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MUNICIPAL CHARTERS

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ARGUMENT IN FAVOR OF SENATE CONSTITUTIONAL AMENDMENT NO. 13.

This amendment should be adopted because it reserves to all cities and towns without discrimination the right to determine for themselves whether or not such cities or towns shall be transferred or annexed to any other city or county.

At the time our nation was first established, its founders took the occasion to announce that, in their opinion, all just governments rested upon certain basic principles, among the most important of which is one which declares that "governments derive their just powers from consent of the governed." Ever since that time, whenever and wherever the occasion demanded, that principle has been reaffirmed and strictly observed. It has been consistently followed and adopted down through all the various political subdivisions into which our country is divided, the states, counties and cities, and even the lesser units of government.

And so we find that in the organization, annexation and consolidation of cities or other political subdivisions, this principle has been carefully adhered to and faithfully observed, in order that no people should ever have imposed on them a government not of their own choosing.

However, it appears that in November, 1918, certain interested parties were able to secure the adoption of an amendment to article XI, section 7^{1/2}, of the constitution, which involves a violation of this principle, by providing that, under certain conditions, a city of less than forty thousand inhabitants may be transferred by the legislature to some other adjacent city and

county without consent of the electors of such city being first obtained. An interesting and illuminating point in connection with the matter is the fact that the amendment alone contains about 8000 words and is fifteen pages in length, being two pages longer than the original constitution of the United States, and this, together with the fact that the world war was still holding first place in the public mind, is responsible for the failure of the people to discover the objectionable provision.

Under the law of this state as it now stands, no community can organize into a municipality without the consent of a majority of the people of that community. Neither can any community be annexed to an adjacent city or town without the consent of a majority in that community and also a majority in the adjacent city or town. Why, then, under any set of circumstances, should the legislature be permitted to transfer one city to another without consent of the people of that city being first obtained?

Principles are fundamental, and should never be departed from, no matter how strong the provocation may seem. The future welfare of our nation depends upon the faithful adherence, at all times, to the fundamental principles upon which it was founded, and no violation of them can ever be justified under any circumstances. The adoption of this constitutional amendment would prevent any city from being transferred bodily to another until the people interested have had something to say about it.

Vote "yes."

EDWIN M. OTIS,
State Senator Fourteenth District.
FRANK M. CARR,
State Senator Thirteenth District.

MUNICIPAL CHARTERS. Senate Constitutional Amendment 4 amending

Section 8 of Article XI of Constitution dealing with adoption of municipal charters. Authorizes creation of boroughs in municipalities by amendments to municipal charters as well as by original charters as now provided. Adds proviso that after creation of any borough, whether by original charter or by amendment thereto, the powers thereof shall not be modified, amended or abridged in any manner, without consent of majority of qualified electors of such borough voting at a regular or special election.

YES

NO

Senate Constitutional Amendment No. 4—Relative to the framing and ratifying of municipal charters.

Resolved by the senate, the assembly concurring, That the legislature of the State of California at its forty-fourth regular session, beginning on the third day of January, 1921, two-thirds of all the members elected to each of the houses voting in favor thereof, propose to the people of the state that section eight of article eleven of the constitution be amended to read as follows:

PROPOSED AMENDMENT.

(Proposed changes in provisions are printed in black-faced type.)

Sec. 8. Any city or city and county containing a population of more than three thousand five hundred inhabitants, as ascertained by the last preceding census taken under the authority of the congress of the United States or of the legislature of California, may frame a charter for its own government, consistent with and subject to this constitution; and any city, or city and county having adopted a charter may adopt a new one. Any such charter shall be framed by a board of fifteen freeholders chosen by the electors of such city at any general or special election, but no person shall be eligible as a candidate for such board unless he shall have been, for the five years next preceding, an elector of said city. An election for choosing freeholders may be called by a two-thirds vote of the legislative body of such city, and, on presentation of a petition signed by not less

