San José Charter Review Commission Recommendation Memo Template

Drafted April 19th, 2021; Revised July 2nd, 2021

Instructions

1. Complete sections 1-3 below.
2. Rename document. Replace everything after the "-" in the document name with the proposal name.
   a. *Example: "SJ CRC Recommendations Memo - **Ranked Choice Voting**"*
3. When ready, email to the Commission Secretary (CharterReview@sanJoséca.gov) for posting to the appropriate subcommittee or full Commission. Final deadline for submitting subcommittee recommendations is 12 noon on the following dates:
   a. Friday, July 26 for Voting & Elections Subcommittee
   b. Friday, August 23rd for Governance Structure Subcommittee
   c. Friday, September 3rd for Policing & Municipal Law, Accountability & Inclusion Subcommittee

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1) Proposal Name

Proposal Name:	*Ranked Choice Voting*
Submitted by:	*Elections and Voting Subcommittee – Commissioner Huy Tran as lead*
Date submitted:	*August 6, 2021*

3) Proposal Details

1) What problem(s) are you trying to address? *Before suggesting a solution, it is important to be clear about the problem you aim to solve.*	Increasing the diverse representation of the communities in San José by reducing barriers to running for office and providing voters the option to vote for the candidates that best reflect their values. This recommendation does this by reducing the costs of running for office by consolidating the elections process, and by allowing voters to rank multiple candidates instead of choosing only one.
2) How has this problem possibly benefited or burdened people, especially BIPOC, low-income, undocumented and immigrant, those experiencing houselessness, etc.? *Is there data that speaks to the impact of this problem? What does the disaggregated data tell us?*	RCV is gaining in popularity around the nation, including four cities here in the Bay Area. RCV has two main benefits: (1) allows voters to select candidates who best reflect their values, and (2) reduces the costs running for office by consolidating the primary and general. Allowing voters to rank candidates gives them the ability to choose the candidate that best reflects their values. Further, it does not limit voters to pick the candidates who have the best chance of winning (i.e. lesser of two evils). The most recent data shows that representation of women – women of color in particular – increased in the Bay Area cities where RCV was adopted. Data from early 20th century also showed that representation of people of color increased in New York City and several Ohio cities where proportional RCV was used. Additionally, one of the obstacles of running for San José city-wide office is the pure cost, in money and in time. The primary system means that candidates have to be ready to run in two separate elections, each taking months of commitment and campaign expenditures that can easily exceed $100,000 for each election. This type of commitment is very unrealistic for those who have family and job commitments, but do reflect the more common experiences of the residents of San José. See Exhibit 1 with charts from Californians for Electoral Reform comparing funds raised from

2018 and 2020 city council races.

Data also establishes that RCV improves on the civility of elections and promotes issue-oriented campaigns because candidates will work to become the second or third choice for voters. Improving the civility and promoting more issue-oriented campaigns provides more incentives for women and people of color to participate as candidates by allowing campaigns to focus on policy ideas rather than attacking people.

Lastly, turnout during primary elections is always lower than turnout during general elections. However, primary voters are the ones who cut the field to the top-two contenders, and in many cases elect local representatives outright. RCV will consolidate primary and general elections into one run in November, allowing more voters to participate in our local elections.

3) What change are you proposing? *Describe the revision to San José's Charter that you are proposing. Include relevant Charter section numbers.*	**Amending Section 1600(a) as follows:** "REGULAR MUNICIPAL ELECTIONS. A Regular Municipal Election is ~~either~~ a regularly scheduled ~~Primary or Run-off Municipal~~ Election, which shall be held on the same date the State of California holds its Statewide General Election. Such elections shall be held every two years, with the election for Mayor and for the odd numbered Council Districts being every four (4) years beginning with 1994, and the election for the even numbered Council Districts being every four (4) years beginning in 1996. Each member's term shall commence on the first day of January next following, and end on the last day of December in the fourth calendar year succeeding, the date of the member's election. ~~A regularly scheduled Primary Election shall be held on the same date that the State of California holds its Direct Primary Election. A Run-off Municipal Election shall be held on the same date the State of California holds its Statewide General Election.~~"

Replacing Section 1600(d) as follows:

(d) RANKED CHOICE VOTING. Elections for all elected city offices, including but not limited to Mayor and Council member, shall be conducted using ranked choice voting, known sometimes as "instant runoff voting."

