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The History of the Referendum in New Mexico

Roy C. Stumph

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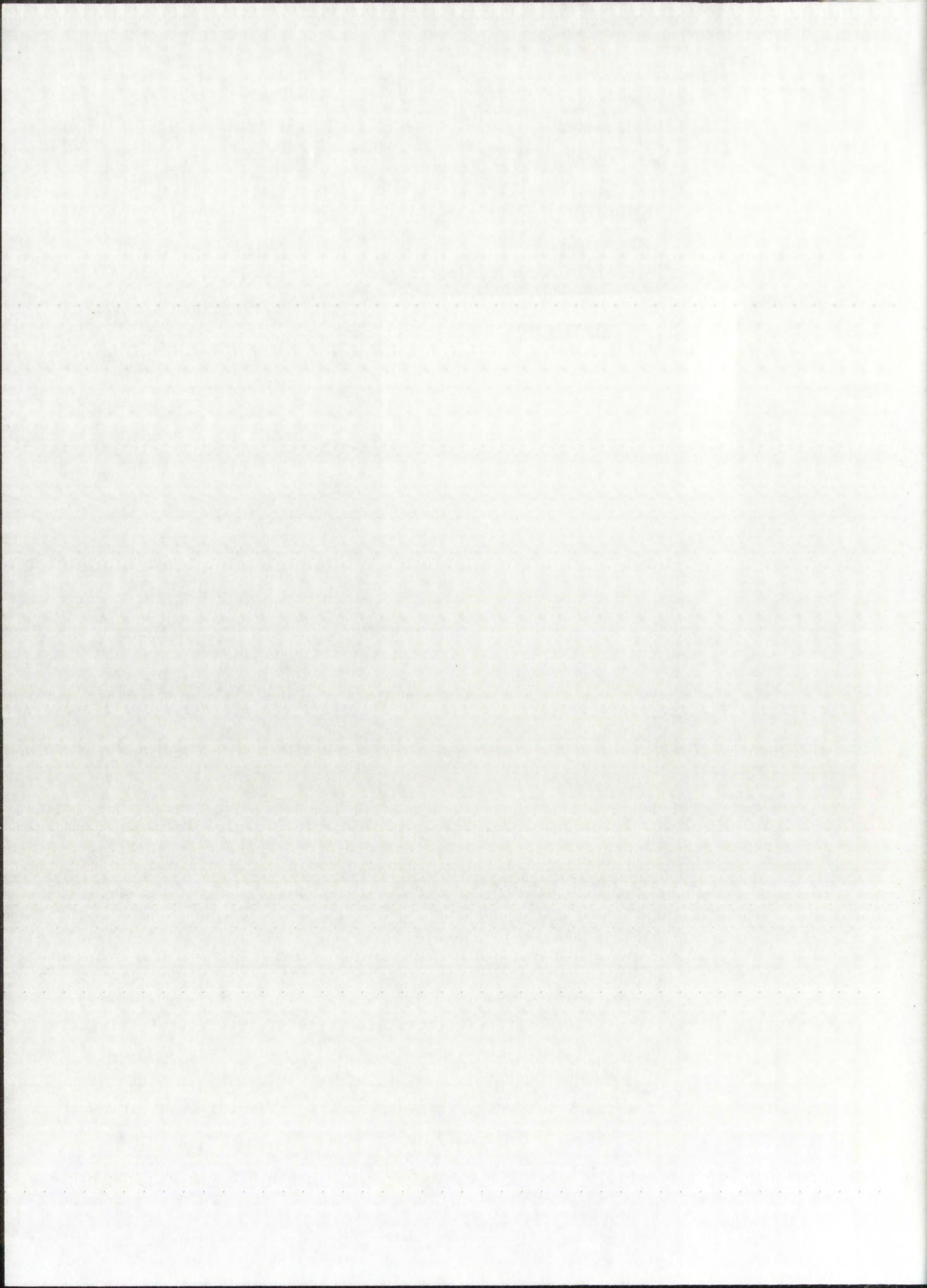
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THE HISTORY OF THE REFERENDUM IN NEW MEXICO

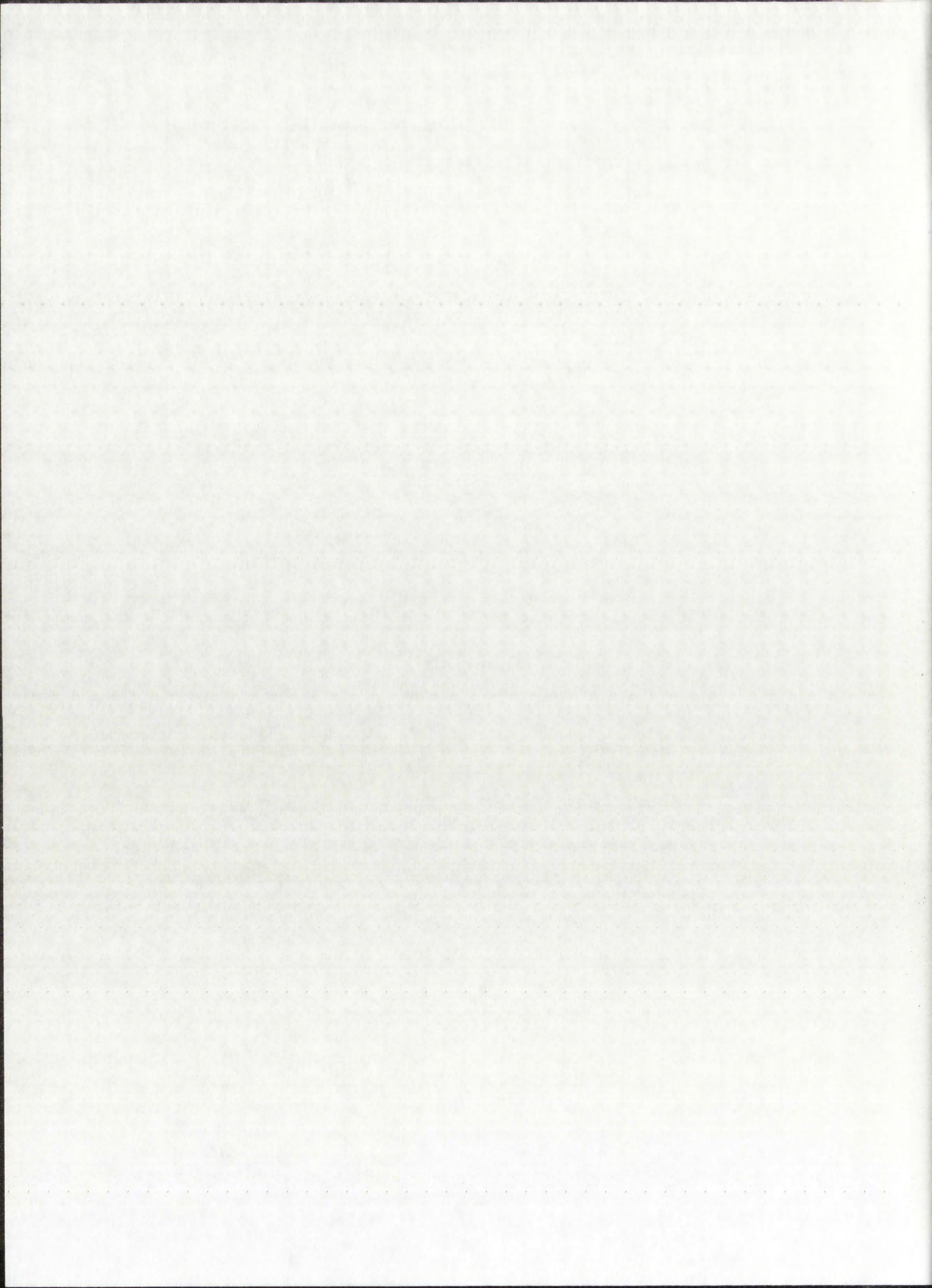
By

Roy C. Stumph

A Thesis

Submitted in partial fulfillment of the
Requirements for the Degree of
Master of Arts in Government

University of New Mexico
1941



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This thesis, directed and approved by the candidate's committee, has been accepted by the Graduate Committee of the University of New Mexico in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

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February 15, 1941

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Preface

The purpose of this thesis is to describe the history and operation of the referendum in New Mexico. A resume of the history of the referendum in the United States has also been included to provide a background for understanding New Mexico's experience with this direct form of government. The thesis reveals that the law has been used only in a few instances, and that the people, far from using it in a reckless manner, have been conservative. Furthermore, the law in New Mexico is so difficult to operate because of the high percentages required, that only special interests with money enough to hire petition-takers can afford to make use of it. Thus far, the general public on its own initiative has not used it on a single occasion to prevent a law from going into effect. Decisions of the Supreme Court of the State have done much to clarify ambiguous sections of the law and to make it workable. Once the law is better understood, it is probable that it will be employed more frequently.

It is extremely difficult to do research in problems of New Mexico government because of the paucity of materials, but the writer has investigated all those available. Files of newspapers, books, and periodicals have been checked for information. Interviews with members of the constitutional convention and a study of unpublished material dealing with the convention have been most helpful.

The study was suggested by Dr. Thomas C. Donnelly of

the Government Department, and the writer is indebted to

him for his guidance and assistance. However, the writer

assumes full responsibility for the interpretation of the

work, wherever it may be.

Ray Stannard

August, 1919

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CHAPTER I

A HISTORY OF THE REFERENDUM MOVEMENT

IN THE UNITED STATES

The initiative and referendum are not new forms of popular control. In the democracy of Greece, for instance, legislation was initiated by the people and was voted upon by the populace as a whole, without the medium of representatives. Switzerland has used direct methods of control for many years with much success. Mr. James Bryce, English ambassador to the United States, declared to a Cambridge audience in 1904 that Switzerland was the most successful democracy the world has ever seen.¹ The United States had the initiative in Georgia in 1777. Our state legislatures have, from earliest times, referred certain questions to the people for their approval or disapproval. An example of this is found in New Mexico under the Territorial Government.² The legislature in 1855-56, as a result of opposition to the compulsory education law of 1856, referred the law to the people in several counties for their approval or disapproval. This action resulted in the law's being repealed in 1856.

¹ Robert C. Brooks, Political Parties and Electoral Problems, p. 23.

² John H. Vaughn², History of New Mexico, p. 217.

A HISTORY OF THE AMERICAN MOVEMENT

IN THE UNITED STATES

The initiative and referendum are not new forms of popular control. In the century of Greece, for instance, legislation was initiated by the people and was voted upon by the populace as a whole, without the medium of representatives. Switzerland has used direct methods of control for many years with much success. Mr. James Bryce, English ambassador to the United States, declared to a Cambridge audience in 1904 that Switzerland was the most successful democracy the world has ever seen.¹ The United States has the initiative in Georgia in 1901. Our state legislatures have, from earliest times, retained certain questions to the people for their approval or disapproval. An example of this is found in New Mexico under the Territorial Government.² The legislature in 1857-58, as a result of opposition to the compulsory education law of 1856, referred the law to the people in several counties for their approval or disapproval. This action resulted in the law's being repealed in 1858.

¹ Robert C. Bryce, *Political Parties and Elections* (London, 1912), p. 27.

² John E. Vance, *History of New Mexico*, p. 217.

The initiative and referendum movement was instigated primarily because the people lacked faith in the integrity of their legislatures. The people held the strong conviction that they could hardly do worse than their state legislatures and that they might do better.³ At first the conservatives opposed these reforms while the liberals heartily endorsed them.⁴

Reasons for the Initiative and Referendum

It is well to note some of the arguments for these popular reforms.

The initiative and referendum are means for the direct control of law making. The initiative corrects a legislature's failure to draw up and pass certain laws, while the referendum enables the people by a vote on certain issues to give or withhold their sanction of the measure. These methods will educate the people by the publication of the pro's and con's for each measure, and thus insure presentation of the negative side. The legislature is less liable to accept bribes, to be under secret influences, or to resort to log-rolling practices.⁵ The increased interest of the voter may result in the

³ W. B. Munro, Encyclopedia of Social Sciences, p. 51.

⁴ Ibid., p. 25.

⁵ National Economic League, pp. 23, 24, 25.

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1. W. D. Howe, *Encyclopedia of Social Sciences*, p. 21.
2. *Ibid.*, p. 22.
3. *National Economic Review*, pp. 23, 24, 25.

election of legislators of higher caliber than formerly.

Hasty and ill-conceived legislation can be voided.

One writer states in regard to Switzerland⁶ that in cantons where the initiative and referendum are used, ensuing clean government and leadership have resulted in civic and industrial growth. In the only canton where neither the referendum nor the initiative is in use, there is misuse of authority and political apathy of the familiar American type.

Although there are many people, no doubt, who may consider that Switzerland is not necessarily an example for the United States to follow, there is, nevertheless, a parallel between the two countries in that the Swiss cantons are somewhat like our states. Since our territory is of a corresponding type, success and the forces making for success in Switzerland could possibly be transferred to our own country with advantage.

To the average citizen the following example is a startling one and shows the possible need for control of public law-making bodies. These figures have been given by ex-senator D. B. Hill.⁷ He states that there were 14,000 national and state laws passed in one year. New York State legislature passed an average of 500 laws a year. North

⁶ National Economic League, p. 25.

⁷ Debaters Handbook, "Democratic v. Aristocratic Government", Eltweed Pomery, p. 24.

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Carolina in 1901 passed 1,265. Since these numbers are so overwhelmingly large, it is clearly indicated that much duplication is going forward, together with legislation that affects only small groups or favored interests.

These reasons cited for the support of the initiative and referendum are not exhaustive, but they are sufficient to demonstrate the fact that popular control might be used to advantage.

Reasons Opposing the Initiative and Referendum

There were and still are many arguments against popular control. Charles S. Lobingier⁸ has summed up these arguments: "(1) indifference of electors, (2) complexity of legislation and incapacity of electors, (3) obliteration of distinction between constitutional and other law, (4) impairment of legislative influence."

Richard L. Neuberger generalizes his argument against the referendum by the following statement:⁹

The people are seldom fooled on candidates; men are generally apparent for what they stand. Measures are another matter; there the people can be misled and bewildered. Laws can mean one thing and say another. Deception, too, is easy when the average citizen must pass on intricate phraseology conceived by lawyers.

⁸ Debaters Handbook, "Direct Popular Legislation: The Chief Objection Examined," Charles S. Lobingier, p. 27.

⁹ Richard L. Neuberger, "Liberalism Backfires in Oregon," Current History, March, 1939, p. 35.

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There were and still are many arguments against popular

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little knowledge of the process of legislation. The

Chief objection mentioned, Charles S. Hopkins, p. 22.

Richard L. Hensberger, "Initiation and Referendum in

Oregon," National Academy, March, 1919, p. 32.

These arguments, and others, regardless of validity, had little influence on the people in the face of evils which they daily saw in actual practice.

Kinds of Referendum in America

Direct legislation has existed in this country in two forms:¹⁰ first, as applying to constitution making or amendment; second, as applying to ordinary legislation. The second of these two forms is used largely in local governments.

The initiative movement had not satisfied the people; in fact, it made them want more power. It did permit them to propose laws, but it did not allow them to vote on all forms of laws which might be unacceptable to them.

Many of the laws enacted were not for the public good; some were even decidedly injurious. Many were passed because of the influence of special interests, while others were obviously partisan in their political benefits. As a result, the people demanded some means by which they could at least partly control the legislatures.

There are three kinds of referendums in America.¹¹

First, the submitting of state constitutions to popular vote. This precedent was established in Massachusetts in

¹⁰ Brooks, op. cit., p. 459.

¹¹ R. L. Lowell, Public Opinion and Popular Government, pp. 169-72.

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10. Brooks, op. cit., p. 459.

11. R. J. Lowell, "Public Opinion and Political Development,"

1778. This convention has been adopted universally in some form, either compulsory or optional, throughout the United States. Connecticut in 1818 went a step further by referring constitutional amendments to a vote of the people.

The actual use of this early referendum has been discussed by Dr. Oberholzer¹² who states that in New York State between the years 1886-1891 there were 110 constitutional amendments submitted. Fifty were ratified; sixty rejected. Michigan, between 1835-1908, submitted 87 amendments. Forty-eight were accepted, thirty-six rejected. Massachusetts, between 1780-1911, submitted 60. Forty-one were accepted; nineteen rejected.

It will be shown later that the early use of the referendum on constitutional amendments has a definite parallel to the later use of the referendum on measures in point of the actual percentage ratio of approvals and rejections.

The second use of the referendum was upon certain specified legislation enacted by the state representative bodies. This movement began about the middle of the nineteenth century.

Public approval was usually asked upon such questions as: selections of sites for state capitals or public

¹² Lowell, op. cit., p. 160.

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Public approval was usually raised upon such questions
and selections of sites for state capitals or public

buildings, the contracting of state debts, taxation in excess of fixed amounts, charters of banks, extension of suffrage, and a few others.¹³

The specification of these questions by the older states was really the result of evolution. As a question emerged and caused difficulties, it was arbitrated by means of the referendum, and thereafter questions of that particular stamp were specified for referendum. New states, realizing the trouble that could be avoided, profited by the experience of the older states, and thus specified the same questions that had been formulated by the older, established states.

The third use of the referendum was a provision for the review of a question by the people upon petition of a certain number of citizens. This form usually had an emergency clause provision which exempted certain subjects from being referred. The Emergency Clause of New Mexico is typical of such restrictions.¹⁴

These emergency clauses are generally for the protection of two things. First, legislation which is needed to go into immediate effect because of the "emergency" nature of a state or local need. Laws carrying this implication are

¹³ Lowell, op. cit., p. 172.

¹⁴ Constitution of New Mexico, Article IV, Section 1.

Showing Distribution Of Direct Control Measure.



x An I., and R., amendment was adopted by the voters of Idaho in 1912, but was not self-executing.

* New Mexico and Maryland have state-wide Referendum only.

Many Texas cities have adopted the I., R., R., under Home Rule.

℥ Kansas and Louisiana have the state-wide Recall only.

22 constitutional provisions for I., R., R.

15 states having general laws for the I., R., R.

7 states having only special laws for the I., R., R.

4 states having no laws or constitutional provisions whatever for the I., R., R.

It is also possible that the

of the literature, and the

known as the "Hawthorne effect"

of direct observation, which

has been shown to be a

distortion of the

the form of the

provision.

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regulation of the

However, that is not the

main purpose of the

method is to

The number of

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to 15 percent for

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usual pattern

Obviously the ideal percentages of signatures are those which are neither so low that an abuse of the practice could ensue, nor so high that it would be impossible to refer the law if a reasonable number of voters desire it.

If the percentage is too moderate, it is possible for private interests, whose power is very influential, to refer measures of some particular benefit or harm to that organization. Several forms of coercion may be used to force signatures. Although to prove that such a policy has been carried out is usually very difficult, the evidence, nevertheless, points strongly in that direction.

The voters are many times persuaded to sign petitions by the use of arguments not important to the case. The special interests may use arguments which are trivial in comparison to others in order to cover up the important issues. A check on such practices is sometimes utilized in the form of the press, particularly if the special interest does not have control of the newspapers. One writer makes the statement: "Radical measures are easily tagged by the press and interest aroused to defeat them. Ambiguous wording and hidden meanings are more readily explained by the newspapers than in the publicity pamphlet or on the stump."¹⁹

The financial rewards to the special interests make it worth while for them to use money and influence to gain the

¹⁹ Public Opinion, op. cit., p. 39.

desired rewards. However, it has been stated that the legislatures and the people usually refused to enact the proposals of these interests into the law, particularly in cases where the sinister or special interests behind the measures have been detected.²⁰

With the exception of Maine, all states required 5 percent for the referendum prior to 1911. Since then Ohio and Washington fixed 6 percent, and Nevada, Nebraska, and North Dakota, 10 percent.²¹

For the referendum petition, Maine and Maryland make a flat requirement of 10,000 signatures; Massachusetts makes the same requirement in case the law is not to be suspended pending the vote, but if suspension is requested, 15,000 names are required.²²

Some states, as Nevada, require that a majority of the electors of the state, or a majority of all voting at the same election for some qualified office, shall be required for a referendum petition.²³

²⁰ Lowell, op. cit., p. 37.

²¹ Brooks, op. cit., p. 462, citing C. O. Gardner, "Problems of Percentages in Direct Government," American Political Science Review, Vol. X, pp. 500-514, August, 1916.

²² Loc. cit.

²³ Brooks, op. cit., p. 485.

A time limit is usually placed upon these petitions. This limit begins with the date of enactment, and, many states, Massachusetts being one,²⁴ require the petition to be filed within ninety days.

Publicity pamphlets or voters' textbooks are used in twelve states. These are official bulletins either issued solely by the state or, at least, under its official supervision. These pamphlets contain arguments for both sides of the question in order that the voters may know definitely both positions.

Edwin R. Cottrell summarizes California's requirements for its voters' bulletin as follows:²⁵

The Constitution was amended in 1908, three years before adoption of direct legislation, to require the Secretary of State to publish a pamphlet which contains a full text of all proposals, the facsimile of each measure on the ballot, and arguments for and against the measure not exceeding five hundred words each. Arguments for the initiated measures were written by the sponsors; opposition arguments by persons selected by the Secretary of State. Arguments on measures submitted by the Legislature or by referendum petition are written by persons designated by the Lieutenant Governor, as presiding officer of the Senate.

States having official bulletins and the date adopted are:²⁶ Oregon and Montana, 1907; Oklahoma, 1908; California,

²⁴ Brooks, op. cit., p. 485.

²⁵ Edwin R. Cottrell, "Twenty-Five Years of Direct Legislation in California," Public Opinion, January, 1939, p. 31.

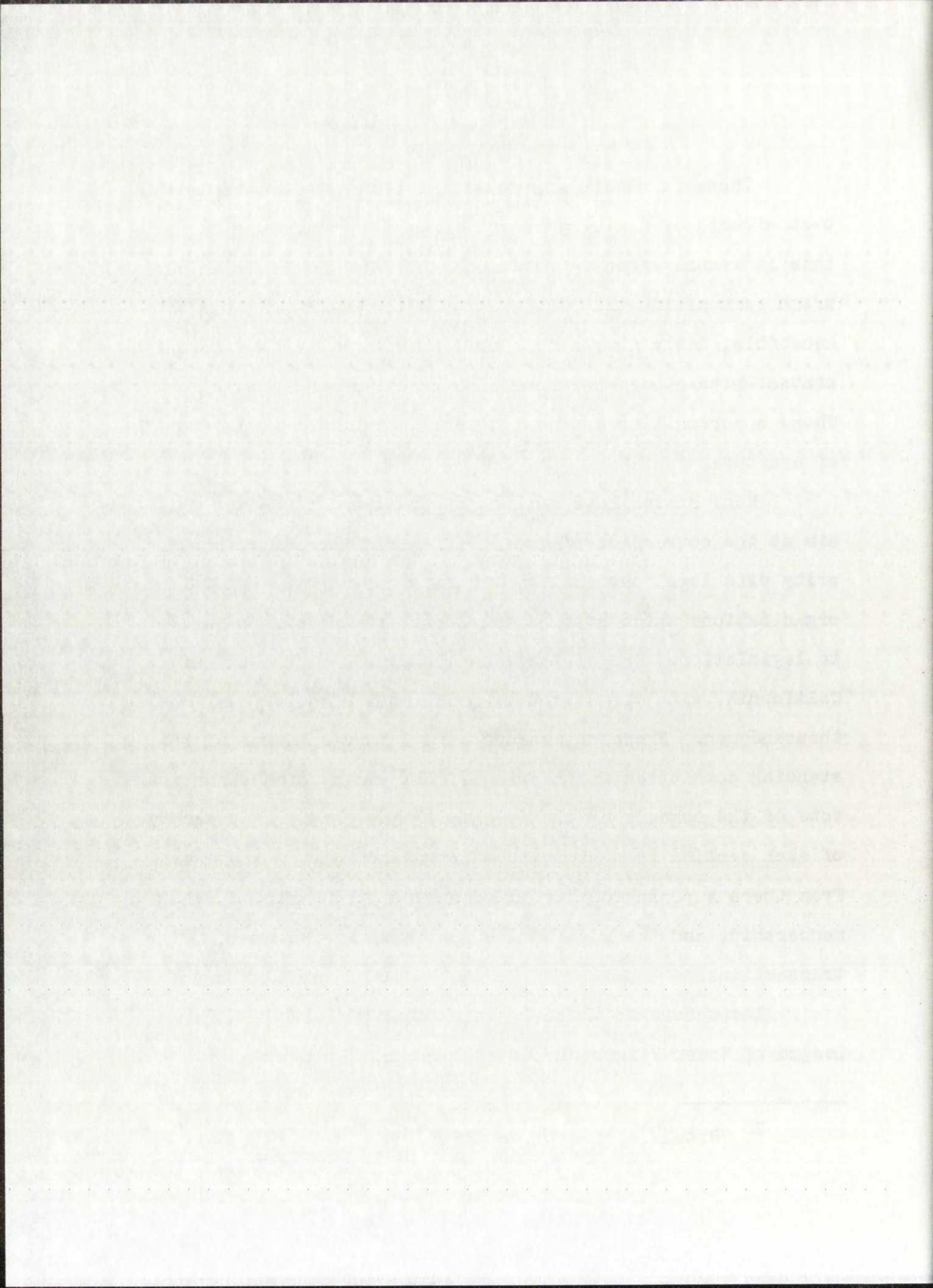
²⁶ Brooks, op. cit., p. 473.

These pamphlets are generally believed to have the best effects on non-urban communities.²⁸ The reason for this is readily grasped when one considers the fact that in urban communities the people have better opportunities for handbills, daily newspapers, civic meetings, and a personal contact with others which enables an exchange of ideas. These opportunities are denied rural communities as a result of a natural isolation.

Many states have methods of political education which aim at the correction of factors of isolation and unfamiliarity with legal phraseology. California has two outstanding organizations which attempt to educate the voters in regard to legislation. One of these is the Commonwealth Club of California, with its statewide membership of over four thousand men. Proposed measures are referred to one of its standing committees for hearings, followed by discussion and vote of the members of that section. The result of the votes of each section is sent to the central offices of the club. From there a postcard vote is taken from the entire club membership, and the results are published in the monthly transactions.

The second of these organizations is the California League of Women Voters, a powerful group. It publishes

²⁸ Brooks, op. cit., p. 485.



each proposed measure as drawn up and gives a thorough explanation of the bill.²⁹

Radio propaganda has been utilized increasingly during recent years in connection with referendum issues. What effect such radio campaigns will have in the future is a matter open for conjecture.

Use of the Emergency Clause

The emergency clause (mentioned on page 7) may be considered a necessary requirement to prevent reference of legislation. The necessity for such a clause is decided by a simple majority of the legislature in each state. What shall constitute emergency legislation is usually defined in the state constitutions.

