P.O. BOX 30754
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

August 23, 2021

By email only

Honorable Gretchen Whitmer
Governor, State of Michigan
The George Romney Building
Lansing, MI 48909

Attention: Mark Totten
             Legal Counsel to the Governor

Re: **City of Ann Arbor – Proposed Charter Amendment**

Sections 13.4(a) and 13.5 (a) – (c) – when state law authorizes ranked choice voting, that method of voting shall be used for the nomination and election of the mayor and the other members of the city council

Dear Governor Whitmer:

You have referred to this office the referenced and attached charter amendment adopted by resolution of the Ann Arbor city council at its meeting held on August 2, 2021. In addition, your office has provided to this office two letters sent to you from James R. Lancaster (Lancaster), dated July 26, 2021 (Lancaster Letter No. 1) and August 4, 2021 (Lancaster Letter No. 2). These letters set forth background information and legal analysis regarding rank choice voting on behalf of the Rank MI Vote Ballot Question Committee.[1]

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[1] While Lancaster Letter No. 2 seeks the Governor's approval of this proposed amendment, both letters seek the Governor's approval of the proposed charter amendment for rank choice voting adopted by the Lansing city council. However, the Lansing city clerk withdrew Lansing's request for approval of that proposed charter amendment in his letter to the Governor of August 10, 2021, informing the Governor as follows: "The Lansing City Council has subsequently reconsidered the vote by which both of these resolutions [for rank choice voting and the elimination of the city's primary election] were adopted and has not readopted the resolutions by the proposal deadline for the November 2021 City election. The proposals will not appear on the November 2021 ballot, so your consideration of the amendments is no longer necessary."

The proposed amendment provides for ranked choice voting for the nomination and election of the mayor and other members of this city council, subject to the requirement that this method of voting will not take effect until authorized by state law. In its resolution and in the proposed amendment itself, the city council recognizes that the ranked-choice-voting method is currently not authorized by state law. At this time, instead, the council seeks approval of the city voters of this method of voting in anticipation of this method of voting being expressly authorized by the legislature in the future.

I have reviewed the proposed amendment in light of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1, *et seq.*, and conclude that the proposed amendment is consistent with the HRCA for the reason that, by its terms, this amendment will not be implemented without specific enabling legislation setting forth the procedures for rank choice voting. Although proposed legislation was introduced in 2019 for setting forth such procedures in the HRCA and the Michigan Election Code, no action was taken regarding those bills during the 2019-2020 legislative session.[2]

The Attorney General has a separate responsibility to review proposed ballot language for compliance with the requirements of Section 21 of the HRCA. I have examined the ballot language for the proposed amendment as set forth in the city

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[2] From the 2019-2020 legislative session, see HB 5281, 3 p. (HRCA) and HB 5282, 14 p. (Michigan Election Code) which were introduced to expressly authorize the method of rank choice voting for city officers. However, no action was taken by the House of Representatives regarding these bills which were referred to the Committee on Elections and Ethics.

Council's resolution and conclude that the ballot language conforms to the requirements of Section 21 of the HRCA.

Sincerely,

/s/*George M. Elworth*

George M. Elworth
Assistant Attorney General
State Operations Division
(517) 335-7573

GME:bb
Encs. Correspondence from the Governor's office:

a. Governor's August 6, 2021 referral of the Ann Arbor city council's August 2, 2021 resolution, adopting this proposed amendment which includes ballot language for the proposed amendment.
b. Lancaster Letter No. 1 to the Governor, dated July 26, 2021, in support of rank choice voting,
c. Lancaster Letter No. 2 to the Governor, dated August 4, 2021, in support of rank choice voting,

cc: Jacqueline Beaudry, City Clerk, by email only: JBeaudry@a2gov.org
    Matthew Thomas, Assistant City Attorney, by email only: MThomas@a2gov.org
    Kristina Gierhart, Executive Assistant, Governor's Office, by email only

2021-0324916-A

Attachment a.
Governor's 8/6/2021 referral

STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

August 6, 2021

George Elworth
Attorney General's Office
State Operations Division
G. Mennen Williams Building
Second Floor

RE: **Proposed Charter Amendments – City of Ann Arbor**

Dear Mr. Elworth,

Enclosed please find proposed charter amendments from the City of Ann Arbor for your legal review.

I have included a copy of my cover letter to the Ann Arbor City Clerk for your files. Please let me know if our office may provide you with any further information.

Sincerely,

/s/Kristina Gierhart

Kristina Gierhart
Executive Assistant for Legal Services
Office of Governor Whitmer
(517) 241-5630

c: Attorney General's Office, State Operations Division

STATE OF MICHIGAN

OFFICE OF THE GOVERNOR

LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

August 6, 2021

City of Ann Arbor
Jacqueline Beaudry
City Clerk
301 E. Huron Street
P.O. Box 8647
Ann Arbor, MI 48107

Re: **Proposed Charter Amendments – City of Ann Arbor**

Dear Ms. Beaudry,

On behalf of Governor Whitmer I am responding to your email and attached letter dated August 6, 2021. I am forwarding your information to the Attorney General's Office for legal review of the proposed charter amendments for the City of Ann Arbor. Our office will respond upon completion of that review and recommendation.

Please contact me if you have any questions or concerns.

Sincerely,

/s/Kristina Gierhart

Kristina Gierhart
Executive Assistant for Legal Services
Office of Governor Whitmer
(517) 241-5630

c: Attorney General's Office, State Operations Division

CITY OF ANN ARBOR, MICHIGAN

301 E. Huron St., P.O. Box 8647, Ann Arbor, Michigan 48107-8647

Phone (734)794-6140   Fax (734)994-8296

www.a2gov.org

August 6, 2021

The Honorable Gretchen Whitmer
Governor of the State of Michigan
ATTN: Legal Division
George W. Romney Bldg.
P.O. Box 30013
Lansing, MI 48909-7513

Dear Governor Whitmer:

Pursuant to statute, copies of the proposed amendments to the Ann Arbor City Charter are being submitted for your approval. The proposed charter amendments would be as follows:

1. Modifies Sections 13.4 and 13.5 of the City Charter to allow for Ranked Choice Voting.
2. Adds a new subsection to Section 14.2 of the City Charter, related to emergency purchasing procedures.
3. Amends Section 14.2 of the City Charter, related to the $25,000 dollar limit.

The proposed charter language is included in the enclosed certified resolutions, adopted by the Ann Arbor City Council at its regular session of August 2, 2021. The resolutions authorize the charter amendment propositions to appear on the November 2, 2021 Special Election Ballot.

Sincerely,

Jacqueline Beaudry
City Clerk

JB/rw

c: Attorney General Dana Nessel, Washtenaw County Clerk Lawrence Kestenbaum

Ballot Letter.

City of Ann Arbor

Certified Copy

Resolution: R-21-300

File Number: 21-1409   **Enactment Number: R-21-300**

Resolution to Order Election and to Determine Ballot Question for Charter Amendment to Allow for Ranked Choice Voting **(7 Votes Required)**

Whereas, Ranked Choice Voting enhances the democratic process by allowing for more choice for voters, providing more information about voter preferences, representing a broader spectrum of views, and promoting majority support;

Whereas, Legislation has previously been introduced in the State House of Representatives that would allow the City to provide by Charter that City Officers be elected by Ranked Choice Voting; and

Whereas, It would be beneficial to have the enabling Charter language in place should the legislation pass, so that the City can proceed with Ranked Choice Voting immediately, without the possible expense of calling a special election.

RESOLVED, That the Ann Arbor City Council proposes that the City Charter be amended by modifying Section 13.4 and 13.5 to read as follows:

Primary Elections

SECTION 13.4.

(a) A City primary election for the purpose of nominating such officers of the City as this Charter provides shall be held on August 8, 2017, and in succeeding years on the first Tuesday following the first Monday in August as provided for in Section 12.4. If, upon expiration of the time for filing nomination petitions for any elective office, it appears that petitions have been filed for no more than one candidate for the office from each political party nominating candidates therefor, no primary election shall be held with respect to the office. ~~The candidates receiving the highest number of votes of their respective parties at any city primary election shall be declared the~~ The nominees for election to the respective offices for which they are candidates shall be selected pursuant to Section 13.5. As to any office with respect to which no primary is necessary, persons named in petitions as candidates for election to the office shall be certified by the Clerk to the Election Commission to be placed upon the ballot for the next subsequent regular election under the party heading set forth in the nomination petitions for the candidates.

(b) No person who is a sticker candidate for nomination, or whose name is written in on the ballots at any primary election, shall be declared nominated unless that person receives at least fifty votes.

Election Procedure

SECTION 13.5.

(a) Except as otherwise provided herein, the general election laws of the State shall

control, as nearly as may be, all procedures relating to registration for and to the calling and conduct of City elections.

(b) In the event State law allows for the use of Ranked Choice Voting for the election of City Officers, the candidate receiving the majority of votes shall be declared the winner according to the following guidelines:

(1) The ballot shall allow voters to rank a number of choices in order of preference equal to the total number of candidates for each office.

(2) If a candidate receives a majority of the first choices, that candidate must be declared the winner. Subject to subsections (3) and (4), if no candidate receives a majority of the votes, the candidate, or candidates, who received the fewest number of first choices must be eliminated and each vote cast for that candidate must be transferred to the next ranked continuing candidate on the elector's ballot. Except as provided in subsection (5), this process will continue until a candidate receives a majority of votes.

(3) If the total number of votes of the 2 or more candidates credited with the lowest number of votes is less than the number of votes credited to the candidate with the next highest number of votes, those candidates with the lowest number of votes must be eliminated simultaneously and their votes transferred to the next ranked continuing candidate of each ballot in a single counting operation.

(4) If an elector skips a rank, the elector's vote must be transferred to the elector's next ranked choice.

(5) If after the ranked choice voting process described in subsection (2) is complete and there is a tie of 2 or more candidates, the tie must be resolved as provided by State law.

(6) If the voting system, vote tabulation system or similar or related equipment used by the City cannot feasibly accommodate choices equal to the total number of candidates running for each office, the Clerk shall limit the number of choices a voter may rank to no fewer than three.

(c) In the event State law allows for the use of the Ranked Choice Voting guidelines found in Section 13.5(b) for the election of City Officers, and until such time as voting machine equipment capable of implementing Ranked Choice Voting is available and obtained by the City of Ann Arbor, and such equipment is approved by the Election Commission, the candidate with the highest number of votes in their respective race shall be elected or nominated.

RESOLVED, That November 2, 2021 is designated as the day for holding an election on the proposed Charter amendment;

RESOLVED, That the City Clerk shall transmit a copy of this resolution to the Attorney General and the Governor of Michigan and shall perform all other acts required by law for holding the election;

RESOLVED, That the proposed Charter amendment shall appear on the ballot in the following form:

ANN ARBOR CITY CHARTER AMENDMENT
RANKED CHOICE VOTING FOR THE ELECTION OF CITY OFFICERS

Shall the Charter be amended to provide that the Mayor and City Council members are to be nominated and elected by a Ranked Choice Voting method when it is authorized by State Law?

Yes   No

RESOLVED, That the proposed Charter amendment and proposed ballot question shall be published in full in the Washtenaw County Legal News;

RESOLVED, That the City Clerk is directed to publish the proposed Charter amendment in full, together with the existing Charter provisions amended as required by law and in accordance with resolution of Council, and to post the proposed Charter amendment in full together with the existing Charter provisions to the City's website; and
RESOLVED, That if the amendment is adopted, it shall take effect on January 1, 2022.

Sponsored by: Councilmembers Disch, Grand and Eyer

At a regular session of the Ann Arbor City Council held on August 2, 2021, the foregoing resolution was moved by Councilmember Disch, seconded by Councilmember Grand, that this Resolution R-21-300 be approved.

The vote was as follows:

AYES: Councilmembers Grand, Griswold, Nelson, Ramlawi, Briggs, Disch, Song, Eyer, Radina and Mayor Taylor, 10;

NAYS: Councilmember Hayner, 1;

ABSENT: 0.

The resolution was declared adopted.

****

I, Jacqueline Beaudry, Clerk of the City of Ann Arbor, Michigan, certify that this is a true copy of Resolution R-21-300, passed by the Ann Arbor City Council on 8/2/2021.

