

⁴¹*Massachusetts General Laws Relating to Elections*, 1938, ch. 54, sec. 41.

⁴²*Michigan Laws*, 1937, no. 278; *Election Laws of Minnesota*, 1938, ch. VII, sec. 285.

⁴³*California Statutes*, 1931, ch. 931.

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Identification of candidates by residence occurs infrequently. Street addresses are found on the ballots for metropolitan areas in Illinois, Kansas, and Rhode Island. The home town of candidates is printed on the paper ballots in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, West Virginia, Maryland, Kentucky, Alabama, Illinois, South Dakota, and Kansas.⁴⁴ In Maryland the county may be named also. Illustrative ballot forms in Iowa and Oregon show the county with each candidate's name.

In 1937 Oklahoma enacted the following provision for the identification of candidates:

Any candidate who is other than of the White race, shall have his race designated upon the ballots in parenthesis after his name. . . . To avoid confusion or misunderstanding among the voters the Election Board shall have the right to place after any candidate's name in parenthesis any words not exceeding five in number, which will identify or distinguish said candidate from any other person. This provision shall apply to both Primary and General Elections.

The same laws barred nicknames, abbreviations, etc., through a section specifying that "No candidate shall have any prefix, suffix, or title placed before or after his name upon the ballots. . . ."⁴⁵

MARKING THE BALLOT

There are wide disparities among the states with regard to the printed instructions given the voter for marking the ballot. This is a matter of obvious importance

⁴⁴*Maine Election Laws*, 1937, ch. 8, sec. 2; *New Hampshire Election Laws*, 1937, ch. 26, sec. 3; *Public Laws of Vermont*, 1934, 4:14-218; *Massachusetts General Laws Relating to Elections*, 1938, ch. 54, sec. 41; *West Virginia Election Laws*, 1938, 3:5-4; *Maryland Election Laws*, 1938, ch. 95, sec. 63; *South Dakota Election Laws*, 1938, sec. 7241; *Kansas General Statutes*, 1935, ch. 25, sec. 602. Although the law is silent in Alabama, Illinois, Kentucky, and Rhode Island, an inspection of ballots shows residence of candidates.

⁴⁵*Oklahoma Laws*, 1937, ch. 29, Art. 2, secs. 5-6.

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since any irregularity may invalidate a vote cast. In thirty-one states, such instructions are printed at the top of the ballot; in two, Iowa and Missouri, at the bottom of the ballot. These directions vary in fullness, according to state and type of ballot. As a rule the party-column pattern needs more explanation—that is, how to vote a straight ticket and how to vote a split ticket. The Michigan ballot is a good example of detailed instructions and New Hampshire of scant instructions. In Indiana, Louisiana, New Hampshire, Ohio, Rhode Island, and West Virginia the words “To vote a straight ticket mark here,” are placed around the circle in which such a choice is to be recorded. Idaho provides an example of adequate instructions:

You can vote a ticket “straight” by placing an X in large circle below name of party you wish to vote for. You can “scratch” your ticket by placing an X in small circle on right of name you wish to vote for.

In New Jersey full instructions are given across the top of the ballot and at the head of each column. The law in New Mexico specifies that instructions on the ballot are to be printed in both English and Spanish.⁴⁶ For an office-group ballot, the Colorado statement, “To vote for a person, make a cross mark (X) in the square at the right of his name,” is sufficient. Since Montana changed its ballot pattern to the office-group in 1939, the law requires the display of the following directions on the ballot: “Vote in all columns”; “Vote for county and township offices in the next column”; and “Vote on initiatives, referendums and constitutional amendments in the next column.”⁴⁷ Some of the thirty-three states with gen-

⁴⁶*New Mexico 1927 Election Code*, sec. 306.

⁴⁷*Montana Laws*, 1939, ch. 81, pp. 173-174.

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eral instructions also have scattered cautions, such as “Vote for two.” Arizona adds to this the statement, “Vote straight” above the party square and “ticket here” below. There are seven states which have no other instructions than the message to vote for a certain number for a given office.⁴⁸ Finally, seven states print no instructions on the ballot.⁴⁹

The two methods of expressing the vote are that of marking a cross (X) or its variant for the preferred candidate or referendum proposition and that of lining out or scratching names or propositions not voted for. Thirty-three states specify the cross mark (X); seven states allow the cross mark or a variant;⁵⁰ three states require the voter to scratch out the candidate or answer not favored;⁵¹ and five states permit the cross (X) and/or scratching.⁵²

Illustrating the form used in the majority of states, Ohio prints across the top of each ballot the slogan, “Use X only in marking ballot.” There have been many ballots invalidated at each election because the cross mark (X) was irregular. Some of the states have even defined the cross mark in their laws. Utah requires that the two straight lines be as nearly equal in length and cross each other as near the center of each line as practicable; but the law also provides that no ballot shall be rejected for an irregularity in the mark unless the marks “show an attempt on the part of one or more persons to so mark

⁴⁸Alabama, Illinois, Maryland, Mississippi, Nebraska, Tennessee, and Virginia.

⁴⁹Delaware, Kentucky, Maine, Oklahoma, South Carolina, Texas, and Utah.

⁵⁰The states allowing the cross mark or variant are Missouri, New Jersey, North Carolina, North Dakota, Tennessee, Utah, and Virginia.

⁵¹Arkansas, South Carolina, and Texas.

⁵²Alabama, Delaware, Georgia, Idaho, and West Virginia.

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their ballots that it can be determined that the intent of said person or persons is to show concerted action on the part of a group in designating their ballots."⁵³ The Missouri definition requires the crossing of the two lines to be within the voting space.⁵⁴ New Jersey allows "a cross (X) or plus (+)," North Carolina "a cross (X) or a check mark, or other clear indicative mark." In 1936 Virginia put the voting squares in the ballot and, in the section on marking, informed the voter that he should "mark immediately preceding the name of each candidate he wishes to vote for a check (✓) or cross (X) mark or a line (—) in the square provided for such purpose, leaving the square preceding the name of each candidate he does not wish to vote for unmarked."⁵⁵ The ruling in *Vallier v. Brakke* in South Dakota was that "Informality in making cross should be disregarded, when intention is clearly apparent."⁵⁶ The same ruling was handed down in Tennessee in *Menees v. Ewing*.⁵⁷ That the mark must be within the voting square was the decision in *Howser v. Pepper*, and in *Perry v. Hackney* in North Dakota.⁵⁸

There are five states allowing a combination of the cross mark and scratching or lining out. In Georgia the law prescribes the cross in the party-column parentheses or lining out what is not desired if a split ticket is voted; amendments were to be marked out if undesired, although brackets have been provided since 1936 for marking X

⁵³*Utah General Election Laws*, 1938, 25-6-19, 25-6-21.

⁵⁴*Missouri Election Laws*, 1937-38, sec. 10310.

⁵⁵*Virginia Laws*, 1936, p. 276, repealing *Laws*, 1931, sec. 162. Virginia formerly scratched or lined out.

⁵⁶*Vallier v. Brakke*, 64 N. W. 180 (South Dakota, 1895).

⁵⁷*Menees v. Ewing*, 210 S. W. 648 (Tennessee, 1919).

⁵⁸*Howser v. Pepper*, 8 N. D. 484 (1899); *Perry v. Hackney*, 11 N. D. 148 (1902).

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on proposition ballots. Alabama,⁵⁹ Delaware,⁶⁰ Idaho,⁶¹ and West Virginia⁶² allow the voter to mark X and/or exercise his displeasure toward the opposition by erasing or scratching.

In Arkansas the only method of expressing a choice is to line out horizontally all names voted against. In Texas the voter may vote a straight ticket by running a line vertically through all party columns voted against; he may vote a mixed ticket by running a line horizontally through the name of such candidates as he desires to vote against in the ticket of his choice, by writing in the name of the candidate for whom he wishes to vote, or by leaving unscratched the desired names in other columns.⁶³ There is room for irregularity in lining out; but in *Stubbs v. Moursund* it was held that "... if the intent of the voter can be ascertained in the light of surrounding circumstances, effect should be given to the ballot in accordance with such intent."⁶⁴ South Carolina's law merely says that the ballot (party papers) is to be folded and deposited in the proper box.⁶⁵ The provision for marking propositions is that the voter may strike out the word "Yes" or the word "No," the word not stricken out being the one to be counted.⁶⁶

The instruments for marking include stamp or stencil, pen and ink, and pencil (black lead, indelible, or blue). The five states that require a stamp or stencil are Cali-

⁵⁹*Alabama Code* of 1928, ch. 19, sec. 473.

⁶⁰*Delaware Election Laws*, 1936, 1858, sec. 49.

⁶¹*Idaho Code* (Annotated), 33-804.

⁶²*Official Code of West Virginia*, 3:5-19.

⁶³*Texas Rev. Civil Statutes*, 1925, art. 2981.

⁶⁴*Stubbs v. Moursund*, 222 S. W. 632 (Texas, 1920).

⁶⁵The South Carolina law for primary elections provides for scratching names.

⁶⁶*South Carolina Election Law*, 1938, sec. 2303.

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California, Kentucky, Louisiana, Nevada, and Oklahoma.⁶⁷ The advantage of the stamp is that it gives an identical mark, doing away with irregular or identifying cross marks which too often invalidate ballots. California requires this caution across the top of the ballot: "Mark Crosses (X) Only with Rubber Stamp: Never with Pen or Pencil." In two states, Colorado and Mississippi, the law specifies pen and ink.⁶⁸ There are nine states which allow the choice of ink or pencil.⁶⁹ Twelve states require a pencil—"a black lead pencil" in Connecticut, New York, Ohio, and West Virginia; one of "soft black lead" in New Hampshire; "an indelible pencil" in Maryland, Minnesota, and Pennsylvania; "a black lead, indelible pencil, or black crayon" in Delaware; "a blue pencil" in Indiana; merely "a pencil" in Arkansas and South Dakota. In Indiana the voter is handed a blue pencil with his ballot, and he must return it to the clerk, when he hands in his ballot, before he can leave the polling place; all the blue pencils must be destroyed before the beginning of the count.⁷⁰ In twenty states the law is silent as to the materials with which to mark the ballot. However, in their instructions to the election officials, some of these states make a provision similar to the one in Georgia: "Each voting shelf or table shall be kept supplied with convenience for marking the ballots."⁷¹

⁶⁷California Election Laws, 1936, sec. 1197.6; Kentucky Statutes, 1933, ch. 41, sec. 1471; Louisiana General Election Laws, (Act No. 130), 1935, sec. 71; Nevada Election Laws, 1938 (Act of 1917), sec. 42; Oklahoma Statutes, 1931, sec. 5711.

⁶⁸Colorado Statutes (Annotated), 1935, ch. 59, sec. 229; Mississippi Digest of Election Laws, 1935, p. 18.

⁶⁹Florida, Illinois, Michigan, New Jersey, New Mexico, North Carolina, Oregon, Texas, and Wyoming.

⁷⁰Indiana Election Laws, 1938, ch. X, sec. 277.

⁷¹Georgia Election Laws, 1926, sec. 138(v).

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There is yet another aspect of marking. Most of the states provide a blank column or blank lines for the voter to write in or paste the name of a person not on the ballot. Half of these states print a voting square beside each blank line. Some of these require that the name written in must be voted by the cross (X) in the voting space;⁷² others allow the voting by the cross (X), but their interpretation is that the intention of the voter is clear without the mark.⁷³ In Minnesota, an Attorney-General's opinion points out that "where a voter writes in a name, it is unnecessary to put the cross after it."⁷⁴ Some states make doubly sure of the substitution by a write-in; for example, Maine and Virginia require the voter to erase the name of the printed candidate and write in the desired name.⁷⁵ The Missouri law provides that the voter may draw a line through the printed name and write below it the name of the person for whom he desires to vote, and then place a cross mark in the square to the left.⁷⁶

Occasionally pasters and stickers are allowed for the insertion of the voter's preference, as in Montana, New Jersey, North Dakota, Pennsylvania, and Washington. The Massachusetts law prohibits the use of any paster with a political designation on it.⁷⁷ In the law of North Carolina is the statement: "No sticker is to be used."⁷⁸

In order to meet the contingency of a vacancy, caused

⁷²Illinois, Michigan, Missouri, Montana, New Jersey, North Carolina, Tennessee, Vermont, and West Virginia. In 1935 Vermont joined this group, Acts of Vermont, 1935, no. 11.

⁷³California, Idaho, Iowa, Minnesota, Nebraska, North Dakota, Utah, and Wyoming.

⁷⁴Minnesota, 1930, Op. Att-Gen. 251.

⁷⁵Maine Election Laws, 1937, ch. 8, sec. 16; Virginia Election Laws, 1938, sec. 153.

⁷⁶Missouri Election Laws, 1937, ch. 61, 10310.

⁷⁷Massachusetts Laws Relating to Elections, 1938, ch. 54, sec. 65.

⁷⁸North Carolina Election Laws, 1937, sec. 146 (a-28).

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by the death or withdrawal of a candidate after the ballots have been printed, or to correct an error on the ballot, stickers or pasters which have been printed by the officer charged with printing the ballots "shall be pasted upon each of the official ballots by the ballot clerks before signing their initials thereon and delivering to voters."⁷⁹ The wording of this Wisconsin statute is typical of that in the twenty-five states which permit such a use of pasters.⁸⁰ An Attorney-General's opinion in Ohio on July 21, 1930, rules that "stickers may be placed over the names of candidates who have withdrawn." The New Mexico law provides that if there is no nominee for the vacancy "the county clerk shall cause blank stickers to be pasted over the name of such candidate on the ballots."⁸¹ The procedure in North Carolina is different; there a citizen becoming a candidate to fill a vacancy within ten days of election day may, at his own expense, have the Board of Elections print a separate official ticket containing the office-title and his own name.⁸² Tennessee uses the paster for reasons connected with illiteracy; thus a candidate is required to furnish the officer holding the election with slips on which his name is printed, and these are handed to such voters as are unable to write, to be pasted on in the proper space.⁸³

The presentation of propositions on a separate ballot or in a specified position on the blanket ballot has already been discussed. Consideration need be directed here only

⁷⁹*Wisconsin Election Laws, 1937, 5.28.* Any other use of pasters is forbidden by 6.23(11).

⁸⁰Delaware, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Texas, Vermont, Washington, West Virginia, and Wisconsin.

⁸¹*New Mexico Code of 1927* as amended to 1937, ch. 41, sec. 303.

⁸²*North Carolina Election Laws, 1937, sec. 125 (a-7).*

⁸³*Compilation of the Election Laws of Tennessee, 1922, sec. 160.*

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to the statement of the proposition as it appears on the face of the ballot. The majority of the states print a concise statement of the amendment or proposition on the ballot, once with "Yes" or "For" beside one voting space, and "No" or "Against" beside another. Rhode Island prefers the words "Approve" and "Reject." The states which print the measure or the title of the measure twice, once beside each voting space, are Connecticut, Georgia, Louisiana, Nebraska, North Carolina, Texas, and West Virginia.⁸⁴ Some examples of titles in this form are reproduced.⁸⁵

NORTH CAROLINA

YES "For Amendment to the Judicial Section of the Constitution."
NO "Against Amendment to the Judicial Section of the Constitution."

WEST VIRGINIA

"Banking Institutions Amendment," amending section six, article eleven.

For ratification of "banking institutions amendment."

Against ratification of "banking institutions amendment."

NEW YORK

Proposed Amendment Number Two

YES "Shall the proposed amendment, submitted by the Constitutional Convention in relation to legislative apportionment and to the term of office of senators, be approved?"
NO

KANSAS

Shall The Following Be Adopted?

"Prohibition Repeal Amendment to the Constitution of Kansas." YES
NO

⁸⁴See the discussion of the Connecticut ballot in Chapter II. The Nebraska separate ballot for proposed amendments to the constitution for the general election of November 8, 1938, prints the propositions twice but the law does not require it.

⁸⁵North Carolina Official Ballot on Constitutional Amendments, Nov. 3, 1936; West Virginia ballot for Nov., 1938; New York Propositions and Amendments ballot, Oneida County, Nov., 1938; Kansas "Questions Submitted" ballot, Topeka, Nov., 1934.