than fifteen per cent of the registered electors of such city, the legislative body shall call such election at any time not less than thirty nor more than sixty days from date of the filing of the petition. Any such petition shall be verified by the authority having charge of the registration records of such city or city and county and the expenses of such verification shall be provided by the legislative body thereof. Candidates for the office of freeholders shall be nominated either in such manner as may be provided for the nomination of officers of the municipal government or by petition, substantially in the same manner as may be provided by general laws for the nomination by petition of electors of candidates for public offices to be voted for at general elections. The board of freeholders shall, within one hundred twenty days after the result of the election is declared, prepare and propose a charter for the government of such city; but the said period of one hundred twenty days may with the consent of the legislative body of such city be extended by such board not exceeding a total of sixty days. The charter so prepared shall be signed by a majority of the board of freeholders and filed in the office of the clerk of the legislative body of said city. The legislative body of said city shall within fifteen days after such filing cause such charter to be published once in the official paper of said city; (or in case there be no such paper, in a paper of general circulation); and shall cause copies of such charter to be printed in convenient pamphlet form, and shall, until the date fixed for the election upon such charter, advertise in one or more papers of general circulation published in said city a notice that such copies may be had upon application therefor.

Each charter shall be submitted to the electors of such city at a date to be fixed by the board of freeholders, before such filing and designated in such charter, either at a special election held not less than sixty days from the completion of the publication of such charter as above provided, or at the general election next following the expiration of said sixty days. If a majority of the qualified voters voting thereon at such general or special election shall vote in favor of such proposed charter, it shall be deemed to be ratified, and shall be submitted to the legislature, if then in session, or at the next regular or special session of the legislature. The legislature shall by concurrent resolution approve or reject such charter as a whole, without power of alteration or amendment; and if approved by a majority of the members elected to each house it shall become the organic law of such city or city and county, and supersede any existing charter and all laws inconsistent therewith. One copy of the charter so ratified and approved shall be filed with the secretary of state, one with the recorder of the county in which such city is located, and one in the archives of the city; and thereafter the courts shall take judicial notice of the provisions of such charter. The charter of any city or city and county may be amended by proposals therefor submitted by the legislative body of the city on its own motion or on petition signed by fifteen per cent of the registered electors, or both. Such proposals shall be submitted to the electors only during the six months next preceding a regular session of the legislature or thereafter and before the final adjournment of that session and at either a special election called for that purpose or at any general or special election. Petitions for the submission of any amendment shall be filed with the legislative body of the city or city and county not less than sixty days prior to the general election next preceding a regular session of the legislature. The signatures on such petition shall be verified by the authority having charge of the registration records of such city or city and county, and the expenses of such verification shall be provided by the legislative body thereof. If such petitions have a sufficient number of signatures the legislative body of the city or city and county shall so submit the amendment or amendments so proposed to the electors. Amendments proposed by the legislative body and amendments proposed by petition of the electors may be submitted at the same election. The amendments so submitted shall be advertised in the same manner as herein provided for the advertisement of a proposed charter, and the election thereon held at a date to be fixed by the legislative body of such city, not less than forty and not more than sixty days after the completion of the advertising in the official paper. If a majority of the qualified voters voting on any such amendment vote in favor thereof it shall be deemed ratified, and shall be submitted to the legislature at the regular session next following such election; and approved or rejected without power of alteration in the same manner as herein provided for the approval or rejection of a charter. In submitting any such charter or amendment separate propositions, whether alternative or conflicting, or one included within the other, may be submitted at the same time to be voted on by the electors separately, and, as between those so related, if more than one receive a majority of the votes, the proposition receiving the larger number of votes shall control as to all matters in conflict. It shall be competent in any charter framed under the authority of this section to provide that the municipality governed thereunder may make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. It shall be competent in any such charter, or amendment thereof, to provide for the creation of boroughs in all or any part of the territory of the city or city and county governed thereby, and to provide that each such borough may exercise such general or special municipal powers, and to be administered in such manner, as may be

prescribed for each such borough in such charter; provided, however, that after the creation of any such borough, the powers thereof shall not be modified, amended or abridged in any manner, without the consent of a majority of the qualified electors of such borough voting at a regular or special election.