Attest: _____   August 06, 2021
         Jacqueline Beaudry, Ann Arbor City Clerk   Date Certified

City of Ann Arbor

Certified Copy

Resolution: R-21-301

File Number: 21-1321   **Enactment Number: R-21-301**

Resolution to Order Election and to Determine Ballot Question for Amendment to Section 14.2 of the City Charter Related to Emergency Purchases **(7 Votes Required)**

Whereas, Section 14.1 of the City Charter, entitled "Authority of Council," subsection b provides:

> All contracts, except as otherwise provided in this charter or by ordinance of the Council in accordance with the provisions of Section 14.2 of this charter, shall be approved by the Council and shall be signed on behalf of the City by the Mayor and the Clerk;

Whereas, Section 14.2 of the City Charter, entitled "Purchase and Sale of Personal Property," provides:

> The Council shall by ordinance establish the procedures for contracts for all services and for the purchase and sale of personal property under the direction of the City Administrator. The ordinance shall provide the dollar limit within which purchases of personal property may be made without the necessity of securing competitive bids, and the dollar limit within which purchases may be made and contracts for services entered into without the necessity of council approval. Such dollar limits shall, in no case, exceed twenty-five thousand dollars ($25,000.00). No purchase shall be made or service contract entered into unless a sufficient appropriation is available;

Whereas, Unforeseen events sometimes arise that require the City Administrator to enter into contracts in order to continue provision of essential City services, without otherwise complying with those requirements of Chapter 14 of the City Charter, such as obtaining prior Council approval and securing competitive bidding; and

Whereas, Section 1:317 of Chapter 14 of the City Code provides a method for emergency procurement of supplies, materials, equipment, professional services, and construction services, but there is no corresponding provision in the City's Charter that expressly addresses emergency procurement;

RESOLVED, That the following amendment adding a subsection (b) to Section 14.2 of the City Charter be placed on the ballot and submitted to the voters at the next general city election:

> (b) The Council shall by ordinance establish the procedure for contracts for emergency purchases, which shall be authorized under the direction of the City Administrator.

RESOLVED, That November 2, 2021 is designated as the day for holding an election on the proposed Charter amendment;

RESOLVED, That the City Clerk shall transmit a copy of the proposed amendment to the Attorney General and the Governor of Michigan and shall perform all other acts required by law for holding the election;

RESOLVED, That the following question shall appear on the ballot in the following form:

ANN ARBOR CITY CHARTER AMENDMENT RELATED TO EMERGENCY PROCUREMENT

Shall Section 14.2 of the Charter be amended to require City Council to establish, by ordinance, the procedure by which the City Administrator may make emergency purchases.

__ Yes __ No

RESOLVED, That the proposed Charter amendment and proposed ballot question shall be published in full in the Washtenaw County Legal News;

RESOLVED, That the City Clerk is directed to publish the proposed Charter amendment in full, together with the existing Charter provisions amended as required by law and in accordance with resolution of Council, and to post the proposed Charter amendment in full together with the existing Charter provisions to the City's website; and

RESOLVED, That if the amendment is adopted, it shall take effect immediately.

Sponsored by: Councilmember Eyer, Councilmember Radina and Mayor Taylor

At a regular session of the Ann Arbor City Council held on August 2, 2021, the foregoing resolution was moved by Councilmember Radina, seconded by Councilmember Grand, that this Resolution R-21-301 be approved.

The vote was as follows:

AYES: Councilmembers Grand, Griswold, Nelson, Briggs, Disch, Song, Eyer, Radina, and Mayor Taylor, 9;
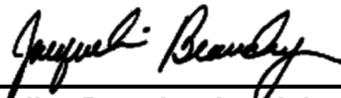
NAYS: Councilmembers Hayner and Ramlawi, 2;

ABSENT: 0.

The resolution was declared adopted.

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I, Jacqueline Beaudry, Clerk of the City of Ann Arbor, Michigan, certify that this is a true copy of Resolution R-21-301, passed by the Ann Arbor City Council on 8/2/2021.

Attest: _____   **August 06, 2021**

Jacqueline Beaudry, Ann Arbor City Clerk   **Date Certified**

City of Ann Arbor

Certified Copy

Resolution: R-21-302

File Number: 21-1322   **Enactment Number: R-21-302**

Resolution to Order Election and to Determine Ballot Question for Amendment to Section 14.2 of the City Charter Related to the $25,000 Dollar Limit **(7 Votes Required)**

Whereas, Section 14.1 of the City Charter, entitled "Authority of Council," subsection b provides:

> All contracts, except as otherwise provided in this charter or by ordinance of the Council in accordance with the provisions of Section 14.2 of this charter, shall be approved by the Council and shall be signed on behalf of the City by the Mayor and the Clerk;

Whereas, Section 14.2 of the City Charter, entitled "Purchase and Sale of Personal Property," provides:

> The Council shall by ordinance establish the procedures for contracts for all services and for the purchase and sale of personal property under the direction of the City Administrator. The ordinance shall provide the dollar limit within which purchases of personal property may be made without the necessity of securing competitive bids, and the dollar limit within which purchases may be made and contracts for services entered into without the necessity of council approval. Such dollar limits shall, in no case, exceed twenty-five thousand dollars ($25,000.00). No purchase shall be made or service contract entered into unless a sufficient appropriation is available;

Whereas, The $25,000 dollar-limit exception has not been altered to account for inflation or otherwise since 1995, even though the cumulative rate of inflation since that time is over 75%;

Whereas, Staff estimates that changing the dollar-limit to $75,000 would result in Council seeing 48% fewer items, where such items account for merely 4% of the total value of all contracts that the City enters into in a year;

Whereas, Staff further estimates that such change would result in the City realizing a savings of nearly 625 fewer staff hours expended on processing resolutions for contract approvals; and

Whereas, Increasing the dollar limit to $75,000 and allowing the City Council to adjust such amount in the future to account for inflation is in the City's best interest.

RESOLVED, That the following amendment to Section 14.2 of the City Charter be placed on the ballot and submitted to the voters at the next general city election:

   (a) The Council shall by ordinance establish the procedures for contracts for all

services and for the purchase and sale of personal property, under the direction of the City Administrator. The ordinance shall provide the dollar limit within which purchases of personal property may be made without the necessity of securing competitive bids, and the dollar limit within which purchases may be made and contracts for services entered into, without the necessity of ~~c~~Council approval. ~~Such dollar limits shall, in no case, exceed twenty-five thousand dollars ($25,000.00)~~ <u>The dollar limit within which purchases may be made and contracts for services entered into, without the necessity of Council approval shall, in no case, exceed $75,000.00 (which City Council may by ordinance increase to account for inflation). The dollar limit within which purchases of personal property may be made without the necessity of securing competitive bids shall, in no case, exceed $25,000.</u> No purchase shall be made or service contract entered into unless a sufficient appropriation is available.

RESOLVED, That November 2, 2021 is designated as the day for holding an election on the proposed Charter amendment;

RESOLVED, That the City Clerk shall transmit a copy of this resolution to the Attorney General and the Governor of Michigan and shall perform all other acts required by law for holding the election;

RESOLVED, That the following question shall appear on the ballot in the following form:

ANN ARBOR CITY CHARTER AMENDMENT RELATED TO THE $25,000 DOLLAR LIMIT

Shall Section 14.2 of the Charter be amended to permit the City Council to delegate to the City Administrator the authority to approve purchases and to enter into contracts when the cost to the City is equal to or lesser than $75,000, to be adjustable for inflation.

__ Yes __ No

RESOLVED, That the proposed Charter amendment and proposed ballot question shall be published in full in the Washtenaw County Legal News;

RESOLVED, That the City Clerk is directed to publish the proposed Charter amendment in full, together with the existing Charter provisions amended as required by law and in accordance with resolution of Council, and to post the proposed Charter amendment in full together with the existing Charter provisions to the City's website; and

RESOLVED, That if the amendment is adopted, it shall take effect on January 1, 2022.

Sponsored by: Councilmember Eyer, Councilmember Radina and Mayor Taylor

At a regular session of the Ann Arbor City Council held on August 2, 2021, the foregoing resolution was moved by Councilmember Eyer, seconded by Councilmember Disch, that this Resolution R-21-302 be approved.

The vote was as follows:

AYES: Councilmembers Grand, Griswold, Briggs, Disch, Song, Eyer, and Mayor Taylor, 7:

NAYS: Councilmembers Hayner, Nelson, Ramlawi, and Radina, 4;

ABSENT: 0.

The resolution was declared adopted.

****

I, Jacqueline Beaudry, Clerk of the City of Ann Arbor, Michigan, certify that this is a true copy of Resolution R-21-302, passed by the Ann Arbor City Council on 8/2/2021.

Attest: _____   **August 06, 2021**
Jacqueline Beaudry, Ann Arbor City Clerk   **Date Certified**

Attachment b.

Lancaster Letter No. 1 to the Governor,
dated July 26, 2021

LANCASTER
ASSOCIATES

July 26, 2021

The Honorable Gretchen Whitmer
Governor
State of Michigan
111. S. Capitol Ave., 2nd Floor
Lansing, Michigan 48933

      Re: City of Lansing Resolutions 2021-149 and 2021-150
                Proposing Implementation of Ranked Choice Voting

      I represent Rank MI Vote Ballot Question Committee ("RMV"). RMV was formed for the purpose of promoting the use of Ranked Choice Voting ("RCV") in Michigan.

      On behalf of RMV, I am writing in support of the request by the City of Lansing for your approval, pursuant to Home Rule City Act ("HRCA") § 22, MCL 117.22, of the ballot language in City of Lansing Resolutions 2021-149 and 2021-150. These resolutions propose to present to the voters amendments to the Lansing City Charter implementing Ranked-Choice voting for City of Lansing elections.[1] Resolution 2021-149 proposes to implement what it describes as "ranked-choice/instant run-off" voting for the positions of mayor, city clerk and city council. Resolution 2021-150 proposes to eliminate the primary election for these positions. These proposals are tie-barred.

      This letter sets forth my analysis of the Michigan Constitution and existing statutes, including the Home Rule City Act, MCL 117.1 *et. seq.* and the Michigan Election Law, MCL 168.1 *et. seq.,* regarding the authority of Home Rule Cities to implement RCV for elections for city offices.

      The 1963 Michigan Constitution and relevant statutes clearly establish that Home Rule Cities may amend their charters to implement RCV for city offices. State law clearly defers to city charters with respect to elections for city offices. Therefore, we request that, pursuant to Home Rule City Act Section 22, MCL 117.22, you approve submission of these ballot questions to the City of Lansing voters at the November 2021 General Election.

The 1963 Michigan Constitution and The Home Rule City Act

The 1963 Michigan Constitution grants broad authority to the Legislature to regulate the "time, place and manner" of elections. Article 2, §4(2) provides:

§ 4 Place and manner of elections.

Sec. 4. (2) Except as otherwise provided in this constitution or in the constitution or laws of the United States *the legislature shall enact laws to regulate the time, place and manner of all nominations and elections,* to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. No law shall be enacted which permits a candidate in any partisan primary or partisan election to have a ballot designation except when required for identification of candidates for the same office who have the same or similar surnames. (Emphasis added)

The Constitution also grants broad self-governance authority to Home Rule Cities. Article 7, §22 provides:

§ 22 Charters, resolutions, ordinances; enumeration of powers.

Sec. 22. *Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter,* and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. *Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.* (Emphasis added)

The Legislature has delegated to Home Rule Cities the power to establish the time, place and means of conducting elections for city offices. Section 117.3 of the HRCA, MCL 117.3(a) provides the following:

117.3 Mandatory charter provisions.

Sec. 3. Each city charter shall provide for all of the following:

(a) The election of a mayor, who shall be the chief executive officer of the city, and of a body vested with legislative power, and for the election or appointment of a clerk, a treasurer, an assessor or board of assessors, a board of review, and other officers considered necessary. The city charter may provide for the selection of the mayor by the legislative body. *Elections may be by a partisan, nonpartisan, or preferential ballot, or by any other legal method of voting....*

....

(c) The time, manner, and means of holding elections and the registration of electors, subject to section 26[2] and other applicable requirements of law. (Emphasis added).

2

The Michigan Election Law recognizes the autonomy of Home Rule Cities with respect to the selection of the appropriate manner to elect city officials. Michigan Election Law Section 321(1), MCL 168.321(1) provides:

168.321 City officers; qualifications, nomination, election, appointment, term, and removal; list of candidates; quorum; election or appointment of successor.

Sec. 321. (1) Except as provided in subsection (3) and sections 322, 327, 641, 642, 644e, 644f, 644g, and 646a [*none of which are relevant to this situation*], **the qualifications, nomination, election, appointment, term of office, and removal from office of a city officer must be in accordance with the charter provisions governing the city.** (Comment and emphasis added)

Additionally, Michigan Election Law Section 323, MCL 168.323, provides:

168.323 Board of city election commissioners; preparation of ballots, canvass of returns, conduct of primary and election; provisions governing.