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By an act of 1935 Florida joined the group of states which print the measure only once.⁸⁶

The laws of Iowa, Michigan, New Mexico, North Dakota, and Vermont require the full text to appear on the ballot.⁸⁷ The Michigan Constitution specifies that "Proposed amendments shall also be printed together with any other special questions to be submitted at such election in full on a single ballot separate from the ballot containing the names of candidates or nominees for public office."⁸⁸ In New Mexico propositions must be printed in full in both English and Spanish. Although the laws of Maryland and Mississippi do not require the proposed measure to appear in full on the ballot, an examination of ballots shows that they are so printed. The Nevada ballot contains a quotation of the constitutional amendment, but by an act of 1935 any referenda must be submitted "with a brief statement of the purpose of such question, in plain ordinary language which may be readily understood by the ordinary lay person."⁸⁹

Some states make no requirement other than that the question or questions be printed on the ballot. Other states call for the printing of a condensed version of the amendment or question. Several of these laws fail to place the responsibility for the composition of this abbreviated wording. In the other states the law lodges the responsibility in varying quarters. It rests with the attorney-general in Missouri and Oregon:

⁸⁶*Florida Laws, 1935, ch. 16877.*

⁸⁷*Election Laws of Iowa, 1938, sec. 761; Michigan Laws Relating to Elections, Revision of 1938, (400) sec. 3078; New Mexico 1927 Election Code, sec. 405; Election Laws of North Dakota, 1930, secs. 959-960; Public Laws of Vermont Relating to Elections, 1934, sec. 225.*

⁸⁸*Constitution of Michigan, Art. XVII, sec. 3, ratified in 1918.*

⁸⁹*Statutes of Nevada, 1935, ch. 65.*

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The attorney-general shall provide and return to the secretary of state an official ballot title for such proposed constitutional amendments. The official ballot title may be distinct from the legislative title of such proposed constitutional amendment and shall express in not exceeding twenty-five words the purpose of such proposed constitutional amendment. In making such official ballot title the attorney-general shall, to the best of his ability, give a true and impartial statement of the purposes of the proposed constitutional amendment, and in such language that such official ballot title shall not be intentionally an argument likely to create prejudice either for or against such proposed constitutional amendment . . .⁹⁰

In Pennsylvania the responsibility lies with the secretary of state: "Constitutional amendments so submitted shall be printed in brief form, to be determined by the Secretary of the Commonwealth, and other questions so submitted shall be printed in brief form, to be determined by the Secretary of the Commonwealth in the case of questions to be voted on by the electors of the State at large, and by the county boards in other cases."⁹¹ It may rest with the governor, as in Georgia, where he is required to "phrase the brief statement to be carried on the ballot each of two times."⁹² Finally, as in North Carolina, the wording may be up to the legislature or other body in which the matter has originated: "On the official ballot on constitutional amendments or other propositions submitted shall be printed each amendment or proposition submitted in the form laid down by the legislature, county commission, convention, or other body submitting such amendment or proposition."⁹³

⁹⁰*Missouri Election Laws, revised for 1937-38, sec. 10386.* The Oregon law closely resembles that of Missouri in the specific details.

⁹¹*Pennsylvania Laws, 1937, no. 320, Art. X, sec. 1003(g).*

⁹²*Georgia Laws, 1939, no. 377, 305.*

⁹³*North Carolina Election Laws, as amended to 1937, sec. 127(e).*

CHAPTER IV

VOTING MACHINES

The simple devices which served as the first voting machines are in marked contrast to the intricate mechanisms which cast, register, record, and count the votes of millions of American voters today. At the time English leaders were making a vain effort to secure the enactment of a ballot act, George Grote proposed what Sidney Smith termed a "dagger ballot box." A card on which the names of the candidates were printed was placed under the glass in a card-frame. Through one of the holes in the wooden frame the voter punctured the card opposite the name of his favorite candidate, and then by pulling a slide he caused the card to fall into the ballot box. This device of 1836 was apparently the first voting machine.¹

In 1849, in Paris, Jan Josef Baranowski suggested that adding-machine principles be applied to voting and that a closet be provided in which the voter could make his choice by turning handles or pushing buttons opposite the names of candidates. In 1859, in Germany, Werner von Siemens constructed a primitive machine, operated mechanically to cast either white or black balls. In 1869, in the United States, Thomas A. Edison patented a crude machine which was never put to the actual test of an election.² In England, Sydserff in 1869 and Davy in 1870 pro-

¹Gross, *op. cit.*, pp. 456-463.

²Mahoney, *op. cit.*

duced devices using a ball or its equivalent placed in a chosen compartment, but the balls had to be counted.³

Machines combining voting and counting began to appear toward the end of the nineteenth century. Father Vito Leto, a priest at Cimmina, Sicily, used several railroad signal devices. His machine was divided into compartments according to the number of candidates. A fitted stylet turned the counting mechanism and rang a bell.

John W. Rhines, of St. Paul, Minnesota, invented a machine which was described in the *New York Nation* of April 18, 1888, as follows:

The ordinary paging-machine of the printer suggested the main idea to Mr. Rhines. The principle involved is that of the counting machine, as in the odometer On raising the lid of the box, a screen is drawn up before the stall, shutting both voter and machine from view. The lid when raised discloses a number of keys not unlike organ stops. There are as many vertical rows of keys as the greatest number of candidates for any one office, and as many keys in a horizontal row as there are offices to be filled. The printed name of each candidate and the office for which he is nominated are placed in the top of or above these keys.

The elector in voting presses down the key bearing the name of the candidate he wishes to support. In being depressed it has locked all the keys of other candidates to the same office, thus making it impossible for an elector to vote for more than one candidate to the same office; at the same time this key has imprinted indelibly, on a slip of paper beneath in the box, a number which shows the total vote cast for that candidate up to that time.⁴

Bills proposing the adoption of the Rhines machine were introduced in the legislature of Michigan and Minnesota in the session of 1889 but failed to pass.

Jacob H. Myers of Lockport, New York, invented the "Myers Automatic Ballot-Cabinet," and it was this contrivance that the first voting-machine law—that enacted

³Frank Keiper, "Voting Machines," *Encyclopaedia Britannica*, 14th ed., 1929, vol. XXIII, pp. 258-259.

⁴Wigmore, *op. cit.*, p. 201.

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by New York in 1892—authorized for elections of town officers in all towns in the state if approved by the town board. Connecticut and Michigan specified the Myers machine, which did not prove reliable or convenient enough.⁵ Then there was the McTammany machine, specified in the first voting-machine laws of Connecticut, Massachusetts, and Rhode Island, with a key for each candidate and with a pneumatic machine for counting holes in a paper web.⁶ In an advisory opinion on the McTammany machine four Supreme Court judges of Rhode Island decided that “A record of the choice of the voter may be indicated as well by the puncture of a paper as by a pencil mark thereon.”⁷ New York amended its law in 1896, 1897, and 1898 to allow the adoption, respectively, of the “Davis Automatic Ballot-Machine,” the “Boma Automatic Ballot-Machine,” and the “Standard Automatic Voting Machine.”⁸ These early laws made adoption of the voting machine optional, but specified the acceptable models.

In 1897 California created a commission to investigate voting machines. Other states likewise set up bodies⁹ to examine machines and to make a report, usually to the secretary of state, upon the capacity of a given machine to register the will of the voters, its accuracy and efficiency, and its mechanical perfections and imperfections. These laws made the use of the machines approved by a

⁵*New York Laws*, 1892, ch. 127; *Connecticut Laws*, 1895, ch. 263; *Michigan Laws*, 1893, no. 98 and 99. See Ludington, *op. cit.*, p. 17.

⁶Ludington, *op. cit.*, pp. 17, 35, 64.

⁷*In Re Voting Machine*, 19 R.I. 729 (1897).

⁸Ludington, *op. cit.*, pp. 51-53.

⁹Some of the more recent states to enact voting machine laws have assigned the examining of machines to the secretary of state—for example, Texas. In 1937 Connecticut abolished its voting-machine board and assigned the duties of the board to the secretary of state. *Connecticut Laws*, 1937, ch. 32, sec. 165c.

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state commission or board optional by any town, city, or village. In 1900 Rhode Island amended its first law of the same year to allow the secretary of state to purchase and furnish voting machines to cities and towns upon application.¹⁰ In 1900 Ohio provided that the question of adopting voting machines could be submitted at any general election, and in 1902 allowed adoption on petition of sixty-five per cent of the voters of any district.¹¹

In general these laws required that the voting machine give the voter all the facilities for making his choice afforded by the Australian ballot system and further demanded that the machine obviate the mistakes or frauds which, if made on the paper ballot, would invalidate the vote. The Indiana law of 1901 prohibited approval by the commissioners of any machine which did not meet the following requirements: (1) afford each elector an opportunity to vote in absolute secrecy either a straight party ticket or a split ticket; (2) prevent any elector voting for more candidates than he is entitled to; (3) allow for the tickets of seven political parties; (4) contain seven pairs of “yes” or “no” counters with the operating or voting devices therefor; (5) enable each elector to vote by irregular ballot for a person whose name did not appear on the machine; (6) be of such character that each elector might readily and intelligently vote within the period of one minute for all candidates of his choice; (7) possess one or more locks, by means of which any movement of the voting or registering mechanism could be absolutely prevented, thus forestalling any fraudulent manipulation or tampering; and (8) be so constructed as to remain closed during the progress of the voting, and

¹⁰*Rhode Island Laws*, 1900, ch. 794.

¹¹*Ohio Laws*, 1900, p. 308; *Laws*, 1902, p. 419.

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so prevent any person seeing or knowing the number of votes registered for any candidates.¹²

The Illinois Act of 1903 authorized municipalities to use voting machines if approved by a majority vote of the people.¹³ The vote in Chicago in 1904 favored adoption, but difficulty arose in finding a machine to fit the need of the system of cumulative voting required for the lower house of the Illinois legislature. However, the board of election commissioners let the contract for the purchase of 1,200 machines. The scandal arising because of alleged bribery committed by the manufacturer's agent in securing the contract led to legislative investigation and to subsequent litigation to compel the city to accept and pay for the machines. Through these circumstances the voting machine was condemned in the minds of Illinois voters. As a result, the law, though not repealed, has never been applied. As a further result, this Chicago precedent retarded the progress of the voting-machine movement in other states.¹⁴

Early experience with the voting machine elsewhere developed well-defined objections in the minds of many voters. The first machines could be fraudulently manipulated; hence many of the states legislated to define tampering with them as a felony, punishable by fine or imprisonment. However, the machines were not reliable, and provision had to be made for emergency adjustments. The New York law provided that "If any voting machine being used in any election shall become out of order dur-

¹²*Indiana Laws*, 1901, p. 591.

¹³*Illinois Acts*, 1903, p. 178. There is evidence of a revived interest in the machine in Illinois in S.B. 351 and H.B. 366 which were proposed in the 1937 Legislature but failed to pass.

¹⁴D. T. Zukerman, "The Case for Mechanical Balloting," *National Municipal Review*, 1925, vol. XIV, pp. 226-233.

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ing such election, it shall if possible be repaired or another machine substituted as promptly as possible, but in case such repair or substitution cannot be made, paper ballots, printed or written, and of any suitable form, may be used for the taking of votes, and for such purpose the reduced sample ballots may be employed."¹⁵

The early machines were limited in that they could not be used for cumulative voting, preferential voting, or proportional representation, and in that many machines provided for only seven political parties and inadequately for referendum voting. Because of the initial cost, some states provided for the gradual installation of machines. The New Jersey law of 1905, providing that machines be established in that manner at state expense,¹⁶ was repealed in 1911 because the belief arose that the distribution of voting machines was being handled in such a way as to give partisan advantage.¹⁷ In Minnesota in 1912 and 1913 provisions were added to the election laws requiring the printing of sufficient ballots for at least half the electors, to be available to those who preferred paper ballots, as well as to those voters who came to the polling place and found the machines occupied by others. This mixed system led to additional expense and mounting dissatisfaction, resulting in abandonment of the machines.¹⁸ In Wisconsin one-third of the population was enthusiastically voting on machines by 1915; then legislation compelling the use of paper ballots on county questions

¹⁵*New York Consolidated Laws*, 1930, ch. 17, sec. 261.

¹⁶*New Jersey Laws*, 1905, ch. 215; secs. 1-10.

¹⁷Pennsylvania avoids this possibility by requiring that if the machines are installed gradually, they are to be introduced in alphabetical order by counties or by city, borough, or township within the county. *Pennsylvania Acts*, 1937, no. 320, sec. 1104 (c).

¹⁸Zukerman, *op. cit.*, pp. 226-233.

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brought confusion and the Attorney-General ruled in 1920 that "a hybrid system of voting, that is, voting partially by ballot and partially by machine, was not permitted."¹⁹ Thus the voting-machine movement was retarded by the limitations and the unreliability of the early models; by the unfortunate experiences of a few states, arising from the lack of uniformity in the voting systems; and by the indifference, timidity, and distrust of the average voter.

Indiana, in 1933, and California, in 1937, authorized the use of a machine or machines and paper ballots in the same precinct—in Indiana, if the number of registered voters is too great for the machine provided; and in California, if the number of candidates and propositions exceeds the capacity of one machine.²⁰ The Iowa law of 1937 permits paper ballots for the township ticket.²¹ It remains to be seen whether the use of machines and paper ballots in the same precinct in Indiana, California, and Iowa will prove satisfactory.

During the decade beginning in 1930 five states enacted their first voting-machine laws—Texas in 1930, Alabama in 1935, Tennessee in 1937, Kentucky in 1938, and Louisiana in 1940.²² Each of these permits adoption of the machine anywhere in the state for use in any election. In 1935 two states reenacted voting-machine laws—New Jersey following the repeal of 1911 and Rhode Island following the repeal of 1921.²³ During the same decade two states repealed their voting-machine laws—Arkansas in

¹⁹*Ibid.*; also IX O.A.G. 435 (Wisconsin, 1920), quoting a letter of January 20, 1940, from the office of the Attorney-General of Wisconsin.

²⁰*Indiana Laws*, 1933, 29-903; *California Statutes*, 1937, ch. 878.

²¹*Iowa Laws*, 1937, ch. 94, p. 111.

²²*Texas Laws*, 1930, ch. 33 (amended *Laws*, 1937, 2d sp. sess., ch. 52); *Alabama Acts*, 1935, no. 282, p. 679; *Tennessee Laws*, 1937, ch. 159; *Kentucky Laws*, 1938, ch. 133; *Acts of Louisiana*, 1940, nos. 84 and 224.

²³*New Jersey Laws*, 1935, ch. 302; *Rhode Island Laws*, 1935, ch. 2195.

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1937 and Oregon in 1939.²⁴ Seventeen states amended existing voting-machine laws.

The voting-machine laws in the majority of the states authorize the adoption of the machine for use in all elections in any subdivision of the state. This optional character of the laws has been modified in some states by making the machine mandatory in counties or cities of a given population. In 1903 Indiana did this in every county in the state containing a city with a population of 36,000 or more, leaving the machine optional in all other counties.²⁵ In 1907 Montana worded its law as follows: "The Boards of County Commissioners of counties of the first class shall, and the Boards of County Commissioners of other counties and City Councils of all cities and towns, may, at their option adopt and purchase, for use in the various precincts, any voting-machine approved by the Voting-Machine Commission, and none other."²⁶

In New York a law in 1924 ordered the use of voting machines in all cities of a population over 175,000 by March, 1, 1925, and empowered the state comptroller to pay for the machines if the city failed to do so and to deduct the amount from the city's share of state taxes.²⁷ New York State had pioneered in the employment of the machine, but New York City lagged behind. The use of the machine was made compulsory in 1931 in Connecticut for cities of 10,000 or over; in 1937 in Florida for counties

²⁴*Oregon Laws*, 1939, ch. 446. In the election of 1928 the machines in the city of Portland were too small for the demands made on them, and the resulting congestion at the polls caused dissatisfaction.

²⁵*Indiana Laws*, 1901, p. 591, as amended by *Laws*, 1903, p. 278.

²⁶*Montana Laws*, 1907, ch. 168.

²⁷*New York Laws*, 1924, ch. 442. The New York laws of 1921 and 1922, which made machines mandatory in first-class cities and provided for gradual installation during the three years before the 1924 election, were not put into effect in New York City because of partisan complications. *Zukerman, op. cit.*, pp. 226-233.

ENACTMENT OF VOTING MACHINE LAWS BY DECADES*
(Dates in parentheses indicate repeal)

1891—1900	1901—1910	1911—1920	1921—1930	1931—1940
1892 New York	1901 Kansas	1912 Massachusetts (re-enacted)	1922 Virginia	1935 Alabama
1893 Massachusetts†	1902 Maine	1913 New Hampshire	1923 California (re-enacted)	1935 New Jersey (re-enacted)
1895 Michigan	1903 New Jersey (1911)	1914 Oregon (1939)	1927 Arizona	1937 Rhode Island (re-enacted)
1897 Connecticut	1903 California (1921)	1914 Washington	1929 Arkansas (1937)	1938 Tennessee
1898 Minnesota	1905 Illinois	1914 Maryland	1929 Oklahoma	1940 Kentucky†
1899 Ohio†	1905 Colorado (1921)		1929 Florida	1940 Louisiana
1899 Indiana	1907 Utah (1917)		1929 Georgia	
1900 Nebraska (1921)	1907 Montana		1930 Pennsylvania	
	1900 Iowa		1930 Ohio (re-enacted)	
	1921 Rhode Island (1921)		1930 Texas	

*Thirteen states have never enacted a voting-machine law—Delaware, Idaho, Mississippi, Missouri, Nevada, New Mexico, North Carolina, North Dakota, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming.

†Declared unconstitutional by state supreme court: Massachusetts, 1907; Ohio, 1909; and Kentucky, 1938.