States having this clause are: South Dakota, Oregon, Montana, Oklahoma, Missouri, Colorado, New Mexico, Washington, and Maryland.³⁰

The primary purpose of such a clause is to safeguard measures which the legislature believes to be of such essential value that they should not be revoked by the people. It is believed that the public may not be cognizant of the value of certain laws, while the legislature may be able to clearly perceive the need for such legislation.

²⁹ Public Opinion, op. cit., pp. 41, 42.

³⁰ Brooks, op. cit., p. 485.

The foremost criticism of the emergency clause is that it has been used by legislatures to pass laws for political or other non-emergency reasons to prevent such legislation from being referred. When the people or certain factions have suspected such malpractice to have occurred, it has been necessary to take the question to court for settlement.

In order to restrict this misuse of the clause, Maine, California, Arizona, and Massachusetts require a two-thirds vote of the legislature to declare an emergency.³¹

Operation of the Referendum

There has been a great deal of criticism as to the actual use of the referendum. Much of this criticism has, of course, been legitimate and has carried evidence to back it.

In order to show the actual operation of the referendum, it will be necessary to disprove these main objections as to its practical applications.

The objection has been raised that the referendum has been put to too frequent use. Most states have adopted the plan of voting on such petitions at the regular November election in an attempt to save time and expense. As a result, the already over-loaded ballot has again been lengthened.

³¹ Brooks, op. cit., p. 486.

so much trouble and takes so much time that it is seldom used. The people by tacit consent many times overlook favoritism in legislation.

Perhaps the chief objection to the referendum is that it is government by a minority. On the average not more than eighty percent of those registered vote on election day, and the proportion is usually much smaller. Many of the voters only vote for officers and not on the referred measures. If this be true, then measures are sometimes adopted or defeated by twenty-five or thirty percent of the whole electorate.³⁴

Modern democratic government, national and state, has always been a government by a minority of the electors. In cases where issues have been rather spirited we have had unusually large numbers voting.

In the Georgia election of 1914 only 9½ percent of the voters amended the constitution to create Barrows County.³⁵ In the New Mexico referendum of 1914 there was a vote of 90.0 percent.³⁶

The following figures on the national election of 1914 covering all states give the percentages on the referendum issues:³⁷

³⁴ Encyclopedia of Social Sciences, p. 52.

³⁵ New Republic, op. cit., p. 4.

³⁶ Lowell, op. cit., p. 189.

³⁷ New Republic, op. cit., pp. 15, 16.

Average percentage of total vote	68.7
Lowest percentage of total vote	61.4
Highest percentage of total vote	78.7
Woman suffrage states average percentage of total vote	67.2
Woman suffrage states lowest percentage of total vote	58.8
Woman suffrage states highest percentage of total vote	86.3
I. and R. states average percentage of total vote	76.1
I. and R. states lowest percentage of total vote	67.1
I. and R. states highest percentage of total vote	91.3

These percentages indicate that we are not being controlled by a minority, taking the United States as a whole.

The average percentage in Maine on referendum voting in 1910 was 41.8; in 1912, 75.1. In South Dakota in 1908, 85.7; in 1910, 77.0; in 1912, 68.75. It has been very uniform in Oregon ranging between 72 and 79 percent.³⁸

These state percentages also indicate that we are not being controlled by a minority.

The following chart³⁹ gives the referendum vote in Maryland for the years 1920-1930. This shows how the voting may change from time to time over a period of years. During this decade there are only three instances of minority voting out of eleven elections. It must be kept in mind that the referendum has never been used on a state-wide legislation in Maryland--only by counties.

³⁸ C. I. Winslow, "The Referendum in America," The American Political Science Review, February, 1933.

³⁹ Ibid.

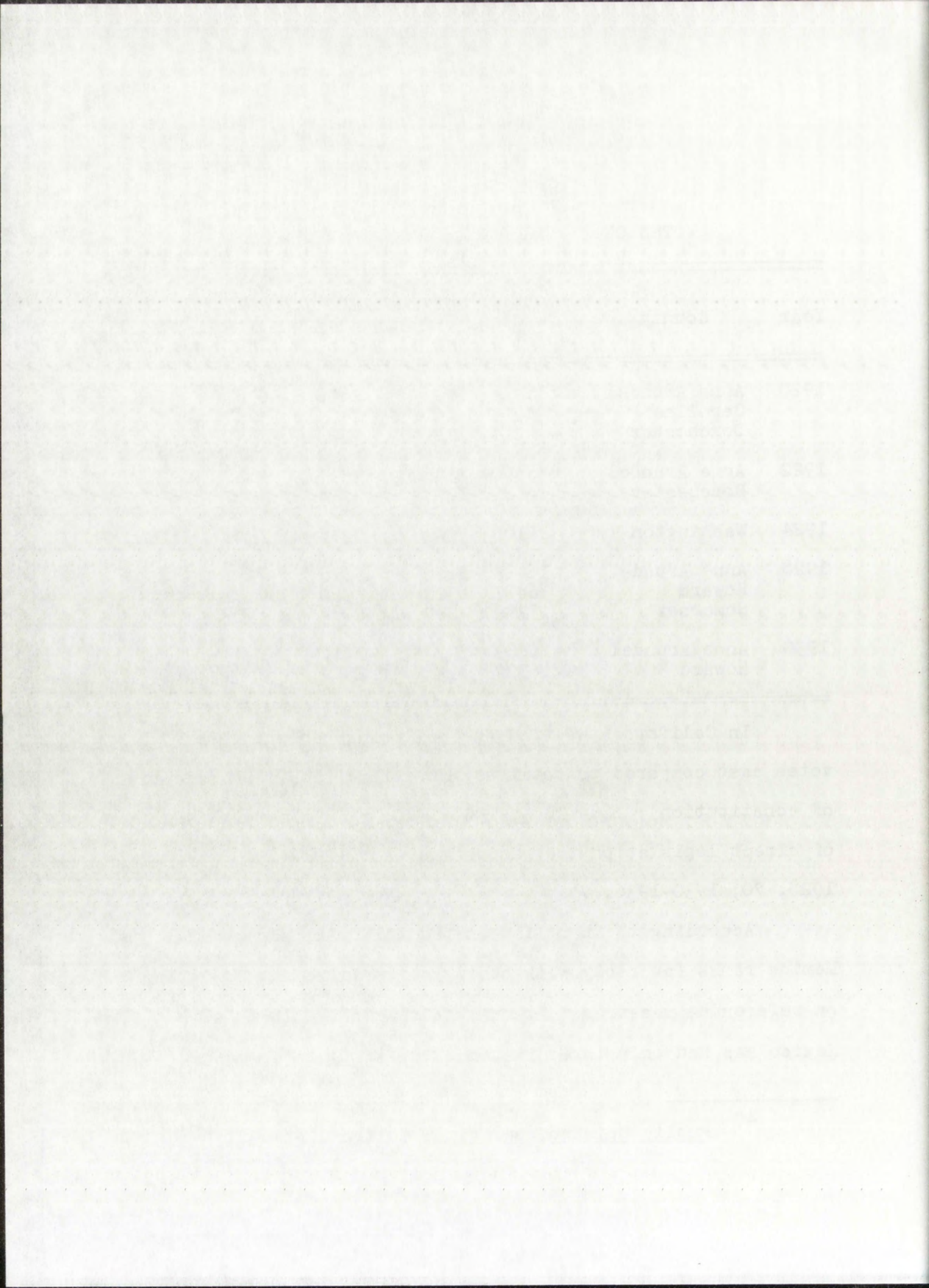


CHART II⁴¹COMPARATIVE PERCENTAGE VOTE IN NEW MEXICO AND
OTHER STATES ON REFERENDUM QUESTION

Maryland 1930 ⁴² (two counties only)	57	New Mexico 1937 ⁴⁹	52
Maryland range ⁴³	80.9-31.1	New Mexico 1930 ⁵⁰	51
Maryland average ⁴⁴	57.9	New Mexico 1914 ⁵¹	90.1
Arkansas range ⁴⁵	90-60	New Mexico average	64
Arkansas average ⁴⁶	75		
Oregon average ⁴⁷	79-72		
Georgia ⁴⁸	9.5		

⁴¹ These percentages are based on votes cast on referendum measures compared to the number of votes cast for officials at the same election, or to the number of votes cast to registered voters. Rank indicates highest number of votes cast over a period of years.

⁴² American Political Science Review, op. cit.,

⁴³ Loc. cit.

⁴⁴ Loc. cit.

⁴⁵ Ibid., Thomas, p. 74.

⁴⁶ Loc. cit.

⁴⁷ Lowell, op. cit., p. 184.

⁴⁸ New Republic, op. cit., vol. 2: sup., Mar. 6, 1915.

⁴⁹ New Mexico Blue Book, 1937-1938.

⁵⁰ New Mexico Blue Book, 1931-1932.

⁵¹ Lowell, op. cit., p. 189.

COMPARATIVE REPRESENTATIVE VOTE IN NEW JERSEY AND OTHER STATES OF NEW JERSEY DELEGATION

Massachusetts 1937	57	New Jersey 1937	52
(two states as only)			
Massachusetts 1937	50-51	New Jersey 1937	51
Massachusetts average	51.5	New Jersey 1937	50.1
Massachusetts range	50-51	New Jersey average	51
Massachusetts average	51		
Massachusetts range	50-51		
Massachusetts average	51.5		
Massachusetts range	50-51		
Massachusetts average	51		
Massachusetts range	50-51		
Massachusetts average	51.5		

41. These percentages are based on votes cast in reference to the number of votes cast for the candidate of the party receiving the highest number of votes cast over a period of years.

42. American Political Science Review, 21:1.
43. Loc. cit.
44. Loc. cit.
45. Loc. cit.
46. Loc. cit.
47. Lowell, op. cit., p. 184.
48. Loc. cit., op. cit., vol. 2, p. 171.
49. New Jersey Five Year, 1937-1939.
50. New Jersey Five Year, 1937-1939.
51. Lowell, op. cit., p. 189.

The last criticism of the referendum deals with the number of proposals initiated by direct legislation. If direct legislation is to be successful, it should actually be put into practice.

It appears that roughly two-thirds of the proposals voted upon in the direct legislation states were placed through the initiative and referendum. Charts III⁵² and IV⁵³ will show this in detail.

These figures show that in the initiative and referendum states in 1912 the legislatures submitted 27 proposals; the people submitted 94, or 77 percent. In 1914 the legislatures submitted 68 proposals; the people 109, or 61 percent.

These percentages of 77 and 61 indicate that direct legislation is very active. These percentages are not large. They should not be large.

The purpose of direct legislation is to initiate those measures which for some reason the legislature has not enacted, or to refer those measures to the people if their value be doubted.

The people do not intend to take over law-making except where the legislature has not passed laws in accord with public wishes.

⁵² New Republic, op. cit., pp. 5, 6. (Note: That the chart lists New Mexico as not having the referendum.)

⁵³ Public Opinion, op. cit., Cottrell, p. 32.

CHART III

ORIGIN OF PROPOSALS (1914)

Initiative and Referendum States	Amendment		Statutes		Total	
	Initv.	Legis.	Initv.	Refer. Legis.		
Ariz.	5	-	10	4	-	19
Cal.	8	22	9	4	5	48
Colo.	5	3	3	5	-	16
Me.	-	-	-	1	-	1
Mich.	1	3	-	-	-	4
Mo.	3	8	-	4	-	15
Mont.	-	2	3	1	-	6
Neb.	1	3	-	3	-	7
Nev.	-	2	-	-	-	2
Ohio	4	-	-	-	-	4
Okla.	4	-	-	-	-	4
Ore.	10	8	9	-	2	29
S. D.	-	8	-	3	1	12
Wash.	-	1	7	2	-	10
TOTAL	41	60	41	27	8	117

States not having Initiative and Referendum	Amendment		Statutes		Total	
	Initv.	Legis.	Initv.	Refer.	Legis.	
Fla.	-	3	-	-	-	3
Ga.	-	9	-	-	-	9
Idaho	-	3	-	-	-	3
Ind.	-	-	-	-	2	2
Kans.	-	2	-	-	-	2
La.	-	17	-	-	-	17
Mass.	-	-	-	-	4	4
Minn.	-	11	-	-	-	11
Miss.	-	9	-	-	-	9
N. M.	-	3	-	-	-	3
N. C.	-	10	-	-	-	10
N. D.	-	7	-	-	-	7
S. C.	-	10	-	-	-	10
Tex.	-	3	-	-	-	3
Vt.	-	-	-	-	2	2
Wis.	-	10	-	-	-	10
Wyo.	-	4	-	-	-	4
TOTAL	-	101	41	27	8	109
GRAND TOTAL	41	161	41	27	16	226

Initiative
and
Referendum
States

Ala.
Cal.
Col.
Fla.
Ga.
Iowa
Ky.
La.
Maine
Mass.
Mich.
Miss.
Mo.
Nebr.
Nev.
N.H.
N.J.
N.Y.
Ohio
Okla.
Pa.
S.D.
Tenn.
Tex.
Vt.
Wash.
W.Va.
Wis.
Wyo.

States not
having
Initiative
and
Referendum

Ark.
Del.
Ill.
Ind.
Kan.
Kent.
Md.
Mont.
N.C.
N.D.
S.C.
Utah
Va.
West Va.
Idaho

CHART IV

ORIGIN OF PROPOSALS AND SUMMARY OF
VOTES ON MEASURES SUBMITTED (1878-1936)

	Total Submitted	Adopted	Rejected
Referendum: Legislative Act by Petition of Voters	28	8	20
Constitutional Amendment by Legislature	185	105	80
Bond Issues by Legislatures	15	11	4
TOTAL	228	124	104

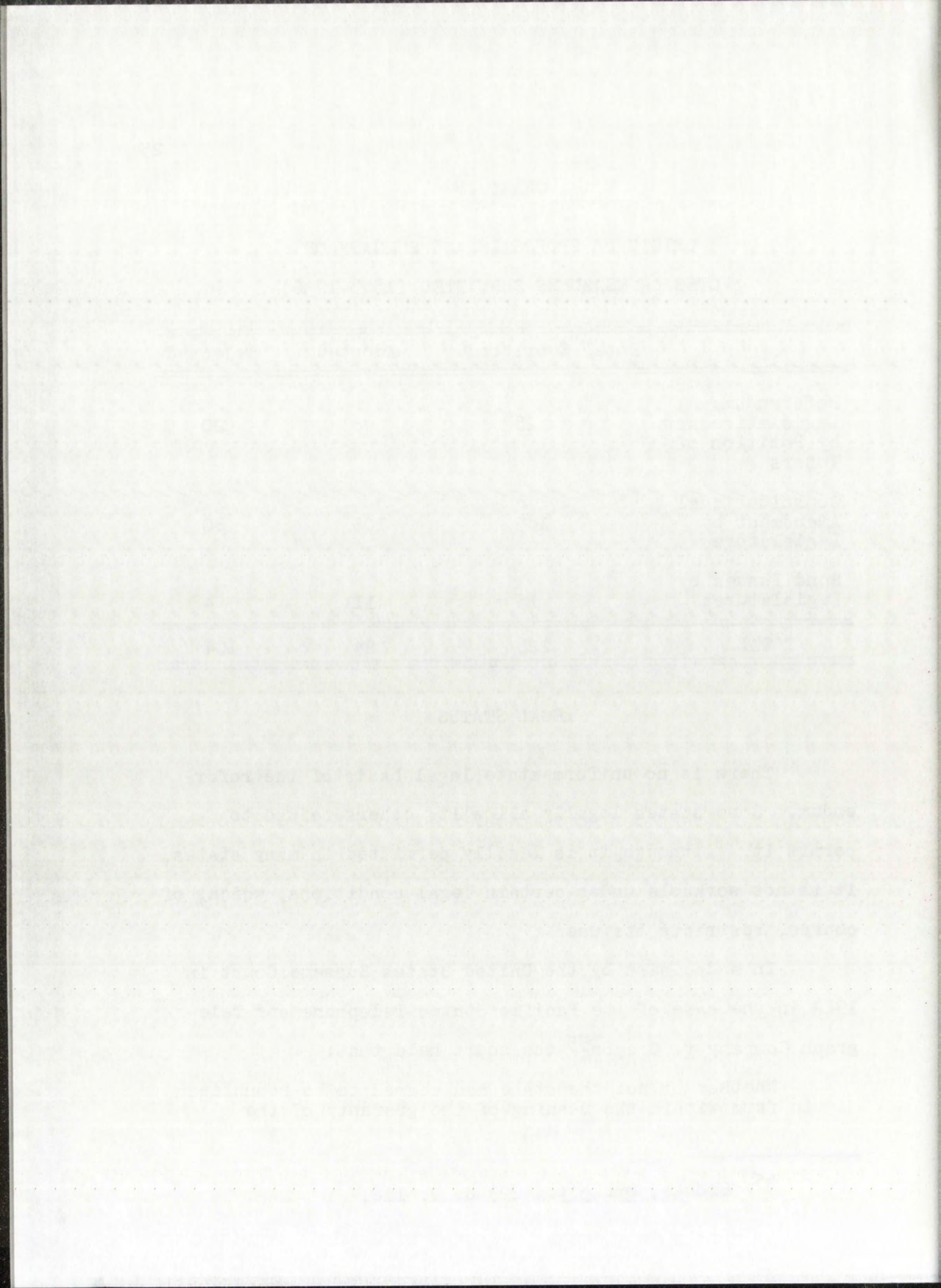
LEGAL STATUS

There is no uniform state legal basis of the referendum. Some states legally allow it; others refuse to permit it. Although it is legally permitted in many states, it is not workable under certain legal conditions, which, of course, restricts its use.

In a decision by the United States Supreme Court in 1912 in the case of the Pacific States Telephone and Telegraph Company v. Oregon⁵⁵ the court held that:

Whether or not the state had ceased to be republican in form within the meaning of the guaranty of the

⁵⁵ Brooks, op. cit., 223 U. S. 118.



United States Constitution, Article IV, Section 4, because of its adoption of the initiative and referendum, is not a judicial question, but a political one, which is solely for Congress to determine.

Congress has not yet raised the question. Indeed it may be assumed to have answered it tacitly by admitting senators and representatives elected in states after their adoption of the initiative and referendum.⁵⁶

Since the question is political and under the jurisdiction of Congress and Congress has not considered it, obviously Congress prefers to allow the states to settle the question for themselves. This is not an unusual situation in the United States as Congress has permitted the states in many instances to settle questions which are under legal control of the federal government.

⁵⁶ Brooks, op. cit., 223 U. S. 118.

United States Government
Department of the Interior
Bureau of Land Management
Washington, D. C. 20250

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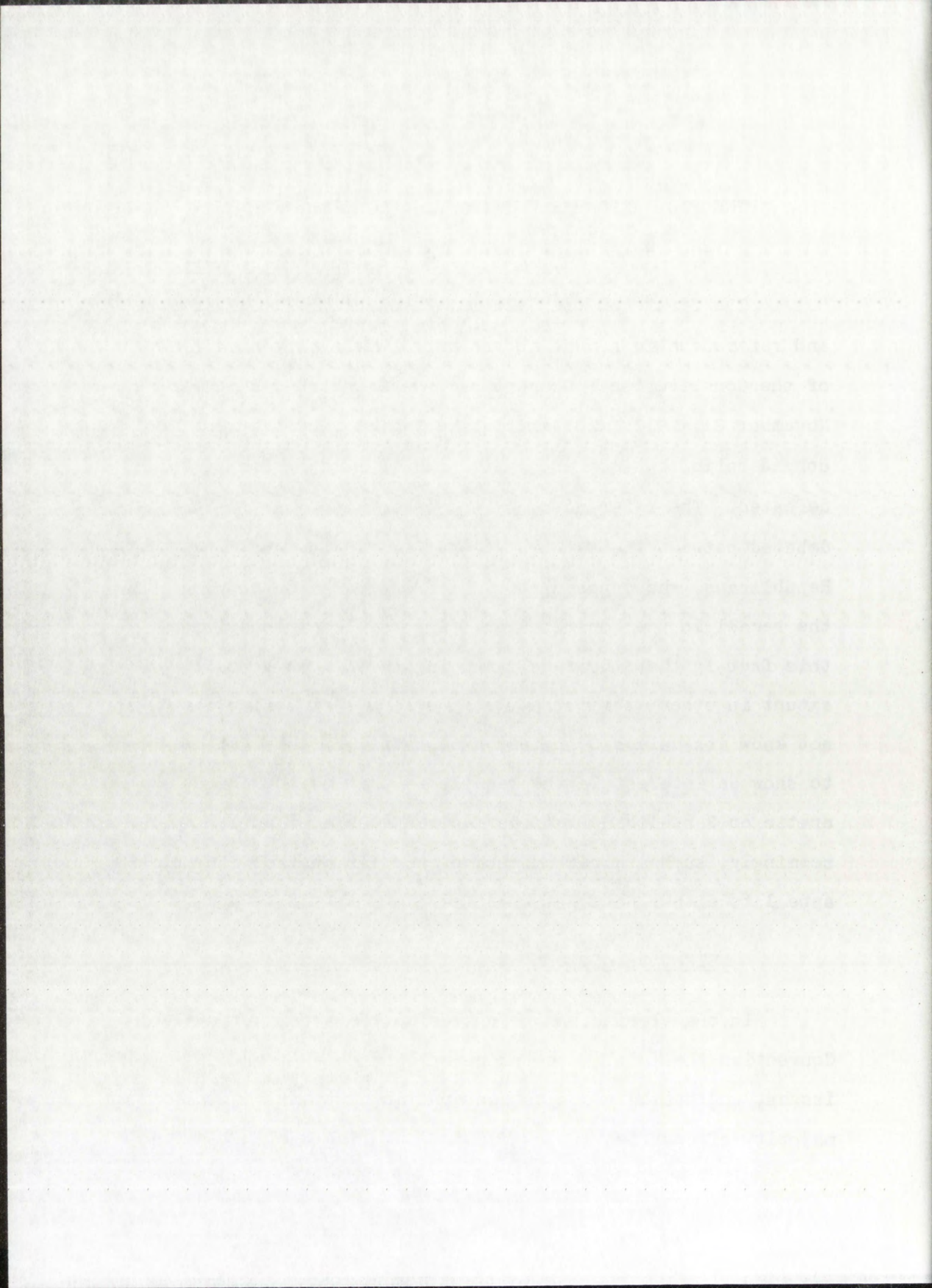
CHAPTER II

THE FIGHT FOR THE INITIATIVE AND REFERENDUM IN THE CONSTITUTIONAL CONVENTION OF NEW MEXICO

The first and only attempt to enact the initiative and referendum in New Mexico occurred during the meeting of the Constitutional Convention from October 3, 1910, to November 21, 1910. The initiative, which received some consideration but not enough to make it a major issue, was defeated. The referendum, on the other hand, was fiercely debated between the Democrats, who favored it, and the Republicans, who opposed it. No effort was made to place the recall in the Constitution. A possible explanation of this fact is that the recall was in use to such a small extent in other states that the people of New Mexico did not know its values. Another explanation of this failure to show an interest in the recall, is that neither Democratic or Republican factions desired such a measure; seemingly, such a direct method of popular control did not appeal to either party at the time.

Election of Delegates to the Convention

In the election of delegates to the Constitutional Convention the initiative and referendum were important issues, and heated contests centered about them. In the majority of counties the candidates favoring the initiative



and referendum measures were extremely outspoken, as were those aligned against them. In general, the Democrats were in favor of these measures in either an extreme or modified form. However, the Republican headquarters issued from Santa Fe a statement that there would be no initiative or referendum law in the Constitution, although it was possible that a modified initiative and referendum law might be submitted.¹

Throughout the territory it was conceded generally that the Republican delegates were, for the most part, against the initiative and referendum. However, a minority of Republican candidates were sincerely in favor of these measures and desired to be elected on such a platform. These men were not afraid to announce publicly their stand and to fight for it. The day before the election of delegates, four Republicans from Guadalupe County issued a circular letter in which they stated that they favored the initiative and referendum.² The people, as a whole, seemed to favor the measures, while there is little doubt that the political machines of both parties would have preferred sidetracking them.

The influence of the party machine was evident in many counties. In San Miguel county, for example, the county

¹ Tribune Citizen, Sept. 7, 1910.

² Ibid., Oct. 3, 1910.

and referendum measures were extremely unpopular, as was
those aligned against them. In general, the Democratic party
in favor of these measures in almost an entire or partial

form. However, the Republican party was divided. It was
divided as to whether they would be no initiative or
referendum law in the Constitution, although it was possible

that a modified initiative and referendum law might be
adopted.

Throughout the territory it was conceded generally
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the initiative and referendum. However, a minority of
Republican candidates were sincerely in favor of these
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men were not afraid to announce publicly their stand and to
fight for it. The day before the election at delegate, the
Republicans from Gustavus County issued a circular letter in

which they stated that they favored the initiative and
referendum. The people, as a whole, seemed to favor the
measures, with there is little doubt that the political

machines of both parties would have preferred a referendum
law.
The influence of the party machine was evident in many

counties. In San Miguel county, for example, the county

1 Tribune Circular, Sept. 7, 1910.

2 Ibid., Oct. 7, 1910.

commissioners refused to appoint minority representation on the election boards of the county, and it was forecast before the delegate election that the returns would be overwhelmingly Republican.³ Following the election, from East Las Vegas came the report:⁴

Through the control of the election boards without minority representation, the aid of the Santa Fe railroad, the saloon element and all the purchasable vote, and a big campaign fund, the Republicans carried this county by a substantial majority.

There is much talk today of the part taken by the Santa Fe railroad. Railroad officials were openly working for the Republican ticket in front of the polls. There are charges made by the railroad men who wanted to vote the Democratic ticket that the trains were held up outside of the city to prevent them from voting, while others were said to be deadheaded, and men who would not work for the Republican ticket were ordered to man the trains.

Instances such as these show the efforts made to control the election of delegates, and the attempts were very successful in many regions.

The election of delegates, which took place September 6, 1910, showed the people favored the initiative and referendum. Although fifty-eight Republicans were elected to the convention compared to twenty-three Democrats, and nineteen fusionists, a large number of the Republicans, at least a dozen, were independent. That is, they were not connected

³ Tribune Citizen, Sept. 9, 1910.

⁴ Ibid., Sept. 7, 1910.