Sec. 323. It is the duty of the board of city election commissioners to prepare the primary ballots to be used by the electors. The returns shall be canvassed by the board of county canvassers and the results certified to the board of city election commissioners, who shall prepare and furnish ballots for the ensuing election. The printing and distribution of ballots, equipment, and supplies, **the conduct of the primary and election, the canvass and certification of the returns, and all other particulars shall be in accordance, *as nearly as may be*, with the provisions of this act governing general primaries and elections.** (Emphasis added)

This last sentence in Section 323 recognizes that "[s]tate law defers to local rule in the sphere of city elections." *Barrow v. City of Detroit Election Commission,* 305 Mich. App. 649, 664; 854 N.W. 2d 489 (2014). Therefore, implementation of RCV does not require strict compliance with Michigan Election Law.

The City of Lansing has the authority pursuant to the Michigan Constitution and the Home Rule City Act to amend its charter to implement RCV for elections to city offices. Michigan Election Law recognizes the supremacy of the city charter over its provisions. If the voters of the City of Lansing choose to adopt Resolutions 2021-149 and 2021-150, any provisions of Michigan Election Law that would inhibit the ability of the City to implement RCV are unenforceable.

Bureau of Elections Objections to the Implementation of RCV

The Michigan Department of State, Bureau of Elections, has maintained that RCV cannot be implemented under current Michigan law. This was expressed recently in an affidavit filed by the Director of Elections, Jonathan Brater.[3] We are also aware of a more recent letter from Mr. Brater to Assistant Lansing City Attorney Lisa Hagan dated July 22, 2021. A copy of this letter is attached.

There is no question that with respect to elections for all other public offices *except for* city offices, RCV cannot be implemented. However, Mr. Brater's conclusion with respect to Home Rule Cities, is erroneous. It appears to be based on the premise that the Michigan Election Law supercedes all other statutes and relevant provisions of the Michigan Constitution.

Michigan Election Law specifies that candidates for all offices *except for* city offices are elected based on plurality voting; i.e., the candidate receiving the most votes is declared to be duly elected. For example, MCL 168.51 regarding the election of the Governor and Lieutenant Governor, states:

> **168.61 Governor and lieutenant governor; certificate of determination by board of state canvassers.**
>
> Sec. 61. *The board of state canvassers shall determine which candidates for governor and lieutenant governor have received the greatest number of votes and shall declare such candidates to be duly elected.* The said board shall forthwith make and subscribe on its statement of return a certificate of such determination and deliver the same to the secretary of state. (Emphasis added)

Similarly, for county offices, MCL 168.201 provides:

> **168.201 County officers; certificate of determination by board of county canvassers.**
>
> Sec. 201. *The board of county canvassers shall determine which candidates for the offices named in section 191 of this act received the greatest number of votes and shall declare such candidates to be duly elected.* The said board shall forthwith make and subscribe on its statement of returns a certificate of such determination and deliver same to the county clerk within 14 days following the date of the election. (Emphasis added)

Similar provisions exist for every other election *except for* the election of city officials. See Michigan Election Law Chapters 4 – 14, and 16-24A.

As noted above, Chapter 15 regarding City elections does not state that the candidate receiving the greatest number of votes is "declared" to be "duly elected." Instead, Section 321(1), MCL 168.321(1), provides that:

> ...the qualifications, nomination, election, appointment, term of office, and removal from office of a city officer must be in accordance with the charter provisions governing the city.

And Section 323, MCL 168.323 provides:

> ...the conduct of the primary and election, the canvass and certification of the returns, and all other particulars shall be in accordance, *as nearly as may be*, with the provisions of this act governing general primaries and elections. (Emphasis added)

In other words, the City Charter is the primary determinant of the manner of electing city officials, not the Michigan Election Law.

Moreover, RCV has been successfully implemented in Michigan in the City of Eastpointe. While this occurred in the context of a federal consent decree settling a Voting Rights Act lawsuit in the case *U.S. v. City of Eastpointe, et.al.* U.S. District Court, Eastern District of Michigan, Civil Action No. 4:17-CV-10970 (2019), the Eastpointe experience illustrates the feasibility or implementing RCV for elections for city offices.

The Consent Decree in *Eastpointe* addressed three specific concerns apparently raised by the Elections Bureau regarding conflicts between the implementation of RCV and Michigan Election Law. These sections of the Michigan Election Law are:

- MCL 168.691: Prohibition of listing a candidate's name in more than one column on the ballot for the same office:

  168.691 Official ballots; names of candidates; identification numeral; compliance.

  Sec. 691. (1) Each board of election commissioners shall have printed on the ballot, or on ballot labels or slips to be placed on a voting machine, when used, the names of the candidates certified to that board under this act. *A candidate's name shall not be placed or printed in more than 1 column on the ballot for the same office.* A board of election commissioners for a county or city may arrange the ballots with an identification numeral placed in the same space with the name of each of the candidates. That identification numeral shall be rotated with the name of the candidate, and when rotated, shall appear in the same space with the same candidate regardless of where the candidate's name appears on the ballot.[4]

  The Consent Decree stated that "Defendants may use a ranked choice ballot that lists a candidate's name in more than one column on the ballot for the same office.

- MCL 168.736b-736f: Restrictions on instructions on ballot security sleeves:

  168.736b Secrecy sleeve; primary election; instructions.

  Sec. 736b. Each ballot secrecy sleeve used at a primary election must either contain the following ballot *marking instructions printed on the front of the ballot secrecy sleeve or must have a clear plastic pocket on the front of the ballot secrecy sleeve that contains a printed copy of the following ballot marking instructions....*[remainder of section spells out the specific ballot language required; it does not include or allow for instructions on RCV]

  Similar language is contained in sections 736c [general elections], 736d [nonpartisan elections], 736e [special elections], and 764 [absent ballot instructions].

  168.736f Ballot marking instructions; limitation.

Sec. 736f. The ballot marking instructions as provided in sections 736b, 736c [general election], 736d [non-partisan], 736e [special elections], and 764 [absent ballot instructions], *__are the only written ballot marking instructions that shall be provided to an elector.__*[5]

The Consent Decree stated that "Notwithstanding Section 736f of the Michigan Election law, Mich. Comp. Laws §168.736f, Defendants may provide ballot marking instructions compatible with ranked choice voting to electors."

- MCL 168.795(1)(c): Voting for multiple candidates for the same office:

168.795 Electronic voting system; requirements; method for rendering electronic tabulating equipment inoperable; equipping each polling place with accessible voting device.

Sec. 795. (1) An electronic voting system acquired or used under sections 794 to 799a shall meet all of the following requirements:

......

(c) Permit each elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; and to vote for or against any question upon which the elector is entitled to vote. __Except as otherwise provided in this subdivision, the electronic tabulating equipment must reject all choices recorded on the elector's ballot for an office or a question if the number of choices exceeds the number that the elector is entitled to vote for on that office or question.__ Electronic tabulating equipment that can detect that the choices recorded on an elector's ballot for an office or a question exceeds the number that the elector is entitled to vote for on that office or question must be located at each polling place and programmed to reject a ballot containing that type of an error. If a choice on a ballot is rejected as provided in this subdivision, an elector must be given the opportunity to have that ballot considered a spoiled ballot and to vote another ballot. (emphasis added)

The Consent Decree stated: "Notwithstanding Section 795(1)(c) of the Michigan Election Law, Mich. Comp. Laws §168.795(1)(c), in tabulating a voter's ballot for an office elected using ranked choice voting, the voter's first preference will be counted by Defendants even if the voter has overvoted on subsequent preferences. Similarly, a voter's second of third preference may be counted by Defendants...even if the voter has overvoted on subsequent preferences."

Mr. Brater's July 22, 2021 letter raises other issues expressing other additional concerns. If the voters of the City of Lansing adopt Resolutions 2021-149 and 2021-150, it may be necessary for the City to enter into a Memorandum of Understanding ("MOU") or similar agreement with the State to assure the accuracy and integrity of elections implementing RCV.

But the Eastpointe experience shows it is feasible to do so. The provision of the Michigan Constitution, the Home Rule City Act and Michigan Election Law, cited in this letter, mandate that the Elections Bureau allow for implementation of RCV for Home Rule Cities.

Furthermore, none of the issues raised in the Eastpointe Consent Decree, or Mr. Brater's letter, invalidate the substantive right of Home Rule Cities to implement by RCV. Pursuant to MCL 168.323, these provisions cannot be strictly enforced to prevent the City of Lansing voters from adopting RCV, should they choose to do so.

Judicial Decisions Addressing RCV

There is little judicial analysis of the validity of the implementation of RCV in Michigan. The only relevant judicial opinion I found that has been issued since the adoption of the 1963 Constitution is a circuit court opinion in the case *Stephenson v. City of Ann Arbor* (Washtenaw County Circuit Court Case No. 10166-AW, 1975). A copy of this case is attached. This case addressed a challenge to a form of RCV (which it called Majority Preferential Voting) in the Ann Arbor City Charter at that time, that is substantially the same as what is being proposed in Lansing Resolution 2021-149.

The plaintiff challenged the use of RCV in Ann Arbor City Mayor's race, alleging it violated the Equal Protection clause of the 14th Amendment of the U. S. Constitution, and Article 1, Section 2 of the Michigan Constitution of 1963. The Court upheld the use of RCV, though it did not specifically address whether the use of RCV conflicted with the Michigan Election Law.

The *Stephenson* decision cited two older cases that addressed the constitutionality of RCV in the context of the 1850 and 1909 Michigan Constitution, *Maynard v. Board of District Canvassers*, 84 Mich 228; 47 NW 756 (1890) and *Wattles v. Upjohn*, 211 Mich 514, 173 NW 335 (1920). However, as the Circuit Judge noted in *Stephenson*, those cases address voting systems that were significantly different from the RCV, or "preferential," voting methods implemented by Ann Arbor; and, thus, are distinguishable from what is now being proposed for the City of Lansing. Also, those cases predate the addition of the language in Art. 7, §22 in the 1963 Constitution, and thus are of questionable validity in addressing this issue.
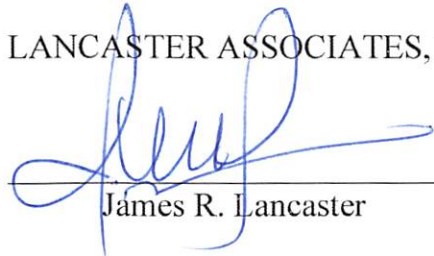
Conclusion

The implementation of RCV is clearly and explicitly authorized by the 1963 Michigan Constitution Article 2, §4(2) and Article 7, §22, and §117.3 of the HRCA. Section 321 and 323 of Michigan Election Law clearly provides that any provisions in the Michigan Election Law contrary to this conclusion cannot be strictly enforced.

7

State law clearly defers to local charters with respect to elections for city offices. Therefore, we request that, pursuant to Home Rule City Act Section 22, MCL 117.22, you approve submission of these ballot questions to the City of Lansing voters at the November 2021 General Election.

Respectfully,

LANCASTER ASSOCIATES, PLLC

James R. Lancaster

Cc: The Lansing City Council
Hon. Andy Schor
Hon. Barb Byrum
Mark Totten
Jonathan Brater
Ron Zimmerman
Jim DeLine

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[1] A copy of Lansing City Clerk Chris Swope's letter to you dated July 12, 2021, and the two resolutions are attached as Exhibit A.

[2] Home Rule City Act Section 26 provides:

117.26 Elections; general provisions; applicability of MCL 168.641.

Sec. 26. (1) All elections held under this act shall be paid for by the locality where held. Except as otherwise provided by law or ordinance, the legislative body of the city shall determine the publication and notice of the election.

(2) Notwithstanding another provision of this act or a charter provision, an election under this act is subject to section 641 of the Michigan election law, 1954 PA 116, MCL 168.641[relating to the dates for elections] .

[3] *Bailey v Antrim County and Benson*, 13th Judicial Circuit Court (Antrim County) File No. 20-9238-CZ (Judge Kevin Elsenheimer). This lawsuit received national attention as it was filed by parties supporting former President Trump, claiming that the Presidential Election results in this county were invalid due to improprieties in the Dominion vote tabulation equipment. It was determined that the mistakes that occurred in initial vote tabulations were result of a programing error by the County Clerk. The case was recently dismissed. However, in this lawsuit Director Brater filed an affidavit which stated, in relevant part:

"Ranked Choice Voting is not authorized by the Michigan Election Law for use in federal or state-level elections."

In a footnote to this sentence, the Affidavit states:

"Due to a consent decree it entered with the Department of Justice in 2019, the City of Eastpointe in Macomb County is the only jurisdiction in Michigan that uses ranked choice voting to elect city officers. United States v City of Eastpointe, Case No. 4:17-cv-10079, E.D. Mich. Notably, the voting system used in Macomb County is not Dominion, but Election Systems and Software (ES&S)."