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with a population between 150,000 and 170,000; and in 1937 in Maryland for Baltimore after January 1, 1938.²⁸ The Rhode Island law of 1938 made the use of the machine compulsory throughout the state. In New York, by the time of the general election in 1938, machines were mandatory in all polling places in every city and town (except for primary elections).²⁹

Another mandatory provision has been inserted in the laws of several states—that once the machine has been adopted by a subdivision it shall be used for all elections. The Texas law in this connection stipulates that:

... voting machines shall be used at any and all elections and primary elections, municipal, county, district or State, held in that County, or any part thereof designated for voting, registering, and counting votes cast at such election and primary elections. All school and bond elections also shall be conducted by the use of voting machines in those counties or parts thereof where such machines have been adopted, where the law specifically makes their use obligatory.³⁰

Florida makes the use of the machine mandatory in all elections in municipalities of over 5,000 inhabitants in counties in which the adoption of the machine has been approved.³¹ And New York requires that machines shall continue to be employed wherever they have already entered into use, at all general elections, and may be used at any other election, except primary elections.³²

A provision for the experimental use of machines has been added to the laws of about one-third of the states which have voting machines. The wording of the Arizona law is typical: "The governing body of any county or

²⁸Connecticut Laws, 1931, ch. 32, sec. 106c; Florida Laws, 1937, ch. 18406; and Maryland Laws, 1937, ch. 94, sec. 224A.

²⁹Rhode Island Laws, 1935, ch. 2195, as amended by Laws, 1938, ch. 2640; New York Laws, 1935, ch. 714.

³⁰Texas Laws, 1930, ch. 33, as amended by Laws, 1937 (2d sp. sess.), ch. 52.

³¹Florida Acts, 1937, ch. 18405.

³²New York Consolidated Laws, 1930, ch. 17, sec. 243.

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city may provide for the experimental use of voting machines in one or more polling places without a formal adoption thereof, and its use at such elections shall be as valid as if the machines had been permanently adopted.”³³ In 1937 Wisconsin added a provision allowing the experimental use of machines where adoption is being considered.³⁴

A few states enacted their first voting-machine laws in order to permit use of machines in certain local areas. For example, the Virginia law of 1922 authorized the use of machines in cities of 50,000 population or over.³⁵ Similar measures were passed by Oklahoma in 1927 for Oklahoma County only and by Georgia in 1929 for Richmond County.³⁶ Most of the Maryland voting-machine legislation has been along these lines.

The laws authorizing the use of machines are worded, as in New Jersey, “at all elections,” or as in Massachusetts, “at primaries and elections,” or as in Texas, “at an election or primary election,” but in New York “at any or all elections other than primary.” In 1931 Michigan amended its law to allow the voting machine to primaries, and in 1937 Florida and, in 1938, Massachusetts extended the use of the machine to primary elections.³⁷

The use of the machine presents a problem if the pri-

³³*Arizona Election Laws*, 1937, sec. 1242. Other states having this provision are Connecticut, Florida, Indiana, Iowa, Louisiana, New York, Texas, and Wisconsin.

³⁴*Wisconsin Laws*, 1937, ch. 11. In Wisconsin, in 1912, the attorney-general had ruled “that once a municipality decided to use voting machines, it could not change back to the old method of voting.” Hence the provision allowing experimental use prior to adoption. I O.A.G. 222.

³⁵*Virginia Acts*, 1922, ch. 51. In *Acts*, 1930, ch. 322, the use of the machine was extended to any city, town, or county in any and all elections.

³⁶In 1937 Georgia extended the privilege of machine use to cities over 200,000 for all elections, including primaries. *Laws*, 1937, ex. sess. no. 65, p. 371.

³⁷*Michigan Acts*, 1931, no. 200; *Florida Laws*, 1937, ch. 17903; and *Massachusetts Acts*, 1938, ch. 281.

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mary is a closed one. The Florida and New Jersey laws require that machines designed for use in primary elections must be “so equipped that the election officials can lock out all rows except those of the voter’s party by a single adjustment on the outside of the machine.” The Pennsylvania law calls for machinery “capable of adjustment by election officers, so as to permit each voter at a primary election to vote only for the candidates for non-partisan nomination, if any, and for the candidates seeking nomination by the political party in which he is registered and enrolled, if he is enrolled as a member of a political party, and so as to preclude him from voting for the candidates seeking nomination by any political party in which he is not enrolled.”³⁸ The Maryland law of 1939 stipulates that the ballot label appear in strips, each party having its ticket on a strip of a different color.³⁹

The situation in the open primary is different. The Minnesota law specifies the use of a machine which will prevent the voter at a primary election from voting for the nomination of candidates of more than one party.⁴⁰ The laws in Michigan and Wisconsin require that “. . . the machine shall be so equipped that the voter may register his vote without disclosing the party whose ticket he voted.”⁴¹ Among the requirements Washington makes of the machine is this:

It shall, except at primary elections, permit the voter to vote for all the candidates of one party or in part for the candidates of one party and in part for the candidates of one or more parties. It shall, except

³⁸*Pennsylvania Acts*, 1937, no. 320, sec. 1107(f).

³⁹*Maryland Laws*, 1939, ch. 563.

⁴⁰*General Statutes of Minnesota*, 1913, sec. 543.

⁴¹*Michigan Acts*, 1937, no. 37; *Election Laws of Wisconsin*, 1937, 11.15.

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at primary elections, provide means whereby the voter can by a single operation vote for all the candidates of one party.⁴²

In Pennsylvania, when it is impossible or impracticable to place the names of all candidates for the primary election on one machine, a second machine may be used, "provided, however, that the names of all the candidates seeking nomination in any one political party shall appear on one machine"; in Texas it is required that "... the names of all candidates for any particular office shall be placed on one machine."⁴³ In other respects the laws governing the primary paper ballot form apply to the ballot label for the machine. Insofar as the laws governing the general election apply to primary elections, the rules for the label in the general election apply to the label in the primary.

The law in practically every state defines certain terms which are applicable to the voting machine. The "ballot labels" are the cards, paper, or other material, containing the titles of offices, the names of candidates, and the statements of questions to be voted on.⁴⁴ The "diagram" is an illustration of the official ballot which, when placed upon the machine, shows the parties, bodies, offices, candidates, and statements of the questions, all in their proper places. The word "question" means a statement of a constitutional amendment or other proposition to be submitted to a popular vote at any election. An "irregular ballot" is the paper or other material on which a vote is cast for persons whose names do not appear on the bal-

⁴²*Washington Laws*, 1935, p. 49, sec. 4.

⁴³*Pennsylvania Acts*, 1937, no. 320, sec. 1110(j); *Texas Laws*, 1930, ch. 33, sec. 8.

⁴⁴The Arizona law uses the word "ballot" and the New Jersey law uses the term "official ballot" for the cards, paper, or other material in the ballot frame.

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lot labels.⁴⁵ The term "device" means the lever, knob, button, or other mechanical contrivance connected with the face of a voting machine, by which the voter registers his vote. The term "counter" means the numbered wheels, dials, or other mechanism whereby the votes for each candidate and upon each question are indicated, recorded, and counted. The "protective counter" is a counter or device that will register each time the machine is operated, and cannot be reset, altered, or moved except by operating the machine. The "voting-machine booth" is the enclosure occupied by the voter when voting. The "model" is a mechanically operating reproduction of a portion of the face of the machine, illustrating the manner of voting. The "custodian" is the person charged with the duty of testing and preparing the voting machine for the election and instructing the election officers in the use of the machines.

Efficiency in elections and satisfaction on the part of the voters where the machines are used depend on the character of the instruction the election officials and the voters receive prior to and on election day. All the states provide for the training of election officials. In Wisconsin this is done by means of schools.⁴⁶ In Florida no one may serve as member of any board of elections without receiving instruction from the custodian of machines, and without being certified by the custodian as qualified to perform the duties in connection with the machine.⁴⁷ In all states sample or specimen ballots, printed on a reduced scale, are distributed for educational purposes be-

⁴⁵Iowa and Virginia use the term "independent ballot" for the same purpose. An Attorney-General's opinion, I O.A.G. 211 (1912), in Wisconsin held that a machine must permit an elector the opportunity to write in the name of a candidate.

⁴⁶*Election Laws of Wisconsin*, 1937, 11.11.

⁴⁷*Florida Acts*, 1937, ch. 18405.

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fore the election and are posted conspicuously at the polling places. New York is one of the states which places a machine on public exhibition in charge of a competent instructor for at least three days during a given period prior to election days. More than half the states with voting-machine laws provide on election day a mechanically functioning model of a portion of the face of the machine, which each voter may personally operate.

The ballot labels are uniformly required to be printed in black ink on clear white material of such form and size as will fit the frame of the machine, and in type as plain and clear as the space will reasonably permit. The Pennsylvania law specifies "type . . . easily readable by persons with normal vision." The Wisconsin law is the briefest in its statement regarding ballot labels: their arrangement shall be according to the law for paper ballots, except that the rows may be vertical or horizontal, and all questions must be arranged on the machine in the places provided for such purpose.⁴⁸ The wording of the New Jersey law is also concise:

Party nominations shall be arranged on each voting machine, either in columns or horizontal rows; the caption of the various ballots on the machines shall be so placed on the machines as to indicate to the voter what push knob, pointer, lever or other device is to be used or operated in order to vote for the candidates or candidate of his choice. The providing of the official ballots and the order of candidates shall be as now required by law.⁴⁹

The Pennsylvania law, which is the most detailed of all the state laws as to the form of ballot labels, requires that the county election board prepare the label and submit it to the secretary of the commonwealth for approval. The statement of each question must not exceed seventy-

⁴⁸*Wisconsin Election Laws*, 1937, 11.09.

⁴⁹*New Jersey Revised Statutes*, 1937, 19:49-2.

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five words. The names of all candidates of a political party are to appear in the same row or column, to the left or top of which there is to be a straight party lever, by means of which an elector may, in one operation, vote for all the candidates of that party for every office. The names of such candidates are to be arranged under or opposite the title of the office for which they are candidates, in the order of votes obtained by the presidential electors of the party nominated at the last presidential election. In case of parties or bodies not represented on the ballot at the last presidential election, the names of the candidates of such parties are to be arranged alphabetically, according to the name of the party or body; and if the number of parties makes it impossible to have a separate row for each, such parties or bodies are to be listed by political appellations on the first left-hand or top row, with the designating letter and number of the ballot label where their candidates may be found. The names of individual candidates for presidential elector are not to appear upon the ballot labels, but, in lieu thereof, the names of the candidates of that party for president and vice-president, together with the name of the party.⁵⁰

Provision is made for the voter whose right to vote is challenged. In Massachusetts such a person is not permitted to cast his vote on the machine, but he must be supplied an official ballot or an absent voting ballot marked "Challenged Ballot" in large type on the back.⁵¹ In Michigan, if the challenged voter establishes under oath his right to vote, he may, at the discretion of the precinct inspectors, be allowed to cast his vote either on

⁵⁰*Pennsylvania Acts*, 1937, no. 320, sec. 1110.

⁵¹*Massachusetts General Laws*, 1932, ch. 54, sec. 35B.

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the regular keyboard of the machine, or in the space provided for voting an "irregular ballot," or on an absent voter's ballot. The poll list is marked; and, if the paper ballot is used, it is endorsed in the manner provided for paper ballots, and counted, recorded, and preserved in the same manner as absent voter ballots.⁵²

Provision for the write-in of names not on the ballot label is made in most of the states by means of an "irregular ballot." If he chooses such a candidate, the voter raises the metal slide above the title of the office and writes the name on the piece of paper there exposed. The phrasing of the Indiana law reads: "Such irregular ballot shall be deposited, written or affixed in or upon the receptacle or device provided on the machine for that purpose."⁵³ Some states, which have the presidential short ballot on the voting machine but do not provide for it on the paper ballot, require that "means shall be furnished whereby the voter can cast a vote in part for the candidates for presidential electors of one party, and in part for those of one or more other parties or in part or in whole for persons not nominated by any party."⁵⁴ In 1935 Washington deleted its provision allowing the voting of irregular ballots for presidential electors.⁵⁵

The speed with which the voter may register his choice on the machine has led the states to limit the time he may remain in the voting booth. The Wisconsin law reads "in no case shall such time be less than one minute"; the Virginia law prescribes that "no voter shall remain within the voting machine booth longer than one minute";

⁵²*Michigan Laws Relating to Elections*, 1939 revision, sec. 576.

⁵³*Indiana Revised Statutes*, 1933, sec. 29-2413.

⁵⁴*Florida Acts*, 1937, ch. 18405. Other states with the same provision are Alabama, New Jersey, New York, Rhode Island, and Virginia.

⁵⁵*Washington Laws*, 1935, p. 49.

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the Texas law stipulates that "no voter shall be permitted to keep the curtain of the machine closed longer than two (2) minutes."⁵⁶ These laws are representative of the requirement in other states. Florida is exceptional in allowing the voter to remain not longer than five minutes. Obviously, using the voting machine requires less time than is necessary in marking paper ballots. More than one machine may be used in a precinct. Some of the states have provided that a machine be furnished for a given number of registered voters: in Maryland this number is 400 and in New Jersey it is 750; but a typical law is that of Pennsylvania with the number 500-600 per machine. Pennsylvania has provided for the consolidation of election districts into new ones, "each having between six hundred and eight hundred registered voters as nearly as may be, except that districts having less than six hundred registered voters may be created whenever the court shall be of the opinion that the convenience of the voters and the public interests will be promoted thereby."⁵⁷

Machines are manufactured today to suit the requirements of the office-group or the party-column ballot, with or without facilities for voting a straight ticket; and a machine has been perfected to meet the needs of proportional representation.⁵⁸ The smallest machines now manufactured allow space for as many as 270 candidates. The largest machines will record the votes of nine parties

⁵⁶*Election Laws of Wisconsin*, 1937, 11.06(5); *Virginia Acts*, 1930, ch. 322, sec. 14; *Texas Laws*, 1930, ch. 33, sec. 15.

⁵⁷*Pennsylvania Acts*, 1937, no. 320, sec. 1105(a).

⁵⁸Sait, *op. cit.*, p. 748.

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of seventy candidates each and provide space for voting on thirty-five questions. There is no doubt that a machine can be found which will meet the needs of any election district.⁵⁹

As soon as the polls of the election are closed the judges of the election or the inspector are required to lock the machine against further voting and open the counting compartments in the presence of all persons who are lawfully within the polling place. The Indiana procedure in canvassing is typical:

The inspector shall, in the order of the offices as their titles are arranged on the machine, read and announce in distinct tones the result as shown by the counter numbers, and shall then read the votes recorded for each office on the regular ballots. He shall also in the same manner announce the vote on each constitutional amendment, proposition or other question voted on. The vote so announced by the inspector shall be taken down by each of the poll clerks and recorded on books or papers prepared for that purpose. They shall record the number of votes received for each candidate on the regular ticket and also the number received by each person on the irregular ticket. The certificate of the number of votes cast for each person shall be made and signed as required by law in case of other election returns, and all statements of the number of votes required by law in duplicate, triplicate or otherwise, shall be made and signed by the election officers.⁶⁰

As soon as the canvass is completed the judges of the election or the inspector must lock the machine against voting, and it so remains for a period of thirty days.⁶¹ The "irregular ballots" are properly secured in a sealed package and the law provides for their proper safeguarding.

⁵⁹Since the expiration of the Keiper roller interlock patent in 1929 (issued to the company in Jamestown, New York, in 1912) the voting-machine business has been open to competition.

⁶⁰*Indiana Revised Statutes*, 1933, sec. 29-2415.

⁶¹*Rhode Island Public Laws*, 1940, ch. 818.

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Should a re-canvass be demanded the locked machines may be opened and examined upon order of a court of competent jurisdiction. The New York law describes the procedure in such cases:

... the county board of canvassers shall summon the inspectors of election thereof, and said inspectors, in the presence of said board of canvassers, or a bi-partisan committee thereof, shall make a record of the number on the seal and the number on the protective counter, if one is provided, open the counter compartment of such machine, and, without unlocking such machine against voting, shall re-canvass the vote cast thereon. Before making such re-canvass the county board of canvassers shall give notice in writing to the voting machine custodian and to the county chairman of each party or independent body which shall have nominated candidates for the election of the time and place where such re-canvass is to be made; and each of such parties or nominating bodies may send two representatives to be present at such re-canvass. If, upon such re-canvass, it shall be found that the original canvass of the returns has been correctly made from the machine, and that the discrepancy still remains unaccounted for, the county board of canvassers . . . shall unlock the voting and counting mechanism of the machine and shall proceed to thoroughly examine and test the machine to determine and reveal the true cause or causes, if any, of the discrepancy in the returns from such machine. Before testing the counters, they shall be reset at zero (000) after which each counter shall be operated at least one hundred times.⁶²

It is quite obvious that the re-canvass of the machine is much more expeditious, more accurate, and less expensive than a recount of paper ballots. To this advantage may be added several other features of the voting machine which recommend it as the most desirable way of casting, registering, and counting votes. As nearly as possible, the machine eliminates fraud and error on the part of both the voters and the election officials. Many voters in every election in which paper ballots are used invalidate their ballots by irregularities in marking, a

⁶²*New York Consolidated Laws*, 1930, ch. 17, sec. 266.

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difficulty entirely eliminated by the use of the machine. Fatigue, carelessness, and manipulation of the figures on the part of election officials often enter into the count of the paper ballots, whereas the machine assures an accurate and prompt total at the closing of the polls. Since the elector may cast his vote in a shorter time on the machine than on a paper ballot and since more than one machine may be used in a precinct election, costs in connection with personnel, supplies, and rent may be reduced by the consolidation of precincts. Since the voting machine is equipped with a curtain which automatically conceals the voter, the expense of constructing voting-booths is eliminated. There is some saving in printing costs, since the ballot label fits into the frame of the machine; however, paper ballots must be printed for absent voters and for educational purposes.