The percentages of the registered electors herein required for the election of freeholders or the submission of amendments to charters shall be calculated upon the total vote cast in the city or city and county at the last preceding general state election; and the qualified electors shall be those whose names appear upon the registration records of the same or preceding year. The election laws of such city or city and county shall, so far as applicable, govern all elections held under the authority of this section.

EXISTING PROVISIONS.

(Provisions proposed to be repealed are printed in italics.)

Sec. 8. Any city or city and county containing a population of more than three thousand five hundred inhabitants, as ascertained by the last preceding census taken under the authority of the congress of the United States or of the legislature of California, may frame a charter for its own government, consistent with and subject to this constitution; and any city, or city and county having adopted a charter may adopt a new one. Any such charter shall be framed by a board of fifteen freeholders chosen by the electors of such city at any general or special election, but no person shall be eligible as a candidate for such board unless he shall have been, for the five years next preceding, an elector of said city. An election for choosing freeholders may be called by a two-thirds vote of the legislative body of such city, and, on presentation of a petition signed by not less than fifteen per cent of the registered electors of such city, the legislative body shall call such election at any time not less than thirty nor more than sixty days from date of the filing of the petition. Any such petition shall be verified by the authority having charge of the registration records of such city or city and county and the expenses of such verification shall be provided by the legislative body thereof. Candidates for the office of freeholders shall be nominated either in such manner as may be provided for the nomination of officers of the municipal government or by petition, substantially in the same manner as may be provided by general laws for the nomination by petition of electors of candidates for public offices to be voted for at general elections. The board of freeholders shall, within one hundred and twenty days after the result of the election is declared, prepare and propose a charter for the government of such city; but the said period of one hundred and twenty days may with the consent of the legislative body of such city be extended by such board not exceeding a total of sixty days. The charter so prepared shall be signed by a majority of the board of freeholders and filed in the office of the clerk of the legislative body of said city. The legislative body of said city shall within fifteen days after such filing cause such charter to be published once in the official paper of said city; (or in case there be no such paper, in a paper of general circulation); and shall cause copies of such charter to be printed in convenient pamphlet form, and shall, until the date fixed for the election upon such charter, advertise in one or more papers of general circulation published in said city a notice that such copies may be had upon application therefor. Such charter shall be submitted to the electors of such city at a date to be fixed by the board of freeholders, before such filing and designated on such charter, either at a special election held not less than sixty days from the completion of the publication of such charter as above provided, or at the general election next following the expiration of said sixty days. If a majority of the qualified voters voting thereon at such general or special election shall vote in favor of such proposed charter, it shall be deemed to be ratified, and shall be submitted to the legislature, if then in session, or at the next

regular or special session of the legislature. The legislature shall by concurrent resolution approve or reject such charter as a whole, without power of alteration or amendment; and if approved by a majority of the members elected to each house it shall become the organic law of such city or city and county, and supersede any existing charter and all laws inconsistent therewith. One copy of the charter so ratified and approved shall be filed with the secretary of state, one with the recorder of the county in which such city is located, and one in the archives of the city; and thereafter the courts shall take judicial notice of the provisions of such charter. The charter of any city or city and county may be amended by proposals therefor submitted by the legislative body of the city on its own motion or on petition signed by fifteen per cent of the registered electors, or both. Such proposals shall be submitted to the electors only during the six months next preceding a regular session of the legislature or thereafter and before the final adjournment of that session and at either a special election called for that purpose or at any general or special election. Petitions for the submission of any amendment shall be filed with the legislative body of the city or city and county not less than sixty days prior to the general election next preceding a regular session of the legislature. The signatures on such petitions shall be verified by the authority having charge of the registration records of such city or city and county, and the expenses of such verification shall be provided by the legislative body thereof. If such petitions have a sufficient number of signatures the legislative body of the city or city and county shall so submit the amendment or amendments so proposed to the electors. Amendments proposed by the legislative body and amendments proposed by petition of the electors may be submitted at the same election. The amendments so submitted shall be advertised in the same manner as herein provided for the advertisement of a proposed charter, and the election thereon held at a date to be fixed by the legislative body of such city, not less than forty and not more than sixty days after the completion of the advertising in the official paper. If a majority of the qualified voters voting on any such amendment vote in favor thereof it shall be deemed ratified, and shall be submitted to the legislature at the regular session next following such election; and approved or rejected without power of alteration in the same manner as herein provided for the approval or rejection of a charter. In submitting any such charter or amendment separate propositions, whether alternative or conflicting, or one included within the other, may be submitted at the same time to be voted on by the electors separately, and, as between those so related, if more than one receive a majority of the votes, the proposition receiving the larger number of votes shall control as to all matters in conflict. It shall be competent in any charter framed under the authority of this section to provide that the municipality governed thereunder may make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. It shall be competent in any charter to provide for the *division of the city or city and county governed thereby into boroughs or districts*, and to provide that each such borough or district may exercise such general or special municipal powers, and to be administered in such manner, as may be provided for each such borough or district in the charter of the city or city and county.