Chris Swope
Lansing City Clerk

July 13, 2021

Governor Gretchen Whitmer
P.O. Box 30013
Lansing, Michigan 48909

RE: City of Lansing Proposed Charter Amendment: Ranked Choice Voting

Dear Governor Whitmer:

On July 12, 2021, the City Council of the City of Lansing, by a vote of 7 yeas and 0 nays, has adopted the enclosed resolution to propose an amendment to the Lansing City Charter. The resolution places the question before Lansing voters on November 2, 2021.

Pursuant to the Home Rule City Act, specifically MCL 117.22, I am submitting the proposal for your approval.

Please contact me if any further information is needed.

Sincerely,

Chris Swope, MiPMC / MMC
Lansing City Clerk

Enclosure: City of Lansing Resolution 2021-149

RESOLUTION #2021-149
BY THE COMMITTEE OF THE WHOLE
RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANSING

WHEREAS, it is required that a method of election of elective officers be provided for by Charter; and

WHEREAS, it has been argued that the current methods of election codified by Charter may contribute to insufficient choice and participation for residents; and

WHEREAS, it has been argued that other methods of election may be more efficient while providing citizens with a superior range of options;

WHEREAS, in the event that the electors adopt the pending Charter amendment to elect City officers by the instant run-off voting procedure, the use of primary elections for these officers will be eliminated;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lansing, pursuant to the authority of the Home Rule Cities Act (MCL 117.1, et. seq.), and by a three-fifths (3/5) vote of its members elect, hereby proposes that the following amendment to Article 2, Chapter 2, Sections 2-205, 2-206, and the addition of Section 2-207 of the Lansing City Charter be submitted, to the electors of the City for adoption or rejection at the election to be held on November 2, 2021:

Chapter 2 ELECTION OF OFFICERS

2-205 METHOD OF ELECTION

.1 THE PERSON RECEIVING THE HIGHEST NUMBER OF VOTES FOR ANY OFFICE SHALL BE DEEMED TO HAVE BEEN DULY ELECTED TO THAT OFFICE, UNTIL SUCH TIME AS VOTING MACHINE EQUIPMENT CAPABLE OF IMPLEMENTING INSTANT RUN-OFF VOTING IS AVAILABLE AND OBTAINED BY THE CITY OF LANSING, AND SUCH EQUIPMENT IS APPROVED BY THE ELECTION COMMISSION; THEREAFTER, FOR THE OFFICES OF MAYOR, CITY CLERK, AND CITY COUNCIL A CANDIDATE SHALL BE ELECTED FOR THAT OFFICE BY RECEIVING MORE THAN 50% OF THE VOTES CAST USING THE FOLLOWING METHOD: EACH VOTER SHALL DESIGNATE THE CANDIDATES FOR OFFICE BY RANKING THE CANDIDATES IN ORDER OF THE VOTER'S PREFERENCE. IF A CANDIDATE RECEIVES MORE THAN 50% OF FIRST PREFERENCE VOTES, THEN THE CANDIDATE IS ELECTED. IF NO CANDIDATE RECEIVES MORE THAN 50% OF THE FIRST PREFERENCE VOTE, THE CANDIDATE WITH THE FEWEST FIRST PREFERENCE VOTES SHALL BE ELIMINATED AND THE ELIMINATED CANDIDATES VOTERS' SECOND PREFERENCE VOTES SHALL BECOME THEIR FIRST PREFERENCE AND BE ADDED TO THE FIRST PREFERENCE VOTES OF THE REMAINING CANDIDATES. THIS PROCESS OF ELIMINATION AND REALLOCATION OF VOTES BY ORDER OF

VOTER PREFERENCE SHALL CONTINUE UNTIL ONE CANDIDATE RECEIVES MORE THAN 50% OF THE VOTE AND IS THEREFORE ELECTED.

.2 CITY COUNCIL AT LARGE ELECTIONS: WHEN MORE THAN ONE CANDIDATE IS TO BE ELECTED, THEN THE PROCESS OF PREFERENTIAL RANKING OF CANDIDATES AND ELIMINATION OUTLINED IN 2-205.1 SHALL BE FOLLOWED. ONCE THE FIRST CANDIDATE IS ELECTED, ALL BALLOTS ARE RECOUNTED AND THE NEXT CANDIDATE WHO RECEIVES MORE THAN 50% OF THE VOTES IS ELECTED, EXCEPT THAT THE ALREADY ELECTED CANDIDATE IS ELIMINATED AND THE SECOND PREFERENCE OF THE VOTERS FOR THAT CANDIDATE ARE COUNTED INSTEAD, WITH THAT PROCESS BEING CONTINUED UNTIL THE SECOND CANDIDATE RECEIVES MORE THAN 50% OF VOTES.

.3 THE INSTANT RUN-OFF VOTING PROCEDURE IN THIS SECTION 2-205 SHALL BECOME EFFECTIVE ONLY IF THE PENDING CHARTER AMENDMENTS TO ELIMINATE PRIMARY ELECTIONS OF CITY OFFICERS IS SIMULTANOUSLY PASSED.

2-205 2-206 Election Commission

.1 The conduct of City elections shall be the responsibility of the Election Commission consisting of the City Clerk, the City Attorney and the Assessor. The City Clerk shall preside.

.2 The Election Commission shall prescribe the procedures to be followed in the conduct of City elections in accord with state law AND THIS CHAPTER.
2-206 2-207 State Law To Apply

The general election laws of the state as supplemented by the provisions of this Charter and relevant ordinances shall apply to the qualifications and registration of voters, the filing for office by candidates, and the conduct and canvass of City elections.

BE IT FURTHER RESOLVED that in accordance with the Home Rule Cities Act (MCL 117.1, et. seq.), the question shall be captioned and stated on the ballot as follows:

CITY OF LANSING CHARTER AMENDMENT
INSTALLMENT OF RANKED-CHOICE (AUTOMATIC RUNOFF) VOTING BY AMENDING THE LANSING CITY CHARTER ARTICLE 2, SECTION 2-205, AND RENUMBERING THE REMAINING SECTIONS OF ARTICLE 2 THEREAFTER

This amendment provides for election of the mayor, city clerk, and council members by majority vote using an instant run-off voting procedure of counting votes (as soon as the City acquires voting machine equipment approved by the City Election Commission) if the Charter is simultaneously amended to eliminate primary elections. Voters shall designate first preferences and subsequent preferences; if no candidate receives more than 50% of first preference votes the candidate with the fewest first preferences is

eliminated and the secondary preferences for that candidate are recounted until a candidate receives a majority of votes.

Shall this amendment be adopted?

_____ YES
_____ NO

BE IT FURTHER RESOLVED that the Charter amendment would take effect on January 1, 2022.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed and authorized to, in accordance with the Home Rule Cities Act (MCL 117.1, et. seq.), transmit a copy of this resolution and roll call vote on it, along with a copy of the proposed amendment to the Governor of the State of Michigan for approval and a copy to the Attorney General of the State of Michigan for approval as to the form in which the proposal shall be presented to the electors.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to cause the above proposal to be placed on the ballot at the election to be held on November 2, 2021.

BE IT FURTHER RESOLVED that the ballot wording is hereby certified to the City Clerk for submission to the City's electors at the election to be held on November 2, 2021.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to give notice of the election and notice of registration therefore in the manner prescribed by law and to do all things and to provide all supplies necessary to submit the ballot proposal to the vote of the electors as required by law.

BE IT FURTHER RESOLVED that in accordance with law, the City Clerk shall post the proposed Charter amendment in full at each polling place.

BE IT FINALLY RESOLVED that the canvass and determination of the votes of said question shall be made in accordance with the laws of the State of Michigan and the Charter of the City of Lansing.

Chris Swope

Chris Swope, CMMC/MMC
Lansing City Clerk

I hereby certify that the foregoing is true
and is a complete copy of the action
adopted by the Lansing City Council.

Chris Swope
Lansing City Clerk

July 13, 2021

Governor Gretchen Whitmer
P.O. Box 30013
Lansing, Michigan 48909

RE: City of Lansing Proposed Charter Amendment: Elimination of City Primary Election

Dear Governor Whitmer:

On July 12, 2021, the City Council of the City of Lansing, by a vote of 7 yeas and 0 nays, has adopted the enclosed resolution to propose an amendment to the Lansing City Charter. The resolution places the question before Lansing voters on November 2, 2021.

Pursuant to the Home Rule City Act, specifically MCL 117.22, I am submitting the proposal for your approval.

Please contact me if any further information is needed.

Sincerely,

Chris Swope, MiPMC / MMC
Lansing City Clerk

Enclosure: City of Lansing Resolution 2021-150

RESOLUTION #2021-150
BY THE COMMITTEE OF THE WHOLE
RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANSING

WHEREAS, it is required that a method of election of elective officers be provided for by Charter; and

WHEREAS, it has been argued that the current methods of election codified by Charter may contribute to insufficient choice and participation for residents; and

WHEREAS, it has been argued that other methods of election may be more efficient while providing citizens with a superior range of options;

WHEREAS, in the event that the electors adopt the pending Charter amendment to elect City officers by the instant run-off voting procedure, the use of primary elections for these officers will be eliminated;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lansing, pursuant to the authority of the Home Rule Cities Act (MCL 117.1, et. seq.), and by a three-fifths (3/5) vote of its members elect, hereby proposes that the following amendment to Article 2, Chapter 2, Sections 2-201, 2-203, 2-204, and 2-406 of the Lansing City Charter be submitted, to the electors of the City for adoption or rejection at the election to be held on November 2, 2021:

Chapter 2 ELECTION OF OFFICERS

2-201 Time Of Elections

.1 IF THIS CHARTER IS AMENDED TO PROVIDE FOR AN INSTANT RUN-OFF VOTING PROCEDURE FOR THE ELECTION OF THE OFFICES OF MAYOR, CITY CLERK, AND CITY COUNCIL, UPON THE EFFECTIVE DATE OF THE IMPLEMENTATION OF THE INSTANT RUN-OFF VOTING PROCEDURE, THE PRIMARY ELECTIONS TO DETERMINE THE CITY OFFICE CANDIDATES SHALL BE ELIMINATED AND THE REFERENCE TO PRIMARY ELECTIONS SHALL BE REMOVED FROM CHARTER SECTIONS 2-201, 2-203, 2-204, AND 2-406.

.2 ~~The primary and general~~ Elections for all City offices shall be held ON THE FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER. ~~at the time provided by State law.~~

2-203 - Wards.

.1 The City of Lansing shall be divided into four (4) wards, from each of which a member of the City Council shall be nominated and elected.

.2 Each ward shall have the same boundaries as shall exist on the effective date of this Charter until changed in accord with law.

.3 The Election Commission shall revise the boundaries of the wards within sixty (60) days after the figures from the Federal decenniel census become available. New ward boundaries created within one hundred twenty (120) days of a City ~~primary~~ election shall become effective after the NEXT general election.

.4 The Election Commission shall, to the greatest extent possible, establish wards that are compact, contiguous and of equal population.

2-204 Method Of Nomination

.1 The method of nomination for all elective offices in the City shall be by petition, or by a candidate submitting a filing fee. ~~A primary election shall be on those occasions when the number of persons submitting valid nominating petitions or filing fees exceeds twice the number of positions to be filled in the office.~~

.2 Nominating petitions submitted by candidates for offices to be filled by voters of a ward shall be signed by at least one hundred (100), but no more than one hundred fifty (150), of the persons registered to vote in the ward in which the election is to be held.

.3 Nominating petitions submitted by candidates for offices to be filled by the voters of the City at large shall be signed by at least four hundred (400), but not more than six hundred (600), of the registered electors of the City.

.4 In lieu of submitting nominating petitions, a candidate may nominate himself or herself for City office by submitting a filing fee of one hundred dollars ($100). The filing fee shall be nonrefundable.

.5 The City Clerk shall assist members of the public by providing information regarding the requirements for candidacy, and in the preparation of petitions.

.6 Neither nominating petitions, nor filing fees shall be accepted unless accompanied by an affidavit sworn to or affirmed by the candidate, stating that the candidate possesses the legal qualifications for the office and requesting that the candidate's name be printed on the ballot.

2-406 - Special elections.

.1 Special City elections shall be held when called by resolution of the City Council at least fifty (50) days in advance of the election, or when required by this Charter or State law. Any resolution calling a special election shall set forth the purpose of such election.

.2 Special elections to fill vacancies shall be called at least ninety (90) days before the general election. A special primary election shall be held at least twenty-five (25) days before the special general election.

.3 Any election to fill a vacancy in an elective City office shall be held on election day in November and shall be preceded by a primary election. No general election to fill a vacancy may be held unless the vacancy occurred at least six (6) months prior to the general election.