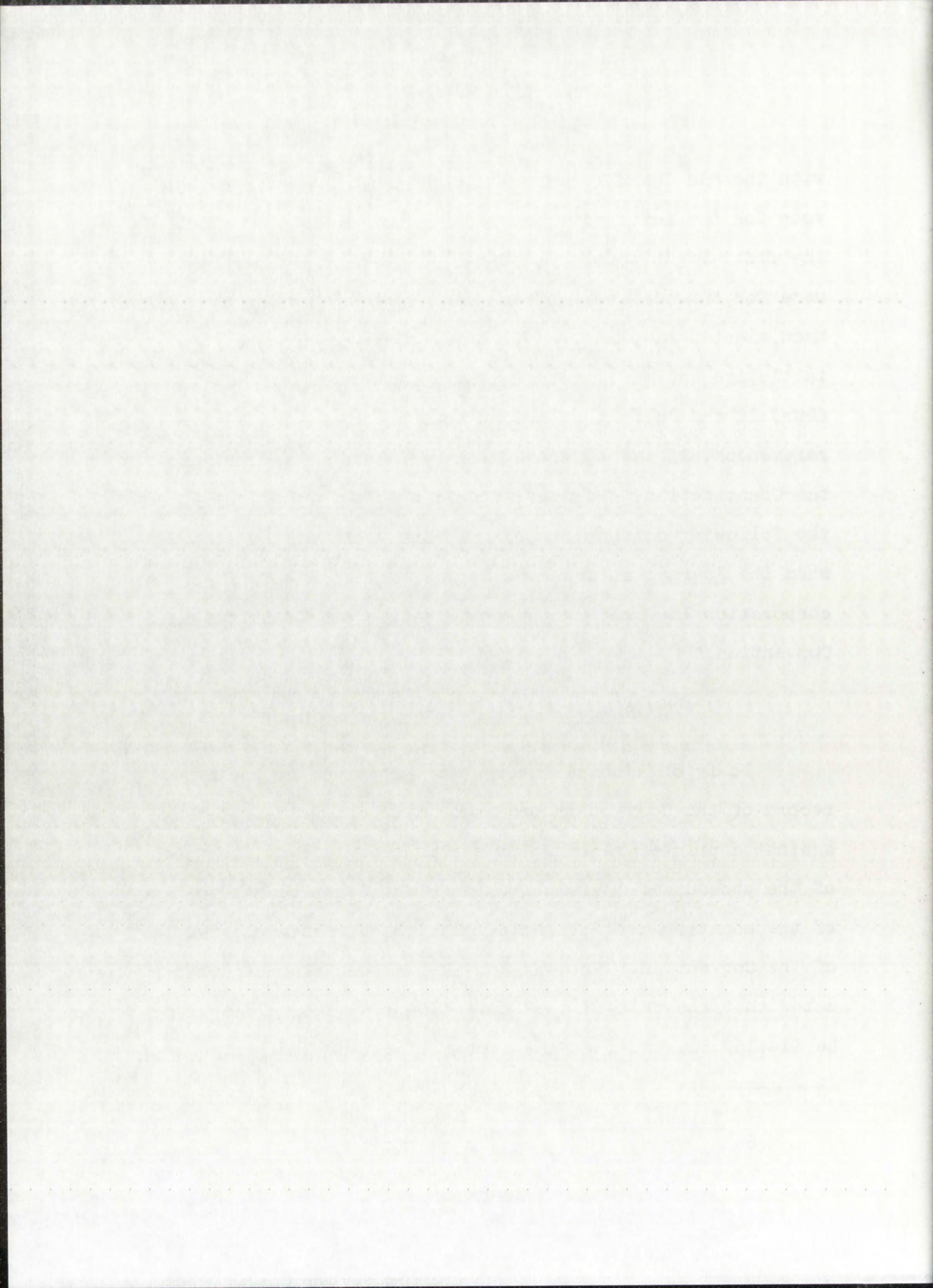
with the Old Guard machine and they could be counted upon to vote for the initiative and referendum measures. Others of the fifty-eight were sympathetic. The twenty-three Democrats were for the measures as were the nineteen fusionists who had been elected on platforms pledging their support to the initiative and referendum.⁵ Thus, with over half (fifty-four) of the delegates pledged to support the initiative and referendum, it seemed these measures would be incorporated in the Constitution. However, from the Albuquerque Journal came the following ominous statement, "Every one of the candidates whom the Journal attacked as bosses, railroad attorneys, and corporation lawyers have been elected to the Constitutional Convention."⁶

Records of the Convention

It is of special interest to note that no published record of the Convention was made. The delegates voted against a printed record. It was stated, in justification of the procedure, that such expense could not be met in face of the mounting cost connected with the absolute necessities of the Convention. The Ways and Means Committee had estimated that the cost of the Convention to October 17 would be \$14,152.51, and that the probable cost of the sixty day

⁵ Tribune Citizen, Sept. 7, 1910.

⁶ Ibid., Sept. 9, 1910.



session would amount to \$47,402.90. These figures did not include the cost of the election of the delegates. The same committee estimated that a daily record of the Convention would contain from 24 to 40 pages. It was determined that the cost of publishing 24 pages would be \$67.50, and of 40 pages, \$112.50.⁷ This report seemed to indicate to the delegates that the cost of publishing a daily record of the Convention was prohibitive, especially since the sixty day session was otherwise costing approximately \$50,000. These facts can be viewed more sympathetically if one considers the scant population of the State at that time upon whom the burden of these expenditures would fall. Despite these considerations, many people sincerely doubted that the expense question was the main reason for not publishing such a record, and sentiment throughout the state was in favor of a record.

A thorough investigation of the Convention files, the newspapers of the time, and at least one interview with a delegate reveal the fact that many delegates introduced bills and made speeches contrary to the platforms upon which they had been elected. The Republican party, whose roster contained many delegates who had been elected on the initiative and referendum planks, voted, strangely, as a body

⁷ Tribune Citizen, Oct. 21, 1910.

Section 101 of the Internal Revenue Code

The purpose of this section is to provide for the

allowance of a deduction for the cost of

the property used in the production of income

for the purpose of this section, the cost of

the property shall be the cost of the property

less any allowance for depreciation or other

depletion which has been allowed or is allowable

under the provisions of this title

For purposes of this section, the cost of

the property shall be the cost of the property

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against these measures. In the face of a Republican majority in the Convention, insurgents in the Republican ranks were reluctant to express their desires.⁸ Not only Republicans, but Democrats, also, were forced to make compromises upon these issues.

Gag Rules

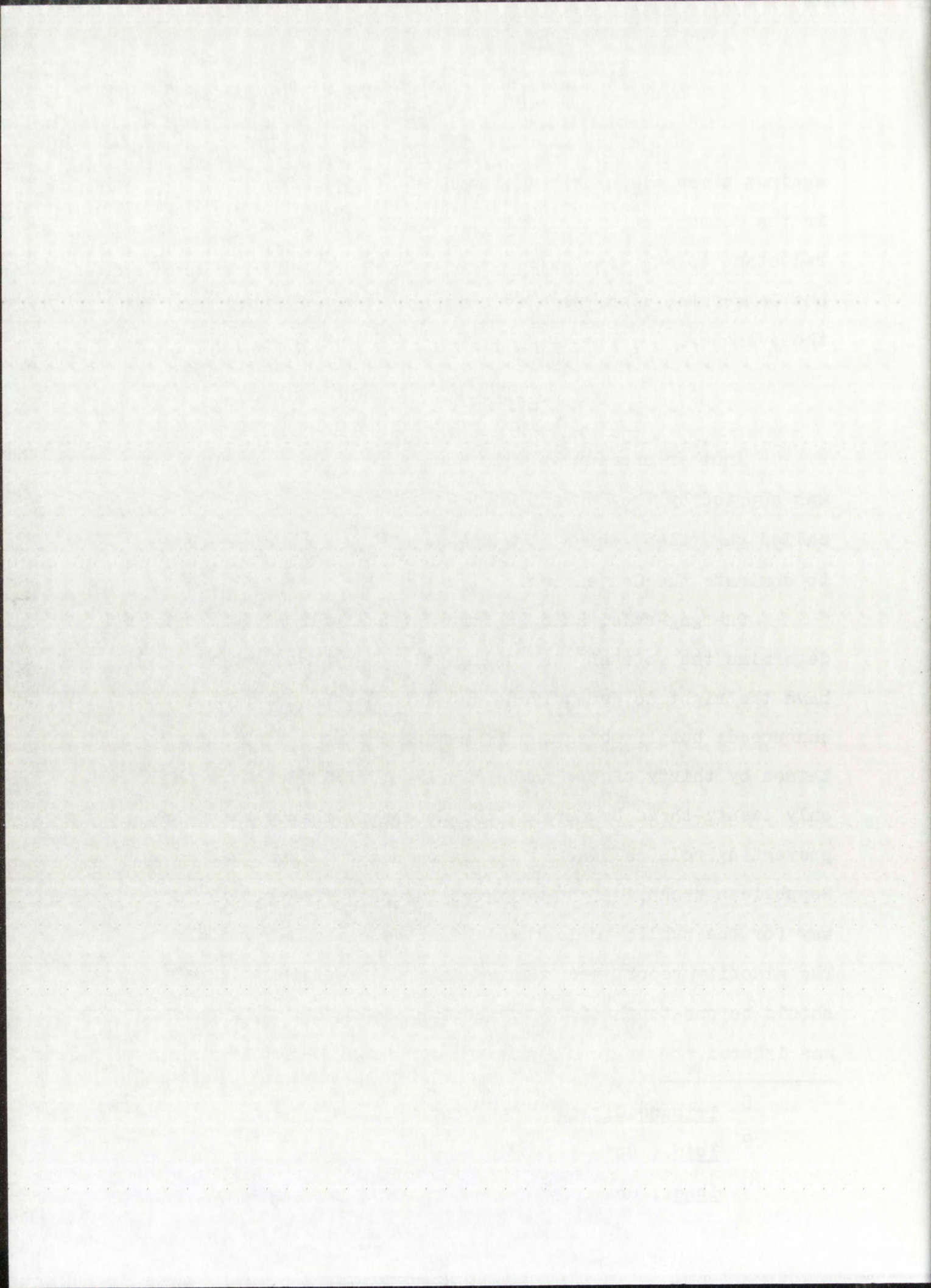
Another procedure, which had far-reaching results, was adopted by the Convention. Reference is made to the so-called gag rules, which gave the Republicans an opportunity to dominate the Convention.

One gag-rule, Rule 18, prevented a roll call to determine the vote of each delegate:⁹ "Any two members shall have the right to demand yeas and nays before the result is announced; but if objection is made the demand shall be sustained by thirty of the members present." Since there were only twenty-three Democrats, the necessary thirty votes for preventing roll call could easily be secured from the Republican ranks. If no vote was taken, there would be no way for the public to learn how each delegate had voted. The minority report recommended that the sustaining vote should be one-tenth of the members present, but this report was ignored.¹⁰

⁸ Tribune Citizen, Oct. 22, 1910.

⁹ Ibid., Oct. 12, 1910.

¹⁰ Ibid., Oct. 12, 1910.



Rule 20 stated:¹¹ "Any member supported by a majority vote shall have the right to demand the previous question at any time." This rule worked to cancel further debate upon any question when the majority so desired it.

Another rule, preventing a delegate from speaking more than fifteen consecutive minutes,¹² curtailed proper debate and discussion. These gag rules kept the minority ineffective throughout the Convention.

Split within the Democratic and within the Republican Parties

Neither the Democrat nor the Republican party platforms had contained a definite pledge regarding the initiative and referendum question. Consequently, although the Democrats individually had pledged themselves to support the initiative and referendum, there was no general agreement among them as to what constituted a good initiative and referendum law.

This vagueness resulted in a lack of unity among the Democrats. Many wanted the Oregon plan with its low percentages. This group did not intend to compromise. Other Democrats, on the other hand, when they perceived that the Oregon plan appeared too radical to the Republicans, wished to raise the percentages so as to effect a compromise which would be acceptable to both parties. Representative

¹¹ Tribune Citizen, Oct. 12, 1910.

¹² Ibid., Oct. 13, 1910.

Fergusson, the Democratic leader for the initiative and referendum measures, was also the minority Floor Leader.¹³ Mr. Fergusson opposed the suggestion by the Republicans (and some Democrats) to the effect an initiative and referendum law be written by the people and voted upon by the legislature, providing the legislature did not enact one earlier. In the event the legislature did not enact a law, the one drawn up by the people was to be submitted to a vote of the people. If a majority favored it, the bill was to become a law.¹⁴ Many Democrats were willing to let the issue subside until after the Constitution had been ratified, and then to let the decision rest with the people by means of an ordinary law, as mentioned above. The reason for this was the hope that it would facilitate the adoption of a Constitution.¹⁵

The Republicans were also divided on the initiative and referendum issues. Those who had been elected on the strength that they supported these measures still wished to vote for them. Some Republicans and Democrats wished to have a separate submission plank on direct legislation presented to the voters at the same time as the Constitution.¹⁶ This form of compromise was suggested in order that the people be permitted to vote directly for such measure; in addition, it was feared by the minority that too much pressure for the

¹³ Albuquerque Journal, Nov. 25, 1910.

¹⁴ Ibid., Oct. 8, 1910.

¹⁵ Ibid., Dec. 18, 1910.

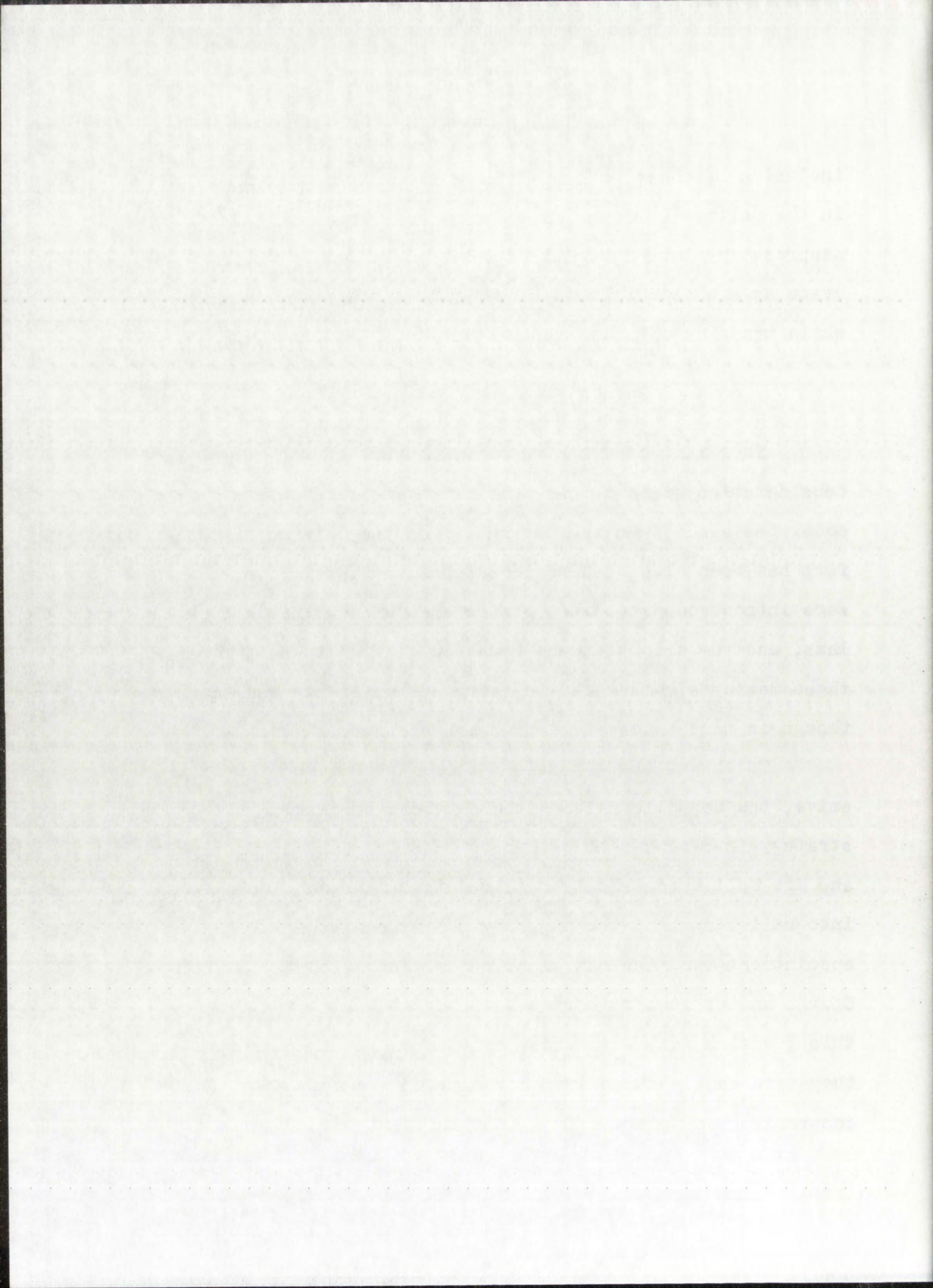
¹⁶ Ibid., Nov. 20, 1910.

inclusion of these measures in the Constitution would result in the political leaders arousing sufficient opposition to suppress any action at all on these questions. The Democrats as a whole opposed the separate plank proposition, while many Republicans supported it as a last resort.

The Initiative Sidetracked

The fight over the referendum overshadowed the slight consideration given to the initiative question. Those delegates elected to the Convention on the referendum platform had been elected also to support the initiative. Bills were introduced proposing both referendum and initiative laws, and the delegates who had been elected to support these measures, attempted to carry out their pledges, even though in many cases it meant opposing party leaders.

To thwart the efforts of those who favored the initiative, the Republican leaders executed a successful bit of strategy in a caucus held October 25. Mr. Catron, Mr. Speiss, and Mr. Fall successfully deceived the insurgent Republicans into believing that the majority of the party were for appointment, and against election, of judges of the Supreme Court, and of members of the Corporation Commission. Since this question was, of course, a major one to the insurgents they were easily duped into agreeing on a compromise. This compromise was to the effect that the party would agree to



the election of judges to the Supreme Court and members of the Corporation Commission if in return the insurgents would concede to drop their fight to place the initiative in the Constitution.¹⁷

At this same caucus it was decided that the party would not support the move for a separate vote on the initiative and referendum section. As a result, the initiative issue was not raised again at the Convention by either the Republicans or the Democrats. The Democrats realizing that the Republicans were definitely opposed to the measure decided that it would be better to drop the initiative since it would so obviously place the success of the referendum in jeopardy. No doubt this was a wise move on the part of the Democrats, since an insistence on the initiative would certainly have resulted in a defeat of both measures.

Political Opposition to the Referendum

The referendum issue called forth open resistance. One point stressed by the opposition was that the Democrats would rather see the Constitution rejected as a whole rather than vote for a constitution which did not contain a referendum law.

An article from the Silver City Independent said:¹⁸

¹⁷ Tribune Citizen, Oct. 26, 1910.

¹⁸ Albuquerque Journal, Nov. 15, 1910.

The attempt of judges to the Supreme Court and members of
the Constitutional Convention to in return the initiative would
be made to drop their fight to place the initiative in the

At this time it was decided that the party
would not support the move for a separate vote on the
initiative and referendum question. As a result, the initiative
issue was not raised again at the Convention of 1910.
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The question is: will the people of New Mexico approve a state Constitution which guarantees representative government as in the Federal administration and that of three-fourths of the states; or will they reject admission to the Union, sought for fifty years simply because they cannot have the?

What?

Such articles and speeches greatly influenced the people against pushing these measures too strongly for fear that such predictions as the above would actually come true. The public was very anxious for statehood and considered that even a Constitution that was far from ideal was better than a loss, or delay, of statehood. Many Democratic delegates refused to press the issues on the theory that the question could be satisfactorily settled after admission to the Union.

In some quarters, the actual benefits of the referendum were attacked. The Phoenix Republican states that citizens would be too hasty in legislating.¹⁹ The El Paso Herald said, "The founders of the nation never contemplated a pure democracy, but instead they planned a republic, and the state constitutions are supposed to conform to this plan."²⁰ From Phoenix again²¹ we find that the argument in the Arizona Constitutional Convention was that the initiative

¹⁹ Albuquerque Journal, Oct. 12, 1910.

²⁰ Ibid., Oct. 16, 1910.

²¹ Ibid., Nov. 11, 1910.

was not an instrument of government as defined in the United States Constitution. This constitution, it was pointed out, stated a republican form of government meant government by representatives.

A Democratic paper took special note of such arguments when it replied:²²

The Republican papers agree that the old system of delegated, representative, or better still, usurpative government is better. If so, why are so many states adopting the initiative and referendum.

The same paper said:²³

The Santa Fe Eagle strikes the nail on the head when it remarks editorially that according to the stand-pat press, the common people are not capable of governing themselves, but they have wit enough to select people who know how they ought to be governed.

A very effective move on the part of the opposition took place as follows:²⁴

The Republicans circulated a document among the saloon men setting forth that the Democrats had entered into an alliance with the prohibitionists to force the initiative and referendum into the Constitution for the purpose of imposing a prohibition law upon the state, and they succeeded in lining up the majority of the saloon men, too.

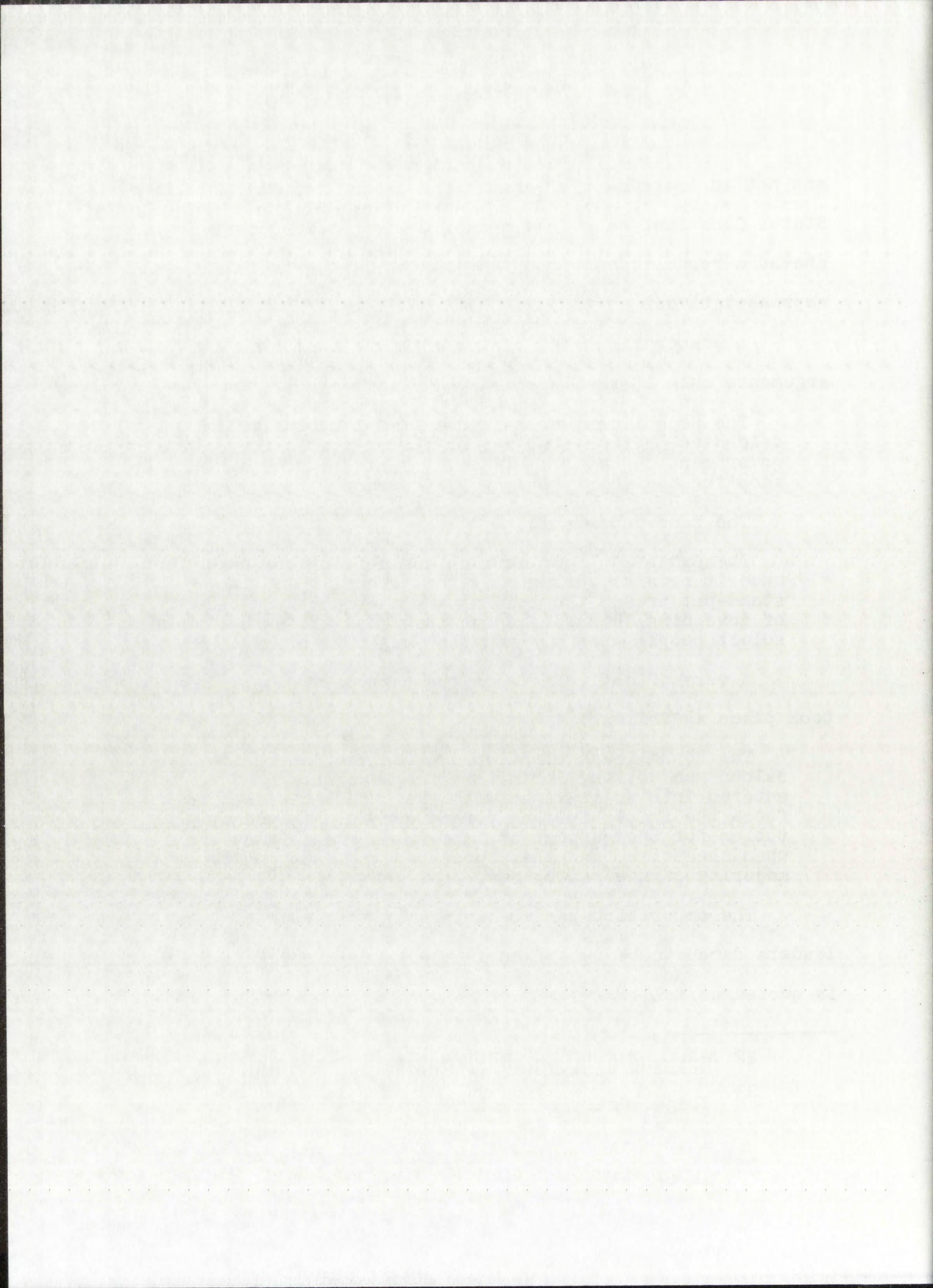
The opposition was so certain of its power that the leaders dared to be outspoken in their position. Mr. Speiss is quoted as follows:²⁵

²² Tribune Citizen, Oct. 21, 1910.

²³ Ibid., Oct. 18, 1910.

²⁴ Ibid., Sept. 10, 1910.

²⁵ Ibid., Nov. 1, 1910.



If the initiative and referendum should be written in the Constitution the disfranchisement of the native people would insue.

Corporation Influence

The railroad and mining corporations played a very important role in the effort to defeat direct legislation, although to prove, absolutely, that these corporations used their influence in such a manner would be difficult. Still, much evidence points in that direction.

The first traceable effort of these interests was made at the time of the election of delegates to the Convention. They interfered at the eleventh hour when it became evident that public sentiment was for the initiative and referendum.

In certain sections of the state these groups were especially active. From Raton came the report that,²⁶ "The Republicans used more money in this election than in years, both in the city and out of it. The corporations contributed to this large fund." In San Miguel county we find that,²⁷ "Reports from this county indicate that the corporations were never more active than in the present campaign." An account from McKinley county reveals:²⁸

²⁶ Tribune Citizen, Sept. 7, 1910.

²⁷ Ibid., Sept. 7, 1910.

²⁸ Ibid.

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McKinley county went Republican, as was to be expected. The majorities were larger than usual for the reason that the coal company managers entered the campaign with vim and used their influence against the Democrat ticket and the initiative and referendum.

The corporations were active as is shown by the report on the Santa Fe railroad:²⁹

The election was featured at the last hour by the aggressive influence of the corporations, notably the Santa Fe railroad company, which threw their intimidating power toward the Republican ticket in the counties where the Republican vote was the heaviest.

Mr. Charles A. Speiss, who was elected President of the Convention, was the attorney for the holders of the Santa Fe county railroad bonds.³⁰ It was commonly believed that he was paid by the Santa Fe railroad for his services.³¹ "Mr. Speiss made no attempt to refute the charge that a large contingent fee depends on the completion of his services to his clients by looking after their interests in the Convention."