While the machine eliminates certain expenses connected with voting by paper ballot, it calls for new expenses such as drayage, storage, insurance, upkeep, replacement, and the education of officials and voters. The heavy initial cost of the machines is counteracted by long-time savings. Most of the companies are willing to let the machines pay for themselves over a period of years. The Automatic Voting Machine, for example, "may be purchased outright or by deferred payments. When possible such payments may be amortized by savings effected out of current election funds."⁶³ When voting machines were purchased for Dallas County, Texas, "it was estimated that the savings in election costs would pay for

⁶³*The How, What and Why of the Automatic Voting Machine*, a pamphlet issued by the Automatic Voting Machine Corporation, Jamestown, New York.

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same over a period of fifteen years, but at this rate of savings our machines will liquidate themselves in a much shorter time."⁶⁴

The question of the voting machine's constitutionality, which arose early, was settled in some states by an amendment to the constitution and in other states by a court action. Arizona, New York, Oregon, and Rhode Island adopted elastic constitutional provisions in which power was delegated to the legislature to prescribe the method of voting, provided that secrecy be preserved.⁶⁵ Utah's first constitution contained a provision stating that "Nothing in this section shall be construed to prevent the use of any machine or mechanical contrivance for the purpose of receiving and registering the votes cast at any election: Provided, that secrecy in voting be preserved."⁶⁶

Virginia in its constitution of 1902 granted the General Assembly the authority to provide for the use of machines.⁶⁷ In 1901 Pennsylvania amended its constitution to permit "such other method as may be prescribed by law; provided that secrecy in voting be preserved." However, prohibitions against local or special legislation made the introduction of machines impossible except on a statewide basis. In 1928 Pennsylvania again amended its constitution to require the General Assembly by general law to permit the use of the machine at the option of

⁶⁴Testimonial of the County Auditor, Dallas County, Texas, in a pamphlet, *8,500,000 Voters Cast Their Ballots on Jamestown Automatic Voting Machines at the Last Presidential Election* (1936).

⁶⁵Arizona Constitution, 1912, Art. VII, sec. 1; New York Constitution, 1894, Art. II, sec. 5; Oregon Constitution, 1859, Art. II, secs. 8 and 15; Rhode Island Constitution, 1842, Art. VIII, sec. 2.

⁶⁶Utah Constitution, 1898, Art. IV, sec. 8.

⁶⁷Virginia Constitution, 1902, Art. II, sec. 37.

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any subdivision.⁶⁸ California in 1902, Connecticut in 1905, Colorado in 1906, Massachusetts in 1911, Maine in 1935, and Louisiana in 1940 amended their constitutions to permit the use of the machine.⁶⁹

The supreme courts of three states invalidated voting-machine laws on the ground of unconstitutionality—Massachusetts in 1907, Ohio in 1909, and Kentucky in 1938. The Massachusetts court held that voting machines were not written votes within the meaning of the constitution.⁷⁰ The Ohio court ruled that voting machines were contrary to the requirement of a written ballot, contained in the state constitution. In 1929 the Ohio Supreme Court sustained the use of the voting machine so far as secrecy of the ballot was concerned in the decision in *State v. Green*; but in this particular case the use of the machine had been authorized by a city for all elections, and this the court held the city had no power to do.⁷¹ The decision rendered by the Kentucky Court of Appeals on the constitutionality of the 1938 voting-machine law said in part:

. . . we think it would be a very strained construction and applica-

⁶⁸Pennsylvania Constitution, 1873, Art. VIII, sec. 4 (Nov., 1901) and sec. 7 (Nov., 1928).

⁶⁹California Constitution, 1879, Art. II, sec. 6; Connecticut Constitution, 1818, Art. XXXV; Colorado Constitution, 1876, Art. VII, sec. 8; Massachusetts Constitution, 1780, Art. XXXVIII; Maine Constitution, 1819, Art. LIX; Louisiana Constitution, Art. VIII, sec. 1.

In a letter of February 6, 1940, the Attorney-General of Maine stated that "it has never been decided why our Legislature deemed it necessary to amend the Constitution in order to permit the use of voting machines. The Amendment was passed by the Legislature without a dissenting vote and without any discussion relative thereto."

⁷⁰*Nichols v. Board of Election Commissioners of the City of Boston*, 196 Mass. 410 (1907).

⁷¹*State ex rel. Karlinger v. Board of Deputy State Supervisors of Elections*, 80 O.S. 471 (1909); *State, ex rel. Automatic Registering Machine Co., v. Green, Director of Finance*, 121 O.S. 310 (Ohio, 1929).

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tion to say that operating a series of levers which blindly register the effect is marking a ballot and depositing it. Unquestionably the framers of the constitution meant that a paper ballot with the names of the candidates upon it should be furnished.⁷²

However, in other states the constitution was interpreted more liberally. In 1905 the Illinois Supreme Court upheld the validity of the 1903 law with the opinion that "Voting by ballot does not necessarily mean by use of paper tickets; it includes any method of voting which preserves the secrecy of the vote."⁷³ Likewise the Indiana Supreme Court, in 1914, decided that the constitutional prescription that "all elections shall be by ballot, does not prevent the use of voting machines."⁷⁴ In Iowa the State Supreme Court reached this interpretation:

Voting by means of a voting machine is voting by ballot. The constitutional provision that elections shall be by ballot was intended to require and protect the secrecy of the ballot, with the general purpose of guarding against intimidation, securing freedom in the exercise of the elective franchise and reducing to a minimum the incentive to bribery.⁷⁵

The Minnesota Supreme Court in 1906 ruled that the use of the voting machine does not contravene the provision of the constitution requiring that "all elections shall be by ballot."⁷⁶ The Montana Supreme Court sustained the voting-machine law of 1907 on the ground that "the term 'ballot' [is] employed, not to designate a piece of paper, but a method to insure, so far as possible, the secrecy and integrity of the popular vote."⁷⁷ The Supreme

⁷²*Jefferson Co. ex rel. Grauman v. Jefferson Co. Fiscal Court*, 273 Ky. 674 (1938).

⁷³*James D. Lynch v. William C. Malley et al*, 215 Ill. 574 (1905).

⁷⁴*Spickerman v. Goddard*, 182 Ind. 523 (1914).

⁷⁵*U. S. Standard Voting Machine Co. v. Hobson*, 109 N. W. 458 (Iowa, 1900).

⁷⁶*Elwell v. Comstock*, 99 Minn. 261 (1906).

⁷⁷*Montana Laws*, 1907, ch. 168; *State ex rel. Fenner v. Keating*, 53 Mont. 371 (1917).

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Court of Michigan similarly upheld the constitutionality of the voting machine: "The section requiring all votes . . . to be given by ballot merely declares the policy of the state to assure to the elector a secret as distinguished from an open or announced vote, and does not permanently establish a particular mode of voting, and is not infringed by an act of the legislature requiring all voting by machine to be by secret vote."⁷⁸ The same position was taken by the Supreme Court of Washington.⁷⁹ In 1935 the Maryland Supreme Court held that the constitutional provision that "All elections shall be by ballot" does not forbid the use of voting machines, enunciating this principle: "A Constitution is to be interpreted by the spirit which vivifies, and not by the letter which killeth."⁸⁰

⁷⁸*Detroit v. Election Inspectors*, 139 Mich. 548 (1905).

⁷⁹*State ex rel. Empire Voting Machine Company v. Carroll*, 78 W. 84 (Washington, 1914).

⁸⁰*Norris v. Mayor and City Council of Baltimore*, 192 At. 531 (Maryland, 1935).

CHAPTER V

THE BALLOT IN PRESIDENTIAL ELECTIONS

The Constitution of the United States makes the following provisions for the election of presidential electors: (1) each state is assigned a number of electors equal to the whole number of senators and representatives of the respective states in the Congress; (2) the manner of election may be determined by the state legislature; (3) persons holding offices of trust or profit under the United States may not serve as electors; and (4) Congress may determine the time of choosing the electors.¹ The present study is concerned primarily with the manner and time of appointing the electors, the several methods which are employed in presenting the names of candidates for presidential electors on ballots for the general election, and the recent movement for the "presidential short ballot."

During the first forty years following the adoption of the Constitution the electors were usually chosen by the state legislatures, although it is interesting to note that in the first election of George Washington three states authorized popular election.² This method was subsequently emulated by other states and became common by

¹Constitution of the United States, Art. II, sec. 1, and Amendment XII.

²Maryland, Pennsylvania, and Virginia. See Stuart Lewis, *Party Principles and Practical Politics*, New York, 1938, p. 46.

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1832.³ By act of Congress in 1845 the date for choosing the electors was fixed as "the Tuesday next after the first Monday in the month of November of the year in which they are to be appointed." Thus electors are now uniformly selected by popular vote, and the date is universally set in November.

In the early presidential elections some states chose electors by districts. Since the post of presidential elector is a state office, there was justification for the idea that he should represent the whole state. The practice of choosing electors at large gave an advantage to the dominant party in the state. If that party controlled the legislature its interests would be served by choosing electors at large; but if it faced the possibility of an adverse vote, it might seek to have the electors chosen by districts. The district method of choosing electors was made mandatory in a proposed Twelfth Amendment in 1802 which failed of passage in the Senate by only a single vote after approval by the House, and was included in proposals which passed the Senate on four occasions between 1812 and 1824, one of which failed in 1820 to receive a two-thirds majority in the House by a margin of only five votes.⁴

In 1892 a controversy arose in Michigan over a state law requiring the election of electors by districts. Those opposing the law contended that the state as a body politic must select the electors at large and they likewise challenged the exclusive power of the legislature over the manner of choosing electors. In the case of *McPherson v.*

³Since 1832, with the exception of South Carolina prior to the Civil War, of Florida in 1868, and of Colorado in 1876, all the states have chosen electors by vote of the people. *Ibid.*

⁴J. E. Kallenbach, "Recent Proposals to Reform the Electoral System," *American Political Science Review*, 1936, vol. XXX, p. 929.

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Blacker, appealed from the Supreme Court of Michigan, the United States Supreme Court spoke decisively on both points:

The act [that of appointing electors by districts] is the act of political agencies duly authorized to speak for the State, and the combined result is the expression of the voice of the State, a result reached by direction of the legislature, to whom the whole subject is committed. . . .

The Constitution does not provide that the appointment of electors shall be voted for upon a general ticket, nor that the majority of those who exercise the elective franchise can alone choose the electors. It is recognized that the people act through their representatives in the legislature, and leaves it to the legislature exclusively to define the method of effecting the object.⁵

While the Court sustained the exclusive power of the legislature as to the manner of appointing electors and upheld the election by districts, it is interesting to note that since that decision, no state legislature has failed to submit the matter to popular vote or to have the electors voted for at large.⁶

During the first hundred years after the adoption of the Constitution, electors, wherever chosen by popular vote, were presented as individual candidates. In 1892 Massachusetts departed from this practice by providing for a grouping of the list of electors so that a single mark by the voter served for all electoral candidates nominated by a given party.⁷ Minnesota followed suit in 1901.⁸ This arrangement is not to be confused with straight-ticket voting, which embraces the party candidates for all offices. The printing of the names of electoral candidates in a group serves to make the ballot more compact, to simplify the task of the voter who wishes to vote for all

⁵*McPherson v. Blacker*, 146 U. S. 26-27 (1892).

⁶This is true even though the ballots in some states still identify the electoral candidates by districts.

⁷*Massachusetts Laws*, 1892, ch. 279.

⁸*Minnesota Laws*, 1901, ch. 109.

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the candidates of his party, and to expedite the canvassing. Since the ballot contains a blank column or blank lines for the write-in privilege, this group arrangement does not infringe upon the right of the voter who wishes to choose his electoral candidates from more than one party. Following the lead of Massachusetts, other states have provided for the grouping of electors on the ballot.

Kansas, in 1897, and Wisconsin, in 1901, introduced the practice of printing on the ballot the names of the candidates for president and vice-president,⁹ thus identifying each list of electoral candidates with the names made prominent by the campaign. This emphasis on the names of the presidential candidates has increased so widely that today only a few states fail to print the names of the party candidates for president and vice-president on the ballot.

Some of the states have made the two changes in ballot arrangement in the same law—for example, Maryland's law of 1918.¹⁰ Other states have made the two changes in different years—for example, Nevada in 1929 added the names of the presidential candidates and in 1939 grouped the electoral candidates, printing only one voting square.¹¹

The introduction of the voting machine with its limitations as to arrangement and space led Iowa in 1900, Indiana in 1901, and New Jersey in 1902¹² to provide in the voting-machine law that the names of electoral can-

⁹*Kansas Laws*, 1897, ch. 129; *Wisconsin Laws*, 1901, ch. 457.

¹⁰*Maryland Laws*, 1918, ch. 51.

¹¹*Nevada Laws*, 1929, ch. 44: "Nothing in this act shall be construed to permit the throwing out of any ballot because the elector has marked X after the names of such candidates for president and vice-president, though no space has been placed for such mark." *Laws*, 1929, ch. 171.

¹²*Iowa Laws*, 1900, ch. 37; *Indiana Acts*, 1901, p. 591; *New Jersey Laws*, 1902, ch. 205.

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didates might be omitted, that the ballot label might contain only the words "Presidential Electors" preceded by the party name, and that the voter might vote for any person(s) of his choice by means of an "irregular ticket" (the term used for the write-in privilege on the voting machine). The Illinois voting-machine law of 1903 provided that the machine:

. . . may be so constructed that the names of all candidates for presidential electors will not occur thereon, but in lieu thereof one ballot label in each party column or row shall contain only the words "Presidential Electors" preceded by the party name.

. . . in case the machine is so constructed that the candidates for presidential electors of any party can be voted for only by voting for the ballot label containing the words "Presidential Electors," by voting an irregular ticket as hereinafter defined, the elector may vote for any person or persons he may choose for presidential electors.¹³

Other states also provided for this omission of electoral candidates on the ballot label of the machine (before their omission from paper ballots).¹⁴

While the states were becoming accustomed to the idea of voting directly for the presidential candidates on the voting machine, the movements to group the names of the electoral candidates on the paper ballot and to add the names of the presidential candidates to the party name, preceding the list, continued to grow.

The first state to shorten the paper ballot by omitting the names of candidates for presidential electors was Nebraska.¹⁵ Its pioneer law, enacted in 1917, called upon

¹³*Illinois Laws*, 1903, p. 179.

¹⁴Connecticut (*Acts*, 1903, ch. 207), Colorado (*Acts*, 1905, ch. 101), Nebraska (*Laws*, 1905, ch. 67), Wisconsin (*Laws*, 1907, ch. 583), New Hampshire (*Laws*, 1913, ch. 225), Oregon (*Laws*, 1913, ch. 337), and Washington (*Laws*, 1913, p. 180).

¹⁵Two excellent articles prepared by Leon C. Aylesworth deal with the presidential short ballot: "The Presidential Ballot," *American Political Science Review*, 1923, vol. XVII, pp. 89-96, and "The Presidential Short Ballot," *ibid.*, 1930, vol. XXIV, pp. 966-970.

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the Governor to appoint as electors "those persons selected in the preceding delegates state convention by the political party whose candidates for President and Vice-President received the highest number of votes at the general election held in the within year and years, on such day as congress may appoint."¹⁶ Iowa improved on this wording with its law on the same subject two years later: "A vote for the candidates of any one 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."¹⁷

In 1921 an Illinois bill, similar to that of Nebraska, was vetoed by Governor Len Small because the measure provided for appointment by the governor of those electors whose party was favored at the polls, and hence appointment would not take place on the date prescribed by Congress. Wisconsin in 1925 and Illinois in 1927 enacted laws following the language of the Iowa law; and Nebraska in 1927 reworded its law similarly.¹⁸ In 1929 Michigan and Ohio adopted the presidential short ballot.¹⁹ The wording of the Ohio law is concise: "A vote for names of candidates for president and vice-president is a vote for the electors of that party, the names of whom are on file with the secretary of state." Before the decade 1930-1940, six states had by law omitted the names of electoral candidates from all ballots.

¹⁶*Nebraska Laws*, 1917, Art. 1964, sec. 26.

¹⁷*Iowa Laws*, 1919, ch. 86, sec. 6.

¹⁸*Wisconsin Laws*, 1925, ch. 250; *Illinois Laws*, 1927, p. 450; *Nebraska Laws*, 1927, ch. 105.

¹⁹*Michigan Acts*, 1929, no. 306; *Ohio Laws*, 1929, secs. 107-8.

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In 1931 Pennsylvania and Texas passed laws omitting the names of electors from the ballot.²⁰ However, the Texas law was not applied because in 1932 the Attorney-General advised the Secretary of State as follows:

... this act . . . is so vague, indefinite and uncertain that, in our opinion, it is incapable of either intelligent construction or application.