.4 Whenever a vacancy in the office of Mayor, City Clerk or City Council exists for thirty (30) days and the City Council has failed to fill the vacancy, the Election Commission shall schedule a special election to fill the vacancies at the earliest possible time. The date of the election shall not be subject to the provisions of Section 2-406.3.

BE IT FURTHER RESOLVED that in accordance with the Home Rule Cities Act (MCL 117.1, et. seq.), the question shall be captioned and stated on the ballot as follows:

CITY OF LANSING CHARTER AMENDMENT
REMOVAL OF REFERENCES TO A PRIMARY ELECTION, CONTAINED IN LANSING CITY CHARTER ARTICLE 2, SECTIONS 2-201, 2-203, 2-204, AND 2-406

This amendment provides for the elimination of primary elections for the City offices of Mayor, City Clerk, and City Council, if the Charter is simultaneously amended to provide for the election of City officers by an instant run-off procedure and the new method of election is implemented.

Shall this amendment be adopted?

_____ YES
_____ NO

BE IT FURTHER RESOLVED that the Charter amendment would take effect on January 1, 2022.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed and authorized to, in accordance with the Home Rule Cities Act (MCL 117.1, et. seq.), transmit a copy of this resolution and roll call vote on it, along with a copy of the proposed amendment to the Governor of the State of Michigan for approval and a copy to the Attorney General of the State of Michigan for approval as to the form in which the proposal shall be presented to the electors.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to cause the above proposal to be placed on the ballot at the election to be held on November 2, 2021.

BE IT FURTHER RESOLVED that the ballot wording is hereby certified to the City Clerk for submission to the City's electors at the election to be held on November 2, 2021.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to give notice of the election and notice of registration therefore in the manner prescribed by law and to do all things and to provide all supplies necessary to submit the ballot proposal to the vote of the electors as required by law.

BE IT FURTHER RESOLVED that in accordance with law, the City Clerk shall post the proposed Charter amendment in full at each polling place.

BE IT FINALLY RESOLVED that the canvass and determination of the votes of said question shall be made in accordance with the laws of the State of Michigan and the Charter of the City of Lansing.

Chris Swope, CMMC/MMC
Lansing City Clerk

I hereby certify that the foregoing is true
and is a complete copy of the action
adopted by the Lansing City Council.

July 22, 2021

Lisa Hagan
Assistant City Attorney
Office of the Lansing City Attorney

Via email to Lisa.Hagen@lansingmi.gov

Dear Ms. Hagen:

Thank you for letting us know about the City of Lansing's proposed charter amendments regarding ranked choice voting (RCV). The letter includes information regarding the implementation of RCV in Michigan. While the Bureau of Elections (BOE) does not oppose RCV in concept, RCV is inconsistent with several provisions of the Michigan Election Law (MEL), 1954 PA 116, MCL 168.1 *et seq.*, and holding an election using RCV creates multiple challenges under the MEL.

Accordingly, with one court-ordered exception, recent elections in Michigan have not been conducted with RCV notwithstanding municipal charter requirements. You may be aware, for example, that the City of Ferndale's charter contains provisions for RCV, but the city has not conducted an election using this method.

The City of Eastpointe is currently *required* to conduct their city council elections using RCV, but this is being done under a settlement agreement with the U.S. Department of Justice to resolve the allegation that the city's "at-large method of electing the Eastpointe City Council dilutes the voting strength of black citizens, in violation of Section 2 of the Voting Rights Act", which is federal law. Complaint, *United States v City of Eastpointe*. The federal consent agreement, which supersedes state law, required Eastpointe to adopt multi-winner RCV for city council elections beginning with the November 5, 2019 election.

Outside of a federal requirement to set aside these provisions, several provisions of MEL inhibit the ability to conduct elections with RCV. For example, the MEL does not contemplate or authorize any reduction in the number of votes cast for an elected candidate; subtraction and redistribution of validly cast, surplus votes to continuing candidates; and redistribution of a losing candidate's total votes.

Among these is the requirement to electronically tabulate results in the precinct on Election Night. None of the three Election Management System vendors used in Michigan currently provides an end-to-end, self-contained system for tabulating results and determining winners for multi-winner RCV that has been tested, certified, and approved for use with Michigan-compliant voting systems.

The MEL requires that all election results be canvassed and reported by precinct inspectors: "Immediately on closing the polls, the board of inspectors of election in each precinct shall proceed to canvass the vote." MCL 168.801. In other words, the initial canvass cannot be performed outside of the precinct, nor by anyone other than the election inspectors. Next, the inspectors are required to prepare the statement of returns showing the number of votes cast for all candidates for each office. MCL 168.806, 809. All of this is done in the precinct on Election Night after polls close and before the election materials are delivered to the receiving board, and without human intervention (in counting and assigning votes to specific candidates). Under current law, it simply is not possible to assign the duties necessary to determine who was elected when using RCV (such as the distribution of votes among the candidates and necessary calculations) to another election official (such as the city clerk or Board of County Canvassers).

Additionally, the MEL bars "overvotes," or voting for more candidates than the total number to be elected to a particular office. MCL 168.576a provides, "In all partisan and nonpartisan primary elections, the voter shall be entitled to vote for a number of candidates for each office equal to the number of persons to be elected for that office." Similarly, MCL 168.580 provides, "In counting the ballots after the closing of the polls, only those candidates having crosses or check marks marked in the squares to the left of their names shall be considered to have received votes, and any ballot upon which more votes have been recorded for candidates for any office than may, by law, be elected to that office shall be rejected as to all names appearing on the ballot for that office only." Electronic voting systems approved for use in Michigan must be programmed to detect and reject ballots containing overvotes:

> (1) An electronic voting system acquired or used under sections 794 to 799a shall meet all of the following requirements: ... (c) Permit each elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; and to vote for or against any question upon which the elector is entitled to vote. Except as otherwise provided in this subdivision, the electronic tabulating equipment shall reject all choices recorded on the elector's ballot for an office or a question if the number of choices exceeds the number that the elector is entitled to vote for on that office or question. Electronic tabulating equipment that can detect that the choices recorded on an elector's ballot for an office or a question exceeds the number that the elector is entitled to vote for on that office or question shall be located at each polling place and programmed to reject a ballot containing that type of an error. If a choice on a ballot is rejected as provided in this subdivision, an elector shall be given the opportunity to have that ballot considered a spoiled ballot and to vote another ballot. MCL 168.795.

The Michigan Election Law is quite restrictive in terms of the written instructions that are provided to voters. Under MCL 168.736f, "The ballot marking instructions as provided in sections 736b, 736c, 736d, 736e, and 764, are the only written ballot marking instructions that shall be provided to an elector." These sections deal with primary, general, nonpartisan and special elections, and absent voter ballots, respectively, and none contemplate RCV.

The following chart contains a summary of the provisions of the MEL which conflict with the use of RCV in Michigan:

Requirement	Citation
Candidates' names must be rotated on the ballot	MCL 168.569a
Ballot must allow voters to vote for write-in candidates	MCL 168.795
VAT must allow an individual with disabilities to vote in a manner that provides the same opportunity for access and participation as provided for other voters	MCL 168.795
Vote accumulation software must meet SOS specifications; SOS must so certify	MCL 168.795
Tabulator must be programmed to reject ballots containing errors	MCL 168.795
Firmware and software must be tested and approved by a certified independent testing authority (ITA) accredited by the National Association of State Election Directors	MCL 168.795a
Firmware and software must be approved by Board of State Canvassers	MCL 168.795a
Source code must be escrowed	MCL 168.797c
Statement of votes must indicate the total number of votes for each candidate	MCL 168.806
Results must be available in the precinct	MCL 168.807

Thus, while not expressly prohibiting RCV, the MEL does not contemplate the use of the practice and has several provisions in conflict with it. The only state statute that addresses RCV at all, the Home Rule City Act, 1909 PA 279, MCL 117.3(a), simply provides, "[City] Elections may be by a partisan, nonpartisan, or preferential ballot, or by any other legal method of voting." There are no state laws, administrative rules, or policies to guide RCV implementation.

Accordingly, BOE construed and applied existing election laws to maintain the best semblance of compliance with current state legal requirements in order to assist Eastpointe to comply with their federal court-ordered mandate. In order to avoid the manual counting of RCV ballots, Eastpointe used third-party tabulation software developed by the Ranked Choice Voting Resource Center (Resource Center). The Resource Center's product is stand-alone software, not an integral component of a currently certified and approved voting system. The Resource Center submitted its tabulation software to a voting system test laboratory (VSTL) for testing and certification, which was completed in early September 2019.
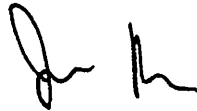
VSTL certification of any tabulation software is necessary because it will be used to count votes, accumulate totals from multiple precincts and determine election winners. After VSTL certification, the Resource Center submitted its software for state certification and testing to ensure compatibility with the ES&S system, used in Eastpointe, and obtained conditional approval of the Board of State Canvassers (BSC). The BSC conditionally approved the use of the Resource Center's product for use only in Eastpointe and in conjunction with the ES&S voting system. Any other use, or any alternative tool to calculate the results of an RCV election, would need to go through the same rigorous testing prior to implementation. State certification testing includes a successful demonstration of the following functionalities: import of election files; creation of election and ballot files; tabulation of test decks on precinct tabulators, accessible voting devices and AVCB tabulators; and secure transmission of results via modem, if

applicable, and directly via memory devices to the vote accumulation software on a central computer.

BOE has learned a significant amount about RCV from the Eastpointe election, and would do its best to use this knowledge in assisting Lansing, Dominion, Ingham County, or any other jurisdictions that were conducting an election under RCV if it were legally permissible. BOE will also work collaboratively with national experts and legislators who support the policy, as it continues to be discussed in Michigan. However, it currently is not possible to conduct an election using RCV and comply with the MEL. If Lansing does place charter amendments to implement RCV for city elections on the ballot, and those amendments pass, Lansing will not be able to conduct city elections using RCV until the MEL is amended.

Sincerely,

Jonathan Brater, Director of Elections

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

JAMES E. STEPHENSON,

Plaintiff,

FILE NO. 75—10166 AW

ANN ARBOR BOARD OF CITY CANVAS-

SERS and JEROME S. WEISS,

Defendant,

V

ALBERT H. WHEELER, JAMES M. DAHL,

DOROTHY L. CAHN, MARJORIE C. BRAZER,

LeROY CAPPAERT, DEBORA H. FREEMAN,

MARY HELEN S. GILBERT, CHESTER FELDMAN

and HENRIETTA FELDMAN, individually

and as a Class,

Intervening Defendants.

OPINION OF THE COURT

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

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

The Ann Arbor voters in the November 5, 1974 general election added Section 13.12(b) to their City Charter. The amendment was adopted by a majority of the voters.

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

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

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

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

The results of the election were as follows:

First Preference Votes for Stephenson 14,453

First Preference Votes for Wheeler   11,815

First Preference Votes for Ernst   3,181

First Preference votes for Miscellaneous

        Write-in Candidates   52

Total Valid First Preference Votes   29,501

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

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

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

Wheeler   14,684

Stephenson   14,563

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

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

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

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

3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No classification was established by the Charter Amendment or City of Ann Arbor to discriminate against any voter or group of voters--all voters possessed the same rights.

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

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

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

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

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

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

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

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

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

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

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

The Court also finds no merit to Plaintiff's claim that certain voters have an opportunity to change their minds and their votes while others do not have that right under this "M.P.V." System. Each voter has an equal opportunity and right at the time he or she casts his or her ballot election day. The fact that each person voting lists different orders of preference does not mean that some voters have greater rights than others. Each voter is on an equal footing with the next voter as to whether his first preference, second preference etc. will remain in the "elimination process". It is the equal right to list preferences and the equal opportunity to be eliminated or to stay in the running that accords each voter the same rights, not the possibilities of whose first or second preference may or may not stay in the counting. Each voter is given the same rights at the same time, that is, the time of casting his or her ballot. It is then that a voter may "change his or her mind" by consciously deciding who his or her first, second or third preference is for the office of Mayor. Thus, at the time of vote casting, each voter who chooses to make more than one preferential selection, in effect exercises his or her mental process of changing his or her mind, as the voter decides that a certain candidate meets his tests for Mayor in the event his or her first choice does not remain in the the running. This Court finds no constitutional infringement or prohibition against changing one's mind in this fashion, inasmuch as each voter is given the same right to do so at the same time and each voter's ballot is given the equal right to be counted in the same manner as any other voter's ballot. Each voter has the same rights as the next one. Nothing in the "M.P.V." system weighs one voter's rights over the other. The M.P.V. system, thus has the same effect as a run-off election, except that it consolidates it into one election.