The percentages of the registered electors herein required for the election of freeholders or the submission of amendments to charters shall be calculated upon the total vote cast in the city or city and county at the last preceding

general state election; and the qualified electors shall be those whose names appear upon the registration records of the same or preceding year. The election laws of such city or city and county shall, so far as applicable, govern all elections held under the authority of this section.

ARGUMENT IN FAVOR OF SENATE CONSTITUTIONAL AMENDMENT NO. 4.

Senate Constitutional Amendment No. 4, being an amendment of section 8 of article XI of the state constitution, is designed to permit cities, in their charters, to provide a satisfactory scheme for the creation of boroughs within their limits. The supreme court of the state has decided, in a case entitled *Case vs. The City of Los Angeles*, reported in 175 California Reports, at page 774, that, as the constitution now stands, if a city desires to establish such a scheme, its plan is only valid if it provides for the division of the entire city into boroughs. This decision has practically rendered the borough schemes in many city charters valueless, for while many cities might desire to create a borough in a specified section of the city, very few cities would want to carry the scheme to the extent of creating boroughs covering the entire city.

Not only does the scheme contemplated by the proposed amendment appear to be just and proper, but it is consistent with the scheme now existing in the constitution for the creation of boroughs in city and county governments, such as exists in San Francisco. There is of course no reason why one scheme should obtain in a municipality having a city and county government and another in an ordinary charter city, and the proposed amendment, if adopted, will remove this inequality and make one plan for borough governments which will be consistent throughout the entire state.

Not only is the proposed amendment of interest to inhabitants of cities, but it should also interest persons living in unincorporated territory adjacent to cities who might, for certain purposes, such as the securing of a water supply or sewage facilities or fire or police protection, desire annexation to the city but, at the same time, wish to retain jurisdiction over their strictly local affairs. There is at present no law in this state under which such a plan could be worked out, excepting through the division of the entire city into boroughs, while if the proposed amendment is adopted any charter city will be enabled to provide a scheme whereby communities desiring annexation or consolidation may have the benefits of incorporation with the larger city and at the same time retain full control over their own local affairs.

It must be remembered also that the amendment is permissive only. It does not compel any city to take advantage of its provisions, but simply provides the necessary constitutional authority for a city which may desire, through amendment to its charter, to provide itself with a workable plan for a borough government.

The section of the constitution proposed to be amended is a long section, but the entire amendment is contained in the portion near the end which relates to the formation of boroughs, and no other part of the section is affected. It is an amendment which can not possibly affect the public interests of any community adversely, but which is calculated to benefit cities desiring to avail themselves of its provisions through the extension of the California doctrine of municipal home rule, and its adoption by the people is urged upon that ground.

CHARLES W. LYON,
State Senator Thirty-fourth District.
M. B. JOHNSON,
State Senator Eleventh District.