You are, therefore, advised that, in the opinion of this Department, you should certify the names of the presidential electors of each political party to the proper county officials. You are not required, in our judgment, to certify the names of the actual candidates for President and Vice President of the respective political parties.²¹

Massachusetts in 1932, Connecticut, Missouri, and North Carolina in 1933, and Washington in 1935 adopted the presidential short ballot.²² The Indiana act for a presidential short ballot, approved on February 28, 1933, was inadvertently repealed by a law providing for a separate presidential ballot box, approved on March 2, 1933.²³ Laws providing for the omission of electors from the ballot were enacted in California, Indiana, and Maryland in 1937.²⁴ Nine states authorized the use of the presidential short ballot during the decade, bringing the total number of states to fifteen by the time the 1940 campaign was held, although this number does not include the states which have the provision for omission on voting machine labels only. With New York and Rhode Island added, the effective number has reached seventeen, of which all

²⁰*Pennsylvania Laws*, 1931, no. 216; *Texas Laws*, 1931, ch. 186.

²¹An unpublished letter of Attorney-General James V. Allred to Secretary of State Jane Y. McCallum, September 26, 1932.

²²*Massachusetts Acts*, 1932, ch. 35, p. 106; *Connecticut Laws*, 1933, ch. 67, sec. 165; *Missouri Laws*, 1933, pp. 225-229; *North Carolina Supplement*, 1933, ch. 165; and *Washington Laws*, 1935, sec. 3, p. 46.

²³*Indiana Laws*, 1933 (Feb. 28), ch. 1, sec. 29-112; *Laws*, 1933 (March 2), ch. 92, p. 666. The point was confirmed by Mr. Fred C. Gause, of the Indiana State Board of Election Commissioners, in a letter dated Nov. 14, 1939.

²⁴*California Statutes*, 1937, ch. 266 (adding sec. 1188.5 to the Code); *Indiana Laws*, 1937, ch. 61; *Maryland Laws*, 1937, ch. 95, sec. 64.

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but three, Nebraska,²⁵ North Carolina, and Missouri, have voting-machine laws to which the presidential short ballot law applies.

The states which have enacted first voting-machine laws or have re-enacted a repealed law since 1917, specifically providing for the omission of electoral college candidates from the ballot label, are Virginia (1922); New York (1924);²⁶ Arizona (1927); Florida (1929); Alabama, New Jersey, and Rhode Island (1935); and Tennessee (1937). Two of these states, New York and Rhode Island, although lacking a presidential short ballot law, used the machine in all precincts in the 1940 election.

The growth of the presidential short ballot movement may be traced in the total electoral strength affected by it through the successive presidential elections between 1920 and 1940.²⁷ In the 1920 and 1924 elections two states—Nebraska with eight electors and Iowa with thirteen—omitted the names of candidates for twenty-one electors. In 1928 the additional thirteen of Wisconsin and twenty-nine of Illinois made the total sixty-three. These four states lost a total of four electoral votes as a consequence of the 1930 census and reapportionment, reducing their total electoral votes to fifty-nine. By the 1932 election Michigan's nineteen, Ohio's twenty-six, Pennsylvania's thirty-six, and Massachusetts's seventeen brought the total to 157 electors. By 1936 the addition of Connecticut's eight electors, Missouri's fifteen, North Carolina's

²⁵In 1921 Nebraska repealed its voting-machine law, which provided for the omission of electors. North Carolina and Missouri have never enacted voting-machine legislation.

²⁶The validity of New York's action in eliminating electors on voting machines was sustained by the Supreme Court of King's County in *Thomas v. Cohen*, 262 N.Y.S. 320 (1933). Kallenbach, *op. cit.*, p. 924.

²⁷This does not include states having voting-machine laws with provision for omission of electors.

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GROWTH OF THE PRESIDENTIAL SHORT BALLOT

State	Electoral College Votes in Each Presidential Year					
	1920	1924	1928	1932*	1936	1940
Nebraska.....	8	8	8	7	7	7
Iowa.....	13	13	13	11	11	11
Wisconsin.....			13	12	12	12
Illinois.....			29	29	29	29
Michigan.....				19	19	19
Ohio.....				26	26	26
Pennsylvania.....				36	36	36
Massachusetts.....				17	17	17
Connecticut.....					8	8
Missouri.....					15	15
North Carolina.....					13	13
Washington.....					8	8
California.....						22
Indiana.....						14
Maryland.....						8
New York†.....						47
Rhode Island‡.....						4
Total‡.....	21	21	63	157	201	296

*The reapportionment effective in 1932 altered the number of electoral votes in Nebraska, Iowa, and Wisconsin.

†With the exception of New York and Rhode Island, which required state-wide use of the machine in the 1940 election, states whose voting-machine laws provide for the omission of names of electoral candidates are not included.

‡Since the 1931 law is ineffective, Texas is omitted.

thirteen, and Washington's eight made the total 201. With the twenty-two electors of California, the fourteen of Indiana, and the eight of Maryland added for the 1940 election, the total number of electors whose names are omitted is 245,²⁸ representing a total population, according to the 1930 census, of more than 60,000,000. This implies a voting potential of about 30,000,000 and a voting participation of about 20,000,000.

The presidential short ballot may be justified in several ways. While independent voting may be admired and a

²⁸With the fifty-one electors of New York and Rhode Island added, the total is 296 electors, constituting more than half of the electoral college.

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split ticket for various offices may be evidence of discrimination, splitting lists of electoral candidates is wasting a vote. Voting for a few electoral candidates of one party and a few of another party serves to cancel out any effective choice for the presidency. The only common-sense procedure is straight voting for one group of electoral candidates. The pre-election campaign and public discussions center on the choice of candidates for president and vice-president, not on candidates for separate electoral offices. Consequently, the presence of the names of electoral candidates is superfluous.

The presidential short ballot can be further justified from the standpoint of election officials. The counting of votes for each electoral candidate is expensive in time and energy, and the large ballots are unwieldy. The most efficient approach to the count lies in a tally of the vote for presidential candidates. Hence, the group vote for president, with or without the names of electoral candidates, provides a relatively easy means of tallying.

Another justification for the presidential short ballot is that of economy and convenience. Elimination of the names of electoral candidates, by reducing the size of the ballot, lowers the printing costs. The smaller ballot is easier for the voter to handle and mark. In short, the omission of electors from the ballot is beneficial to all.

The common practice today is to put the presidential election in first place on the blanket ballot; the only two exceptions to this rule are Alabama, which places electoral candidates after the state offices, and South Caro-

The New Hampshire ballot on the next page illustrates the following features: party-column arrangement, party emblems, circle for straight ticket voting, addresses of candidates, a blank column for independent write-in, a proposition at the bottom, and group voting for the presidential electors of each party.

 For a Straight Ticket Mark a Circle (X) Within This Circle REPUBLICAN	 For a Straight Ticket Mark a Circle (X) Within This Circle DEMOCRATIC	
For WILLKIE and McNARY Electors: JAMES C. FARMER, Keene ARTHUR E. MOREAU, Manchester HUNTLEY M. SPAULDING, Rochester MABEL B. WYETH, Hanover	For ROOSEVELT and WALLACE Electors: DAMASE CARON, Manchester IRVING A. HINKLEY, Lancaster MICHAEL O'MALLEY, Somersworth CHARLOTTE E. WOODBURY, Bedford	
For Governor: ROBERT O. BLOOD, Concord	For Governor: F. CLYDE KEEFE, Dover	For Governor:
For Representative in Congress: FOSTER STEARNS, Hancock	For Representative in Congress: DANIEL J. MORIARTY, Nashua	For Representative in Congress:
For Comptroller: STANLEY JAMES, Nashua	For Comptroller: WILLIAM A. MOLLOY, Nashua	For Comptroller:
For Senator: CHARLES B. RIGNEY, Nashua	For Senator: ARTHUR J. RENAUD, Nashua	For Senator:
For Representative to the General Court: ALLEN A. BACKER, Nashua	For Representative to the General Court: RODOLPHE CORMIER, Nashua	For Representative to the General Court:
TERENCE DUFFY, Nashua	WILFRED J. GRANDMAISON, Nashua	
DONALD ERION, Nashua	HONORE D. LeBLANC, Nashua	
JOHN D. WILCOX, Nashua		
For Sheriff: RICHARD M. O'DOWD, Manchester	For Sheriff: RICHARD M. O'DOWD, Manchester	For Sheriff:
For County Solicitor: THEODORE B. CARTER, Manchester	For County Solicitor: J. VINCENT BRODERICK, Manchester	For County Solicitor:
For County Treasurer: LANSING P. MALLETT, Manchester	For County Treasurer: OVIDE DUVAL, Manchester	For County Treasurer:
For Register of Deeds: JAMES D. DeROCHER, Nashua	For Register of Deeds: DONAT CORRIVEAU, Nashua	For Register of Deeds:
For Register of Probate: ALBERT L. BISSON, Manchester	For Register of Probate: WILFRED J. BOISCLAIR, Manchester	For Register of Probate:
For County Commissioners: First District: JOSEPH E. PARANT, Manchester	For County Commissioners: First District: WALTER J. T. RICHARD, Manchester	For County Commissioners: First District:
Second District: NAPOLEON F. PAQUETTE, Nashua	Second District: HONORE E. BOUTHILLIER, Nashua	Second District:
Third District: LESTER CLARK, Goffstown	Third District: JOSEPH E. HURLEY, Wilton	Third District:
For Selectmen: JOHN DIONNE, Nashua	For Selectmen: JOSEPH A. BRIE, Nashua	For Selectmen:
RAYMOND HACKETT, Nashua	ARTHUR MORRISSETTE, Nashua	
	WILFRID J. NOEL, Nashua	
For Inspector of the Checklist: WILLIAM C. POMBRIO, Nashua	For Inspector of the Checklist: WILLIAM C. POMBRIO, Nashua	For Inspector of the Checklist:
	For Moderator: JOHN M. BOGGIS, Nashua	For Moderator:
	For Ward Clerk: JAMES G. MORSE, Nashua	For Ward Clerk:

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lina, which puts them at the end of the national ticket.²⁹ Only Maine, New York, North Carolina,³⁰ Ohio, Oklahoma, Vermont, and Wisconsin print a separate ballot for the presidential election. New York, an office-group state, uses the party-column pattern for the presidential ballot; and Wisconsin, a party-column state, uses the office-group pattern for the presidential ballot. Since the North Carolina law permits the consolidation of any of the seven separate ballots required, the presidential election may appear on a ballot with other elections; in either case, however, the party-column pattern is used.

An analysis of the presentation of presidential electors on the paper ballots in the thirty-three states which do not have the presidential short ballot law reveals three methods of arrangement: (1) the name of each electoral candidate is printed just like the name of a candidate for any other office; (2) the electoral names are printed as a group, accompanied by the names of the presidential candidates, with only one voting square; (3) a voting square is printed for a group vote, together with a square beside the name of each electoral candidate, allowing the voter to vote for the group or for each electoral candidate.

The first arrangement—printing the name of each electoral candidate in the same way as that of a candidate for any other office—is still used in Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Kentucky, Louisiana, Mississippi, New Mexico, South Carolina, Utah, West Virginia, and Texas.³¹ These are southern

²⁹*Alabama Code*, 1928, ch. 19, sec. 470; *South Carolina Code*, 1932, sec. 2304.

³⁰*North Carolina Laws*, 1933, ch. 165, secs. 20 and 21.

³¹For the discussion of Texas, see pp. 105 and 107.

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and western states; and, since the number of electors is small, the ballot burden, with few exceptions, would not be greatly lightened if they were omitted. The wording of the Idaho law is typical of this group of states, providing that "When a president and vice president of the United States are to be elected, the name of the office and the names of the candidates for electors must be printed in like type as directed for other offices and candidates."³²

In Delaware the name of every electoral candidate is accompanied by the title, "For Elector of President and Vice President."³³ Kentucky identifies each candidate for elector by his address and district, Louisiana by his parish and district, and West Virginia by address only. In the office-group states of Arkansas and Colorado the party label accompanies each electoral name. Florida, Mississippi, and South Carolina mention no political parties or presidential candidates, although it is understood in the first two that the Democrats lead each office list, and the party papers in South Carolina are restricted to the party circulating them. The Utah law provides that "in case of electors for president and vice-president of the United States the names of the candidates for president and vice-president may be added to the party or political designation."³⁴

This is interpreted by the officers in charge of preparing the ballot as meaning that the presidential candidates come above the party circle. Colorado saves space by inserting the names of presidential candidates vertically and to the left of their respective electors. The practice in the majority of these states is to provide blank lines

³²*Idaho Primary and General Election Laws*, 1937-38, sec. 38-804.

³³*Delaware Election Laws*, 1936, sec. 1814, 5.

³⁴*Utah General Election Laws*, 1938, 25-6-5.

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for the write-in privilege, which has the obvious result of increasing the size of the ballot unnecessarily, since the persons whose names are so written in cannot be elected. Few voters use the privilege.

The second arrangement—printing the names of the electoral candidates as a group, accompanied by the presidential names, with only one voting square—is used by the fourteen states of Arizona, Kansas, Minnesota, Montana, Nevada, New Hampshire, North Dakota, Oklahoma, Oregon, Rhode Island,³⁵ South Dakota, Tennessee, Virginia, and Wyoming. New Hampshire's law is representative of the phrasing used in this group; it provides as follows: "At the right of the name of each candidate and on the same line there shall be a square, except that in the case of electors of president and vice-president of the United States one square shall suffice for each group of electors."³⁶ Among this group each electoral candidate is identified by an address or his district in Kansas, New Hampshire, Oregon, South Dakota, and Virginia, while Oregon saves space by printing the names of electoral candidates in paragraph form, and Minnesota does likewise by dividing each list into two columns, using small type. The surname of the presidential candidate (but not of the vice-presidential candidate) is printed on the ballot in Arizona and North Dakota; the surnames of both candidates in Minnesota, New Hampshire, South Dakota, and in Kansas (since 1935);³⁷ the full names of both candidates are given in Nevada, Oregon, Wyoming,

³⁵Since Rhode Island, by *Laws*, 1938, ch. 2640, has made the use of the voting machine statewide, the provisions of the law governing arrangement of paper ballots have become obsolete.

³⁶*New Hampshire Public Laws*, 1925, ch. 26, sec. 7.

³⁷*Kansas General Statutes*, 1935, 25-603.

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and in Oklahoma (1931), in Montana (1933), in Tennessee (1935), and in Virginia (1936).³⁸

The third arrangement—a voting square for a group vote and an additional square beside the name of each electoral candidate—is found on the ballots of four states. Of these, Maine, New York,³⁹ and Vermont present the presidential election on a separate ballot, with the voting square for the group vote and the party square for straight ticket voting. In Vermont the presidential names are placed above the party square. The fourth state, New Jersey, prints the presidential election in the first position on the blanket ballot with these instructions, as given in the law:

In presidential years, the following instructions shall be printed upon the general election ballot:

7. To vote for all the electors of any party, mark a cross X or plus + . . . in the square at the left of the surnames of the candidates for president and vice president for whom you desire to vote.

8. To vote for part of the electors of any party mark a cross X or plus + . . . in the square at the left of the name of each elector for whom you desire to vote.⁴⁰

The address of each candidate for elector appears on the ballots of Maine and Vermont. Only the surnames of presidential candidates are given on the ballots of Maine and New Jersey, but full names are given in New York and Vermont. On the ballots of Maine and Vermont there are blank lines for the write-in privilege; New Jersey and New York give blank columns for that purpose.

³⁸*Oklahoma Statutes*, 1931, sec. 5816; *Montana Laws*, 1933, ch. 4; *Tennessee Laws*, 1935, ch. 9, pp. 109-110; *Virginia Laws*, 1936, p. 276.

³⁹Although *New York Laws*, 1935, ch. 714, made the use of the voting machine statewide (except for the primary election) by the general election of 1938, the law governing the arrangement of paper ballots has not been repealed.

⁴⁰*New Jersey Elections* (revised to 1938), 19:14-5.

CHAPTER VI

THE PRIMARY BALLOT

Since primary elections occur at regular intervals and are regulated by statute, they resemble general elections.¹ In all one-party states the primary is, in fact, the election. The purpose of this chapter is to present a general view of primary election ballots and to describe the face of the primary ballot. The primary ballot is of the Australian type in that it is prepared and distributed by legally designated authorities and in that it is voted in secret at an election conducted by officials. As the primary is a party election the ballot must be the party ticket, and there must be as many separate tickets as there are parties which have qualified under the laws of each state.

There are fifteen states whose constitutions require or regulate in some manner the use of the primary, leaving to the legislature the elaboration of the system to be used.² With two exceptions, Connecticut and Rhode

¹For decisions regarding the constitutionality of the primary, see C. E. Merriam and Louise Overacker, *Primary Elections*, Chicago, 1928, Chapter VI.

²Alabama Constitution, 1901, Art. VIII, secs. 183, 190; Arizona Constitution, 1912, Art. VII, secs. 10, 14; California Constitution, 1879, Art. II, sec. 2½ (amendment of 1908); Delaware Constitution, 1897, Art. V, sec. 9; Georgia Constitution, 1877, Art. II, sec. 1, par. VIII; Louisiana Constitution, 1921, Art. VIII, sec. 4; Maryland Constitution, 1867, Art. XVII, sec. 12 (amended 1922); Michigan Constitution, 1908, Art. VII, sec. 23; Mississippi Constitution, 1890, Art. 12; Missouri Constitution, 1875, Art. VIII, sec. 3; Ohio Constitution, 1912, Art. V, sec. 7; Oklahoma Constitution, 1907, Art. III, sec. 5; Oregon Constitution, 1859, Art. II, sec. 14a (amended 1917); South Carolina Constitution, 1895, Art. a, sec. 10; Virginia Constitution, 1902, Art. II, sec. 35.