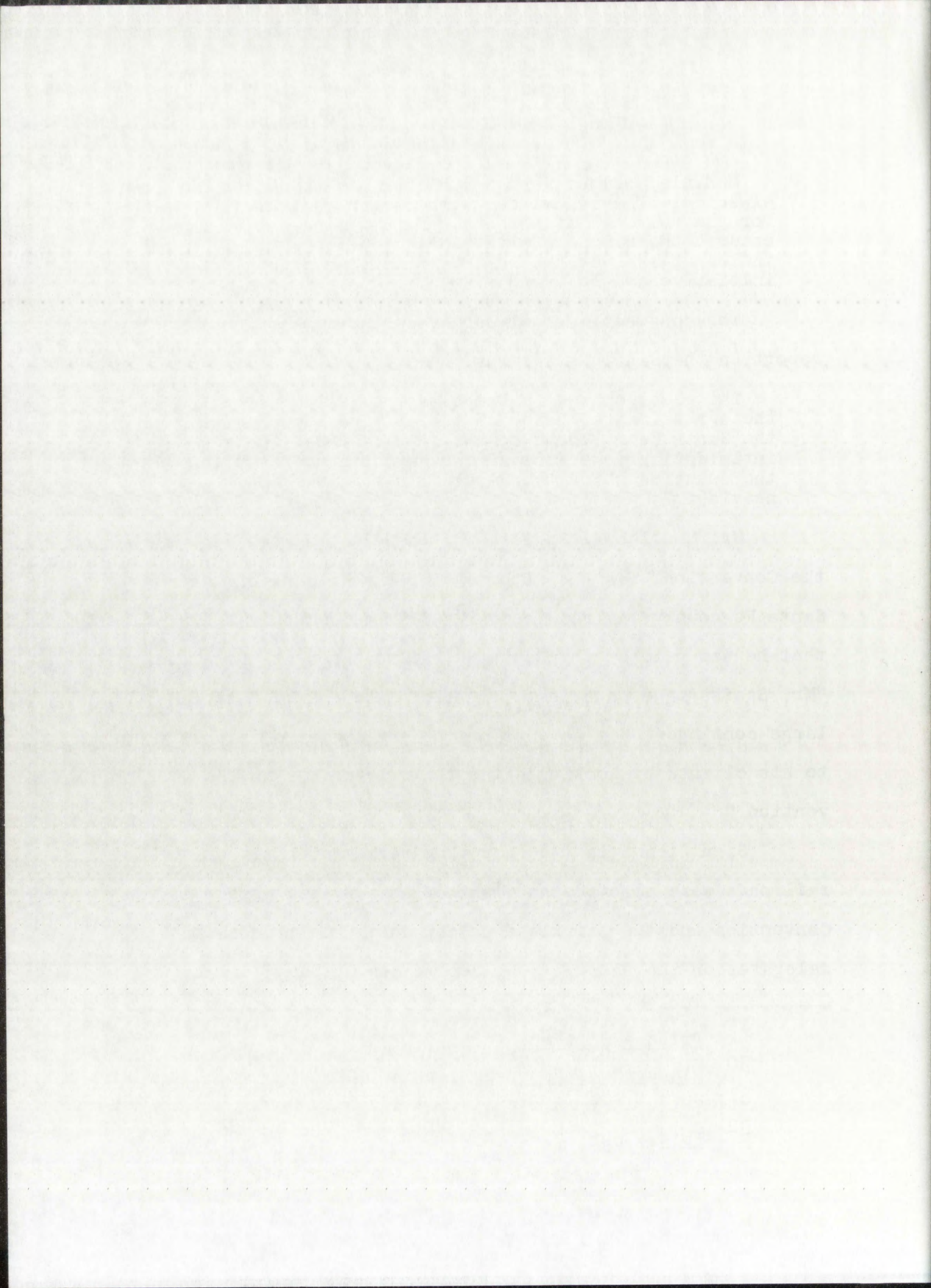
Significant is the fact that representatives of the railroads were allowed the right of ingress and egress to the Convention and the privilege of communicating with their delegates on the floor.³² No record can be found divulging

²⁹ Tribune Citizen, Sept. 7, 1910.

³⁰ Albuquerque Journal, Oct. 4, 1910.

³¹ Ibid., Oct. 4, 1910.

³² Ibid., Oct. 7, 1910.



whether or not these representatives participated in discussion, although it can be safely assumed that they influenced debate by their presence.

The Democrats agreed that the failure of the initiative and referendum measures were largely the result of the power of the corporations. One newspaper states, "The bosses were, and are, against both the initiative and referendum because the corporation attorneys in control of the party organization are opposed to those measures."³³

George Judson King, who came to New Mexico as a lecturer for the National Referendum League and to investigate referendum possibilities here, said, after making a survey of the situation: "It is the same old story here as in every state, people for it, corporations against it, politicians trying to straddle the issue and save their scalps."³⁴

The most plausible explanation for the opposition of the corporations seems to be that they felt that popular measures would give the people sufficient power to control taxation, and that the raising of the taxes of the corporations would result.

³³ Tribune Citizen, Sept. 20, 1910.

³⁴ Ibid., Oct. 17, 1910.

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The business system has failed on the basis of
five and numerous reasons were largely the result of the
growth of the corporations. The newspaper states, "The power
was, and is, a dual one: the initiative and referendum
because the corporation system is in control of the party
organization and opposed to those measures."

George Jackson King, who came to New Mexico as a
lecturer for the National Renaissance League and to investi-
gate relations between business and labor, after making a
survey of the situation "it is the same old story here as
in every state, people for it, corporations against it;
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tions would result.

30 Business and Labor, page 20, 1910.

30 Ibid., page 20, 1910.

Referendum and Initiative Bills Introduced

Several measures were introduced by both Democrats and Republicans, but with different motives: the Democrats desired a workable law; the Republicans wished as harmless a law as possible, if they could not prevent one from being passed altogether. Since the Republicans were in the majority and had control of the committees, it is surprising that a referendum was ever enacted.

Several of the bills introduced will be discussed to show the disagreement between the two parties:

The bill introduced by Delegate Francis E. Wood from Bernalillo County³⁵ contained the highest percentages as well as certain other obnoxious provisions. The number of signatures of voters required for the initiative was fifteen percent from each county and from not less than three-fifths of all counties in the state. Petitions were to be accompanied by affidavits showing that each voter was a legal voter. If the bill after presentation to the legislature was not enacted, it was to go to the people to be directly voted upon by them. This vote required a majority of all the votes cast--not for this measure, but for the candidates in the election. This meant that all who did not vote on the law

³⁵ Tribune Citizen, Oct. 22, 1910; Albuquerque Journal, Oct. 19, 1910.

voted against it. It also provided that the initiative provision for the Constitution should be voted on separately at the time that the Constitution was ratified. If a majority were for it, it became a part of the Constitution.

The number of signatures of voters required for the referendum petition was also fifteen percent from each county and from not less than three-fifths of the counties. Likewise, each petition was to be accompanied by affidavits. If a majority of all votes cast were against it, it was defeated. A petition of twenty-five percent of the voters would suspend the law until the next General Election. The emergency clause contained in Wood's bill was very similar to the one finally enacted.

The initiative bill of A. A. Sedillo was somewhat more moderate.³⁶ Petitions required ten percent of the voters in the state and in each county. The legislature was to draft the law and to submit it to the people if it chose. The law required a majority of the votes cast in the state and of at least two-thirds of the counties. An initiative instituting a Constitutional amendment required support of twenty-five percent of the voters of the state and of each county, and had to be submitted to the people. The legislature was required to approve by a two-thirds vote of both

³⁶ Albuquerque Journal, Oct. 12, 1910.

houses and then must submit the measure to the people. To carry, a majority of the votes of the electors of the state and of each county was required. If the legislature failed to approve the law, it was to be voted upon by the people and a two-thirds majority was necessary for approval.

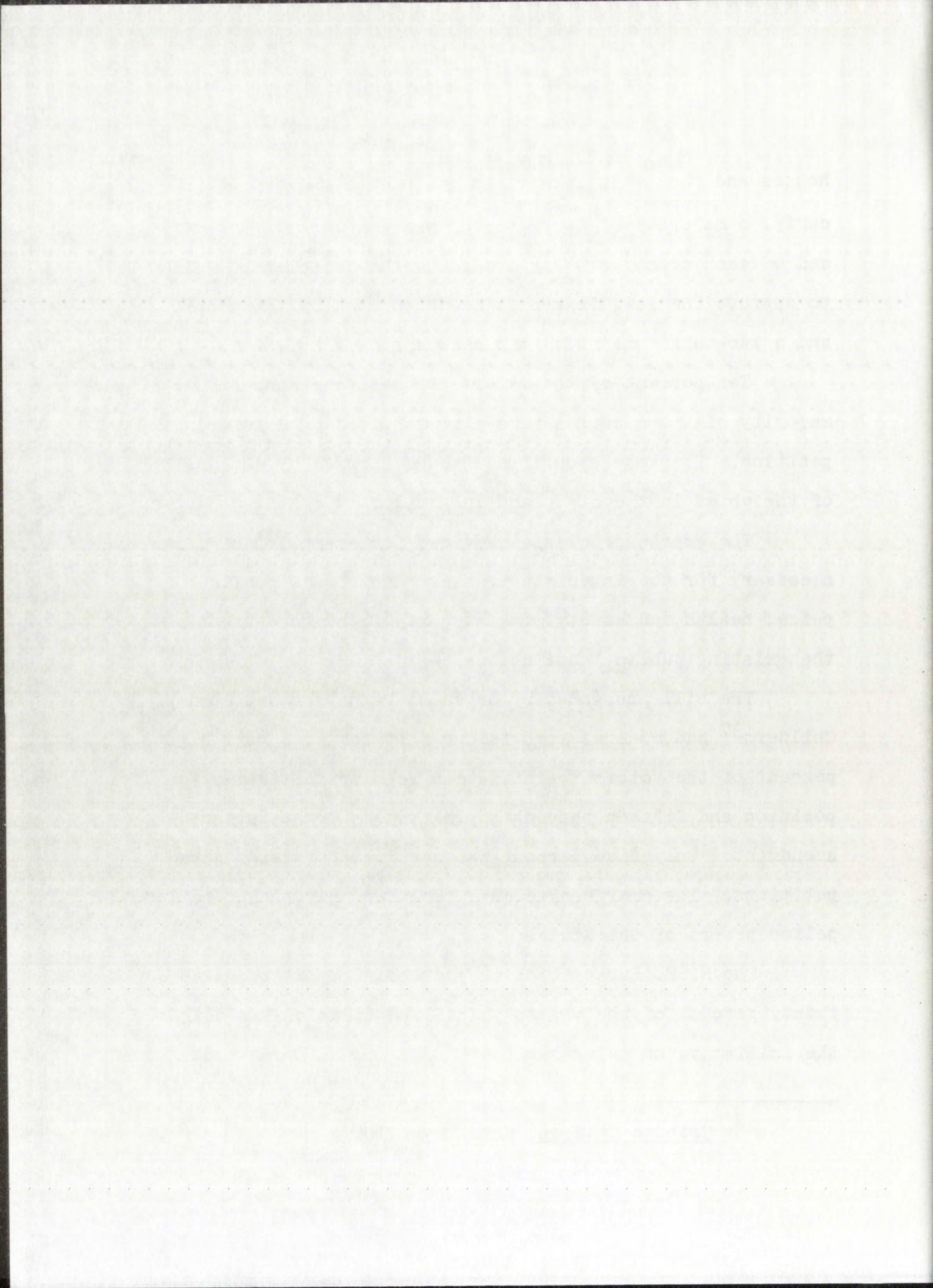
Ten percent of the voters of the state and of a majority of the counties were also required on a referendum petition. The vote upon it had to be carried by a majority of the votes in the state and in a majority of the counties.

The emergency clause provided for exemption of "laws necessary for the immediate preservation of the public peace, health and safety, the support of the government and the existing public institutions."

The bill presented by Green B. Patterson and John W. Childers³⁷ had moderate provisions. It required only eight percent of the voters to initiate a regular initiative petition and fifteen percent to initiate a Constitutional amendment. Only five percent was required for referendum petitions. The emergency clause included only the so-called police powers of the state.

The B. F. Pankey bill was more rigid. It required twenty percent of the voters to call an election for either the initiative or referendum.

³⁷ Tribune Citizen, Oct. 26, 1910.



The Report of the Minority on the Legislative Department,³⁸ which was not even given consideration by the Convention contained also moderate and reasonable requirements. Its provisions were, substantially, only substitutions for corresponding provisions in the Majority Report.

The Majority Report, which was later modified slightly by the Committee on Revision, was adopted by the Convention. The referendum was approved, but the initiative was excluded. The section on the referendum read:³⁹

The people reserve the power to disapprove, suspend, and annul any law enacted by the legislature except general appropriation laws; laws providing for the preservation of the public peace, health, or safety; for the payment of the public debt or interest thereon, or the creation or funding of the same, except as in this constitution otherwise provided; for the maintenance of the public schools or state institutions, and local or special laws.

Under the law, petitions must be filed not less than four months prior to the next general election, and require ten percent of the electors of three-fourths of the counties and, in the aggregate, by not less than ten percent of the qualified electors of the state.

In a referendum election, a majority of the votes cast therein, and not less than forty percent of the total number of legal votes cast is required for approval or disapproval

³⁸ Reports of Majority and Minority of the Committee on Legislative Department. (Unpublished copy.)

³⁹ Constitution of New Mexico, Article 19, Section I.

The report of the committee on the legislative branch, which was not even given consideration by the committee, contained also proposals and recommendations for the improvement of the legislative branch. The committee report, which was later modified slightly by the committee on behalf of the Government, was adopted. The resolution was approved and the bill was enacted.

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Under the law, petition must be filed not later than four months prior to the next general election, and require ten percent of the electors of forty-fourth of the electors, and, in the aggregate, not less than ten percent of the qualified electors of the state.

In a referendum election, a majority of the votes cast therein, and not less than forty percent of the total number of legal votes cast is required for approval or disapproval.

Report of the committee on the legislative branch, which was not even given consideration by the committee, contained also proposals and recommendations for the improvement of the legislative branch. The committee report, which was later modified slightly by the committee on behalf of the Government, was adopted. The resolution was approved and the bill was enacted.

of a measure. A petition of twenty-five percent will suspend an act.

Laws in New Mexico go into effect ninety days after the adjournment of the legislature. Any act necessary for the preservation of the public peace, health, or safety, shall take effect immediately upon its passage. Such emergency acts must be passed by two-thirds vote of both houses,⁴⁰ and the referendum cannot operate against their going into effect.

Jokers in the Bills

It has been mentioned previously that the opponents of direct legislation tried various means of preventing the passage of such laws. When it was found that public sentiment, in alliance with the Democratic minority, was strong enough to force direct legislation through the Convention, an effort made by the opponents was to place "jokers" in the various bills introduced, hoping thereby to render any law which might be passed, ineffective.

George Judson King at the time of the Convention, summed up a few of these jokers as follows:⁴¹

⁴⁰ Constitution of New Mexico, Article 4, Section 23.

⁴¹ Tribune Citizen, Oct. 25, 1910.

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First joker: Any law may be repealed if referred by ten percent of the voters in each judicial district if filed four months prior to any general election. The filing of such petition so near the election leaves any law uncertain as to attack. Such petition should be filed within ninety days after the law is passed so that both sides will know what to do.

Second joker: One law requires petitions signed by twenty-five percent of the voters in each judicial district. Such a number would be practically impossible to obtain.

Third joker: A majority of all votes cast at the election. Experience has shown that not more than 75 to 80 percent of the electors vote on referred measures.

Fourth joker: Some of the bills did not require a two-thirds vote of both houses to pass emergency legislation. A smaller percent would permit the emergency clause to be used too easily.

Fifth joker: The law does not compel the Secretary of State to canvass the vote and announce the result within a limited time. A corrupt Secretary of State could thus withhold a law from going into effect for a long period of time.

Sixth joker: There is no provision made for informing the people on laws coming to a vote.

Other strong criticisms were made of the bill of Delegate Wood:⁴²

⁴² Tribune Citizen, Oct. 22, 1910.

First factor: Any law may be repealed by
two-thirds of the voters in each legislative district.
This means that the voters in each legislative district
may repeal any law passed by the legislature.
Second factor: Any law passed by the legislature
may be repealed by the voters in each legislative district.
This means that the voters in each legislative district
may repeal any law passed by the legislature.

Third factor: Any law passed by the legislature
may be repealed by the voters in each legislative district.
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Sixth factor: Any law passed by the legislature
may be repealed by the voters in each legislative district.
This means that the voters in each legislative district
may repeal any law passed by the legislature.
Seventh factor: Any law passed by the legislature
may be repealed by the voters in each legislative district.
This means that the voters in each legislative district
may repeal any law passed by the legislature.
Eighth factor: Any law passed by the legislature
may be repealed by the voters in each legislative district.
This means that the voters in each legislative district
may repeal any law passed by the legislature.

First: The people could not initiate amendments to the Constitution.

Second: Initiative petitions had to have fifteen percent of the voters signatures, a number nearly double that of any other state.

Third: If petitions were obtained, the bill had first to go to the legislature, and if it was passed or another one passed "in harmony with the spirit thereof and which does not defeat or change its fundamental objective or purpose" then, and not otherwise, could it go to the people for a vote.

These and other well-sustained objections were given by the proponents of the initiative and referendum. It may be said, in due respect to many who were attempting to secure a compromise measure, that they preferred a poor law rather than to see no law at all.

The Convention Vote on the Constitution

When the time came to vote on the Constitution, the various alignments had been concretely formed. The Conservative Republicans had won the liberal Republicans to their ranks. The Democrats were aligned in an effort to force the acceptance of a referendum law, even if it meant the later defeat of the Constitution when it came to a vote of the people.

First. The people would initiate amendments to

the Constitution.

Second. Initiative legislation had to have fifteen

percent of the voters' signatures, a number usually double

that of any other state.

Third. If petitions were obtained, the bill had

to go to the Legislature, and it was passed or

another one passed in harmony with the spirit thereof and

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These and other well-established objections were raised

by the opponents of the initiative and referendum. It may

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secure a responsible majority, that they presented a poor law

rather than to see no law at all.

The Evolution of the Initiative

When the time came to vote on the Constitution, the

various elements had been carefully tested. The Conser-

vative element had won the liberal Republicans to their

rank. The moderate were aligned in an effort to force the

adoption of a referendum law, even if it meant the later

defeat of the Constitution when it came to a vote of the

people.

The delegates had gone to the Convention pledged to support the initiative and referendum:⁴³ 51, for; 49, against. The vote taken at the Convention for the referendum law, as presented by the Majority Report, was 65 for; 25 against.⁴⁴

The vote on the acceptance of the Constitution was 78 for; 18 against; 4 did not vote. All the Republicans but one voted for; one Republican did not vote; 3 Democrats did not vote.⁴⁵

After this step, the next to be taken was the vote on the ratification of the Constitution by the people.

Results of the Convention Vote

Many Democrats, still fighting for a more suitable referendum law, stated that they would campaign against the adoption of the Constitution by the people of the state.

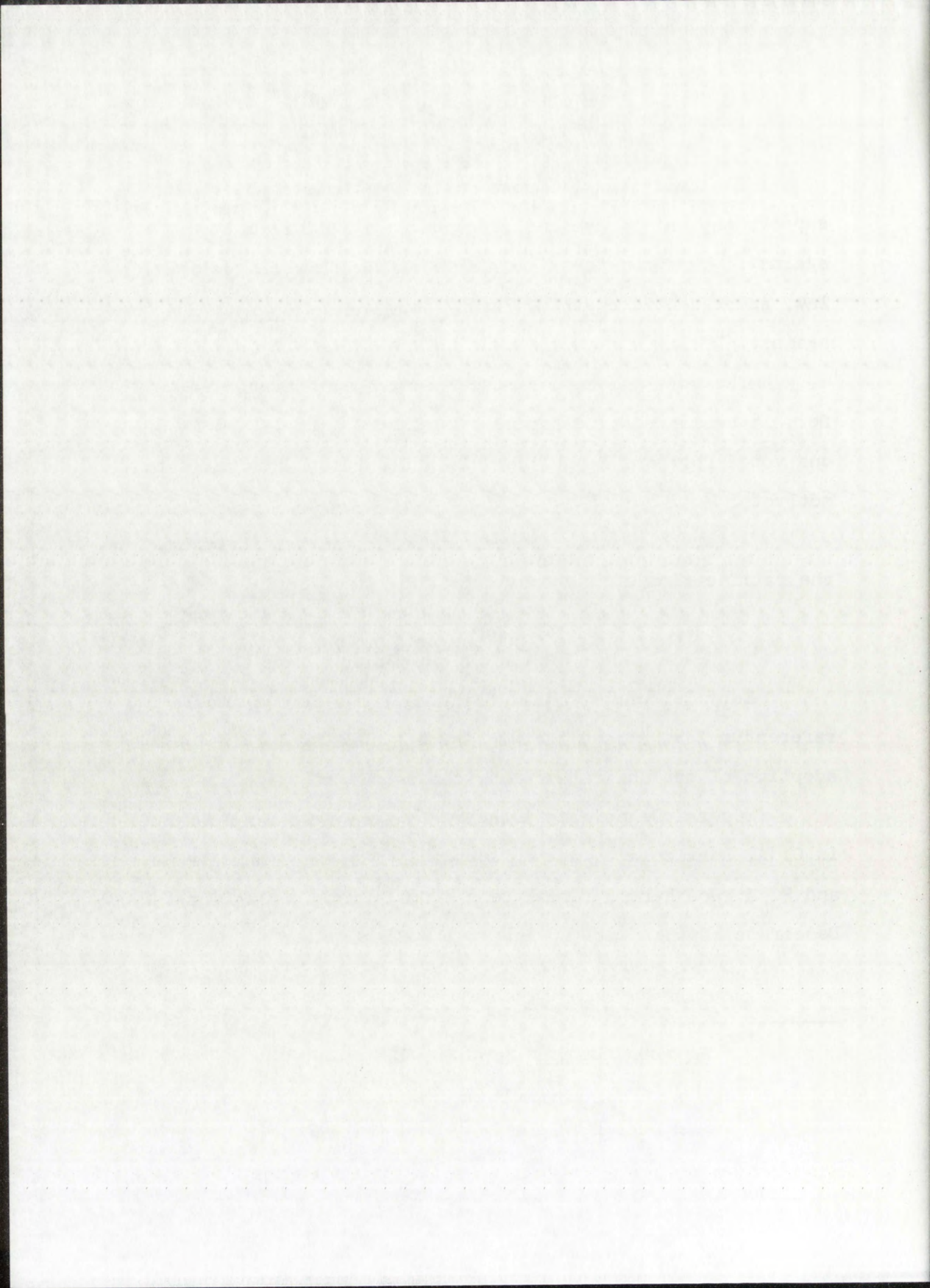
Several Democratic leaders, on the other hand, including O. A. Larrazola, a man influential with the Spanish vote, and H. M. Dougherty, threw their efforts into persuading the Democrats of the state to accept the Constitution.

Much dissatisfaction was expressed throughout the state

⁴³ Tribune Citizen, Sept. 8, 1910.

⁴⁴ Ibid., Oct. 28, 1910.

⁴⁵ Albuquerque Journal, Nov. 22, 1910.



over the adoption of the referendum and the reaction of the initiative. Many Republican and Democratic delegates received word from their home towns and their counties that the people disapproved of their action.⁴⁶ Dona Ana county had protests drawn up from all the precincts and forwarded to its delegates.⁴⁷ The names of Republican delegates who had been elected on the initiative and referendum platform were published.⁴⁸ The vote of each delegate was found, and the local communities prepared to force each delegate to explain his vote.⁴⁹ Such an attitude on the part of the public indicates that it was very much dissatisfied with the action of the Convention.

The vote of the people on the Constitution was overwhelmingly for its acceptance. Since the referendum question was only one of many issues connected with the Constitution, the people sacrificed their feeling regarding it in order to raise no barriers to statehood.

⁴⁶ Tribune Citizen, Nov. 1, 1910.

⁴⁷ Ibid., Oct. 29, 1910.

⁴⁸ Ibid., Oct. 31, 1910.

⁴⁹ Loc. cit.

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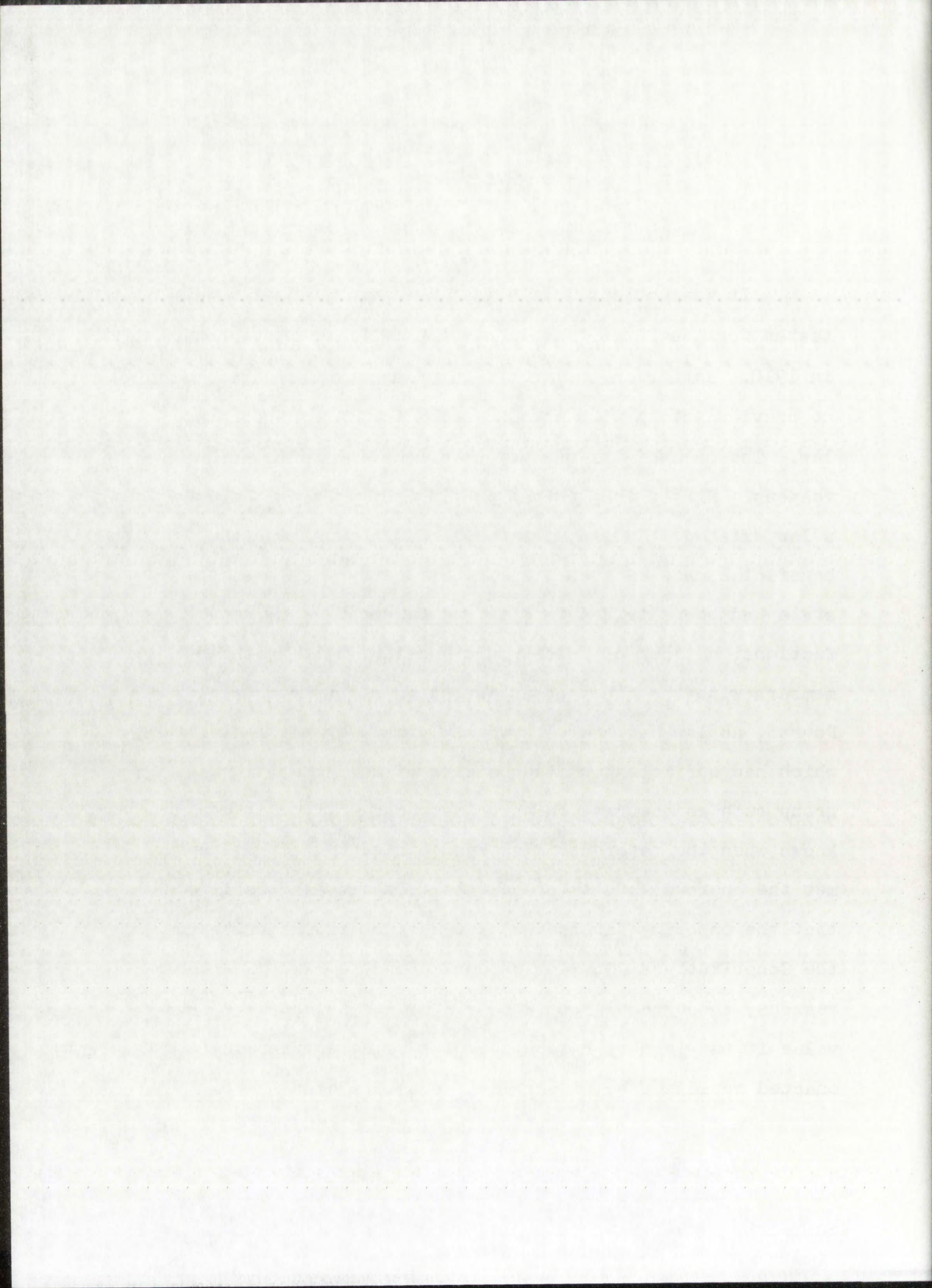
raise no barriers to its adoption.