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

The argument by Plaintiff that the M.P.V. system employed here, violates the "one-man, one-vote" requirement of Baker v Carr, 369 US 186; B2 S Ct 691; Reynolds v Simms, supra, and Wesberry v

Sanders, supra, likewise fails when the tests of those cases are applied to the manner and method this M.P.V. system employed to determine the winner. Again, each voter is given the same equal opportunity at the time he or she casts his ballot. His or her vote is not "weighed differently" from any other votes in the election. Each voter will have one of his or her preferences counted if he or she elects to make more than one preference. The fact that a few voters may decide not to make more than one preference does not render the system unconstitutional. It is a choice or right possessed that the voter may or may not exercise.

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

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

Under the "M.P.V. System", however, no one person or voter has more than one effective vote for one office. No voter's vote can be counted more than once for the same candidate. In the final analysis, no voter is given greater weight in his or her vote over the vote of another voter, although to understand this does require a conceptual understanding of how the effect of a "M.P.V. System" is like that of a run-off election. The form of majority preferential voting employed in the City of Ann Arbor's election of its Mayor does not violate the one-man, one-vote mandate nor does it deprive anyone of equal protection rights under the Michigan or United States Constitutions.

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

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

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

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

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

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

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

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

James G. Fleming

Circuit Judge

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

Attachment c.

Lancaster Letter No. 2 to the Governor,
dated August 4, 2021

August 4, 2021

The Honorable Gretchen Whitmer
Governor
State of Michigan
111. S. Capitol Ave., 2nd Floor
Lansing, Michigan 48933

      Re: City of Lansing Resolutions 2021-149 and 2021-150
              Proposing Implementation of Ranked Choice Voting

      The purpose of this letter is to follow up on my letter dated July 26, 2021, and provide additional information in support of the request by the City of Lansing for your approval, pursuant to Home Rule City Act ("HRCA") § 22, MCL 117.22, of the ballot language in City of Lansing Resolutions 2021-149 and 2021-150. These resolutions propose to present to the City of Lansing voters amendments to the Lansing City Charter implementing Ranked-Choice Voting ("RCV") for City of Lansing elections.

      First, I want to emphasize the urgency of your prompt attention and response to the City of Lansing's request for your approval of these ballot questions. My understanding is that the deadline for the certification of the ballot questions to county and local clerks is August 10, 2021, per MCL 168.646a, for the November 2021 General Election.

      The urgency of this issue is now compounded by the Ann Arbor City Council's recent approval of a ballot question to amend its City Charter to provide for RCV for its elections. A copy of the resolution that I obtained from the City of Ann Arbor website is attached.

      I am assuming that the Ann Arbor City Clerk will be contacting you separately with a request for you to approve their ballot question.

      Subsequent to my July 26 letter, I have had an opportunity to review documents I received from the Michigan Department of State Bureau of Elections in response to my Freedom of Information Act request regarding the implementation of RCV in the City of Eastpointe. These documents include:

- An email and memorandum from Lori Bourbonais, an attorney and senior analyst with the Michigan Department of State Bureau of Elections, dated May 22, 2019. This document states:

Under Michigan Law, RCV is authorized for use by a home rule city which has enacted the "preferential ballot" method of voting in its City Charter, or has adopted an amendment to the City Charter in consultation with the Governor and with the approval of the city's electors. Home Rule City Act, MCL 117.3, 117.21 to 112.24.

- An email from Melissa Malerman, who is also an attorney and a senior analyst with the Michigan Department of State Bureau of Elections, dated May 31, 2019, stating:

  > As Michigan Election Law expressly defers to the city charter to determine the method for nominating and electing city officers, and the Home Rule City Act places the responsibility for making such determinations exclusively with the city, the Michigan Bureau of Elections has never selected the precise method of counting votes in a RCV election for city officers. (Emphasis in the original).

- Another email from Ms. Malerman, dated June 5, 2019. This email states:

  > We're working on statewide standards that would be applicable to all cities that adopt RCV in the future, and work for all three voting system vendors.

- A document from Dominion Voting (the voting system used by Ingham County) describing the software it has that is available to be used by cities that choose to implement RCV. So, clearly, there is no technical impediment to the City of Lansing implementing RCV, should the electors for the City of Lansing approve the proposed charter amendment.
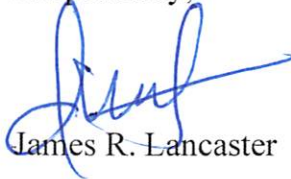
Copies of these documents are attached. The Bureau of Elections has clearly acknowledged that a Home Rule City has the legal authority to implement RCV.

And again, I want to emphasize that Sections 321 and 323 of the Michigan Election Law, MCL 168.321 and 168.323, acknowledge that the election of city officers must be in accordance with its city charter, and that the conduct of elections, the canvass and certification of the returns, and all other particulars shall be in accordance "*as nearly as may be*," with the provisions of the Michigan Election Law. Thus, strict compliance with the Michigan Election Law is not required for implementation of RCV.

We hope that this additional information will persuade you to approve the City of Lansing's ballot questions so they can be presented to the voters at the November 2021 General Elections.

Should you, your staff, or members of the Bureau of Elections or the Attorney General's office have any questions, please do not hesitate to contact me.

Respectfully,

James R. Lancaster

Cc: (Via Email only)
       The Lansing City Council
       Hon. Andy Schor
       Hon. Chris Swope
       Hon. Barb Byrum
       James Smiertka
       Lisa Hagan
       Mark Totten
       Alica Moon
       Jonathan Brater
       Ron Zimmerman
       Jim DeLine

City of Ann Arbor

301 E. Huron St.
Ann Arbor, MI 48104
http://a2gov.legistar.
com/Calendar.aspx

Legislation Text

File #: 21-1409, Version: 1

Resolution to Order Election and to Determine Ballot Question for Charter Amendment to Allow for Ranked Choice Voting **(7 Votes Required)**

Reviewed by: Matthew P. Thomas, Assistant City Attorney

Whereas, Ranked Choice Voting enhances the democratic process by allowing for more choice for voters, providing more information about voter preferences, representing a broader spectrum of views, and promoting majority support;

Whereas, Legislation has previously been introduced in the State House of Representatives that would allow the City to provide by Charter that City Officers be elected by Ranked Choice Voting; and

Whereas, It would be beneficial to have the enabling Charter language in place should the legislation pass, so that the City can proceed with Ranked Choice Voting immediately, without the possible expense of calling a special election.

RESOLVED, That the Ann Arbor City Council proposes that the City Charter be amended by modifying Section 13.4 and 13.5 to read as follows:

Primary Elections

SECTION 13.4.

(a) A City primary election for the purpose of nominating such officers of the City as this Charter provides shall be held on August 8, 2017, and in succeeding years on the first Tuesday following the first Monday in August as provided for in Section 12.4. If, upon expiration of the time for filing nomination petitions for any elective office, it appears that petitions have been filed for no more than one candidate for the office from each political party nominating candidates therefor, no primary election shall be held with respect to the office. ~~The candidates receiving the highest number of votes of their respective parties at any city primary election shall be declared the~~ The nominees for election to the respective offices for which they are candidates shall be selected pursuant to Section 13.5. As to any office with respect to which no primary is necessary, persons named in petitions as candidates for election to the office shall be certified by the Clerk to the Election Commission to be placed upon the ballot for the next subsequent regular election under the party heading set forth in the nomination petitions for the candidates.

(b) No person who is a sticker candidate for nomination, or whose name is written in on the ballots at any primary election, shall be declared nominated unless that person receives at least fifty votes.

Election Procedure

SECTION 13.5.

(a) Except as otherwise provided herein, the general election laws of the State shall control, as nearly as may be, all procedures relating to registration for and to the calling and conduct of City elections.

(b) In the event State law allows for the use of Ranked Choice Voting for the election of City Officers, the candidate receiving the majority of votes shall be declared the winner according to the following guidelines:

(1) The ballot shall allow voters to rank a number of choices in order of preference equal to the total number of candidates for each office.

(2) If a candidate receives a majority of the first choices, that candidate must be declared the winner. Subject to subsections (3) and (4), if no candidate receives a majority of the votes, the candidate, or candidates, who received the fewest number of first choices must be eliminated and each vote cast for that candidate must be transferred to the next ranked continuing candidate on the elector's ballot. Except as provided in subsection (5), this process will continue until a candidate receives a majority of votes.

(3) If the total number of votes of the 2 or more candidates credited with the lowest number of votes is less than the number of votes credited to the candidate with the next highest number of votes, those candidates with the lowest number of votes must be eliminated simultaneously and their votes transferred to the next ranked continuing candidate of each ballot in a single counting operation.

(4) If an elector skips a rank, the elector's vote must be transferred to the elector's next ranked choice.

(5) If after the ranked choice voting process described in subsection (2) is complete and there is a tie of 2 or more candidates, the tie must be resolved as provided by State law.

(6) If the voting system, vote tabulation system or similar or related equipment used by the City cannot feasibly accommodate choices equal to the total number of candidates running for each office, the Clerk shall limit the number of choices a voter may rank to no fewer than three.

(c) In the event State law allows for the use of the Ranked Choice Voting guidelines found in Section 13.5(b) for the election of City Officers, and until such time as voting machine equipment capable of implementing Ranked Choice Voting is available and obtained by the City of Ann Arbor, and such equipment is approved by the Election Commission, the candidate with the highest number of votes in their respective race shall be elected or nominated.

RESOLVED, That November 2, 2021 is designated as the day for holding an election on the proposed Charter amendment;

RESOLVED, That the City Clerk shall transmit a copy of this resolution to the Attorney General and the Governor of Michigan and shall perform all other acts required by law for holding the election;

RESOLVED, That the proposed Charter amendment shall appear on the ballot in the following form:

ANN ARBOR CITY CHARTER AMENDMENT

RANKED CHOICE VOTING FOR THE ELECTION OF CITY OFFICERS

Shall the Charter be amended to provide that the Mayor and City Council members are to be nominated and elected by a Ranked Choice Voting method when it is authorized by State Law?

?   Yes   ?   No

RESOLVED, That the proposed Charter amendment and proposed ballot question shall be published in full in the Washtenaw County Legal News;

RESOLVED, That the City Clerk is directed to publish the proposed Charter amendment in full, together with the existing Charter provisions amended as required by law and in accordance with resolution of Council, and to post the proposed Charter amendment in full together with the existing Charter provisions to the City's website; and

RESOLVED, That if the amendment is adopted, it shall take effect on January 1, 2022.

Sponsored by: Councilmembers Disch, Grand and Eyer

Fracassi, Adam (MDOS)

From:	Bourbonais, Lori (MDOS)
Sent:	Wednesday, May 22, 2019 8:44 AM
To:	Braid, Lauri;Johnson, Brooke;Michael Grix;Richbourg, Paige
Cc:	Williams, Sally (MDOS);Malerman, Melissa (MDOS);Fracassi, Adam (MDOS);Tarrant, David (MDOS)
Subject:	ranked choice voting
Attachments:	RCV Implementation Tasks and Deadlines Eastpointe 5-21-19.pdf

All,

Attached please find the document regarding RCV that we shared with the attorneys for the DOJ and Eastpointe late yesterday afternoon. The document lays out the issues and steps needed that we see moving forward to implement RCV in Michigan.

Please let me know if you have any questions.

Lori

Ranked Choice Voting: Implementation Tasks and Deadlines

Ranked choice voting (RCV) is gaining in popularity across the country. Among other benefits, its proponents argue that RCV promotes greater civility in campaigns and results in more inclusive representation. While the Bureau of Elections (BOE) does not oppose RCV in concept, it is important to understand that the RCV methodology is incompatible with many provisions of the Michigan Election Law. Therefore, the concept of conducting an election in the immediate future using ranked choice voting faces several formidable challenges. In addition to the need to enact legislative changes specific to RCV, BOE recognizes that implementation of this method of voting requires a thoughtful examination of the capabilities of each of the three approved electronic voting systems certified for use in Michigan specifically related to RCV, along with the development of a detailed implementation plan.

On May 13, 2019, the City of Eastpointe verbally notified BOE of its intention to resolve ongoing litigation through the adoption of an RCV system to elect members of the Eastpointe City Council, in preparation for the November 5, 2019 city election. A conference call including BOE, the City of Eastpointe, U.S. Department of Justice, and SOS Executive Office was held on May 14, 2019. The proposal to adopt and implement RCV for use in the upcoming general election was discussed in very general terms during the call.

Under Michigan law, RCV is authorized for use by a home rule city which has enacted the "preferential ballot" method of voting in its City Charter, or has adopted an amendment to the City Charter in consultation with the Governor and with the approval of the city's electors. Home Rule City Act, MCL 117.3, 117.21 to 117.24.