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Island, all the states hold a primary election, with less uniformity as to the date and with somewhat less uniformity as to ballot form and arrangement than for the general election. The primary in South Carolina is hedged about with more legal restrictions than are applied to the general election. Contrary to the practice in other states, Georgia has prescribed in detail (sec. 138w) the form of the ballot to be used in the primary, and in the following section (138x) has made provision for the general election ballot in certain distinctive features, concluding: "In all other particulars said ballots are to be arranged, printed, and prepared, for regular elections, as provided in section 138(w)."³

There are certain aspects of the primary which could not be governed by the general election laws and these are provided for by law in the states; but there are many features which are identical, and the laws of many of the states leave these to be governed by their general election laws. The Wyoming law contains an example of the wording used in the states which have put the primary under the general election law: "Except as herein otherwise provided, all primary elections shall be conducted as required for general elections under the general election laws of the state of Wyoming, as far as the provisions thereof may be applicable, and the election officers for such primary election shall have the same powers and perform the same duties as those for general elections, as nearly as applicable."⁴

The Kentucky law requires that "except as otherwise herein provided," the printing and the distribution of the ballots for the primary nominating election "shall be in

³*Georgia Acts*, 1922, pp. 98, 100.

⁴*Election Laws of Wyoming*, 1934, sec. 36-613.

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the same manner as is now, or may hereafter be prescribed for the printing and distribution of ballots for the general election.’⁶ The Montana law is representative of the states that are still more specific: “The primary ballots with the endorsements shall be printed on white paper in substantially the forms of the Australian Ballot, used in general elections, except that the candidates of each party shall be printed on a separate ticket or sheet.”⁸

The primary is a party election. The legal status of a party is indicated by the admission of its nominees to the general election ballot. Furthermore, a recognized party may participate in the direct primary. The party's vote in the preceding general election in terms of percentage of the total vote for a given office determines its right to hold a primary or to certify its candidates by some other method for a place on the general election ballot. The percentage of the total vote cast in the last preceding election or cast for a given office at that election, on which party status is based, varies among the states. The two states, Connecticut and Rhode Island, which do not have a primary election define a party in terms of the requirement for admission to the general election ballot. The Connecticut requirement is at least one-half of one per centum of the votes cast at the last previous election for the same office or offices; and the Rhode Island requirement is at least two per centum of all votes cast in the state for governor.⁷

Of states having primaries and specifying a percentage requirement for party status, twenty-two indicate 5% or

⁶*Kentucky Election Laws*, 1938, sec. 1550 (29)

⁷*Election Laws of Montana*, 1938, sec. 651.

⁸*Connecticut Laws*, 1931, ch. 38, sec. 166c; *Election Laws of Rhode Island*, 1938, ch. 1515, sec. 1.

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less, eleven require 10%, two name 15%, three mention 20%, one calls for 25%, and one specifies 33¹/₃%.⁸

Kansas allows all political organizations filing nomina-

¹1%—Maine, West Virginia, and Wisconsin. *Maine Revised Statutes* (amended to 1933), ch. 7, sec. 1; *Election Laws of Wisconsin*, 1937, 5.05 (6)d; *Election Laws of West Virginia*, 1938, Art. 3, sec. 1.

²2%—Iowa, Michigan, Pennsylvania (for state offices; 5% for county offices), and Utah. *Election Laws of Iowa*, 1938, sec. 528; *Michigan Laws*, 1931, no. 200; *A Compilation of Registration Acts and Election Code of Pennsylvania*, 1937, secs. 801a, 891b; *Utah Laws*, 1937, ch. 29, sec. 3.

³3%—California, Massachusetts, Missouri, Montana, New Hampshire, and North Carolina. *California Election Laws*, 1936, p. 323, sec. 1-9a; *Massachusetts General Laws Relating to Elections*, 1938, ch. 50, sec. 1; *Election Laws of Missouri*, 1937-38, sec. 10235; *Election Laws of Montana*, 1938, sec. 639; *New Hampshire Primary and Election Laws*, 1937, ch. 25, sec. 1; *North Carolina Laws*, 1933, ch. 165, sec. 1.

⁴5%—Arizona, Illinois, Louisiana, Minnesota, Nebraska, Nevada, North Dakota, Oklahoma, and Vermont. *Arizona Election Laws*, 1937, sec. 1278; *Illinois Revised Statutes*, 1937, ch. 46, sec. 366; *Primary Election Law of Louisiana*, 1935, sec. 2; *Minnesota Election Laws*, 1938, sec. 294; *Nebraska Election Laws*, 1938, 32-1131; *Nevada Election Laws*, 1938, p. 17, sec. 1; *Election Laws of North Dakota*, 1930, sec. 860; *Oklahoma Statutes*, 1931, sec. 5648; *Public Laws of Vermont Relating to Elections*, 1934, ch. 11, sec. 126.

⁵10%—Colorado, Delaware, Idaho (which requires, in addition, that the party must have had three nominees in the previous election), Indiana, Maryland, New Jersey, Ohio, South Dakota, Tennessee, Washington, and Wyoming. (Three of these states—Delaware, Indiana, Tennessee—and Arkansas passed laws forbidding recognition to parties advocating the overthrow of government through violence.) *Colorado Statutes* (Annotated), 1935, ch. 59, sec. 20; *Delaware Revised Code*, ch. 58, sec. 1769; *Primary and General Election Laws of Idaho*, 1937-38, 33-611; *Indiana Code of 1934*, ch. 37, Art. 2, sec. 7187; *Registration and Election Laws of Maryland*, 1938, sec. 190; *New Jersey Revised Statutes*, 19:5-1; *Ohio General Code* (Annotated), 1937, sec. 4949; *Primary and General Election Laws of South Dakota*, 1938, sec. 7096-A, sec. 1; *Tennessee Laws*, 1921, ch. 12, sec. 1; *Washington Revised Statutes* (Remington), sec. 5183; *Election Laws of Wyoming*, 1934, 36-639. *Laws of 1935*: Delaware, ch. 144; Indiana, ch. 325; Tennessee, ch. 72; and Arkansas, no. 33.

⁶15%—Florida and New Mexico. *Florida Laws*, 1937, ch. 18060; *New Mexico Laws*, 1938, ch. 2, sec. 4.

⁷20%—Alabama (1931), Kentucky, and Oregon. *Alabama Laws*, 1931, Act No. 56, sec. 1; *Kentucky Election Laws*, 1938, Art. XII, sec. 1549a(1); *Oregon Election Laws*, 1938, 36-401.

⁸25%—Virginia. *Virginia Election Laws*, 1938, ch. 15, sec. 221.

⁹33¹/₃%—Mississippi. *Digest of Election Laws of Mississippi*, 1935, p. 32. The state shall not pay expenses of a primary election held by any political party that at the next preceding national presidential election did not vote as much as thirty-three and one-third per cent of the total vote cast in the entire state.

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tion papers for a majority of the state or county offices, as provided in the law, to have a separate primary election ticket.⁹ In Arkansas, Georgia, and South Carolina, any organized political party comes under the provisions of the primary law of the state. Two states, New York and Texas, have set a definite number of votes as the basis of the party status; in 1935 New York increased the requirement of 25,000 votes at the last preceding election for governor to 50,000 votes;¹⁰ while in Texas the mandatory primary applies to a party polling 100,000 votes in the last preceding gubernatorial election, and the optional primary or convention applies to a party polling 10,000 to 100,000 votes.¹¹

All the states having primary laws make the primary mandatory with the exception of Alabama, Arkansas, Delaware, Georgia, and Virginia.¹² During the decade 1930-1940 Kansas shifted from the optional to the mandatory primary, Tennessee brought all party nominations within the scope of the compulsory primary, and Utah made the mandatory primary statewide.¹³ The most recent state to accept the direct primary, New Mexico, enacted a mandatory primary law on September 1, 1938.¹⁴

Primaries are distinguished as open or closed according to the freedom of choice on the part of the voter as to his party preference. In states operating under the

⁹*Kansas General Statutes*, 1935, 25-205.

¹⁰*New York Laws*, 1935, ch. 955.

¹¹*Texas Revised Civil Statutes*, 1925, Arts. 3101, 3154.

¹²*General Acts of Alabama*, 1931, Act No. 56, sec. 1; *Digest of Arkansas Laws* (Crawford and Moses, 1931), sec. 3754; *Delaware Revised Code*, 1935, ch. 58, sec. 1769; *Georgia Acts*, 1922, p. 98; *Virginia Election Laws*, 1938, ch. 15, sec. 222. New York makes the primary optional for certain offices and mandatory for all others; and Texas makes the primary optional for the minor parties and mandatory for the predominant party.

¹³*Kentucky Acts*, 1936, ch. 52, sec. 2; *Public Acts of Tennessee*, 1937, 2d ex. sess., chs. 2 and 3; *Utah Laws*, 1937, ch. 29, sec. 5.

¹⁴*New Mexico Laws*, 1938, ch. 2.

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closed primary the voter, through an advanced registration or at the time of the primary, indicates his party, and is given only the ballot of that party at the polls; in states operating under the open primary the voter receives either the tickets of all parties entered in that primary or a consolidated ballot bearing all the party tickets, and he secretly chooses the party for whose candidates he desires to vote. Hence the main difference is in the openness or the secrecy of the voter's accepting the party whose ballot he chooses to vote in the primary election. Stated another way, there are no party tests applied in the open primary; but in nearly all closed primaries there are party tests (the primary ballots in three states—Alabama, Louisiana, and Texas—carry a party pledge). In Texas, if two parties hold primaries, separate polling places are required. In Delaware the parties must hold their primaries on separate days.

Of the forty-six states operating under the primary, only eight have the open primary.¹⁵ Examination of the ballots used in these open primary states reveals four types: (1) the separate, uniform party tickets fastened together, known as the Wisconsin type, copied by Montana and Michigan; (2) the consolidated ballot bearing all party tickets in parallel columns separated by perforated lines, devised for use in Utah in 1937;¹⁶ (3) the

¹⁵*Laws of Wisconsin*, 1903, ch. 451; *Laws of Montana*, 1913, p. 570; *Laws of Minnesota*, 1933, ch. 244; *Laws of Washington*, 1935, ch. 26; *Laws of Idaho*, 1937, ch. 54; *Laws of Michigan*, 1937, no. 37; *Laws of Utah*, 1937, ch. 29; *Laws of North Dakota*, 1939, ch. 139. Massachusetts returned to the closed primary, *Laws*, 1938, ch. 229.

¹⁶With types (1) and (2) in the secrecy of the booth the voter marks the ticket of his choice, then separates it from the remaining tickets and deposits it folded, dropping the folded blank tickets in the proper box. Since the ballots of all parties are identical when folded, no observer can detect which ballot the voter has separated. *Michigan Laws*, 1939, Act No. 63, provided that "The party tickets included in each set of ballots shall be so rotated that each of the different party tickets will appear successively on top."

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separate party columns on a consolidated ballot, the voter being restricted to only one party selected secretly, used by Minnesota, Idaho, and North Dakota; and (4) the office-group arrangement on a consolidated ballot, each candidate being identified by his party label on the line with his name. The last type, used solely in Washington, allows the voter to mark one name for each office (regardless of party), thus erasing or dimming party lines. The tickets in all the open primary states must be uniform in size and color, whether they are separate sheets fastened together (as in Montana) or whether they are consolidated on one ballot paper (as in Minnesota). The Utah perforated ballot insures identical tickets, after the voter has separated them, by having a half perforation around the outside of the consolidated ballot.

There is no special form for the closed primary ballot other than the customary separateness of the party tickets. The general description of the separate tickets for the closed primary states will also include the party tickets for the open primary states (excluding Washington). The states have regulated the color of the party tickets with the same strictness with which they have regulated their general election ballots. By a law of 1939 Vermont required the primary ballots to "be printed on the same colored paper and be as nearly as is practicable in the same form as ballots for general elections

The Washington consolidated open primary ballot on the next page is the only primary ballot permitting indiscriminate crossing from party to party on the same ballot. It resembles a general election ballot.

INSTRUCTIONS: Mark an "X" in the opposite the name of each candidate for whom you wish to vote.

United States Senator HOWARD K. FOSTER Republican EDWIN D. COLVIN Republican HOMER T. BONE Democrat FRANK GOODWIN Republican OTTO A. CASE Democrat	County Treasurer EDGAR S. STACY Democrat HENRI L. GOLDBLATT Republican J. L. JENKS TAYLOR Republican	ALLEN R. PETERS Democrat JAMES H. HAYDON Democrat LEW ZIEPKE Democrat EDWARD FREDERICK BROWN Democrat ALICE CLAIBORNE Republican DON STANGLANI Democrat WILLIAM YEWYCK, JR. Democrat FRANK A. DAVIS Republican
Representative in Congress, 1st Congressional Dist. WARREN G. MAGNUSON Democrat MATTHEW W. HILL Republican JAMES W. HODSON Democrat GILLESPIE CRAIGHEAD Democrat	County Prosecuting Attorney CHARLES O. CARROLL Republican B. GRAY WARNER Democrat ALLAN POMEROY Democrat HENRY CLAY ANNEW Republican CHAR. D. DONNELLY Democrat JAMES W. HOFFMAN Democrat	ARTHUR MITCHELSON Republican KARL W. STEVENS Democrat DENNY MITCHELL Democrat GUY W. DUNLAP Democrat DONALD WESTON Democrat TOM KENNEY Democrat LEO RAFTER Democrat MORRIS FINE Republican EARL L. HENRY Republican
Judge of the Supreme Court, Position No. 1 WILLIAM J. STEINERT	County Sheriff R. A. ALLINGHAM Republican CLAUDE G. BANNICK Republican MURLAN E. CALLAHAN Republican JIMMY MALONE Republican WILLIAM R. STEVENS Democrat FRANK D. COOK Democrat HARRY H. LENTZ Republican C. J. HUTCHINSON Democrat	CHAR. E. WARD Democrat GUY F. BRIDGEMAN Democrat A. F. (ART) KLOS Democrat LEO STROBL Democrat EUGENE A. AVENTBERG Democrat STEWART O. JACOBSON Democrat JOHN MOORE Democrat L. J. MORSETH Republican DOMINICK YELLAN Republican ART JACOBSON Democrat ED GRAHAM Democrat WALTER F. RIDGLE Democrat
Judge of the Supreme Court, Position No. 2 GEORGE B. SIMPSON	County Assessor LOUIS NASH Democrat ROY B. MIRENER Democrat GEORGE W. BLANCHARD Republican ED A. CLIFFORD Republican	J. E. (JACK) SHIELDS Democrat JAMES J. HOGUELEY Republican EDWARD JOHN BOYLE Democrat JOHN E. WELLES Democrat FRANK FORRESTAL Republican FRANK B. WALD Democrat GLEN McLEOD Democrat FRANK BYSSO Democrat DAVID E. GIFFORD Democrat FRANK BUCKLEY Democrat LEO LEONETTI Democrat ROBERT C. JOHNSON Democrat JACK THEILMAN Democrat VOLNEY BENNETT Democrat OREN E. BUNDY Democrat ED T. MURPHY Democrat
Judge of the Supreme Court, Position No. 3 ERNEST M. CARD BRUCE LITTLE C. O. JEFFERS C. L. HOLCOMB GEO. F. HEALYAY	Judge Superior Court (Position No. 12) (Unexpired Term) DONALD A. McDONALD	County Superintendent of Schools FREDMAN J. MERCER Democrat A. R. BURROWS Republican EDWARD C. ROBINSON Republican NINA O. BUCHANAN Democrat
State Senator, 48th District ROBERT T. McDONALD Democrat DAVID A. MAURIER Republican JOHN D. MORROW Democrat MICHAEL J. GALLAGHER Democrat W. R. PETERSEN Republican	County Commissioner, Third District WM. E. BUNNICKER Republican TOM SMITH Democrat JOE A. WHITSTONE Republican G. W. LIGHTFOOT Republican HARRISON E. MUNDAY Republican E. R. HOLMES Republican FRANK MILLER Republican HUBERT V. SMITH Democrat	EDWARD R. SHIRHAN Democrat ROLLIN P. PLATT Democrat
State Representative, 48th District ALICE M. LUDDEN Republican BERT H. COLLINS Democrat FLOYD C. MILLER Democrat D. L. UNDERWOOD Democrat JAMES M. MAY Democrat FRED T. HALL Republican WILLIAM C. TAYLOR Republican SANDRA ASPLAND Democrat	County Auditor EARL MILLIKIN Democrat DUNCAN E. EDDY Republican	County Coroner WILLIAM J. JANIS Republican OTTO H. MITTELSTAHL Democrat
County Clerk CARROLL CARTER Democrat HENRI DANIEL Democrat WALTER C. HEDMAN Republican FRANK (KIT) CARSON Democrat PAUL C. BRYAN Republican F. E. MELNIK Republican ERIC C. BRYAN Republican ARY ALLANBY BRENDEY Republican	Constable, Seattle Precinct J. HARRY HAYEN Democrat MONRAD B. VIGOR Democrat FRANK E. SWICKERT Republican ANDREW CRAIG Democrat CHARLES F. SHAYLE Democrat JAMES E. SHANNON Republican ELMER BUCKERT Democrat MARY A. JENSEN Democrat JOHN A. (JACK) McKENNA Democrat LARSEN A. LOVBEY Democrat AL. STRICKLAND Democrat	PETER BALZEMA Democrat FRED E. LYONS Democrat MILTON HEIMAN Democrat GEORGE GREGORY Democrat ROY FORDREY Democrat WILLIAM F. DEVIN Democrat JAMES HOLLAND BELL Democrat ROLAND L. BARTLING Democrat LLOYD HOLTS Democrat
		Justice of the Peace, Seattle Precinct WILLIAM MOAR CHARLES E. CLAYPOOL WILLIAM E. BELL BEAR MARY WHITEHEAD GUY B. ENOTT HOWARD J. THOMPSON PETER BALZEMA FRED E. LYONS MILTON HEIMAN GEORGE GREGORY ROY FORDREY WILLIAM F. DEVIN JAMES HOLLAND BELL ROLAND L. BARTLING LLOYD HOLTS

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except that separate ballots shall be provided for each party."¹⁷

Texas is an example of the group of states which require the primary ballots, as well as the general election ballots, to be printed in black ink upon white paper.¹⁸ The Oregon law is one of the few which specify a given color for each party ticket; it requires that "All of the official ballots designed to be voted at primary nominating elections shall be printed for the republican party in black ink upon a good quality of white paper; for the democratic party in black ink upon a good quality of blue paper, and for any third party in black ink upon a good quality of yellow paper, and for any additional party or for other separate ballots upon paper of different color selected by the county clerk."¹⁹

California and Nevada provide that the secretary of state is to furnish the special water-marked paper for the primary ballots according to the law for the general election ballots, while Kentucky merely specifies good-quality white paper for the primary (the secretary of state furnishing paper of a specified quality for the general election ballots).²⁰ West Virginia requires that each party ticket be of a different color, selected by the secretary of state.