- 60. Eugene Gilman, Nov. 1, 1910.
- 61. Ibid., Oct. 29, 1910.
- 62. Ibid., Oct. 31, 1910.
- 63. Ibid., Oct. 31, 1910.

CHAPTER III

LEGAL TESTS OF THE REFERENDUM LAW

It was not until 1929 that the referendum law was tested for the first time in our courts after its adoption in 1910. As far as the writer can discover there had been no previous state-wide consideration for attack upon the law. The lack of its use may have been due to several reasons. First, the general public did not know that such a law existed. Second, the people did not realize the beneficial uses of such a law. Third, the people of the state had been divided into strong Democratic and Republican factions, neither of which would consider uniting their members with the other on any question of importance. Fourth, no law had been previously passed by the Legislature which had sufficient united backing of any non-political group such as occurred in this instance. Fifth, it was known when the referendum law was enacted that it had not met the approval of its proponents. It was also realized that the opposing faction had, because of its majority in the Constitutional Convention, drawn up the law. For these reasons, those people who knew of the law and realized its value if put into operation, perhaps believed that the law enacted would not be effective if put to a court test.



The successful legal test of the law in 1929 and the successful referendum vote upon the law in question led to the second and last court test in 1937. This test and the subsequent election again proved that the law was operative and that the people of the state were willing to use measures of popular control if the occasion demanded.

It will be necessary to discuss these test cases in detail in order to understand fully the problems facing the people of New Mexico in regard to the legal use of the referendum law; and to understand the enthusiastic response of the people to the court's decision.

Part I

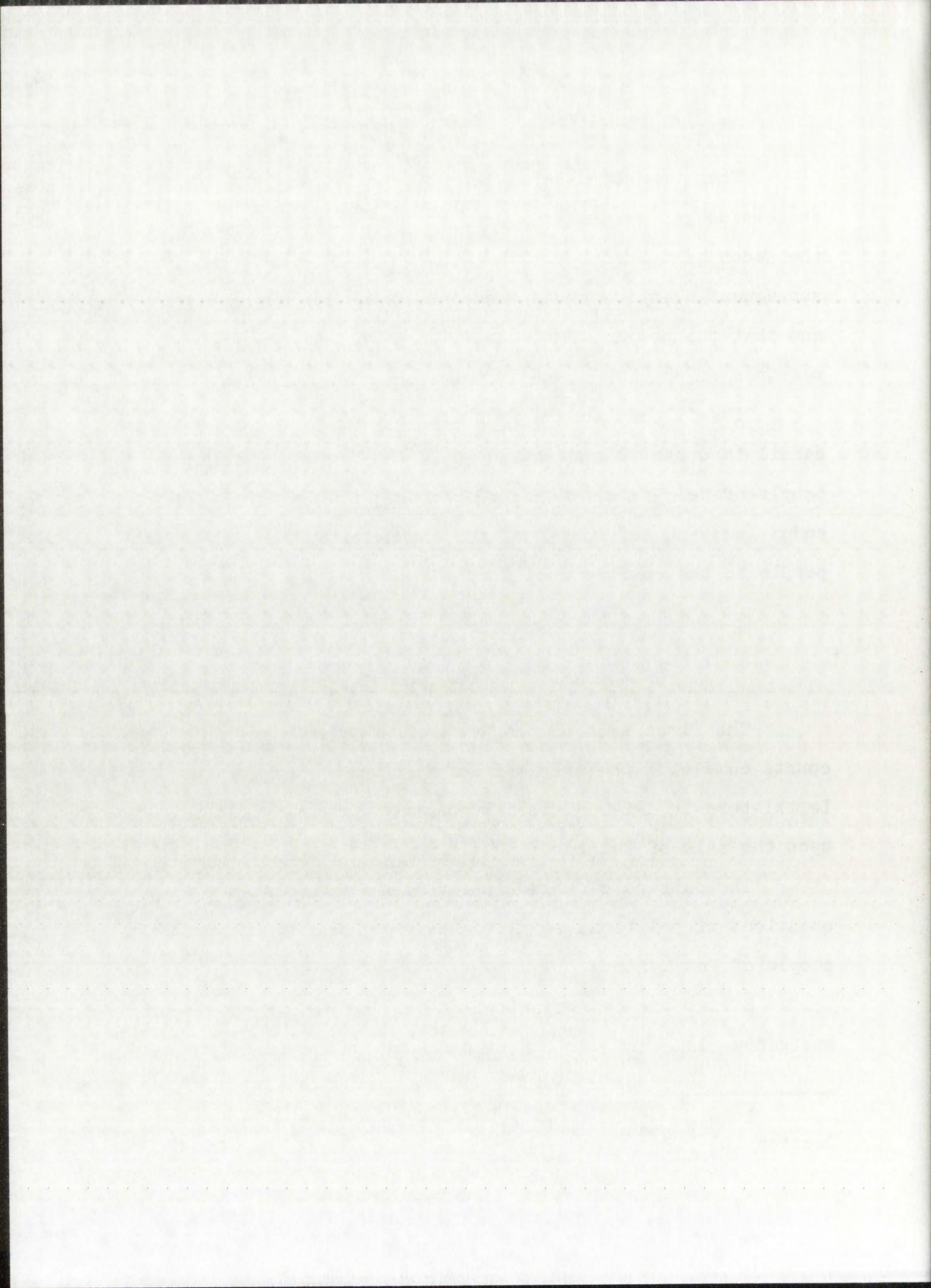
State v. Perrault

The first test of the New Mexico referendum law in the courts came with the enactment of the Tobacco Law by the Legislature in 1929. This law provided for an excise tax upon the sale of tobacco.¹

The passage of this law revealed two important questions of political significance which should interest the people of New Mexico:

First, the determination of our legislature to use the emergency clause of our Constitution to insure immediate

¹ New Mexico Statutes, Annotated, 1929, Chapter 143, Section 101-113.



operation of the law against a possible referendum against it; and second, the first test of the referendum law in court.

The Fight Against Enactment of the Law

The first passage of the law aroused opposition among the tobacco companies and also among the tobacco users. The tobacco companies opposed the law as the added tax would raise the price of tobacco and thus possibly reduce the sales. The users opposed it on the grounds that it would raise the price of the luxury.

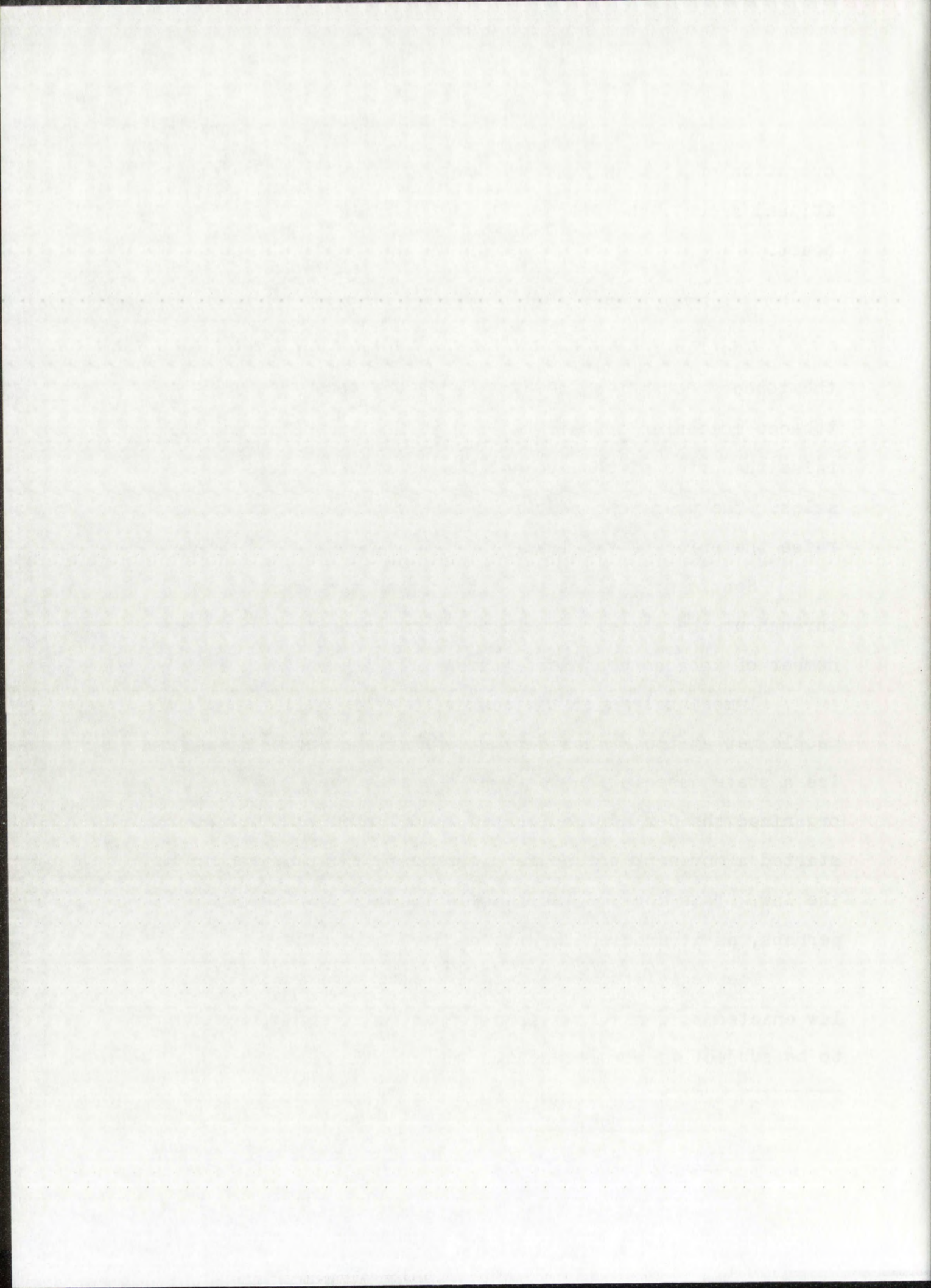
Sentiment against the bill spread very rapidly throughout the state. Public opinion, because of the large number of tobacco consumers, was easily aroused.

Immediately upon the passage of this bill the tobacco people met at the Franciscan Hotel in Albuquerque² to organize a state association to fight the measure. They organized the New Mexico Tobacco Association. It immediately started a movement to secure signatures for a referendum on the law. This move of the Association was a bit hasty, perhaps, as it aroused the ire of the legislature.

The legislature was determined to have a tobacco tax law enacted so a new law was drawn up which was believed not to be subject to a referendum.³

² Albuquerque Journal, April 6, 1929.

³ Ibid., April 9, 1929.



The Senate first passed a new tobacco tax bill which contained the emergency clause so as to prevent a referendum.⁴ The bill also diverted a part of the revenue to the school fund and divided the collection of the revenue between the State Treasurer and the Secretary of State. Either of these two additions to the law, it was believed, would make the referendum law ineffective as the Constitution prevents the reference of a law dealing with the issuance of funds for the maintenance of the public schools or for state institutions.⁵

The House balked at the emergency clause but sent the money to the school fund,⁶ which gave the same result.

The determination of the legislature to enact this law, contrary to public opinion, should be of particular interest to students of government and also to the voters of the state; also, the effort to attempt an unethical use of the emergency clause is due special public notice.

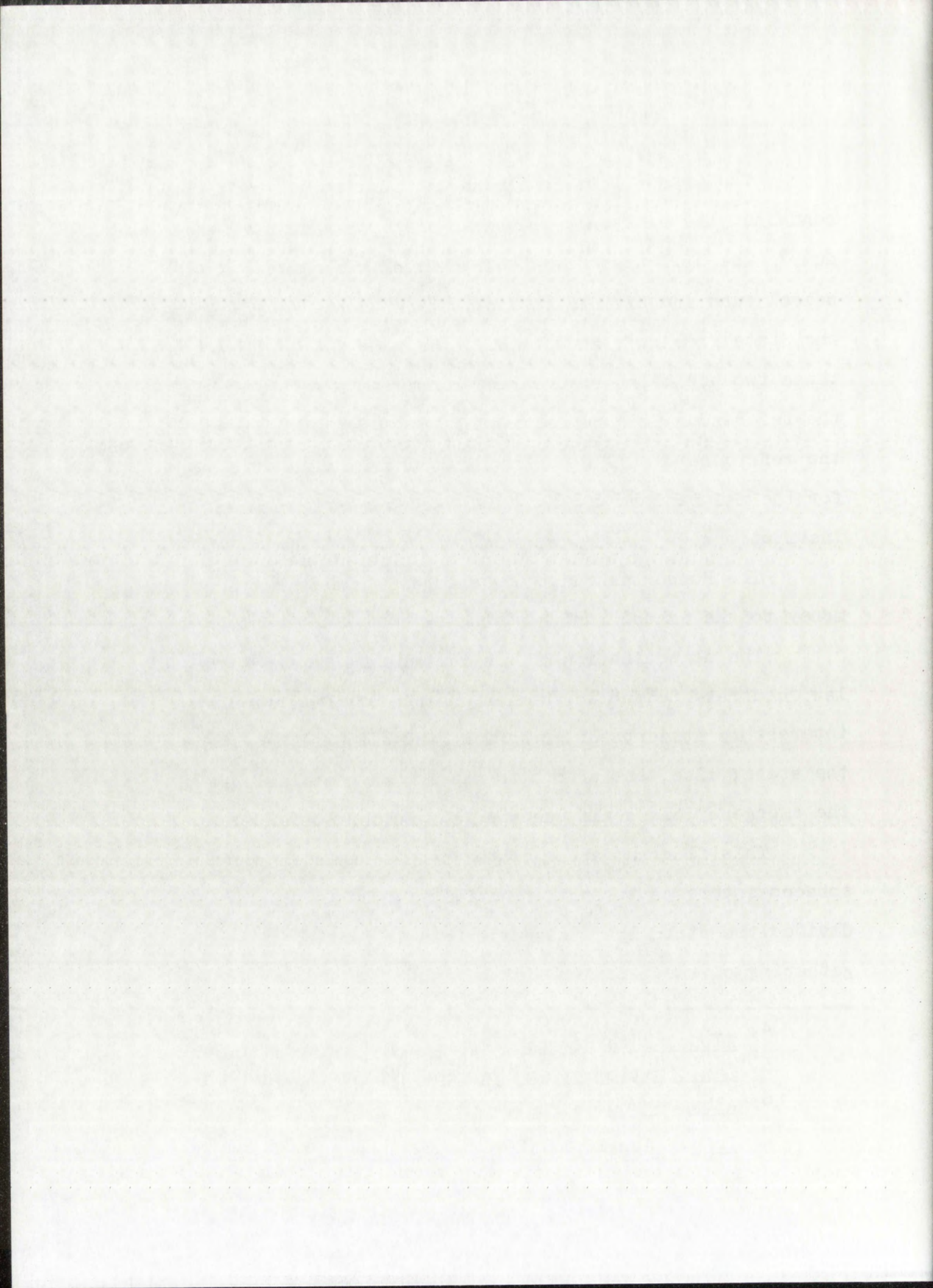
This flagrant abuse of the people's wishes spurred the tobacco interests to further activity. The Association divided the state into four districts to facilitate easier gathering of the petition signatures.⁷ The Association

⁴ Albuquerque Journal, April 9, 1929.

⁵ Constitution of New Mexico, Article IV, Section 1.

⁶ Albuquerque Journal, April 9, 1929.

⁷ Ibid., April 9, 1929.



decided not only to obtain the ten percent of voters necessary to require a referendum vote,⁸ but also to obtain the 25 percent necessary to make the law inoperative until the vote had been taken.⁹ Twenty-five percent of the voters, it was determined, was 35,000.¹⁰

A very large percent of the people in New Mexico at this time did not know the state had a referendum law. Many who did know of the law were not aware of its value. Through the work of the Association and other interests the public was awakened to this new power in their hands. The Association sent out workers throughout the state to check the signatures and to spur on the movement. As a result, signatures were rapidly secured to the referendum petitions.

Although the first definite move to circulate the petitions was begun about April 23,¹¹ by May 12 there were 25,000 signatures.¹² Las Vegas alone secured 800 in one day.¹³ By June, it was estimate that there was an excess of about 5,000 names.¹⁴

⁸ Constitution of New Mexico, Article IV, Section 1.

⁹ Loc. cit.

¹⁰ Albuquerque Journal, April 6, 1929.

¹¹ Ibid., April 23, 1929.

¹² Ibid., May 12, 1929.

¹³ Loc. cit.

¹⁴ Ibid., June 5, 1929.

decided not only to obtain the support of voters, but also to register a referendum vote, but also to obtain the support necessary to make the law operative until the

... and then again, the referendum was held in the winter of 1900, the 12th day.

A very large percentage of the people in New Mexico at

the time did not know the state had a referendum law.

They did not know of the law and had no idea of the value.

Through the work of the Association and other interested parties

public was awakened to this new power in their hands. The

Association sent out writers throughout the state to check

the situation and to put on the movement. As a result

signatures were rapidly secured to the referendum petition.

Although the first definite move to circulate the

petition was begun about April 18, by May 12 there were

25,000 signatures. The Vegas alone secured 500 in one

day. In June it was estimated that there was an excess

of about 5,000 names.

Organization of the Association, Article 17, Section 1

and also

Association, Article 17, Section 1

1914, April 20, 1920

1914, May 12, 1920

1914, June 12, 1920

1914, June 12, 1920

The reason for this large number of signatures was twofold: first, to prevent the Tobacco Law from going into effect, and, second, to test the use of the referendum law. This was probably the stronger of the two reasons. The public was demanding a trial of their newly discovered weapon against unpopular legislative measures.

Whether the outcome of the petitions was favorable or not, it would at least test, it was explained, for the first time the practical use of the referendum law.

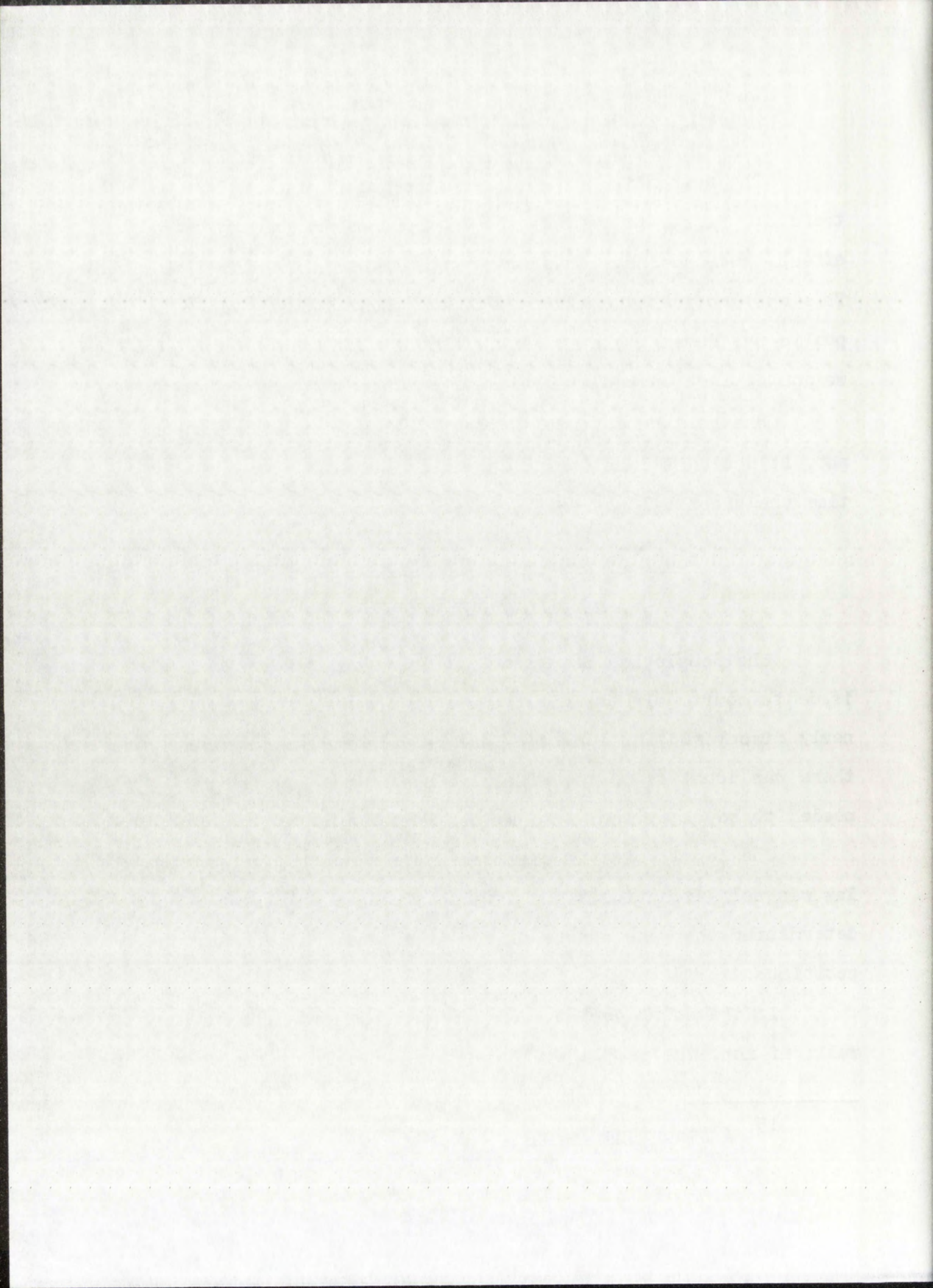
Doubt of Self-executing Provision
of Referendum Law

The people had determined to bring the referendum issue to court. In the first place they wanted to use this newly discovered instrument of theirs. In the second place there was doubt as to the effective use of the law, which needed to be clarified.

The legal point in question was whether the referendum law was self-executing. The law contained no provisions for determining the genuineness of the signatures to referendum petitions.¹⁵

If the court declared in favor of the law, all was well; if not, the people would see about remedying the defect.

¹⁵ Albuquerque Journal, May 30, 1929.



Ruling of the Attorney General

An advanced opinion was asked of Attorney General Otero. In a ruling to the Secretary of State, Mrs. Perrault, he said that the provisions of the Constitution and election laws were sufficient for the submission of referendum petitions to the Secretary of State.¹⁶

Petitions carrying 38,091 signatures were presented to Mrs. Perrault.¹⁷ She was not certain as to what action she should take; so she again asked the Attorney General for advice. It was imperative that she have this legal ruling immediately. The Tobacco Law was to go into effect on May 8,¹⁸ but the arrival of the referendum petitions left her in doubt as to the right course to pursue.

Mr. Otero ruled¹⁹ that there was no law for checking the validity of the names on the petitions and that all she could do was to count the names to see that the required number was there. If any names were found to be illegal, it would be up to the District Attorney in each district to prosecute. All that Mrs. Perrault could do if the required number of names were there was to declare the law inoperative and let the law take its course.

¹⁶ Albuquerque Journal, May 2, 1929.

¹⁷ Ibid., June 8, 1929.

¹⁸ Ibid., May 8, 1929.

¹⁹ Loc. cit.

As the result of this ruling by the Attorney General, the Secretary of State issued a statement to Governor Dillon that the law was inoperative.²⁰ Furthermore, since 25 percent of the voters of the state had signed petitions representing three-fourths of the counties, the law was suspended until it was voted upon.²¹

District Court Action

The first move to contest the referendum law in the courts was made by District Attorney Kenney of Santa Fe, who brought suit in the court at Santa Fe.

Mr. Kenney stated that he did not believe that the Tobacco Law should be held inoperative under the referendum clause of our Constitution without its being declared so by the court. The ruling of the Attorney General should be tested in court action.

The District Court, Judge Halloman presiding, upheld the ruling of Judge Otero that sufficient signatures had been obtained to suspend the law until the next election.²²

Ruling of the State Supreme Court

The New Mexico Tax Payers Association, in order to

²⁰ Albuquerque Journal, June 9, 1929.

²¹ Constitution of New Mexico, Article IV, Section 1.

