

## Ann Arbor Democracy

The current City Charter of Ann Arbor is the product of an elected charter commission. Records of the commission in the Bentley Library indicate that its proceedings included a heated debate about whether City elections should be partisan or nonpartisan. Republicans formed the majority of the commission and thought that the Democrats were pushing for nonpartisan elections so more of them would get elected. So they opted for partisan elections. After voter approval the charter took effect in April of 1956.

Ironically, in the first election under the charter, Democrat Sam Elderveld was elected mayor. He served only one two year term and the Republicans held majority control of the Council until 1969 when Democrat Robert Harris was elected mayor and the Democrats gained an 8 to 3 majority on Council.

A Michigan statute established that no person could gain or lose a voting registration by virtue of being a student or member of the military. Students wishing to register to vote in Ann Arbor had to show City Clerk John Bentley that Ann Arbor was really their principal residence instead of a hometown where parents lived. Student Sally Wilkins filled out a form to show that she was entitled to vote in Ann Arbor, but Bentley ruled she had not shown she was eligible to register.

Wilkins and others filed suit. In a judgment entered on September 10, 1968 the trial court granted some plaintiffs the right to vote, but denied relief to Wilkins. An appeal of that decision worked its way to the Michigan Supreme Court. In his brief to the court, City Attorney Jerold Lax defended the actions of the City Clerk, but also suggested the court consider the constitutionality of the statute which the clerk applied.

The Michigan Supreme Court ruled that the statute, as applied to students, was unconstitutional. Justice's Swainson opinion stated, "In the future, students must be treated the same as all other registrants. No special questions, forms, identification, etc., may be required of students." *Wilkins v. Bentley*, 189 N.W.2d 423, 385 Mich. 670 (Mich. 1971)

The Wilkins ruling came less than two months after the 26th amendment to the U.S. Constitution gave everyone age 18 or older the right to vote. The two changes were thought to give Democrats a big advantage in Ann Arbor. But that student vote could not be taken for granted. The student backed radical left Human Rights party succeeded in getting on the ballot in Ann Arbor and in electing two HRP candidates to the City Council, but its presence on the ballot split the progressive vote and led to the mayoral election of Republican James Stephenson although he didn't receive a majority of the votes cast.

To prevent such a plurality win, the HRP succeeded in getting a City charter amendment which allowed voters to mark second choices which would be counted if no one received a majority of the votes cast. That's what happened in April 1975. Although behind in the first place votes, Albert Wheeler succeeded in beating Stephenson when the second place votes were added to his total. Stephenson challenged the result as unconstitutional, but a visiting judge declared the system and the result valid. The delays and complications in counting the votes on paper ballots made Preferential Voting unpopular. So the voters amended the charter to eliminate it. The HRP managed to elect one more candidate to the City Council, but then faded from the scene.

In the next mayoral election Wheeler was declared the winner by a margin of one vote. Seventeen residents of Ann Arbor Township had mistakenly been permitted to register as City voters and had voted in the election. Belcher sued to overturn the election, but the problem his attorney faced was in demonstrating how the unauthorized votes changed the results. At the trial, he began calling the township residents who had voted as City residents and asking them how they voted. Several of the witnesses revealed how they voted, but then Susan Van Hattum refused to answer the question and was held in contempt of court. In the initial appeal, the Michigan Court of Appeals ruled against Van Hattum, but the Michigan Supreme ruled that in the absence of evidence of fraud, a voter could not be required to disclose his or her vote.

The lawsuit was then back at the trial level although there was no means of determining the effect of the votes by improperly registered voters. So Belcher and Wheeler agreed to a do-over. The court then ordered an

election to determine who would serve the remaining term for which Wheeler had been declared elected. Belcher won and served the remaining year of the term. Subsequently, he was reelected for three successive terms.

The other litigation that significantly affected Council Members was the lawsuit regarding section 12.6 of Charter which states, in part, "Each member of the Council, except the Mayor, shall serve without pay." In 1975, the City Council adopted an ordinance implementing a state law for determining the salaries of local elected officers. The commission created by the ordinance then set the salary of the mayor at \$10,000 and that of council members at \$5,000. A citizen lawsuit resulted in a Circuit Court ruling that the Charter prevented payment of salaries to council members. But the Court of Appeals ruled that the state law overrode the Charter prohibition. Since that time, the mayor and council members have been paid salaries determined by the Compensation Commission.

After the lawsuit era, City elections provided alternating control of the Council between Democrats and Republicans. That ended after a 1992 charter amendment moved City primaries from February to August, and elections from April to November. In 2003, Steven Reid became the last Republican elected to a City office.

It might not be accurate to say that Republicans weren't elected after 2003 because three people who had previously identified themselves as Republicans were elected. Jane Lumm, Steven Repundalo and Marcia Higgins were elected after they stopped identifying themselves as Republicans. Repundalo and Higgins switched their identifications to Democrat while Jane Lumm was elected as an independent.

Without more research, it would not be possible to say that the preference for Democrats had to do with a change in demographics or a change in the Republican Party. But the amount of change in party preference was demonstrated by the Ann Arbor results of the 2020 general election. Only 12% of votes were cast for Republicans. As a result the makeup of the City Council is determined in the low turnout August primary. Unless some runs as an independent there usually is no need to vote for a City Council candidate in November. Only 25% of the registered voters cast ballots in the 2022 August primary. That was 39,900 fewer ballots than were cast in the general election of 2020.

The obvious way to elect City candidates by a more representative number of voters would be to hold nonpartisan elections. In 2019 and 2020, the City Council passed resolutions with the required seven votes to give voters a chance to approve charter amendments mandating nonpartisan elections. Mayor Taylor vetoed both resolutions. .

In his veto messages, Mayor Taylor said that nonpartisan elections would deprive voters of "vital candidate information." The information in question is the party designation letter in front of a person's name on the ballot. But we have seen in Ann Arbor how a person can get elected just by switching from an R to a D. Somehow 276 Michigan cities manage to hold elections without letters in front of candidate names.

In November 2022, another resolution to give residents a chance to vote on the issue was considered by the City Council. The resolution was defeated after Taylor supporters denounced it as racist and classist. In arguing against the latest resolution to give voters a choice on nonpartisan elections, one Council Member said "This proposal has the potential to disenfranchise tens of thousands of voters in every local election." In truth, confining the election of council members to the primary has kept almost 40,000 voters from participating in the process. It is effectively voter suppression. But City electors were denied a chance to choose a process adopted by all but three Michigan cities.

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