As in the case of the general election, sample primary ballots are prepared for educational purposes. West Virginia requires the sample ballots of each party to be printed on the same color of paper as the official ballot,

¹⁷*Vermont Acts*, 1939, no. 5, sec. 3. Formerly the primary ballots were white for all parties.

¹⁸*Texas Election Laws*, 1936, Arts. 3109, 2980.

¹⁹*Oregon Code*, 1930, sec. 36-602.

²⁰*California Direct Primary Law*, 1913, sec. 12; *Nevada Laws*, 1917, no. 276, sec. 12; *Kentucky Acts*, 1932, ch. 85.

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with the words "Sample Ballot" marked in large letters across the face of the ballot. States which employ white primary ballots usually print the samples on cheaper paper, using a different color for the sample of each party. States which use official colored tickets usually print the samples on cheap white paper. In all cases the sample character of the ballot must be easily discernible.

Uniformity in the majority of the states as to the color and the size of the primary ballots is limited to all the tickets of a given party for the whole state or for a county. Since the number of candidates on the slate of each party varies it may be impractical to require that the tickets of all parties be of the same dimensions, especially in states where there is a predominant party. However, Maine is an example of a closed primary state that does require all party tickets (though of different color) to be of uniform size.²¹ Colorado is an example of a closed primary state which requires uniformity in both size and color: "All tickets shall be uniform in color and size, and shall be white, printed in black ink."²²

It is just as important to establish the official character of the primary ballots as it is for those used in the general election ballots. The official endorsement appears on the back of the primary ballots in all states which require that this endorsement be on the general election ballots. The primary ballots must also be folded, either at the time of printing or at the time the ballot is handed to the voter, so that this endorsement is visible. The voter must deposit his ballot folded in the same creases.

The safeguards used in the general election for circumventing the abuse known as the "Tasmanian Dodge" are

²¹*Maine Revised Statutes* (amended to 1933), ch. 7, sec. 8.

²²*Colorado Compiled Statutes* (Annotated), 1935, ch. 59, sec. 28.

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also employed in the primary. In this respect only a few states fail to be consistent in their requirements for both primary and general election ballots. Louisiana and South Carolina call for the use of a single stub only on the primary ballot;²³ Idaho and Missouri, which have a single stub on the regular ballot, do not provide for a stub on the primary ballot; Florida and Georgia, with only one stub on the regular ballot, use two on the primary ballot;²⁴ Colorado and Pennsylvania, with two stubs on the general election ballot, use only one on the primary ballot.²⁵ With these exceptions, the states using the device of the stub apply the same requirements to both elections. The use of the initials or the signature(s) of the clerk or the election judge, which insures that the ballot to be deposited is the same one the voter received on entering the polling place, is similar for both elections in states employing this safeguard.²⁶

The duplicate ballot in Arkansas and the black corner in Colorado are devices in ballot form which are used in the primary as well as in the general election. The Arkansas voter marks the duplicate at the same time he marks the original by means of a carbon sheet. After signing his name on the duplicate and separating the two sheets at the perforated fold, he deposits each in the proper ballot-box. The black corner is found on the lower left-hand corner of the Colorado primary ballot and the voter's number over which it is pasted by the judge is revealed only in case of a contest.

²³*Louisiana Acts*, 1922, no. 97, sec. 16; *South Carolina Code*, 1931, ch. 105, par. 2375.

²⁴*Florida Compiled General Laws*, 1927, sec. 400; *Georgia Acts*, 1937, no. 487.

²⁵*Colorado Compiled Statutes (Ann.)*, 1935, ch. 59, sec. 29; *Pennsylvania Laws*, 1937, no. 320, sec. 1004.

²⁶For discussion of the "Tasmanian Dodge," see Chapter II, pp. 43-44.

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The face of the primary ballot must be of the office-group pattern since the choice to be made is one of several candidates for an office. The ballot may be of one column, resembling the early party strip, as in Georgia and Missouri; or of two columns as in New Jersey or as in Wisconsin (the first headed "State" and the second "County"); or of three columns as in Colorado and Kentucky; or of four columns as in West Virginia (each headed "National," "State," "County," and "City," respectively). The face of the consolidated ballots of Utah, Michigan, Minnesota, Idaho, and North Dakota is of the party-column pattern, although as in Idaho and Utah each party may have two columns. The consolidated primary ballot of Washington is of the office-group pattern. The variation in the number of candidates and even of parties from one election to another and in the number of candidates within each party will make the length and the width of the ballots vary from election to election. In the states having a predominant party the ticket of the minor party or parties may be small, offering candidates for only a few of the offices to be filled.

The party circle or square for straight-ticket voting, which is characteristic of party-column general election ballots, is not needed on the primary ballot since the preferred candidate out of each office-group must be marked. An exception is the consolidated ballot of Idaho which has the party circle at the head of each party ticket with this instruction: "Put a cross (X) in the circle at the head of the party ticket you desire to vote. A vote for a person on any other party ticket renders the vote for that office void."²⁷ Another exception is New York which in-

²⁷*Idaho Code (Annotated)*, 1937-38, 33-611.

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structs the voter "... to vote a straight ticket for all candidates whose names are printed on this ballot within a group for a party position you may make a cross X within a group circle below the title of the party position."²⁸ However, there is also a voting square beside each name.

The emblem, another characteristic of party-column general election ballots, is unnecessary on the primary ballot in states having the closed primary, because, since the voter is handed only the ballot of his party, he does not have to recognize and choose his ticket. However, Kentucky and New York are exceptional in that they print party emblems on the primary ballots.²⁹ Of the open primary states, Utah and Michigan alone put an emblem at the head of each party ticket;³⁰ here the voter must be able to recognize the ticket of his party.

The primary ballot calls for instructions similar to those found on the general election ballots in states using the office-group pattern, such as "to vote for a candidate place a cross mark X in the voting square beside his name." There is no need for the instruction characteristic of the party-column pattern regular ballot as to how to vote a straight ticket and how to vote a split ticket. On the Montana primary ballot instructions are placed above the perforation for the stub. This plan is logical from the voter's standpoint; that is, he needs instructions while he is voting, but after he has voted the instructions need not accompany the ballot into the ballot-box. The scattered cautions which show the voter how many candidates are to be selected in each office-block are impor-

²⁸*New York Consolidated Laws*, 1930, ch. 97, Art. 5, sec. 108.

²⁹*Kentucky Laws*, 1932, ch. 85; *New York Consolidated Laws*, 1930, ch. 97, Art. 5, sec. 108.

³⁰*Utah Laws*, 1937, ch. 29, sec. 24; *Michigan Compiled Laws*, 1929, sec. 2895.

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tant and appear on the primary ballots of practically all the states.

The laws covering marking are the same for both elections, with the exception of Delaware and Georgia which require the undesired candidates to be scratched in the primary. The Missouri primary ballot omits the voting squares but the law does not specify the manner of marking.

The states which provide for the writing of names for personal choice on the general election ballot also allow the same privilege for the primary ballot, although only blank lines at the end of each group are printed. There are no blank columns as on some party-column regular ballots. The same rules apply to the ballots of both elections as to whether the names so written in must be voted by the cross mark X and as to whether stickers or pasters are permitted.³¹ Not all the states that allow the write-in print instructions to the voter as to how to use his privilege—Idaho for example. The blank lines and the voting spaces beside them are self-explanatory.

A significant difference between primary and general election ballots is to be found in the order of presenting candidates; obviously, if each party offers one nominee for each office on a party-column general election ballot there is no problem concerning the order of candidates, but in the primary election, with two or more candidates seeking the same nomination, that problem definitely appears. Nor is the matter similar to office-group ballots in general elections, for there the order often proceeds by parties, either according to a fixed principle or by alphabetizing. In the primary the different schemes for

³¹See Chapter III, pp. 51-58.

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the order of candidates include alphabetizing,³² rotation,³³ lot,³⁴ determination by election authorities,³⁵ time of filing candidacy,³⁶ and the size of the vote in a pre-primary party assembly.³⁷ Minnesota's law on the operation of rotation is as follows:

The names of candidates under headings properly designating each official position, shall be rotated upon the ballot in the printing so that the names of all candidates for each office shall be alternated on the ballots used in each election district that they shall appear thereon substantially an equal number of times at the top, at the bottom, and in each intermediate place, if any, of the list or group in which they belong.³⁸

Identification of candidates must be based on some device other than that of party label (except in Maryland, Vermont, and Washington which do print the party label beside each name) since all the names on the ticket belong to the same party. Montana, New Jersey, and Oregon allow slogans, and in these states a candidate seldom fails to take advantage of this opportunity. The triteness or the prejudice or the emotional appeal of most of the slogans tends to give dignity to the few candidates who have chosen not to be so identified. California and Massachusetts allow a candidate to be labeled "incumbent" and to have his residence or occupation printed if he so requests. Nebraska, in 1931, and New Mexico, in

³²Alabama, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Nevada, Tennessee, Vermont, and Wyoming.

³³Arizona, California, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Utah, Washington, West Virginia, and Wisconsin. Most of these states alphabetize the names before rotating them.

³⁴Arkansas, New Jersey, Pennsylvania, South Dakota, and Texas.

³⁵New York, South Carolina, and Virginia.

³⁶New Mexico.

³⁷Colorado Statutes (Ann.), 1935, ch. 59, sec. 22. The assembly candidates are arranged on the primary ballot according to the size of their vote in the assembly; thereafter the petition candidates follow in alphabetical order.

³⁸Minnesota Election Laws, 1938, sec. 301, p. 57.

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1938, required the post office address or the occupation of candidates whose names are so similar as to confuse the voter.³⁹ Oklahoma provides that if the candidate is of a race other than white, his race is to be stated beside his name.⁴⁰ The primary ballots of about one-fourth of the states permit the use of nicknames, a practice that is rare on the general election ballots. The use of addresses to identify candidates is approximately the same as for the general election ballots, although Texas should be added as requiring the county of a candidate for state office to be printed with his name on the ballot.⁴¹ Approximately one-third of the states make no provision for any sort of identification.

Certain miscellaneous provisions may be noted. In Oregon the candidates are numbered consecutively on both the primary and the general election ballots; but in Indiana and New York only the candidates on the primary ballots are numbered. The voting machine has been adapted to use in the primary. With the exception of New York, all the states having voting-machine laws permit the use of the machine in the primary.⁴² That a party pledge is to be printed on the primary ballot is part of the law in Alabama, Louisiana, and Texas;⁴³ The Alabama and Louisiana pledge appears at the bottom of the ballot, and the Texas pledge appears at the top. It is true that the signing of the duplicate ballot in Arkansas applies to the primary as well as to the general election, but this is only for use in case of a recount. In the states

³⁹Nebraska Laws, 1931, p. 169; New Mexico Laws (special session), 1938, ch. 2, sec. 16.

⁴⁰Oklahoma Laws, 1937, ch. 29, Art. 2, sec. 5.

⁴¹Texas Revised Civil Statutes, 1925, sec. 3109.

⁴²See Chapter IV, pp. 84-86.

⁴³Alabama Laws, 1931, no. 56; Louisiana Acts, 1922, no. 97, sec. 16; Texas Election Laws with annotations, 1940, Art. 3110.

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requiring a second or a run-off primary the rules governing the first primary also govern the second.⁴⁴ In North Carolina the law in this respect says that "such second primary shall be held under the same laws, rules, and regulations as are provided for the first primary." The ballot must have the same official character and must be marked in secret.

Some states which make provisions for the names of non-partisan candidates on the general election ballot have like requirements for the primary ballot. Non-partisan elections customarily apply to judicial and educational offices and to local elections (which are not a part of this study). But the non-partisan character likewise pertains to legislators in Minnesota since 1913 and Nebraska since 1935.⁴⁵ Certain positions are usually listed as non-partisan; but in Missouri non-partisan candidates may run in a non-partisan primary to oppose partisan candidates in the general election for any offices.⁴⁶

In Arizona a separate blank ballot is provided for non-

⁴⁴*Alabama Laws*, 1931, no. 56; *Arkansas Laws*, 1933, no. 38, abolished, *Arkansas Laws*, 1935, no. 20, revived as a "preferential primary" system, *Arkansas Laws*, 1939, no. 372; Florida, Georgia, Louisiana, Mississippi, North Carolina (amending *Laws*, 1931, ch. 254, sec. 17); South Carolina, Texas; *Utah Laws*, 1937, ch. 29, sec. 7. During the decade two other states legislated on the run-off primary: *Kentucky Laws*, ex. sess., 1935, ch. 1, abolished, *Laws*, 1936, ch. 52; and *Oklahoma Laws*, 1937, pp. 135-138, abolishing the second primary.

⁴⁵*Laws of Minnesota*, 1913, ch. 389; *Laws of Nebraska*, 1935, ch. 112, p. 358.

⁴⁶*Election Laws of Missouri*, 1937-38, sec. 10267.

The California non-partisan primary ballot shown on the next page is a peculiar type. The stubs and the requirement to use a rubber stamp indicate certain features of voting in that state.

(This number is to be torn off by Inspector)

No 267

SAMPLE BALLOT
MARK CROSSES (+) ON BALLOT ONLY WITH RUBBER STAMP;
NEVER WITH PEN OR PENCIL

(Fold Ballot to this Perforated Line: leaving Top Margin Exposed)

CALAVERAS No 267

OFFICIAL PRIMARY ELECTION BALLOT

NON-PARTISAN BALLOT

2nd Congressional, 26th Senatorial, 6th Assembly District

To vote for a person whose name appears on the ballot, stamp a cross (+) in the square at the RIGHT of the name of the person for whom you desire to vote. To vote for a person whose name is not printed on the ballot, write his name in the blank space provided for that purpose.

JUDICIAL	COUNTY AND TOWNSHIP
Judge of the Superior Court <small>Vote for One</small>	County Clerk, Auditor and Recorder <small>Vote for One</small>
J. A. SMITH Incumbent	JOHN SQUELLATI Incumbent
Justice of the Peace, Murphys Township <small>Vote for One</small>	Sheriff <small>Vote for One</small>
JOHN M. SHEPHERD Incumbent	HARRY E. JAMES
	JOE W. ZWINGE Incumbent
SCHOOL	
Superintendent of Public Instruction <small>Vote for One</small>	District Attorney <small>Vote for One</small>
RUSSELL H. EWING Educator	VIRGIL M. AIROLA Incumbent
G. VERNON BENNETT Public School Educator	
WALTER F. DEXTER Superintendent of Public Instruction	Treasurer and Tax Collector <small>Vote for One</small>
	PETER L. SNYDER
County Superintendent of Schools <small>Vote for One</small>	MARVIN L. WATERS
CHARLES L. GASTINEAU	PERCY S. PEEK
CHARLES F. SCHWOERER Incumbent	MARTIN JACK SHIFFER

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partisan voters. It is stated in the law that in connection with all primary elections "there shall be provided a separate ballot for each party entitled to participate in the primary, and also a blank ballot on which shall be printed only the titles of the offices to be voted for by the electors at the polling place for which the ballot is printed, to be used by non-partisan voters."⁴⁷

The usual way of conducting the non-partisan primary is to present a non-partisan separate ballot to all voters who present themselves at the primary.⁴⁸ In Washington each voter is given the consolidated office-group primary ballot which contains non-partisan candidates in their proper office-blocks without party label. The ballot of every party in California and Nevada carries in the right column(s) the aspirants for non-partisan nominations; these non-partisan candidates are also listed on a separate non-partisan ballot to be given only to voters who have registered without declaring any party affiliation.⁴⁹ Arizona and Missouri give non-partisan ballots only to voters without party affiliation. Inroads are thus being made on the primary election, which began as a party election, by the growth of the non-partisan movement to except certain offices from partisan nominations or to allow non-party nominations for all offices. Such nominations may also be effected by petition.