Before BOE can begin to develop a roll-out plan, the parties must decide which of the myriad methods of ranked choice voting will be used for City of Eastpointe elections. In its current form, the Michigan Election Law does not contemplate RCV, and the U.S. Department of Justice and City of Eastpointe have not specified which of the following ranked choice voting methods they intend to use. Options include RCV in which:

1. The winner is identified and deemed elected, then his or her excess votes over the minimum number needed to win are reallocated among continuing candidates in subsequent rounds; or
2. The last place candidate is eliminated, then his or her votes are reallocated among continuing candidates in subsequent rounds; or
3. All candidates who have no mathematical chance of winning are eliminated in batches, and their votes are reallocated among continuing candidates in subsequent rounds.
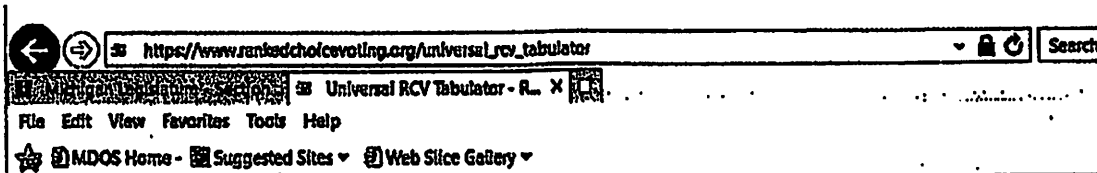
In addition to selecting the precise RCV method to be used, other urgent decision points for the U.S. Department of Justice, City of Eastpointe and its voting system vendor (Election Systems and Software, ES&S) include determining the maximum number of candidates each voter is permitted to rank and the maximum number of candidates the vote accumulation software is able to support, as RCV software capabilities vary among voting system vendors. The parties to the lawsuit must also consider the extent to which the voter accessibility terminal (VAT) must be modified in order to accommodate RCV.

The proposal offered by the U.S. Department of Justice to use the free "Universal RCV Tabulator" software is not acceptable for use in Michigan from a security standpoint. First, the Universal RCV Tabulator is an open source software program, whose source code is published online and widely

available for download or modification by users whose experience and expertise in computer programming and election administration are unknown. Moreover, it is difficult to discern whether modifications to the source code were made in good faith or with nefarious intentions. Voters are already inundated with news stories and social media commentary that undermines confidence in the security of our election systems, and deploying an open source election tabulation software program would further erode public trust. Indeed, the Ranked Choice Voting Resource Center website that links to the software carries the following warning statement: "The software is still in a prototype stage, so you may encounter bugs. Email us at info@rankedchoice voting.org if you run in to any issues with the tabulator." (See highlighted text below.)

⬅ ➡ ⚙ https://www.rankedchoicevoting.org/universal_rcv_tabulator   ▾ 🔒 ⟳ | Search

⬛ Universal RCV Tabulator - R... ✕

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UNIVERSAL RCV TABULATOR

The RCVRC and Bright Spots are pleased to offer the Universal RCV Tabulator: free, open source software for tabulating ranked choice voting elections. This tabulator can take in data from any voting machine capable of exporting a cast vote record and can tabulate a single-winner or multi-winner ranked choice voting election according to the rules used in any current RCV city in the United States. The tabulator outputs results and an audit file for RCV elections in seconds. The tabulator is available under an aGPLv3 License.

You can download the tabulator at this github, or download a compiled version to make install easier at this Google Drive link. You'll need to download the Java 11 Development Kit to run the software, too. The software is still in a prototype stage, so you may encounter bugs. Email us at info@rankedchoicevoting.org if you run in to any issues with the tabulator. We provide example election results data in the Google Drive download, but not whole election result data.

Needless to say, this level of software "support" is profoundly lacking. If the City of Eastpointe requires immediate assistance with troubleshooting when installing or using the Universal RCV Tabulator, or the software becomes inoperable, or is incompatible with other ES&S firmware, hardware and software, who is responsible for resolving these issues? All other voting systems currently in use in Michigan offer extensive vendor support on and around Election Day, including in-person service calls, toll-free telephone numbers and emergency on-call service. The only viable option for implementing RCV in Michigan is through an established voting system vendor with experience working in Michigan.

Once the City of Eastpointe, Department of Justice and ES&S have agreed on an RCV framework for Eastpointe's City Council election, the parties will need to provide a detailed written explanation of how the RCV system proposed for use in Eastpointe will comply with the following statutory requirements:

Requirement	Citation
Candidates' names must be rotated on the ballot	MCL 168.569a
Ballot must allow voters to vote for write-in candidates	MCL 168.795
VAT must allow an individual with disabilities to vote in a manner that provides the same opportunity for access and participation as provided for other voters	MCL 168.795
Vote accumulation software must meet SOS specifications; SOS must so certify	MCL 168.795
Tabulator must be programmed to reject ballots containing errors	MCL 168.795
Firmware and software must be tested and approved by a certified independent testing authority (ITA) accredited by the National Association of State Election Directors	MCL 168.795a
Firmware and software must be approved by Board of State Canvassers	MCL 168.795a
Source code must be escrowed	MCL 168.797c
Statement of votes must indicate the total number of votes for each candidate	MCL 168.806
Results must be available in the precinct	MCL 168.807

Additionally, software specifications and a state certification testing plan must be developed quickly to facilitate implementation this November. At the same time, the City of Eastpointe, Department of Justice and ES&S must determine the cost to procure RCV software and agree on payment terms, which is a local obligation. MCL 168.794b.

One significant obstacle to the parties' desire to implement this new software for the November 2019 city election is the requirement to complete federal and state certification testing. Under MCL 168.795, electronic voting systems must meet a number of criteria, including but not limited to the following: vote by secret ballot, correctly record and count votes, detect overvotes and give the voter an opportunity to correct the mistake on a replacement ballot, provide an accessible voting option for voters with disabilities, be durably constructed, permit voters to cast write-in votes, and so on. State certification testing requires the vendor to demonstrate all of the following functionalities:

- Import of State-defined election files;
- Creation of election and ballot files;
- Tabulation of test ballots ("test decks") on precinct tabulators, accessible voting devices and high-speed AVCB tabulators;
- Transmission of results via modem and directly via memory devices to the vote accumulation software on a central computer.

Prior to state certification testing, an accredited independent testing authority (ITA) must complete its own testing of the system and a copy of the ITA's final report must be filed with BOE. Michigan also requires federal certification by the U.S. Election Assistance Commission (EAC), which is obtained after ITA testing, as evidenced by the filing of the EAC acceptance report and EAC certification number. Use

of an uncertified electronic voting system is illegal under MCL 168.795a, and the failure to obtain timely certification will prevent BOE from presenting it for approval by the Board of State Canvassers.

The following chart describes the tasks that must be completed and associated deadlines for developing, testing, certifying, and operating an electronic RCV system for the November 5, 2019 city election.

Task (Citation if applicable)	Deadline
City of Eastpointe and Department of Justice must identify in writing the precise method of RCV to be used so that software specifications can be developed	ASAP
ES&S must confirm in writing that the RCV software specifications are compatible with its Michigan-compliant voting system	ASAP
BOE must develop a state certification testing plan for RCV software	ASAP
Successful completion of ITA and federal certification testing (MCL 168.795a)	By 7/1/19
Successful completion of state certification testing (MCL 168.795a)	By 7/10/19
Consideration of whether to approve RCV system by Board of State Canvassers (MCL 168.795a)	By 7/15/19
Filing deadline for candidates seeking Eastpointe city offices (MCL 168.644e)	7/23/19
Filing deadline for petitions to place ballot proposals on the ballot (MCL 168.646a)	7/30/19
Deadline for local legislative bodies to certify proposals to the ballot (MCL 168.646a)	8/13/19
Voter outreach, public education campaign regarding RCV method of voting	Ongoing
BOE (in consultation with ES&S) must develop pre-election procedures for: • Preliminary accuracy testing (R 168.777) • Public accuracy testing (MCL 168.778, R 168.778) • Creating test decks (R 168.776)	By 9/6/19
BOE (in consultation with ES&S) must develop Election Day procedures for: • Duplicate rankings (voter ranks a single candidate in multiple positions) • Skipped rankings (voter skips one or more rank positions) • Undervotes (voter ranks a single candidate in first position only) • Overvotes (voter assigns the same rank to two or more candidates) • Tie votes in any round of counting • Invalid write-ins (how to reallocate an unassigned write-in vote) • Error notices and rejecting ballots if the race is overvoted, undervoted, contains skips rankings or duplicate rankings, etc.	By 9/6/19
BOE must develop post-election procedures to address: • Precinct canvass procedure • County canvass procedure • Recount procedure	By 9/6/19
BOE must develop ballot instructions (but see MCL 168.736f)	By 9/6/19
BOE and Eastpointe's forms printing vendor must develop any necessary modifications to forms (Pollbook, Statement of Votes)	By 9/6/19
Deadline for Eastpointe to begin issuing absent voter ballots, including UOCAVA ballots (MCL 168.714, 168.759a)	By 9/21/19
Training of election inspectors (must be appointed by 10/15/19)	TBD
Write-in candidate filing deadline (MCL 168.737a)	10/25/19
Eastpointe must publish the election notice (MCL 168.653a); must indicate which races will be determined by RCV	By 10/29/19

Task (Citation, if applicable)	Deadline
Eastpointe must conduct the preliminary accuracy test (R 168.777)	TBD
Eastpointe must conduct the public accuracy test (MCL 168.778), with 48-hour advance notice to public (R 168.798)	By 10/31/19
Election Day (MCL 168.641)	11/5/19
Eastpointe delivers election results to Macomb County (MCL 168.809)	By 11/6/19
Macomb County Board of Canvassers commences the canvass (MCL 168.821)	By 11/7/19

These milestones include deadlines that may be aggressive, even unrealistic, but represent BOE's good faith estimate of the time and effort involved in implementing a first-of-its-kind electronic RCV method with little advance notice. BOE is ready and willing to assist in developing a workable model for implementing RCV in Michigan. In doing so however, we cannot ignore current legal requirements or the long-established and necessary preparation, testing and certification steps that must be in place to safeguard and ensure an accurate and verifiable system of voting and tabulating election results. In view of the extensive planning and preparation that must be done before electronic RCV can be implemented in Michigan, the City of Eastpointe and Department of Justice are advised to prepare a written contingency plan for counting votes manually as authorized by MCL 168.798b.

From:	Malerman, Melissa (MDOS)
Sent:	Wednesday, June 12, 2019 5:06 PM
To:	Williams, Sally (MDOS); Bourbonais, Lori (MDOS)
Subject:	FW: RCV Tabulation Options Document

Sally asked me to resend this.

From: Malerman, Melissa (MDOS)
Sent: Friday, May 31, 2019 6:05 PM
To: Williams, Sally (MDOS) <WilliamsS1@michigan.gov>; Bourbonais, Lori (MDOS) <bourbonaisl@michigan.gov>;
Tarrant, David (MDOS) <tarrantd2@michigan.gov>; Pierce, Carol (MDOS) <piercec1@michigan.gov>; Fracassi, Adam
(MDOS) <FracassiA@michigan.gov>
Subject: RE: RCV Tabulation Options Document
Importance: High

Please see revised version below.

From: Malerman, Melissa (MDOS)
Sent: Friday, May 31, 2019 10:19 AM
To: Williams, Sally (MDOS) <WilliamsS1@michigan.gov>; Bourbonais, Lori (MDOS) <bourbonaisl@michigan.gov>;
Tarrant, David (MDOS) <tarrantd2@michigan.gov>; Pierce, Carol (MDOS) <piercec1@michigan.gov>; Fracassi, Adam
(MDOS) <FracassiA@michigan.gov>
Subject: RE: RCV Tabulation Options Document
Importance: High

Sally, we are meeting this afternoon to discuss. I offer the following as a starting point.

Chris,

Thank you for outlining some of the outstanding issues that need to be addressed before Eastpointe can
implement RCV for city elections. We appreciate that your memorandum offers myriad tabulation options for
implementing RCV and thoroughly addresses each available method for counting and redistributing votes.

As you may know, the Michigan Election Law, 1954 PA 116, MCL 168.1 et seq., is entirely silent on the RCV
method of voting. In fact, the only statute that addresses RCV at all, the state Home Rule City Act, 1909 PA 279,
MCL 117.3(a) simply provides, "[City] Elections may be by a partisan, nonpartisan, or preferential ballot, or by
any other legal method of voting." Furthermore, under section 321 of the Michigan Election Law, MCL
168.321(1), "the qualifications, nomination, election, appointment, term of office, and removal from office of a
city officer must be in accordance with the charter provisions governing the city." Ordinarily this is done when a
city presents a proposed charter amendment to city voters regarding whether and specifying how to implement
RCV for city elections. MCL 117.3, 117.21 to 117.24.