²² Albuquerque Journal, December 18, 1929.

determine whether the referendum provision could be put into effect without further referendum machinery provision, appealed the case to the State Supreme Court in the Case of State V. Perrault. In its decision on this case the court held that:²³

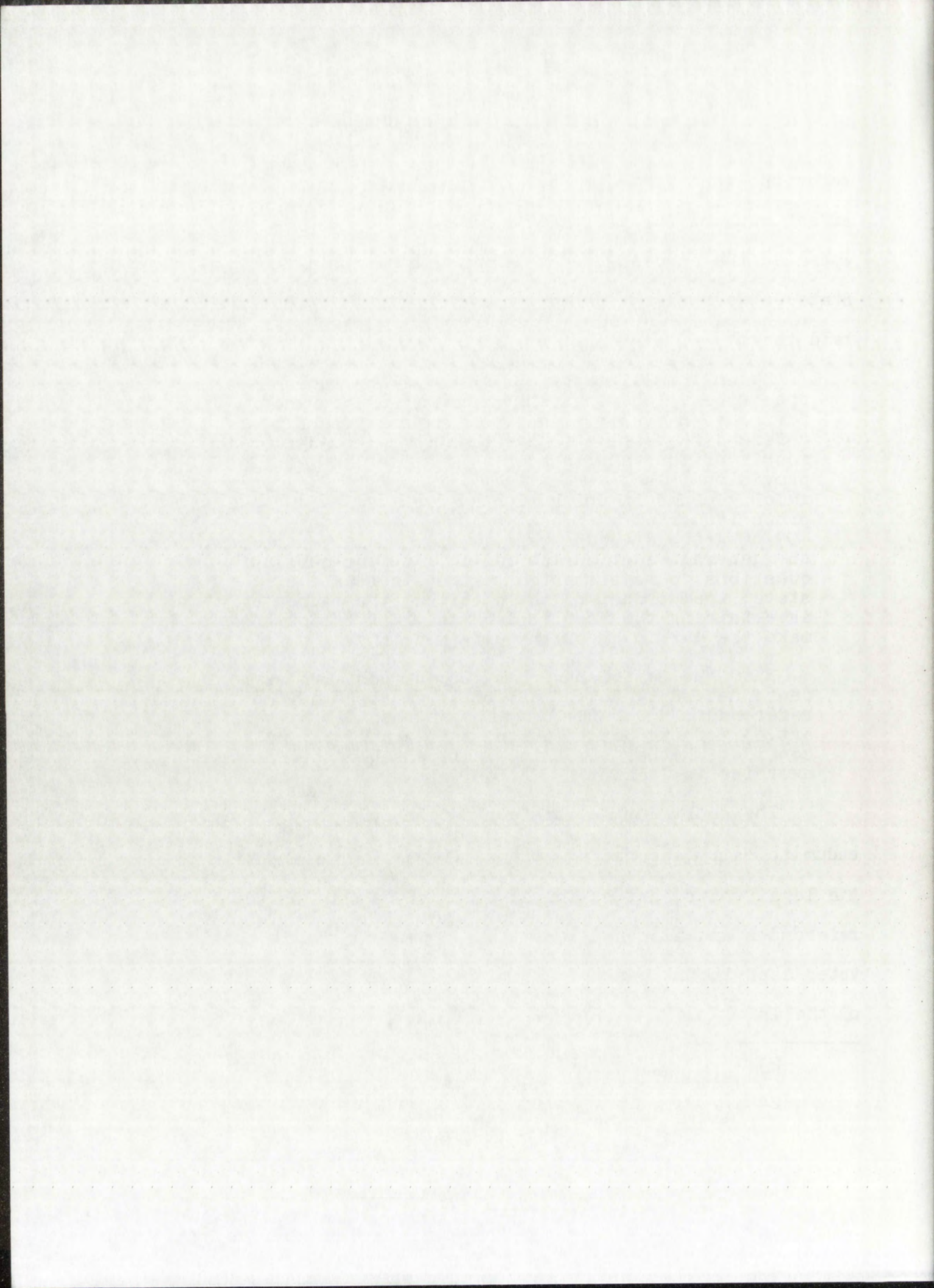
By an intelligent application of the rules prescribed, the necessary machinery is provided; . . . furnishes necessary laws to effectively submit the referendum question to the electorate and declare the result of the vote thereon . . . The Constitutional provision is self-executing if it applies necessary rule by means of which rights given may be enjoyed and protected or duty imposed enforced. Sections 401 and 409 of Article 4, Chapter 41, Laws of 1927 state that the general election law relating to the submitting of questions to be presented to the electorate of the state, the conduct of the election, the manner of ascertaining the result, and the artification thereof make the law in question self-executing.

When the Legislature has passed such laws as it deems necessary to the effective exercise of the referendum, under the duty imposed upon it by section 1, art. 4, of our Constitution, this court will only consider whether something indispensable to effective exercise is lacking.

The court further stated that in order for the referendum to carry, according to law, it requires a majority of the legal votes cast at the election to be cast on the referendum and also not less than 40 percent of the total votes cast in the general election cast for the rejection of the law.²⁴

²³ Albuquerque Journal, December 18, 1929.

²⁴ State v. Perrault, 34 N. Mex., 438.



Importance of the Decision

The importance of this decision to the State of New Mexico was:

First, it definitely gave the people a means of controlling future state legislation.

Second, it definitely proved our referendum law workable as it stood.

The Referendum Vote

Chart V shows the complete result of the referendum which was voted upon at the election on November 4, 1930.²⁵ According to the law which requires that not less than 40 percent of the total number of votes cast must be cast for the rejection of the law in question,²⁶ the Tobacco Law was overwhelmingly defeated. The percentage vote of the total vote cast for officials to those cast for the referendum was 51 percent.²⁷

Significance of the Vote

This vote revealed that the people in New Mexico were:

First, definitely opposed to the law.

Second, determined to use the referendum if forced to do so.

²⁵ New Mexico Blue Book, 1931-32.

²⁶

²⁷ New Mexico Blue Book, 1931-1932.

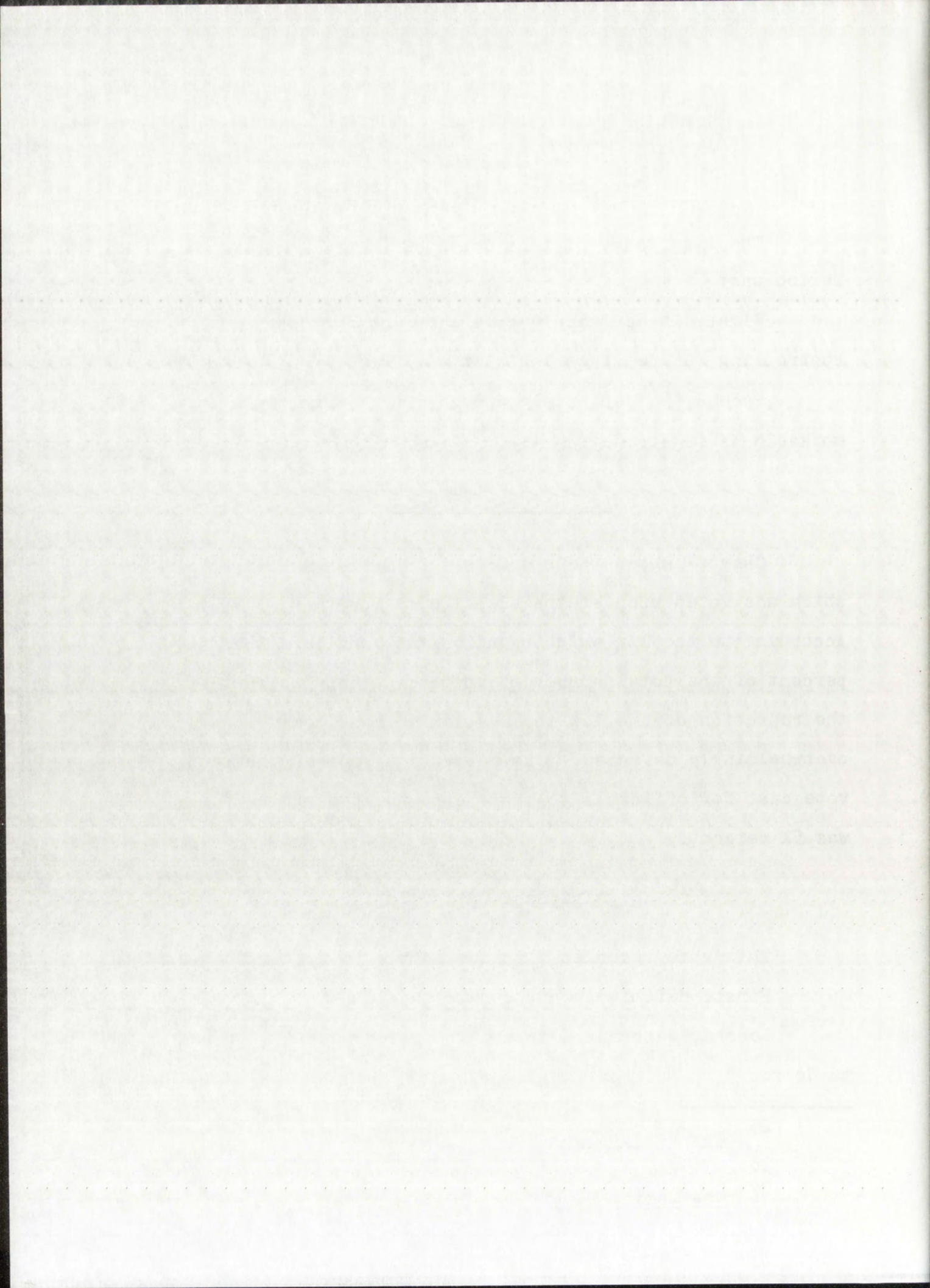


CHART V

VOTE ON THE TOBACCO REFERENDUM LAW, 1931-1932

County	For	Against
Bernalillo	1164	6543
Catron	99	642
Chavez	755	286
Colfax	690	2564
Curry	505	1485
De Baca	101	709
Dona Ana	630	1624
Eddy	387	1285
Grant	323	1906
Guadalupe	62	295
Harding	138	1122
Hidalgo	187	366
Lea	141	927
Lincoln	175	1437
Luna	242	788
McKinley	220	948
Mora	208	1563
Otero	230	1232
Quay	278	1471
Rio Arriba	118	3367
Roosevelt	241	1318
Sandoval	79	1175
San Juan	351	1082
San Miguel	365	3680
Santa Fe	470	3123
Sierra	128	1279
Socorro	122	1800
Taos	125	2093
Torrance	458	1814
Union	437	1693
Valencia	226	1781
Total	9655	51898

Part II

Hutchenson v. Gonzales

The second and last referendum issue to be brought before the people of New Mexico resulted from the Legislature on March 15, 1937 calling a special election to be held September 21, 1937 to vote on the following proposed amendments to the State Constitution:²⁸

Amendment I. To pass an absentee voting law.

Amendment II. To authorize a bond issue for \$1,250,000 for various state institutions for building purposes.

Amendment III. To remove the limit of two terms on the number of terms for county officials.

Amendment IV. To remove the limit of two terms on the number of terms for state officials.

Amendment V. To increase the legislators' pay from five to ten dollars per day.

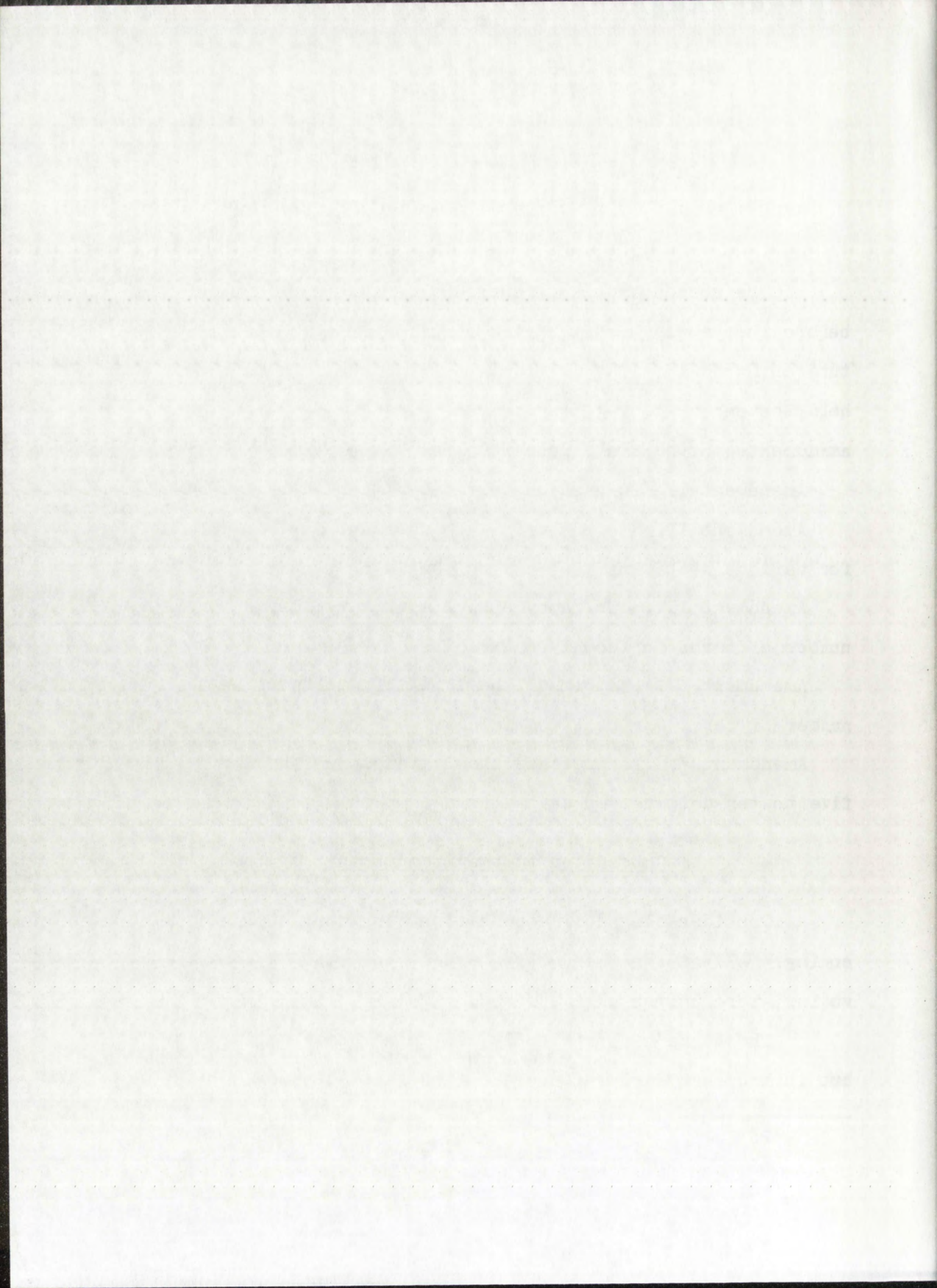
Opposition to the Amendments

Considerable public opposition was immediately forthcoming. All of the amendments, except the one for absentee voting, were universally opposed.

The state had previously had an absentee voting law but it had been declared unconstitutional. If the

²⁸

New Mexico State Laws, 1937, Chapter 117.



opposition to the other amendments had not been so heated, it is very possible that a definite campaign for the absentee law would have been initiated. As it was, the entire state seemed only interested in defeating the other four amendments.

The amendment providing for the bond issue was opposed generally for the reason that the people believed that they were taxed heavily enough at the present time, and that they were convinced that the state institutions could struggle along with their present facilities.

The amendment for an increase in legislators' pay was likewise opposed, seemingly, for the same reason. Several newspaper editorials at times indicated that a raise in pay would aid in attracting better trained or qualified men to serve as legislators. This amendment, like the first, might have been pushed if it had not been for its also being overshadowed by opposition to amendments two and three.

Amendments three and four to remove the two year restriction on county and state officers²⁹ received united opposition from both the Democratic and Republican ranks. These amendments attracted the most popular interest because they involved the control of the state Democratic organization.³⁰

²⁹ Constitution of New Mexico, Article V, Section 1.

³⁰ New Mexico Business Review, "The New Mexico Special Election of 1937 on Constitutional Amendments," Thomas C. Donnelly, p. 164.

The Democrats Split on the Issue

The Democratic party split on the issue, although it was the state Democratic administration which had sponsored the amendments.

One faction of the Democratic party, the one under the leadership of the incumbent governor, Clyde Tingley, sponsored the amendments. The other two factions of the party, led by Senator Dennis Chavez and Congressman J. J. Dempsey, respectively, singled out amendments three and four, in particular to defeat.³¹

Senator Dennis Chavez and Congressman J. J. Dempsey opposed all of the amendments but the one for absentee voting.

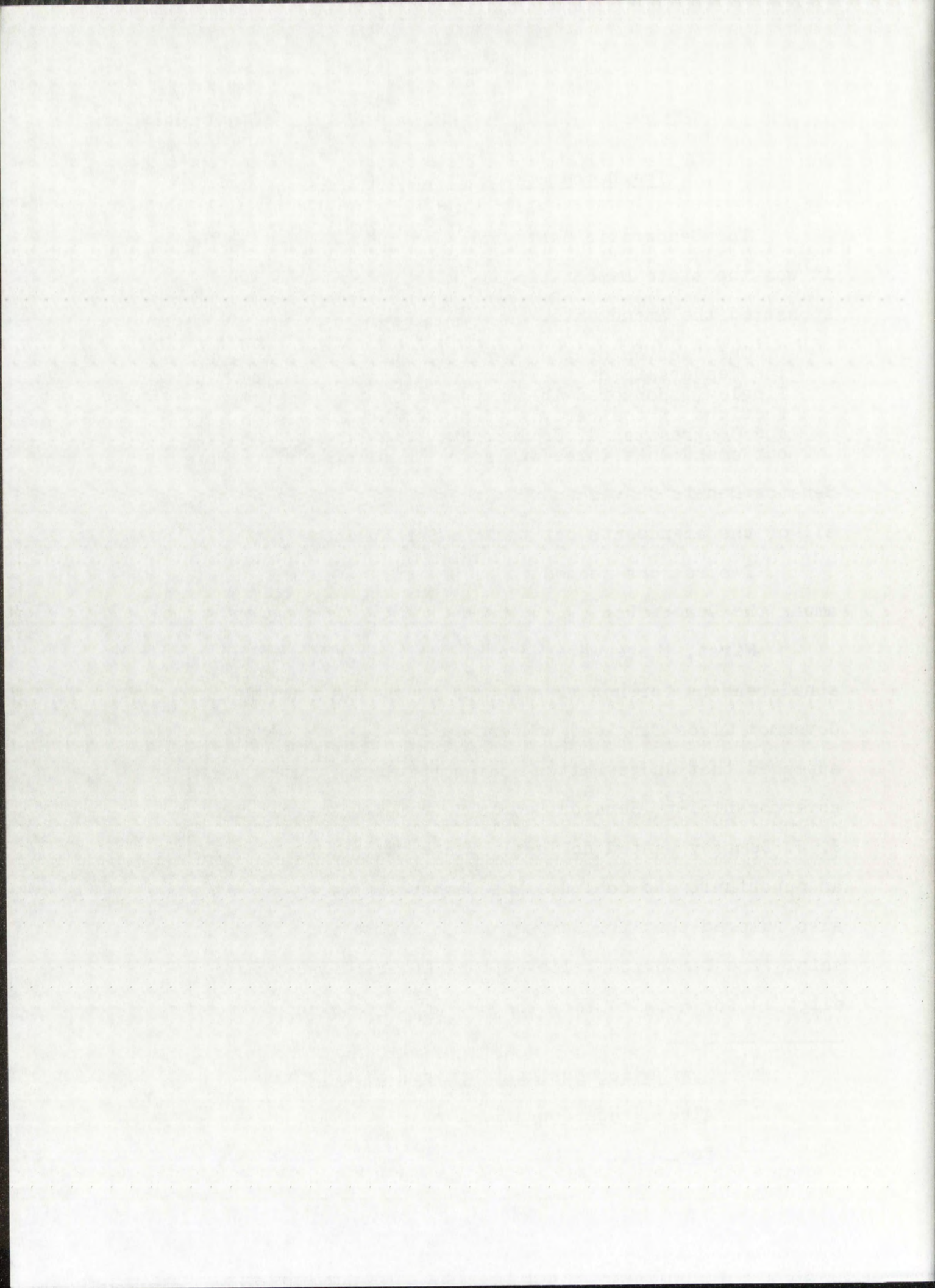
Two reasons seemed to be the cause for this division among the Democrats.

First, there were several in the party who had personal reasons for not wishing the group in power, led by Governor Clyde Tingley, to perpetuate itself in office. It appeared that Judge Patton had aspirations for the next governorship.³² Senator Dennis Chavez and Congressman J. J. Dempsey wanted no legal change so that they could have an opportunity to dominate the Democratic party.³³ It was also rumored that Mr. Dempsey had a desire for the governorship. The Democrats believed that if Mr. Tingley were eligible for a third term that he would be elected over any

³¹ New Mexico Business Review, op. cit.

³² Albuquerque Journal, April 28, 1937.

³³ Loc. cit.



other Democratic aspirant. Congressman Dempsey and Senator Chavez have usually been on the opposite side of the political fence from Governor Tingley and they had no desire to see Governor Tingley's leadership continued for another term.

Second, the Republicans, although not openly opposing the amendments to any great extent, sided with the Chavez-Dempsey faction (1) to be assured that the Tingley group would not perpetuate itself, (2) to aid in splitting the Democratic party.

The Referendum Move to Prevent the Special Election

As a result of the overwhelming opposition to the amendments, a referendum petition movement was started to prevent the Special Election in September. The first move was made by Attorney General Frank A. Patton³⁴ with the organization of the Anti-Special Election League. He believed that it would be easier to obtain the 25 percent of signatures of the electors in three-fourths of the counties necessary³⁵ to prevent a law from going into immediate effect, which, in this case, would suspend the Special

³⁴ Albuquerque Journal, April 28, 1937, and Albuquerque Tribune, April 29, 1937.

³⁵ Constitution of New Mexico, Article IV, Section 1.

other persons' interests. Compensation benefits are provided
 covered have usually been on the opposite side of the
 political fence from government, industry and they had no desire
 to see government interests identified with another

party.
 Because the Administration, although not strictly opposing
 the interests of any one group, sided with the Chamber
 of Commerce (1) to be assured that the right to
 work was protected (2) to aid in establishing the
 democratic party.

The National Labor Relations Board
 as a result of the overwhelming opposition to the
 Administration, a referendum poll, for instance was started to
 prevent the Federal Election Commission. The final vote
 was made by Attorney General Frank A. Besson³ with the
 organization of the Anti-Federal Election Commission.
 Believed that it would be easier to obtain the 50 percent of
 signatures of the electors in these States of the nation.
 necessarily to prevent a law from going into immediate
 effect, which, in this case, would annul the Special

¹ Administrative Journal, April 20, 1937, and
 Administrative Journal, April 20, 1937.
² Constitution of the United States, Article IV, Section 1

Election Law until the regular election time, than it would be to control the election itself. A petition to suspend the law must contain approximately 43,450 signatures.³⁶

If the petition were successful, the election would come at the regular November election (1937), too late for the administration in power to formulate an active campaign.

The Special Election Law did not have the emergency clause attached or it could not have been referred to the people.³⁷

The Fight Between the Democratic Factions

The extent to which the Democratic party was divided over the amendments was seen in the forthcoming referendum fight.

Senator Chavez and Congressman Dempsey were immediately outspoken against the amendments as a whole and were for the referendum.

Ideas as to the use of a referendum were expressed by State Democratic Chairman John E. Miles when he said that our government calls for a vote by a majority of the people and that a referendum by 25 percent of the people would defeat this. He went on to state, "the referendum was designed to

³⁶ Albuquerque Tribune, May 3, 1937.

³⁷ Constitution of New Mexico, Article IV, Section 1; also see Article IV, Section 23. Regular acts of the legislature go into effect ninety days after adjournment.

Electoral law and the right of suffrage

be a matter of course

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guarantee this very right, but now by political trickery it is to be made a weapon to disfranchise the voters and in effect to deny them the right of referendum."³⁸

Personalities in the Fight

In Bernalillo County, John Flaska, County Democratic chairman, started circulating counter-petitions to those for the referendum in an attempt to force the withdrawal of petitions presented to the Secretary of State.³⁸ This policy was taken up in other places. Many people who had previously signed referendum petitions decided to withdraw their names in order to have petitions withheld for lack of signatures.

The fight became so heated that Mr. Flaska threatened to publish the names of the signers to the referendum petitions. He stated that the reason was to expose fictitious names.³⁹

Judge Patton assailed Mr. Flaska and said that he was attempting to intimidate the people to prevent signatures to the petitions.⁴⁰

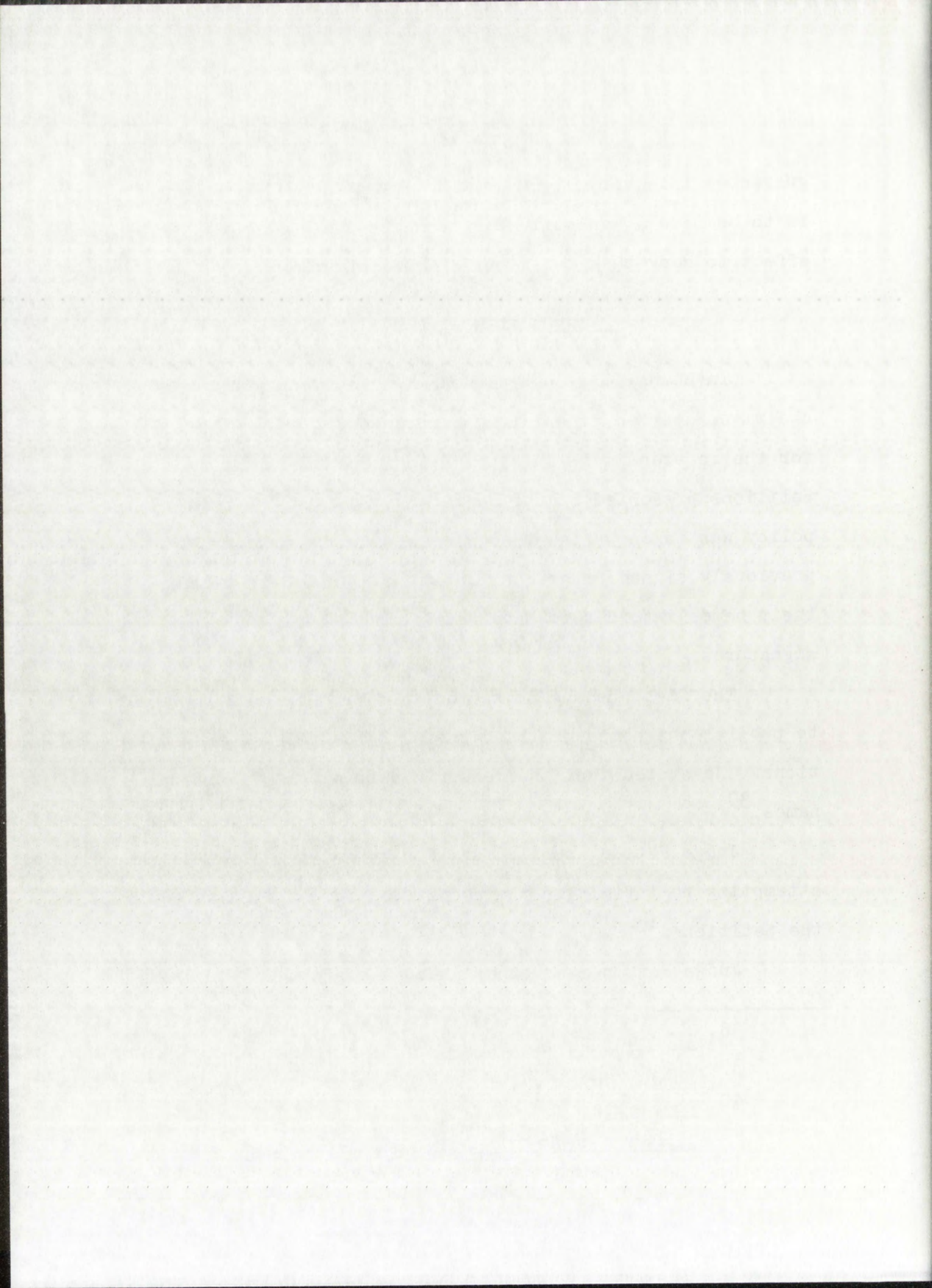
Judge Patton made other charges against Mr. Flaska.⁴¹

³⁸ Albuquerque Tribune, June 4, 1937.