The law in some states requires that the names of unopposed candidates are not to be printed on the primary ballot but to be certified for the general election ballot.

⁴⁷*Arizona Election Laws*, 1937, sec. 1281. The judicial candidates appear on the party tickets.

⁴⁸Idaho (*Laws*, 1933, ch. 16), Minnesota, Montana (*Laws*, 1935, ch. 182), Nebraska (*Laws*, 1931, p. 155, *Laws*, 1935, p. 358), North Dakota, Ohio, Oregon (*Laws*, 1933, ch. 152, sec. 3, *Laws*, 1935, ch. 182, p. 273), South Dakota (*Laws*, 1937, ch. 122), Wisconsin, and Wyoming.

⁴⁹*California Statutes*, 1913, p. 1379; *Nevada Laws*, 1917, no. 276, sec. 12.

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The Nevada law reads: "Where there is no party contest for any office the name of the candidate for party nomination shall be omitted from the ballot and shall be certified by the proper office as a nominee of his party for such office."⁵⁰

North Carolina, Utah, and Wisconsin have similar provisions.⁵¹ The law in Oklahoma requires that unopposed candidates be declared nominees;⁵² and in the opinion of the Attorney-General on July 18, 1929, "Unopposed candidates may be declared nominees without having names printed on ballot and being voted for." In an opinion on July 15, 1930, however, the ruling was to the effect that "where central committee fails to declare unopposed candidate as nominee his name should be placed on ballot." Louisiana amended its constitution in 1934 to make election at the primary final as to unopposed candidates for other than general and congressional elections.⁵³

Similarly, there are provisions that if only two candidates present themselves for a given office in the non-partisan primary, their names are not to appear on the primary ballot but on the general election ballot. The law of South Dakota makes this provision for judicial candidates, adding further:

When petitions are filed by or on behalf of not to exceed four persons as candidates for nomination for the office of Judge of the Circuit Court of Judicial circuits having two Judges, and not more

⁵⁰*Nevada Laws*, 1923, p. 50.

⁵¹*North Carolina Laws*, 1917, ch. 218; *Utah Laws*, 1937, ch. 29, sec. 17; and *Wisconsin Laws*, 1933, ch. 466.

⁵²*Oklahoma Statutes*, 1931, sec. 5764.

⁵³*Louisiana Constitution*, 1921, Art. VIII, sec. 15, as amended by Act 80 of 1934.

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than two such persons are electors of the same county except in Circuits where there are no limitations on the residence of judges, the names of such four, or less, persons need not be placed upon the primary ballot but said four, or less, persons shall be the nominee or nominees for such offices.⁵⁴

The same provision is made for six if there are three judges to be chosen. This omission of unopposed party candidates and of non-partisan candidates when only two names are presented, or multiples of two if more than one is to be chosen, is an effort to shorten the primary ballot.

⁵⁴*South Dakota Laws*, 1921, ch. 224, and *Laws*, 1925, ch. 162.

CHAPTER VII

RECENT TRENDS

Ancient ways of expressing a secret vote were by use of stones, seashells, metal balls, beans, and blocks of clay or wood. The most modern device is the voting machine. By the first methods a choice was made between two persons or two decisions; by the latest method the voter chooses one of several candidates for each of several offices and simultaneously passes upon one or more referenda measures. The centuries which bridge these two extremes of electoral procedure have been periods of experiment. When paper ballots were first used in the American colonies, the citizen brought with him to the polling place the sheet on which he had written his choices; later the office-seekers or their supporters handed the voters printed tickets. As elections became more complex and more corrupt, the American states began to regulate the voting procedure. By the middle of the nineteenth century, the ballot papers had become subject to legislation as to color, number, size, uniformity, and methods of marking and depositing. Through the trial-and-error system each state gained experience in election administration.

Simultaneously, other countries were engaging in their own experiment, notably Great Britain and Australia. Lax election procedure in Australia in the middle of the nineteenth century led to the adoption of a secret ballot and official supervision of elections. In the 1870's the

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Australian secret ballot was introduced into Great Britain and Canada. By the turn of the century the majority of the American states had adopted the Australian ballot system in a modified form. Under the new system, voting was elaborately regulated by the state—the ballots were printed and distributed by designated authorities, were marked and deposited on election day within a polling place under the supervision of the proper officials, and were canvassed according to law.

After the passage by Congress of the Act of 1845 fixing a uniform date throughout the United States for the electing of presidential electors and the Act of 1872 requiring secret ballot for congressional elections, the states made provision for election of other officers on the same day. The ballot laws of today governing the November election, which has become known as "the general election," regulate the details of ballot arrangement. The laws of the states require uniformity of ballot forms through specifications as to quality, color, and dimensions of the ballot paper, as to the kind of ink, and the size of type, and as to arrangement of party tickets. The only two changes in color legislation during the decade 1930-1940 occurred in Maine for the separate ballot for referenda measures and in Vermont for the judicial ballot. By reducing the width of columns and the size of type Nebraska in 1939 reduced the dimensions for the blanket ballot. The laws of most of the states require that the ballots display evidence of their official character by an endorsement printed or stamped on the outside of the ballot; and they insure the depositing of the same ballot which the voter received on entering the polls by the use of a single or double stub or by the initials or signatures of the judges or clerks. During that decade North Caro-

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lina eliminated the official endorsement on the outside; and Kentucky, Ohio, and Pennsylvania improved their laws requiring stubs.

An innovation in ballot form is the Arkansas duplicate ballot, adopted in 1935. Since its purpose is to insure an accurate count, it may be the forerunner of a general guarantee of election purity.

The trend is away from the use of separate ballots and toward the use of the consolidated, or "blanket" ballot. During the last decade the states which legislated on the consolidation of ballots were Montana, Nebraska, North Carolina, Pennsylvania, and South Dakota. In the states whose "blanket" ballots carry the major portion of the load, the elections which are left to separate ballots are those affecting constitutional amendments or other propositions, presidential electors, and non-partisan elections. Yet there is a disposition to transfer these several elections to the consolidated ballot. The reduction of the number of ballot sheets per voter is aimed at lowering printing costs, serving the convenience of the voter, and simplifying the canvass.

The face of the general election ballot conforms to one of two patterns—the party-column, with the party tickets in parallel columns, often accompanied by a party circle for straight-ticket voting and the party emblem; or the office-group form, with the candidates of all parties grouped under the title of the office, usually accompanied by the party designation. During the decade the only shift in pattern was made by Montana, which in 1939 substituted the office-block for the party-column. In 1933, Nebraska, an office-group state, eliminated the party circle and the straight-ticket provision, thus leaving Pennsylvania as the only office-group state with any pro-

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vision for straight-ticket voting. A tendency toward large ballots is found in party-column states which permit easy access to the ballot for minor parties, especially if each party is entitled to a full column, regardless of the number of positions sought. By lumping minor parties together, a few states have reduced the number of columns on the ballot. There is a certain diminution over the country in the emphasis upon party. Students of government generally favor the office-group ballot because it is more compact and more conducive to independent voting than the party-column type. Yet the latter is retained in thirty states, and even the emblem is still retained in half of these.

The party-column ballot allows for the write-in privilege either by a blank column or by blank lines; the office-group pattern allows for it by blank lines only. During the decade Florida and Maryland added lines, and Michigan the column, for the write-in. North Carolina and Kentucky removed the blank lines from the ballot, but did not withdraw the write-in privilege. Thus is indicated a slight tendency to encourage independent voting.

In the arrangement of party-column ballots the chief problem is that of determining the order of the columns; and in the arrangement of office-group ballots the order of candidates is the principal concern, although in many states the order of parties governs the order of candidates. The ballot laws of the states, with few exceptions, govern the order of parties and candidates; and in many states specify some form of identification of candidates. In recent years several states have provided for printing the addresses or occupations of candidates having similar surnames in an effort to avoid any unfairness which might result from confusion in the mind of the

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voter as to the identity of the candidates. Two states give the office-holder who is seeking re-election the advantage of indicating that he is the incumbent.

The instructions needed for the party-column pattern must advise the voter as to how to vote either a straight ticket or a split one; for the office-group pattern the only instruction needed is as to how to vote for a desired candidate. Both ballot forms call for scattered directions, such as "Vote for two." It is obvious that instructions are simpler for the office-group form than for the party-column form, and a movement to shift from the latter to the former might carry with it a movement to simplify ballot instructions. While it is true that Montana enacted this change in 1939, the new law adds to the usual office-group instructions the admonition to vote in all columns, and at the bottom of each column is the warning to vote in the next column; thus there is no reduction in the amount of instruction on the ballot for Montana.

The two methods of marking a ballot are the cross (X) or its variant (a plus or a minus or a check mark) for the preferred candidate or answer, and the scratch applied to the candidates and answers not favored. During the decade Virginia abandoned the scratch or lining-out method. This leaves very few states using the scratching method, which once was common. The laws of many states specify the instrument for marking—stamp or stencil, pen and ink, or black lead, indelible, or blue pencil. The stamp or stencil prevents those irregularities of marking which at every election invalidate many paper ballots. The writing-in or the pasting of a name not on the ballot is sufficient evidence of the voter's wish in some states; while a name so added to the ballot must be accompanied by the cross-mark is the rule in other states. Many

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of the laws provide for the filling of a vacancy, or for the correction of the ballot after it has been printed, by the use of pasters officially printed and affixed.

Ballot laws usually specify the manner of submitting propositions on the ballot, requiring that they be printed on separate ballots or in a given position on the blanket ballot; or be printed once with two voting spaces or twice with a voting space beside each statement, and that the statement be printed in full text, in a concise statement, or by title. Responsibility for the wording of the ballot title or statement for a referendum question is also fixed by law. There are two ways by which the states have reduced the space devoted to propositions; one is by a short summary or title in place of the full text; the other is by one statement of the question with two voting squares rather than two statements of the question. But reduction of space devoted to propositions has not always been attempted; in fact, Louisiana still clings to a device which requires two statements of each question in the party-column and in each independent column, necessitating in 1936 six statements for each of thirty-five amendment proposals. This is a relic of the party-strip, which in the nineteenth century bore propositions below the party slate of candidates. Removal of initiated and referred measures from the general election to special elections tends to reduce the size of the general election ballot.

The movement for the adoption of laws authorizing use of the voting machine, which began in the last decade of the nineteenth century, gained ground during the decade 1930-1940 in the enactment of first laws in five states, in the re-enactment of repealed laws in two states, in the extension of the compulsory use of the machine in

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states where it was already authorized and in the general improvement of voting-machine laws. The machines manufactured today are reliable and are adapted to meet the needs of all elections, including the primary. The voting public is becoming aware of the advantages of the machine—the ease and speed with which the vote is recorded, as well as the long-time economies made possible by the reduction of printing costs, by the saving in personnel, supplies, and rental of polling places through consolidation of precincts, and by the elimination of expensive recounts.

The laws of all the states specify the ballot form for the presidential election. With few exceptions, the blanket ballot includes the presidential election. Some states print the names of electoral candidates in the same way as they do all other names; other states group all the electoral candidates of a given party beneath the names of the presidential candidates with only one voting space for the group; still others print a voting square for a group vote and also a voting square beside the name of each electoral candidate, thus giving the voter the option of registering his choice with one mark or with many marks.

The movement to present to the voter only the names of the presidential candidates began as a mechanical convenience in Iowa as early as 1900, resulting from the limitations of the voting machines. The privilege of voting for the electoral candidates as individuals is provided for on the voting machines by the use of irregular ballots. With few exceptions, all the states with voting-machine laws allow or require the omission of presidential electoral candidates.

Nebraska in 1917 and Iowa in 1919 were the first states to enact presidential short ballot laws—omitting the

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names of electoral candidates from the ballot and providing that a vote for the party presidential and vice-presidential candidates is the equivalent of a vote for the party candidates for electors, whose names in all cases are on file with the Secretary of State. The number of states which, at the end of the decade 1930-1940, had enacted presidential short ballot laws was sixteen, although that of Texas is inoperative; ten of these laws were passed within the decade. This acceleration of the presidential short ballot movement is one of the most important ballot trends of recent times; and it serves as one of the most effective ways of reducing the size of the ballot. In some instances over two hundred names are removed from the ballot without altering the essential character of the presidential election.

The primary election has been subjected to legislative regulation to almost the same extent as the general election. Its regulation is even more important than that of the general election in states having a single dominant party, because in such states the primary is in effect the election. Of the forty-six states which hold primary elections, forty-one require them for one or more parties, while only five states retain the optional primary. The mandatory primary was established during the past decade in Kentucky, New Mexico, Tennessee, and Utah.

Two states have never adopted primaries, eight states require the open primary, and the remaining thirty-eight states provide for the closed primary. In the closed primary the voter is limited to a single party. In the open primary the voter chooses in the voting-booth the party of his preference or may vote a split ticket, as in Washington. During the decade 1930-1940 six states adopted the open primary. The ballots for the open primary may

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be uniform party tickets (as far as outside appearances are concerned) fastened together, or they may be consolidated ballots containing all the party tickets in parallel columns. In either case the voter must secretly select the ticket he wishes to vote and must confine his voting to that ticket; all tickets which he does not vote are discarded, if detachable, or not considered in the count, if not detachable.

The growth of the open primary in the past ten years is a reflection of the increasing tendency toward independent voting. This is especially true of the Washington consolidated office-group type of open primary ballot. The other states now employing the open primary, all but two of which are Western, have reputations for political activities fairly independent of the two major parties.

For both open and closed primaries, the laws governing the general election ballot are applicable in many respects. Thus the Australian ballot frequently is the rule for primaries. The distinctive characteristics of the primary, however, have required peculiar legislation as to the ballot. The states have been forced to define the term "party" for purposes of determining what groups are entitled to a ticket in both the primary and the general election. Since the common practice is to have a separate ticket for each party participating in the primary election, the laws specify that the tickets are to be of the same color in some states, thus establishing uniformity, or of different colors, thus establishing party identity. In various ways, the laws of the several states govern details of uniformity, number of columns, order of candidates, and the candidates' occupation, address, or incumbency.

The order of candidates in a primary ballot—which is nearly always of the office-group pattern—is often de-

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terminated by alphabetizing and rotating. Some states determine order of candidates by lot, as in Texas; others determine it by the order in which candidates are filed, as in New Mexico. The trend, however, is toward rotation, particularly for the primary ballot.

The prediction made by some observers fifteen years ago that the primary would continue to decline has not been borne out by the developments of the last decade. On the contrary, two states adopted statewide primaries during that period, and two others shifted from the optional to the mandatory primary. Furthermore, the local caucuses in the non-primary states of Connecticut and Rhode Island may use voting machines, and their election procedure is similar to that of the primaries of other states.

Shifts are taking place back and forth with reference to the run-off primary. Between 1935 and 1937, Arkansas, Kentucky, and Oklahoma abandoned the second primary. As a result of a feud between state leaders, the Kentucky law was in the statutes for only one year. Arkansas in 1939 re-adopted a second primary. Other adoptions took place in Alabama in 1931 and Utah in 1937. It may be observed, therefore, that the run-off primary has made net gains during the last decade. This means additional primary ballots, though, of course, they are shorter than the ballots for the first primary.

As a result of the important progress the non-partisan movement has achieved in the field of the general election, a group of Western states have made provision for holding non-partisan primary elections simultaneously with the partisan primaries. In most of these states there is a separate ballot for the non-partisan candidates (judicial, educational, and legislative); but in a few states

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the names of non-partisan candidates are printed in a column to the right of the partisan ballot for the partisan voters or on separate ballots for the voters without party affiliation.

Broadly speaking, general election ballots have grown smaller during the period 1930-1940. However, it does not follow that the voter's burden has been noticeably diminished. Actually, special elections occur as frequently as in earlier decades, and in the matter of voting in special elections and primaries the voter is on the whole facing even more demands for the exercise of his suffrage. The depression probably added to political agitation and hence to ballot loads in the sense of producing more candidates and referendum propositions. An examination of the indexes of session laws in the forty-eight states for the decade 1930-1940 reveals literally thousands of topical references relating to election administration, and bearing upon ballots, directly or indirectly. Much of the legislation is local in character and of minor importance. The limits of the present study prevent an analysis of such data. But the existence of such an extensive amount of election legislation leads to the conclusion that legislatures in general are conscious of increasing public demands for electoral changes; it may be observed, however, that many amendments have no doubt been enacted in response to local influences rather than to broad demands for ballot reform.

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