As the Michigan Election Law expressly defers to the city charter to determine the method for nominating and
electing city officers, and the Home Rule City Act places the responsibility for making such determinations
exclusively with the city, the Michigan Bureau of Elections has never selected the precise method of counting
votes in a RCV election for city officers. Simply put, Michigan has no laws, administrative rules, or policies to
guide RCV implementation. Accordingly, we must construe and apply existing election laws so that we may
attain some semblance of compliance with current legal requirements.

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Types of Ranked Choice Voting

Democracy Suite supports the tabulation of ranked choice voting using three different methods:

- **Instant Runoff Voting (IRV)** – Most common form of RCV used in the US for single choice contests. A winner is determined when one candidate achieves 50% of the vote plus 1.
  - o Single choice RCV contests are most commonly calculated using the IRV method. In the first round, only first choices are tabulated. If a candidate gets 50% of the vote plus 1, then that candidate is declared the winner. If not, the candidate with the lowest vote total is eliminated. The ballots that had the eliminated candidate marked as first choice are re-distributed according to their second choice and the second round is tabulated. This continues until one candidate achieves 50% of the vote plus 1.

- **Single Transferable Voting (STV)** – Uses the Weighted Inclusive Gregory Method which implements fractional surplus transfer of elected candidates. Used when there is more than one candidate to be elected in a single contest.
  - o Multiple choice RCV contests would use the STV method. First, a quota or threshold is established based on the number of ballots cast and the number to be elected. In the first round, only first choices are tabulated. If any candidates receives a number of votes equal to or greater than the quota, they are elected. The number of votes that candidate receives in excess of the quota are redistributed to the other continuing candidates on a fractional basis by counting a fraction of each vote for the elected candidate for the candidate ranked next. For example, if a candidate has 10% more votes than the election threshold, every one of their voters will have 10% of their vote count for their next choice. The candidate with the lowest vote total in each round is eliminated. Rounds and eliminations continue until the number of candidates reaching the quota is equal to the number to be elected.

- **Points Instant Runoff Voting (Points IRV)** – A modified form of Instant Run-off Voting where ranked choice voting results are evaluated on a district per district basis and each district has a set number of points (100). Elimination and declaration of winners is done on basis of points, not votes.
  - o In Dominion's experience thus far, Points IRV has only been used in Canadian elections. In Points IRV, each electoral district is worth 100 points. Candidates are assigned a point total based on their percentage of the vote in each electoral district. To win, a candidate must obtain a majority of points from across the jurisdiction.

Appearance on the Ballot

Number of Ranks

The number of voteable ranks can be equal to or less than the number of candidates up to a maximum of ten ranks.

- **Paper-Based Ballots**
  - RCV contests appear on voter marked ballots as a grid (see RCV Voting Conditions in the next section). Because of the limited real estate on paper-based ballots, there is a maximum of ten ranks in the system.

- **Touch Screen Ballots**
  - On touch screen ballots, RCV contests appear in a list form just as any other contest however a "1" appears next to the candidate touched first; a "2" next to the second candidate and so on until the number of allowed ranks have been voted. At that point, no more candidates can be ranked, and the voter can proceed to the next contest.

RCV Voting Conditions

During RCV tabulation, certain conditions affect the way RCV contests are tabulated. Additionally, the tabulators can be configured to recognize these conditions and either provide a warning to the voter casting their ballot on an ICP or ICE, or trigger adjudication from the ICC. The ICX does not allow overvotes, duplicates, inconsistent, or skipped rankings. The conditions are:

- **Overvoted Ranking** – Two or more candidates are marked for the same rank.
  DSuite allows the user two choices for the handling of overvoted rankings.
  - Discard the contest and register an overvoted statistic.
  - Skip the overvoted ranking and move to the next properly voted ranking. If this option is chosen, the system will not provide overvote statistics.

FOR MAYOR / PARA ALCALDE Four (4) Year Term / Plazo de Cuatro (4) Años Rank up to 5 candidates Clasifica hasta 5 candidatos	1st Choice 1° Elección	2nd Choice 2° Elección	3rd Choice 3° Elección	4th Choice 4° Elección	5th Choice 5° Elección
Peter N. Ives	O¹	O²	O³	●⁴	O⁵
Alan Webber	●¹	O²	O³	O⁴	O⁵
Kate I. Noble	O¹	O²	●³	O⁴	O⁵
Joseph M. Maestas	●¹	O²	O³	O⁴	O⁵
Ronald S. Trujillo	O¹	●²	O³	O⁴	O⁵

- **Duplicated Candidate** – More than one rank is marked for a single candidate.
  - In the example below, the first choice is still valid. The second choice is ignored and the third, fourth, and fifth choices would move up to second, third, and fourth.

FOR MAYOR / PARA ALCALDE Four (4) Year Term - Plazo de Cuatro (4) Años Rank up to 5 candidates. Clasifica hasta 5 candidatos.	1st Choice 1° Elección	2nd Choice 2° Elección	3rd Choice 3° Elección	4th Choice 4° Elección	5th Choice 5° Elección
Peter N. Ives	●	●	○	○	○
Alan Webber	○	○	○	○	○
Kate I. Noble	○	○	●	○	○
Joseph M. Maestas	○	○	○	●	○
Ronald S. Trujillo	○	○	○	○	●

- **Inconsistent Ranking** – More than one rank is marked for a single candidate separated by a properly marked ranking.
  - In the example below, the first and second choices are valid. The third choice would be ignored and the fourth and fifth choices would move up to third and fourth.

FOR MAYOR / PARA ALCALDE Four (4) Year Term - Plazo de Cuatro (4) Años Rank up to 5 candidates. Clasifica hasta 5 candidatos.	1st Choice 1° Elección	2nd Choice 2° Elección	3rd Choice 3° Elección	4th Choice 4° Elección	5th Choice 5° Elección
Peter N. Ives	●	○	●	○	○
Alan Webber	○	●	○	○	○
Kate I. Noble	○	○	○	○	○
Joseph M. Maestas	○	○	○	●	○
Ronald S. Trujillo	○	○	○	○	●

- **Skipped Ranking** – There is a gap in the marked rankings.
  - In the example below, the first choice is still valid. The second choice, left blank, is ignored and the third, fourth, and fifth choices would move up to second, third, and fourth.

FOR MAYOR / PARA ALCALDE Four (4) Year Term - Plazo de Cuatro (4) Años Rank up to 5 candidates. Clasifica hasta 5 candidatos.	1st Choice 1° Elección	2nd Choice 2° Elección	3rd Choice 3° Elección	4th Choice 4° Elección	5th Choice 5° Elección
Peter N. Ives	●	○	○	○	○
Alan Webber	○	○	○	○	○
Kate I. Noble	○	○	●	○	○
Joseph M. Maestas	○	○	○	●	○
Ronald S. Trujillo	○	○	○	○	●

- **Unused Ranking** – One or more, but not all, rankings are marked properly with no gaps.
  - o In the example below, the first choice is valid. If the first choice is eliminated during tabulation rounds, this contest on this ballot is considered "exhausted".

FOR MAYOR / PARA ALCALDE Four (4) Year Term / Plazo de Cuatro (4) Años Rank up to 5 candidates Califica hasta 5 candidatos	1st Choice 1ª Elección	2nd Choice 2ª Elección	3rd Choice 3ª Elección	4th Choice 4ª Elección	5th Choice 5ª Elección
Peter N. Ives	●	○	○	○	○
Alan Webber	○	○	○	○	○
Kate I. Noble	○	○	○	○	○
Joseph M. Maestas	○	○	○	○	○
Ronald S. Trujillo	○	○	○	○	○

- **Unvoted RCV contest** – no readable marks are detected in the contest.
  - o The contest is rejected from the vote count and thus, no votes are counted for any candidate.

RCV Tabulation

RCV tabulation is done only in RTR and does not commence until all tabulator results have been loaded into RTR. The tabulators (ICP, ICE, ICX, and ICC) do not tabulate ranked choice voting.

Results tapes printed from individual tabulators are not reflective of any tabulated RCV results. They are only the raw results from each rank as seen by the tabulator.

Again, when it comes to RCV, all the calculations happen in RTR. The tabulators simply make a record of how each RCV contest was marked.

There are a number of configurable options in RTR with regards to tabulating RCV contests. Those options include:

- **Tie Breaking**

Candidates	Vote Totals in Round 1	Vote Totals in Round 2	Vote Totals in Round 3
A	4	6	6 (Tied)
B	5	5	6 (Tied)
C	6	6	8
D	3	3 (Eliminated)	0
E	2 (Eliminated)	0	0

- o Previous Round Evaluation Method
  - None – The system will require the user to manually break the tie. This is usually done by drawing lots or names out of a hat.
  - Backwards – The system will break the tie by moving backwards in rounds starting with the previous round and select the candidate with the most votes. In the example above, this setting would put candidate A forward.
  - Forwards – The system will break the tie by moving forwards in rounds starting from round 1 and select the candidate with the most votes. In the example above, this setting would put candidate B forward.
- o Use Previous Tie Break Decision
  - If selected, the system remembers tie breaking decisions and repeats them if the exact tie happens again in subsequent tabulation.

- **Elimination Type**

Candidates	Vote Totals	Maximum Possible
A	10	10
B	10	20
C	30	50
D	40	90
E	400	490
F	600	1090
G	800	1890

  - o Single – The system will detect that candidates A and B are tied for elimination and the tie will be broken based on the tie breaking method selected. A single candidate will be eliminated. (Recommended)
  - o Single and Tied – The system will detect that candidate A and B are tied for last place and that their vote total sum of 20 is less than the vote total of the subsequent continuing candidate with 30 votes. Also at least two candidates are left to continue so candidates A and B will be eliminated.
  - o Batch Elimination – The largest set of candidates for which the summed vote total is smaller than the next continuing candidate, and which still leave at least two candidates to continue in the next round, is the set of candidates A, B, C, D and E (maximum possible is 490 for this set, and next vote total is 600), so these candidates will be eliminated.

- **Options for Using Thresholds to Determine the Winner (STV)**
  - o **Declare Winner by Threshold** – If this option has been selected, the system will declare winners by threshold. The threshold is the number of votes sufficient for a candidate to be elected. The threshold is calculated in each round by taking the number of continuing ballots, divided by the number of positions to elect plus one, then adding one to the quotient, disregarding any fractions.

    Example: 15 ballots/2 (1 to be elected plus 1) + 1 = 8   A winner is declared upon reaching 8 votes.

    If this option is left unselected the system will not use the threshold to elect candidates but will continue eliminating candidates each round until the number of continuing candidates is equal to the number of positions left to be elected plus one. It will then eliminate the candidate with the least amount of votes and declare the remaining candidate as elected.

- **Options for Using Thresholds to Determine the Winner (STV) Continued**
  - o **Votes to include in threshold calculation** – This option determines the number of ballots to be used in the threshold calculation if the Declare Winner by Threshold option has been selected.
    - **Continuing ballots per round** – Each round the threshold will be re-calculated using the number of continuing ballots in that round; this is the sum of all candidate vote totals for that round. (Recommended if Declare Winner by Threshold has been selected.)
    - **Continuing ballots 1st round** – The threshold will be based on the number of continuing ballots in the first round; this is the sum of all candidate vote totals for that round. The same threshold will apply to all rounds. If this option is used, it is possible that the "winner" may not achieve the threshold depending upon the number of exhausted ballots.

- **Additional Settings**
  - o **Exclude Unresolved Write-ins** – If this option has been selected, any rankings for write-ins that were left unresolved will be ignored. If the ranking containing an unresolved write-in was over-voted because of that unresolved write-in, the ranking will still be considered over-voted even with when this option is used. (Recommended if there are qualified write-in candidates in the contest.)
  - o **Uses Precincts** – If this option is checked, the system will allow for RTR to report round results for each precinct separately. If left unchecked, RTR will not be able to produce round reports by precinct. This does not affect the overall results or the ability to report the total results by contest.
  - o **Pause After Round** – When this option is selected the tabulation session will pause after each round. If it is not selected, tabulation rounds continue automatically until the end or until a manual tie break is required. (Recommended)
  - o **Skip Overvoted Rankings** – This option allows the algorithm to skip over-voted rankings and proceed to the next properly marked ranking. No over-votes will be recorded if this option is used and consequently not be shown in RCV reports.

Test Decks

Test Decks for RCV contests can be produced in a pattern similar to standard contests. The Test Deck should also include exception ballots for the conditions noted in the preceding RCV Voting Conditions section.