³⁹ Ibid., May 17, 1937.

⁴⁰ Loc. cit.

⁴¹ Albuquerque Tribune, May 17, 1937.



He said that an "uniformed man" obtained petitions "on an order signed by me" (Patton); a Democratic county chairman (Flaska) took possession of "some of our petitions and refused to give them up; an offer of fifty dollars was made to one of our (referendum) workers for a number of signed petitions;" the wife of one of our (Patton's) workers was discharged from a Federal position because he was too active about petitions. Patton stated further⁴² that petitions carrying 2,500 Curry County names were in the possession of Walter Mayes, Clovis postmaster, and that they have "refused to turn them over to us to be filed with the Secretary of State." "Anti-special election petitions were snatched from Jim Miller in Albuquerque," supposedly by Tingley men.⁴³

Governor Tingley refused to comment on these charges.⁴⁴ In fact, he was conspicuously inactive during the whole campaign, except in one or two instances.

He was reported to have said before the Junior Chamber of Commerce in Clayton that, "if Union County does not stand by me, I won't stand by Union County, and I'll see that every dime of road money is cut off for the county."⁴⁵ This published statement of Governor Tingley was denied by W. L. Adams,

42

Albuquerque Tribune, May 26, 1937.

43

Ibid., June 7, 1937.

44

Ibid., May 17, 1937.

45

Ibid., May 26, 1937.

he said that an "unpublished" or "obtained" petition for an
 order signed by me" (Benton) a "democratic county chairman
 (Crisp) had submitted" of "some of our petitions and
 received the same from me or other or other persons who made
 so one of our (petitioner) workers for a number of signed
 petitions; the wife of one of our (petitioner's) workers was
 discharged from a Federal position because he was too active
 about petitions. Benton stated further that petitions
 carrying \$500 County County money were in the possession of
 William Meyer, Chief Postmaster, and that they have threatened
 to turn them over to us to be filled with the Secretary of
 State. "Anti-Communist" election petitions were submitted from
 the Editor in Albuquerque, "supposedly by Thelma man."
 Governor Finley refused to comment on these matters.
 In fact, he was conspicuously inactive during the whole
 campaign, except in one or two instances.
 He was reported to have said before the Junior Chamber
 of Commerce in El Paso that, "All United County does not stand
 by me, I won't stand by United County, and still see that every
 drop of good money is cut off for the county." This was
 a statement of Governor Finley was handed by W. L. Adams.

ALBUQUERQUE TRIBUNE, May 26, 1937

Ibid., June 7, 1937

Ibid., May 19, 1937

Ibid., May 26, 1937

President of the Clayton Junior Chamber of Commerce, in the same publication.⁴⁶

Mr. Patton went so far as to say that highway workers, and other state employees have apparently been instructed to buy or steal and destroy all the petitions they can get their hands on.⁴⁷

Republican Participation

There was only slight activity shown by the Republicans. Letters on Republican Service League Stationery were being circulated asking Republicans to aid in having the petitions signed.⁴⁸ Republican State Chairman George R. Craig said that the Republican party would take no part in the contest over the election.⁴⁹

State Educational Institutions Participate

There was some activity shown by several of the state educational institutions in behalf of amendment two relating to issuance of state bonds.⁵⁰ The Board of Regents at the Silver City Teachers College first announced plans to start legal action to prevent the referendum. If the referendum

⁴⁶ Albuquerque Tribune, May 26, 1937.

⁴⁷ Loc. cit.

⁴⁸ Albuquerque Tribune, May 2, 1937.

⁴⁹ Ibid., May 25, 1937.

⁵⁰ Ibid., June 16, 1937, and June 17, 1937.

President

James Wilson

Sept. 27, 1787

Philadelphia

Dear Sir

I have the honor

to acknowledge

the receipt of

your letter of

the 25th inst.

and in reply

to inform you

that the same

has been

forwarded to

the proper

authorities

for their

consideration

and I am

very

truly

Yours

James Wilson

delayed the bond issue, even if voted upon favorably at the regular November election, money from Federal appropriations would be held up. Eleven other state boards entered the fight for the same reason.

Filing the Petitions

Although the fight against the petitions was very bitter, it proved very ineffective. On July 10 referendum petitions with approximately 33 percent of the state electors in thirty counties were filed with the Secretary of State. She announced that 58,682 names were listed. This was 14,000 more than was necessary.⁵¹

This certainly indicated that the people of New Mexico could take the signing of such petitions seriously if they so desired.

One argument of those opposing referendums is that the public does not take sufficient interest in such democratic innovations. That is not the case in New Mexico if this referendum issue is considered as an index of public interest.

Legal Status of Petitions

The first legal question (self-executing machinery)

⁵¹ Albuquerque Tribune, June 10, 1937.

delivered and bond taken, even if under a law which at the
regular November election would have been rejected.
about 25,000 of the 100,000 votes cast in the

light for the measure.

LEGAL BASIS OF PETITION

Although the fight against the initiative was
bitter, it proved very ineffective. On July 10, 1902,
petition with approximately 21 percent of the total vote
for in thirty counties were filed with the Secretary of
State. He announced that 28,482 names were filed. The
was 24,000 more than was necessary. In 1902, the
This certainly indicated that the people of New

Hampshire could take the signing of such petitions seriously.
If they so desired.

One argument of those opposing referendum is that
the public does not care sufficient interest in such
crisis investigations. That is not the case in New Hampshire.
This referendum issue is considered as an important

interest.

LEGAL BASIS OF PETITION

The first legal question (well-recognized)

is: Allegations of Fraud. June 10, 1902.

was the same as the one in State v. Perrault⁵² and was decided the same. Because of Attorney Patton's connection with the League he delegated First Assistant Attorney General A. M. Fernandez, to decide upon the filing of the petitions. Mr. Fernandez held that the special election law was not operative because of the referendum petitions; that the amendments could not be voted on until the next general election; that the Secretary of State cannot pass judgment on signatures on the petitions; that names cannot be stricken from the petitions after filing (the withdrawal petitions were therefore useless).⁵³ He stated further (1) that the Secretary of State has only a ministerial duty--not judicial, (2) that no money is provided for a Secretary of State investigation of signatures.

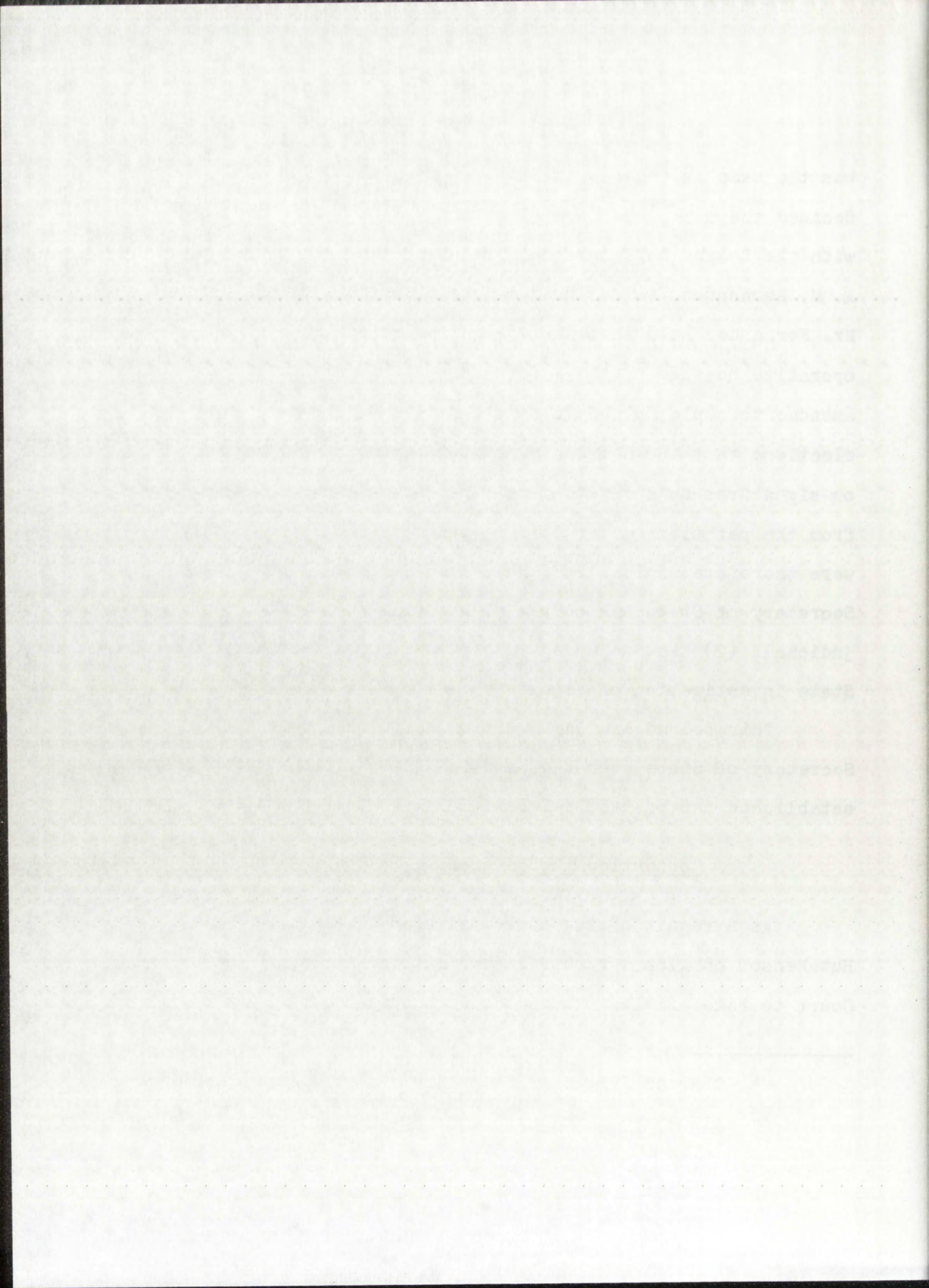
This second similar decision as to the power of the Secretary of State over the names of the petitions definitely established the present referendum law as self-operative.

Contesting the Referendum in Court

As a result of the above decision, Lester F. Hutchenson of Albuquerque filed a petition asking the Supreme Court to take original jurisdiction and issue a writ of

⁵² Chapter III, p. 52.

⁵³ Albuquerque Tribune, June 9, 1937.



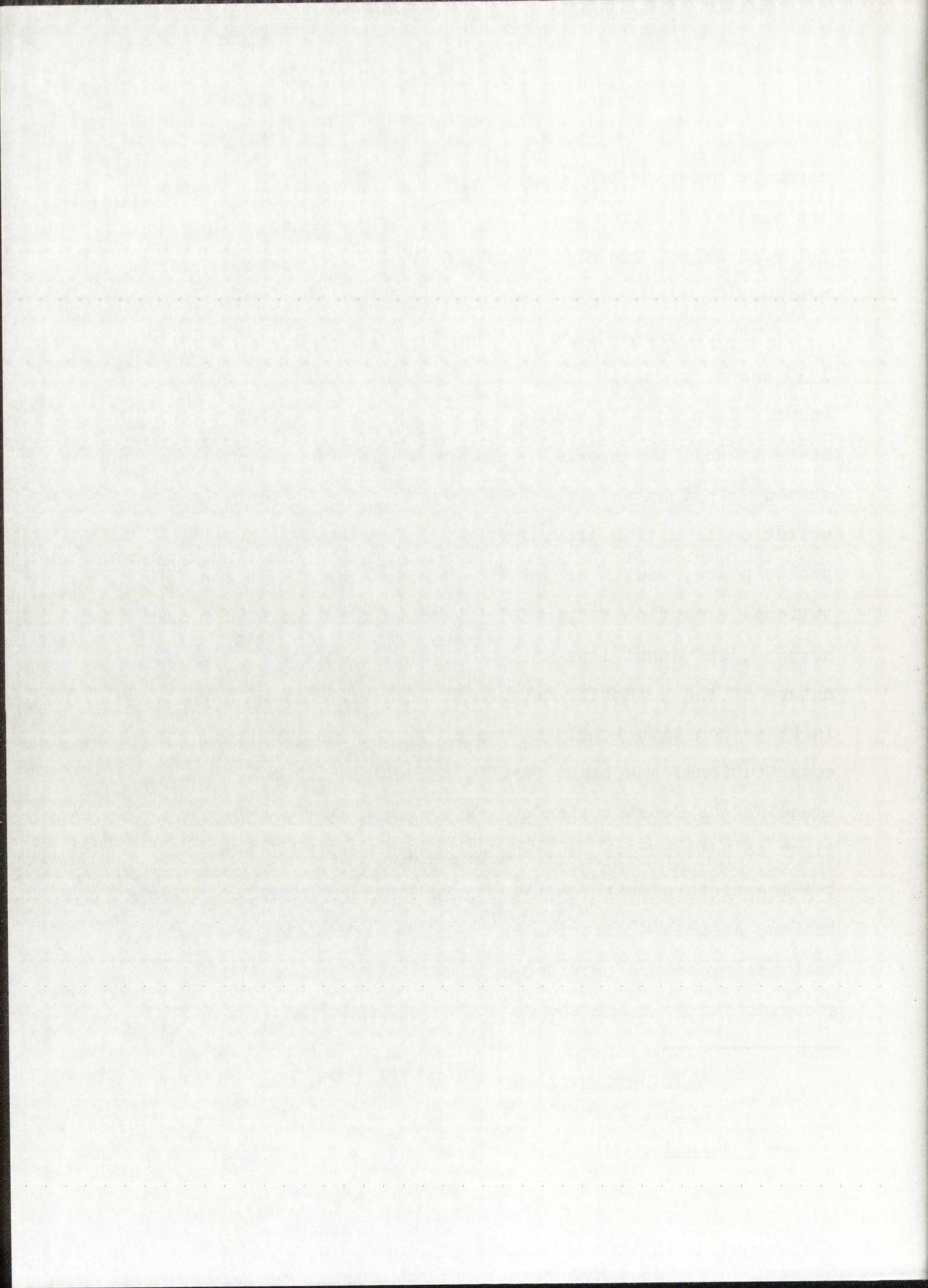
mandamus ordering the special election held. He said that the Special Election law of 1937 was a "special" statute and not referable. The Supreme Court set July 19 for the hearing.⁵⁴

The Supreme Court unanimously held that the law of 1937 was a "special" law and as such not subject to referendum. It granted a writ of mandamus to the Secretary of State to call the special election.⁵⁵ The Court further stated⁵⁶ that an act proposing amendment to the state constitution is a "law providing for the preservation of the public peace, health or safety" within terms of the constitutional exception to people's reserved right to disapprove, suspend, and annul laws enacted by the legislature. (2) The nature of the authority reposed in the legislature to initiate constitutional amendments is provided for in constitutional enactment permitting legislative method of amending the Constitution and reserving in the people the right to "disapprove, suspend and annul any law enacted by the legislature" with certain exceptions--New Mexico Constitution, Article 4, Section 1. (3) The court did not doubt that the procedure provided by the legislature in session as a convention to amend the Constitution, which directs

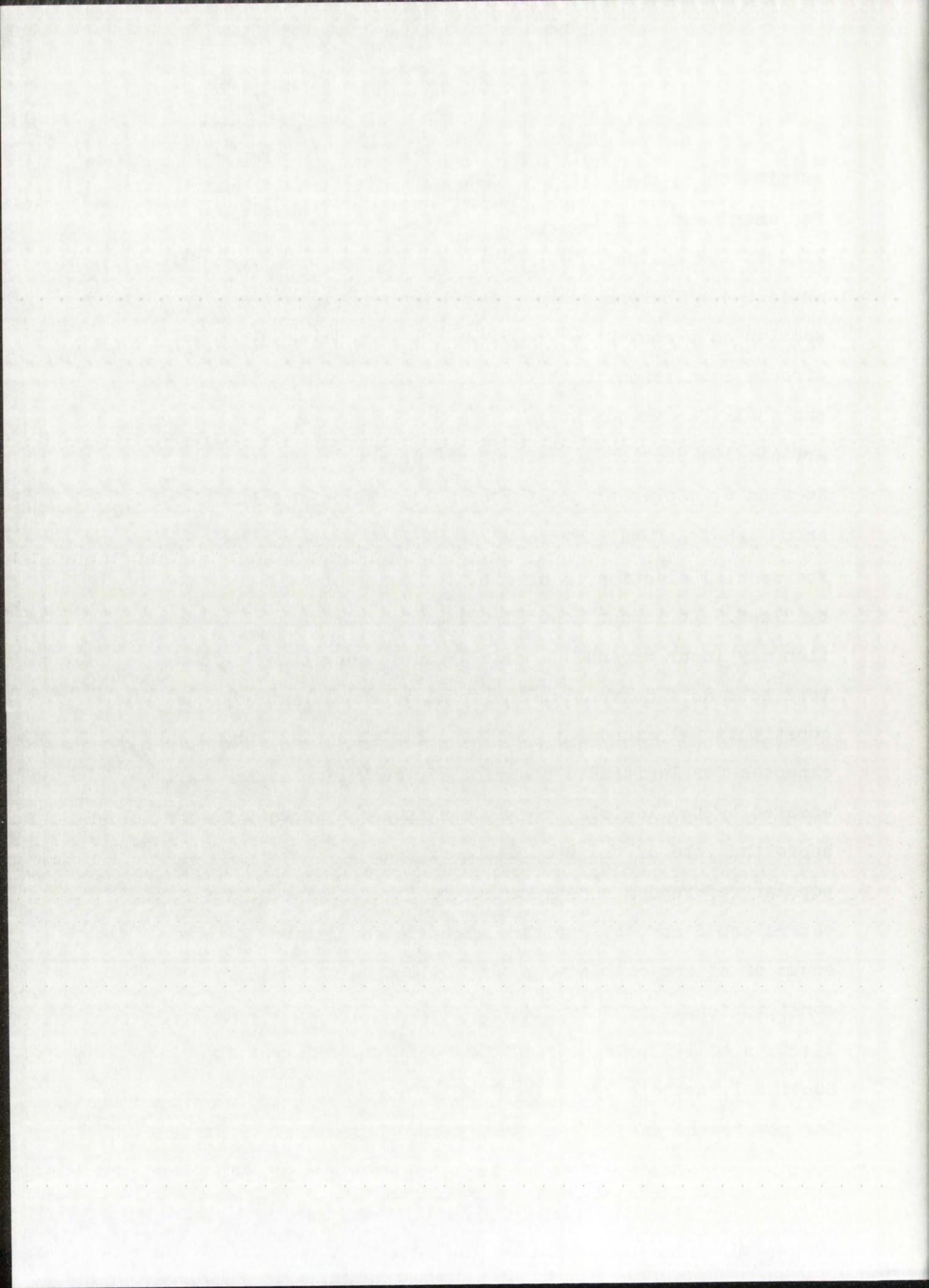
⁵⁴ Albuquerque Tribune, July 19, 1937; July 24, 1937.

⁵⁵ Ibid., July 19, 1937; July 31, 1937.

⁵⁶ Ibid., July 19, 1937.



submission to the voters in order to effectuate the proposals for amendment is a law. The question is whether it is the kind of law against which referendum may be directed under Article 4. The procedure provided by the legislature in session as a convention to amend the Constitution which directs submission to the voters in order to effectuate proposals for amendment is a "law" (New Mexico Constitution, Article 19, Section 1). The Constitution, Article 9, Section 8, declares: "no debt. . . shall be contracted by or on behalf of this state unless. . . " in manner stated. The special election to submit the amendments was provided by "law". It is not doubted that a Constitutional Convention may incur expenses for legitimate needs (the legislature acts as a convention to formulate and submit constitutional amendments). The legislature may incur expenses for legitimate needs. Only such laws as may be enacted by the legislature alone without interposition of approving vote of the people are subject to submission to popular referendum and hence twenty-five percent of the voters could not, by petition, require submission to referendum of an act calling a special election on proposed constitutional amendments (Constitution, Article 4, Section 19; Laws of 1937, Chapter 117). The court referred to Section 1, Article 19 of the New Mexico Constitution (amending power) and stated that twenty-five percent of the voters



could not change, alter, or abrogate these provisions.⁵⁷

Present Status of Referendum Law

The two decisions of State v. Perrault and Hutchenson v. Gonzales clear the doubts first held as to the effectiveness of our referendum law.⁵⁸ They held:

First, although the constitution does not go into detail as to the exact operation of the law it is self-executing.

Second, the law has been put into use twice which proves that it is workable and no change is necessary to make it so.

The referendum law may at times conflict with the Constitution but that can be expected of any law. Such conflicts may be eliminated by a detailed study of the law and the Constitution and a revision of the law or the Constitution made if the people desire a more effective use of the law. It is possible, and likely, that very little action will be taken by the Legislature in this respect unless further uses of the law reveal weaknesses for which the people demand a remedy.

⁵⁷ Such constitutional amendments require a simple majority of the votes cast.

⁵⁸ Chapter III, p. 52.

would not change, after, or suppose these provisions

THE STATE OF NEW YORK

The two Senators of State v. Potters and H. H. H.

Senator Potters the House first held as to the effective
case of our constitution law. They held

first, although the constitution does not require

the State to the right of the law it is still

essential

Second, the law has been put into law since which

proves that it is possible and no change is necessary to

maintain the law in its present form

The referendum law may at times conflict with the

Constitution but that can be expected of any law. Such con-

flicts may be eliminated by a detailed study of the law and

the Constitution and a revision of the law on the Consti-

tution made in the future a more effective use of the

law. It is possible, and likely, that very little action

will be taken by the Legislature in this respect unless the

their case of the law reveal weaknesses for which the people

are not ready

Such constitutional amendments require a single

majority of the voters cast

Chapter III, p. 25

Special Election Results

The special election held September 21, definitely indicated that the people of New Mexico were against the proposed amendments. Chart VI (on the following page) shows the full election returns.⁵⁹ The percentage vote of the total vote cast for officials to those cast for the referendum was fifty-two. All of the amendments were defeated.

⁵⁹ New Mexico Blue Book, 1937-38.

General Election Results

The general election of 1977 was held on 11 November. Indicated that the results of the election were against the proposed amendments. (Chart VI for the following page) shows the full election results. The percentage vote of the local vote was for officials in those areas for the referendum was fifty-two. All of the amendments were defeated.

CHART VI

VOTE ON PROPOSED AMENDMENTS TO THE CONSTITUTION, SEPTEMBER 21, 1937

Counties	Amendment I		Amendment II		Amendment III		Amendment IV		Amendment V	
	For	Against	For	Against	For	Against	For	Against	For	Against
Bernalillo	8154	6240	5474	8761	5556	8710	5701	8603	5561	8671
Catron	455	357	315	488	394	422	388	426	382	434
Chavez	1356	1844	1014	2182	983	2208	969	2227	914	2258
Colfax	2235	1475	1159	2488	1296	2358	1270	2386	1311	2322
Curry	1791	1166	1046	1881	1157	1785	1108	1830	1103	1817
De Baca	545	257	432	370	443	356	445	350	421	380
Dona Ana	1090	2065	1554	2447	1351	2606	1341	2661	1432	2566
Eddy	1035	1259	646	1631	726	1576	647	1639	752	1516
Grant	1628	949	1738	895	1260	1324	1289	1306	1257	1279
Guadalupe	1024	1196	843	1349	854	1338	851	1354	827	1315
Harding	616	691	514	794	433	767	538	767	519	786
Hidalgo	433	283	322	390	395	316	389	326	363	345
Lea	1701	859	1288	1251	1422	1126	1452	1088	1392	1134
Lincn	551	868	306	1109	330	1076	300	1117	344	1071
Luna	691	569	507	757	546	710	535	727	527	724
McKinley	594	944	345	1170	361	1147	333	1204	375	1112
Mora	1789	1188	1398	1356	1557	1373	1559	1389	1522	1433
Otero	653	663	424	875	455	847	453	848	440	861
Quay	1260	1233	623	1852	724	1736	747	1729	693	1766
Rio Arriba	2551	2515	2046	3024	2129	2911	2152	2926	2086	2904
Roosevelt	833	1017	731	1113	474	1349	454	1373	436	1365
Sandoval	1024	1405	743	1657	799	1599	836	1578	789	1622
San Juan	722	730	487	936	548	896	522	923	442	1004

CHART VI (Continued)

VOTE ON PROPOSED AMENDMENTS TO THE CONSTITUTION, SEPTEMBER 21, 1937

Counties	Amendment I		Amendment II		Amendment III		Amendment IV		Amendment V	
	For	Against	For	Against	For	Against	For	Against	For	Against
San Miguel	2976	3287	2360	3792	2528	3668	2667	3678	2297	3769
Santa Fe	2690	4620	2078	5221	2147	5167	2187	5142	2067	5240
Sierra	1019	528	780	764	815	731	816	726	801	751
Socorro	1744	1230	1527	1437	1466	1458	1470	1467	1456	1479
Taos	823	1081	596	1299	628	1264	648	1253	613	1260
Torrance	984	1327	676	1627	724	1576	735	1569	699	1593
Union	1082	1153	791	1433	800	1414	804	1419	824	1400
Valencia	1526	2393	1141	2761	1194	2689	1192	2718	1168	2698
Total	46394	45332	33904	56637	34494	56505	34826	56749	33813	56911
(91726)	.	.	.	.	.	.	.	.	.	.
Majority For 1062	.	.	.	.	.	.	.	.	.	.
Majority Against	.	.	21733	.	.	22011	.	21923	.	22098

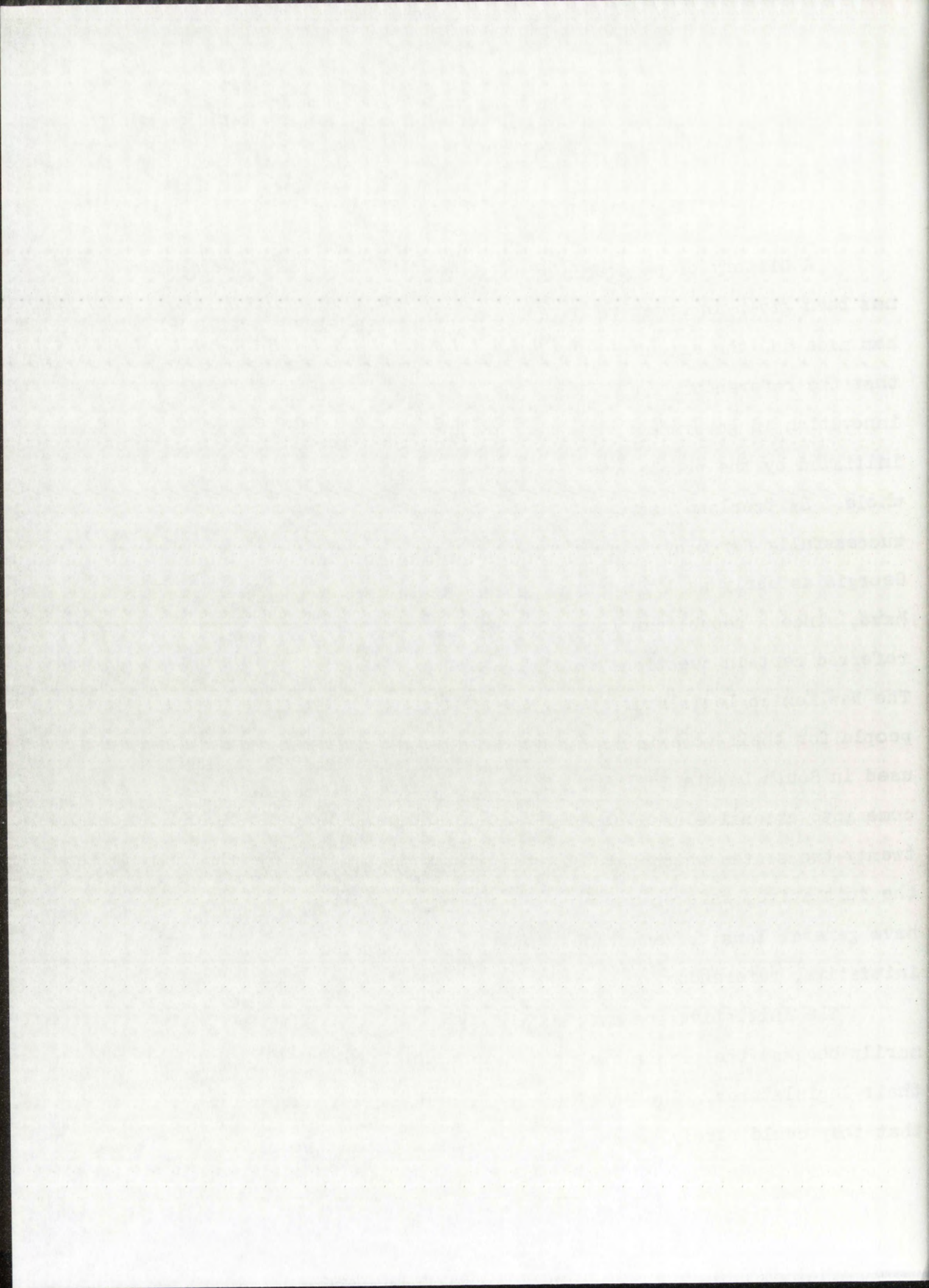
CHAP. IV (continued)

CHAPTER IV

SUMMARY

A history of popular legislation in the United States has been given in order to reveal the progress the movement has made and the extent of its usage. It has been shown that the referendum and initiative is by no means a new innovation in government. Ancient Greece had legislation initiated by the people and voted upon by the populace as a whole. Switzerland has used the initiative and referendum successfully for many years. The initiative was used in Georgia as early as 1777. Many of our state legislatures have, since a republican form of government was established, referred certain questions to the people for their approval. The New Mexico Legislature voluntarily referred a law to the people for their vote in 1856. The referendum was first used in South Dakota in 1898. Later years saw the recall come into extensive use. At the present time there are twenty-two states which have constitutional provisions for the initiative, referendum, and recall; fifteen states which have general laws; seven states which have no provisions for initiative, referendum, and recall.

The initiative and referendum were instigated primarily because the people lack faith in the integrity of their legislatures. The people held the strong conviction that they could hardly do worse than their legislatures and



that they might do better. The public believed that the legislatures were passing (1) too many laws which were not fundamentally necessary (one writer states that in one year there were 14,000 national and state laws passed), and (2) too many laws which were for the benefit of special interests rather than the public.

The initiative and referendum movement has aided greatly in stimulating public-mindedness among the people in that it has given them a legislative responsibility. Newspapers and special publicity pamphlets publish the pro and con for measures in question. As a result, the populace has an opportunity of knowing the pertinent facts regarding the law. There has been a tendency for the public to increase its percentage vote in those states which have direct legislation.

The fight over direct legislation in the Constitutional Convention of New Mexico has been summarized thoroughly to show the difference of opinion between the people of the state and their political leaders in regard to popular control of our Legislature. It has been shown, without question, that many political leaders and several corporations of the state fought direct legislation from the very beginning. Money and political coercion were lavishly used to influence the election of delegates to the Constitutional Convention and to control them after election.

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wholly necessary, (2) laws which were not in the public
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The initiative and referendum movement has arisen
largely in response to public dissatisfaction among the people
in that it has given them a legislative responsibility.
Newspapers and special publicity pamphlets publish the pro-
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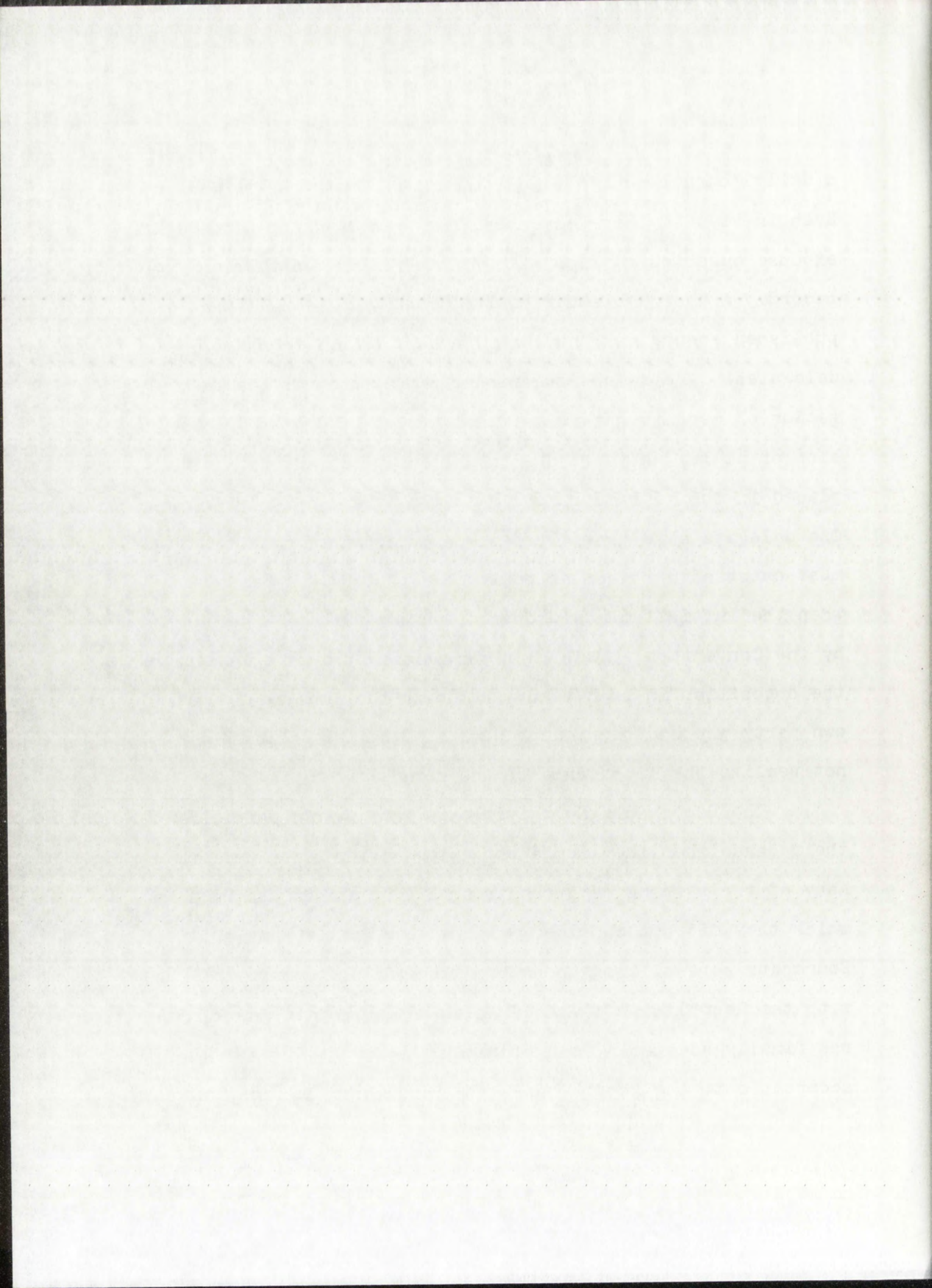
The fight over direct legislation in the Constitu-
tional Convention of New Mexico has been a struggle
to show the difference of opinion between the
people of the state and their political leaders in regard
to popular control of our legislature. It has been shown
without question that many political leaders and members
of the state fought direct legislation from the
very beginning. Money and political coercion were lavishly
used to influence the election of delegates to the Constitu-
tional Convention and to control their action.

The election of delegates which took place September 10, 1910, showed that the people favored the initiative and referendum. Although fifty-eight Republicans were elected (it was generally conceded that the Republican party leadership was against direct legislation) as compared to twenty-three Democrats and nineteen fusionists, a large number of the Republicans, at least a dozen, were independent. Others of the fifty-eight were sympathetic. The twenty-three Democrats were solidly for the measures as were the nineteen fusionists. Thus, over one-half of the delegates (fifty-four) were pledged to support the initiative and referendum.

The Convention was characterized by several political practices which show the power of the party leaders representing the Majority. The first indication of this is shown by no published record of the Constitutional Convention. The lack of such record would make it very difficult for the public to know definitely what was taking place in the Convention and for the public to know how the delegates voted. The excuse given for no published record was that the expense would be prohibitive. It was estimated that the expense of the Convention would be approximately \$50,000 --irrespective of the cost of election of delegates. It was determined that the cost of publishing twenty-four pages of

a daily journal would be \$67.50, and of forty pages, \$112.50. Even in view of these expenses, many people doubted that the expense question was the main reason for not publishing a record. A thorough study of the Convention reveals that a published record may have been "embarrassing" to many delegates. The second questionable practice was the instigation of certain gag-rules which prevented proper discussion of bills. A third questionable act was the "jokers" placed in the referendum bills to make them ineffective. One delegate said that there was a joker in every bill. The most outstanding piece of political strategy was performed when the initiative was dropped from any further consideration by the Convention. This hoax was performed by the leaders of the opposition in such a way that even the members of their own party who had been elected on the initiative issue did not realize the importance of the move.

The Democrats themselves came very nearly defeating their cause when they would not unite on a referendum law. Many of their strong proponents would not consent to any law which they did not consider was the very best. Many of the Democrats were willing to compromise (and did compromise) with the Republicans in the framing of a moderate law which was finally adopted. The referendum law enacted was not acceptable to the Republicans, the Democrats, or the public.

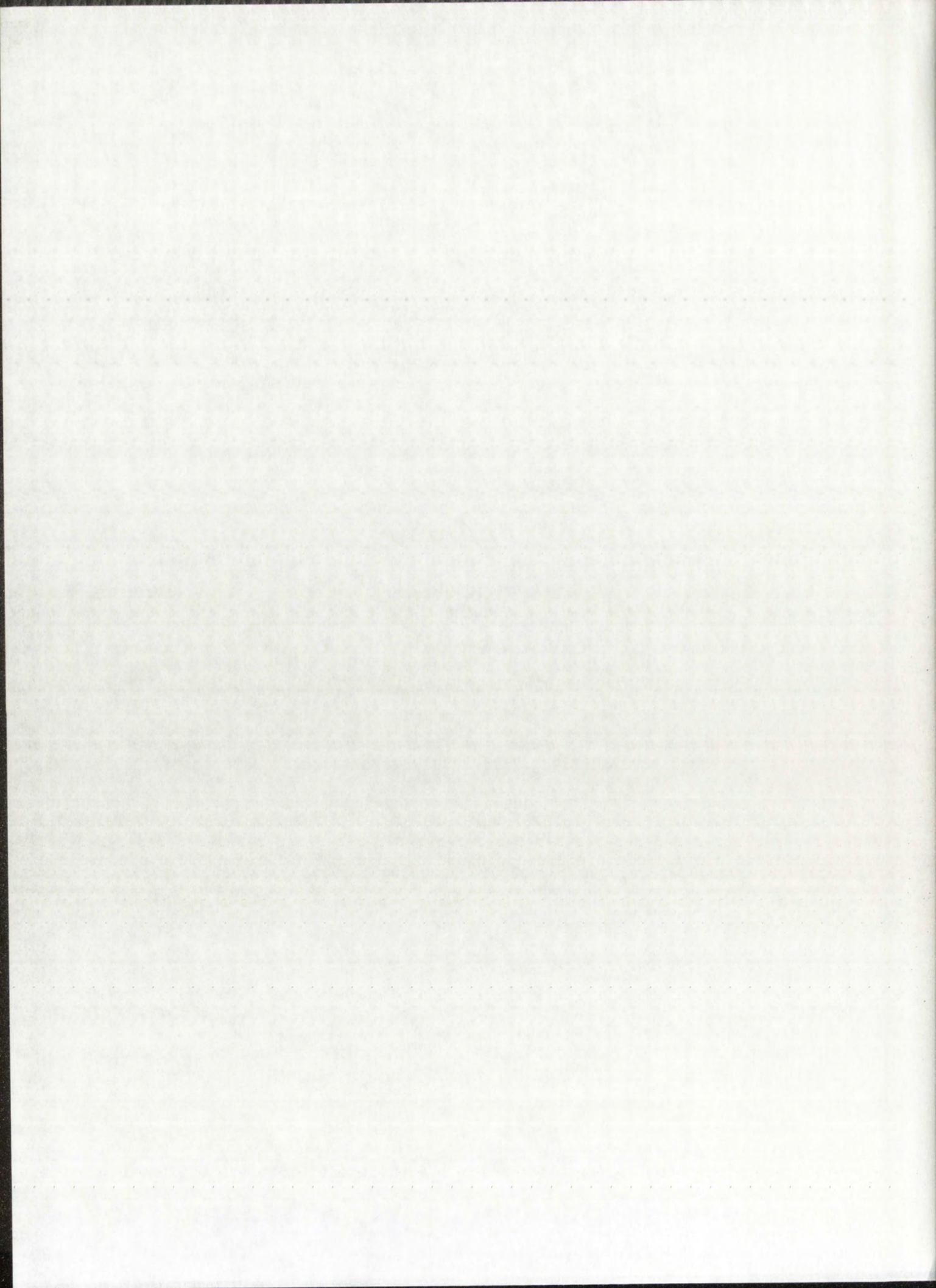


The summary of the two test cases of the referendum law in our courts was given in detail to show (1) that the law has proven workable; (2) that the people of the state will use such a law if occasion demands. It is interesting to note that the first court test came in 1930 after the law's adoption in 1910. There are several reasons for this: (1) the general public did not know that such a law existed, (2) the people did not know the beneficial uses of such a law, (3) the people of the state had been divided into strong Democratic and Republican factions, neither of which would consider uniting their members with the other on any question of importance, (4) no law had been previously passed by the Legislature which had sufficient united backing of any non-political group such as occurred in this instance, (5) it was known when the referendum law was enacted that it had not met the approval of its proponents and, as such, might not prove workable if tested.

The law has proven operative in the two court cases. It is known, however, that it is weak in several respects and that if it is to continue to be used, it needs revision.

The people of New Mexico have shown their interest in the referendum by their vote upon referred measures on the three occasions used. When compared to the voting in other states, New Mexico has made a good showing:

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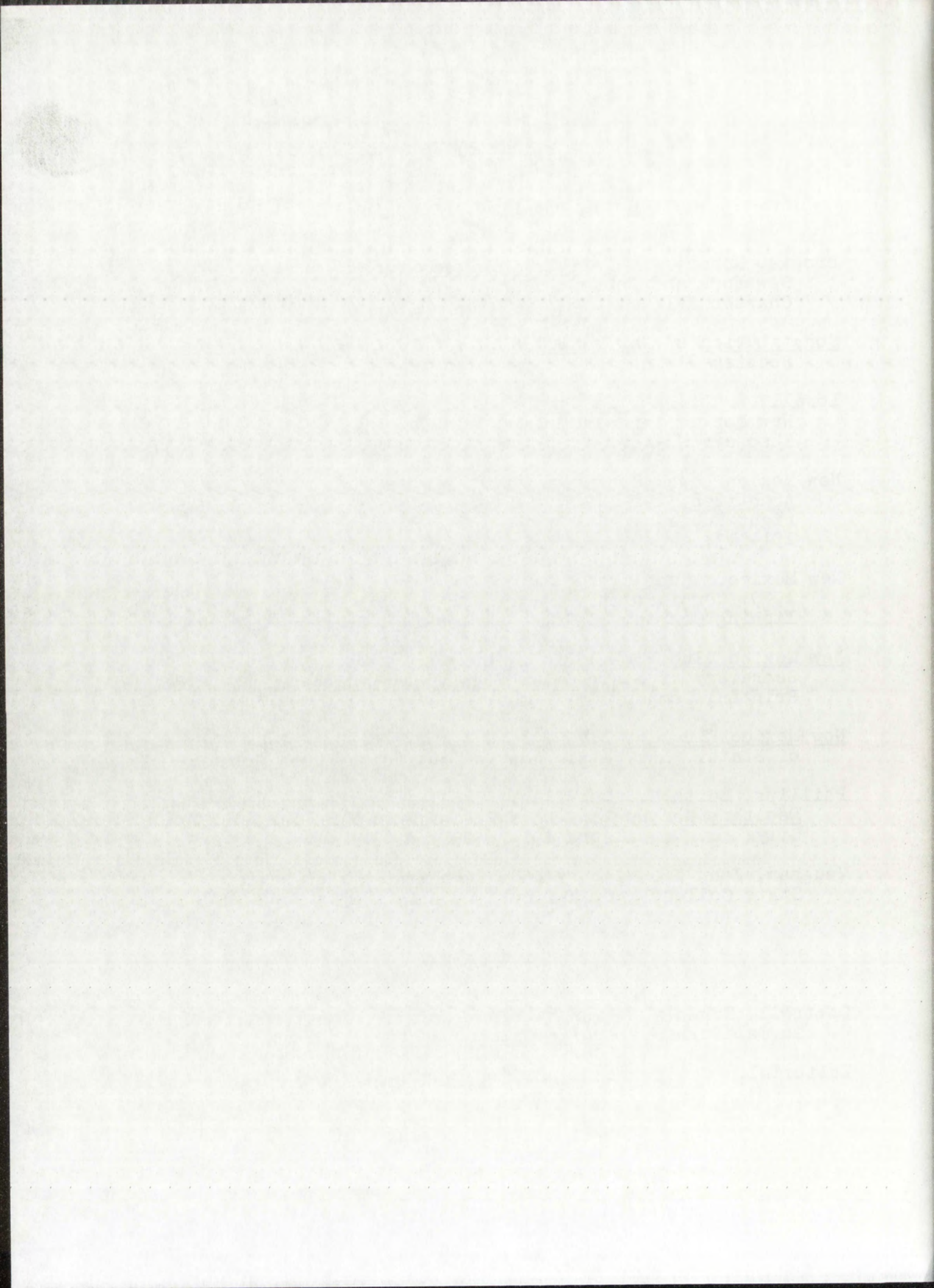
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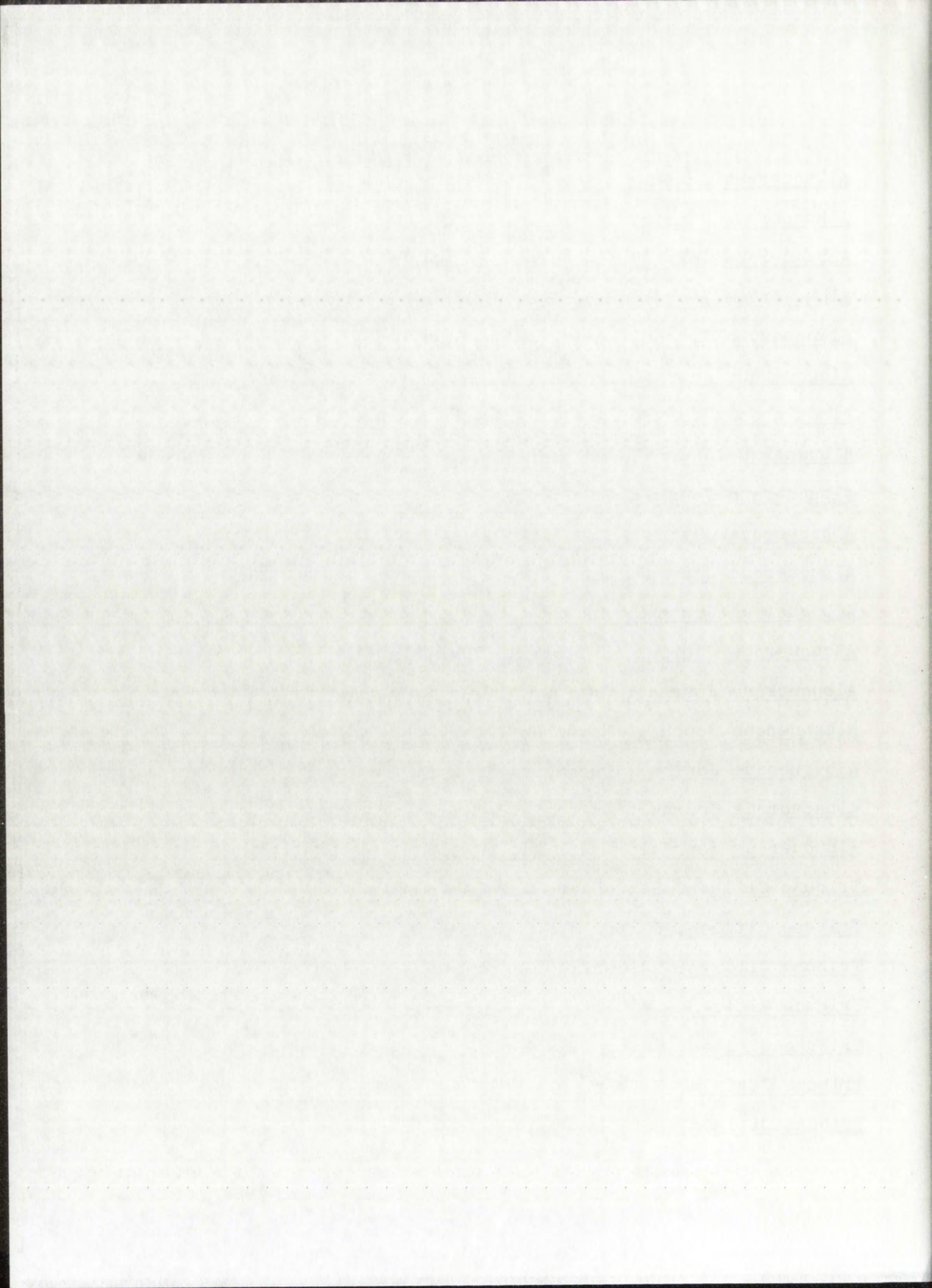
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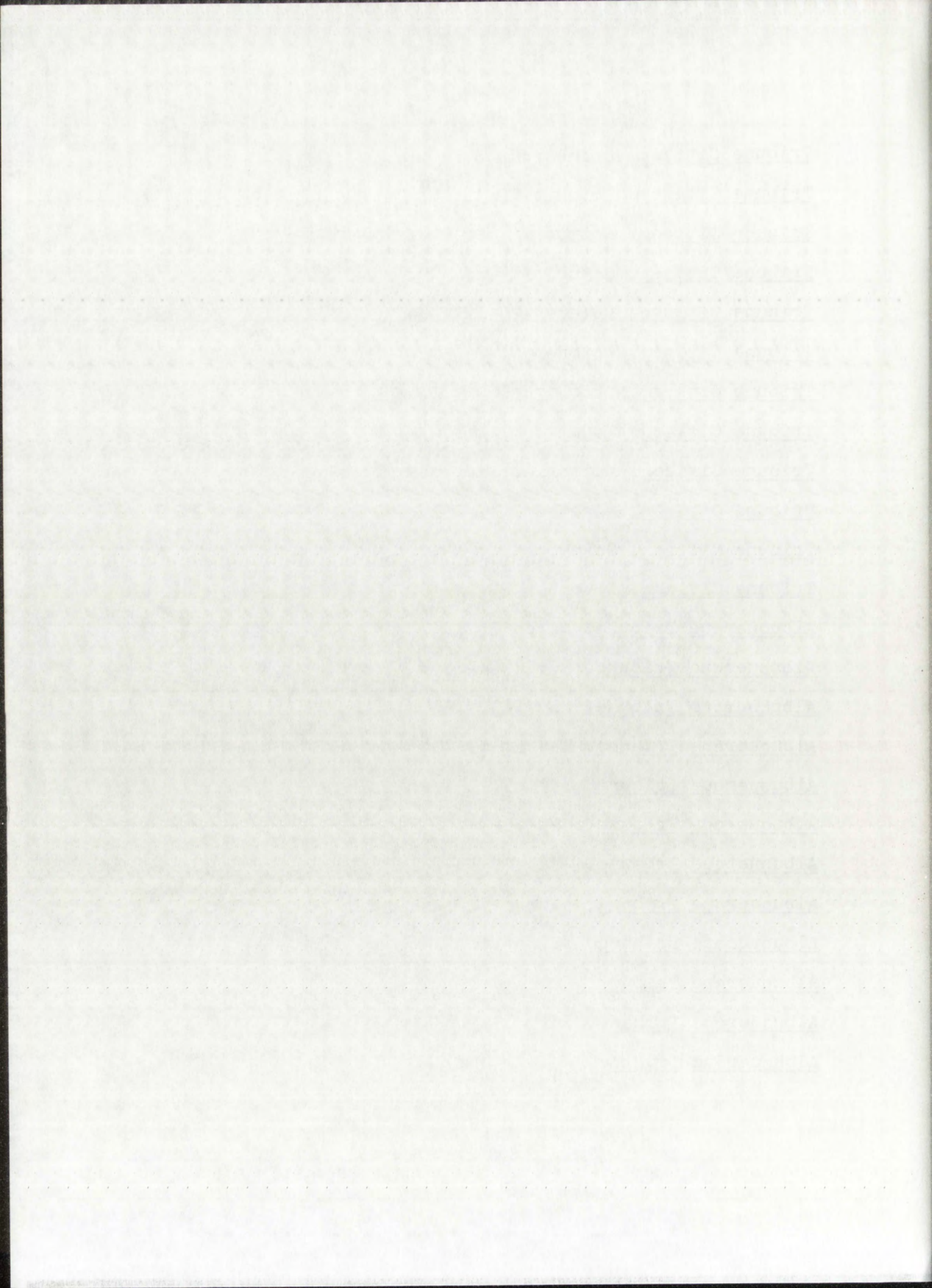
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