(1) Definitions.

a. "Ranked choice voting" shall mean an election system in which voters rank the candidates for office in order of preference, and the ballots are counted in rounds that simulate a series of runoffs until one candidate receives a majority of votes. Ranked choice voting is also known as "instant runoff voting."

b. "Majority of votes" shall mean more than fifty percent (50%) of the votes cast on continuing ballots.

c. "Continuing ballot" shall mean a ballot that counts towards a continuing candidate.

d. "Continuing candidate" shall mean a candidate that has not been eliminated.

e. "Choice" means an indication on a ballot of a voter's assigned ranking of candidates (i.e., first choice, second choice, third choice, etc.) for any single office according to the voter's preference.

f. "Vote" means a ballot choice that is counted toward the election of a candidate. During each round of counting, each continuing ballot contains one vote. All first choices are votes and lower ranked choices are potential runoff votes that may, in accordance with the requirements of this section, become votes and subsequently credited for a continuing candidate.

g. "Round of counting" or "round" means a step in the counting process during which votes for all continuing candidates are tabulated for the purpose of determining whether a candidate has achieved a majority of the votes cast for a particular office, and, absent a majority, which candidate

or candidates must be eliminated.

h. "Next ranked" means the highest ranked choice for a continuing candidate.

(2) General Provisions. Ranked choice voting elections for the offices of Mayor and City Council member shall be conducted according to the procedures in this section. The City shall conduct a voter education campaign to familiarize voters with ranked choice voting. The use of ranked choice voting shall commence with the 2024 Regular Municipal Election.

(3) Ballot. The ranked choice voting ballot shall allow voters to rank as many choices as there are candidates. The ballot shall not interfere with a voter's ability to rank a write-in candidate.

(4) Tabulation. The ballots shall be counted in rounds.

a. In the first round, every ballot shall count as a vote towards the first choice candidate.

b. After every round, if any candidate receives a majority of votes from the continuing ballots, that candidate shall be declared the winner.

c. If no candidate receives a majority, the candidate receiving the fewest number of votes shall be eliminated.

d. Every ballot counting towards that candidate shall be advanced to the next-ranked continuing candidate. All the continuing ballots for all continuing candidates shall be counted again in a new round.

(5) Ties. In the event that two or more candidates tie for the smallest number of votes, the candidate to eliminate shall be chosen by lot.

(6) Elimination of more than one candidate. During the elimination stage of any round, in the event that any candidate has more votes than the combined vote total of all candidates with fewer votes, all the candidates with fewer votes shall be

eliminated simultaneously, and those ballots advanced to the next ranked continuing candidate.

(7) Skipped rankings. In the first or any round, in the event that any ballot reaches a ranking with no candidate indicated, that ballot shall immediately be advanced to the next ranking.

(8) Undervotes, Overvotes, and Exhausted Ballots. After each round, any ballot that is not continuing is an undervote, overvote, or exhausted ballot, as follows: Any ballot that has no candidates indicated at any ranking shall be declared an "undervote." In the event that any ballot reaches a ranking with more than one candidate indicated, that ballot shall immediately be declared an "overvote." In the event that any ballot cannot be advanced because no further continuing candidates are ranked on that ballot, that ballot shall immediately be declared "exhausted". Any ballot that has been declared an undervote, overvote, or exhausted shall remain so and shall not count towards any candidate in that round or in subsequent rounds.

(9) Reports.

The following reports shall be produced for public review.

a.   The "summary report" for a contest shall mean a report that lists the candidate vote totals in each round, and the cumulative numbers of undervotes, overvotes, and exhausted ballots in each round.

b.   The "ballot image report" for a contest shall mean a report that lists, for each ballot, the candidate or candidates indicated at each ranking, the precinct of the ballot, and whether the ballot was cast by a vote-by-mail ballot. In the report, the ballots shall be listed in an order that does not permit the order in which they were cast in each precinct to be reconstructed.

c.   The "comprehensive report" for a contest shall mean a report that lists the vote totals in the summary report by precinct. The report shall list, for each round, the number of

ballots cast in each precinct that:

(i).   were tallied as votes for each candidate in that round,

(ii).   have been declared undervotes,

(iii).   have been declared overvotes, cumulatively for all previous rounds and inclusive of the reported round of tabulation, and

(iv).   have been declared exhausted cumulatively for all previous rounds and inclusive of the reported round of tabulation.

d.   Mode and manner of release. Preliminary versions of the summary report and ballot image report shall be made available as soon as possible after the commencement of the canvass of votes cast. The summary report, ballot image report, comprehensive report, and preliminary versions of the summary report and ballot image report shall be made available to the public during the canvass via the Internet and by other means. The ballot image report and preliminary versions of the ballot image report shall be made available in a plain text electronic format. In any case, preliminary versions of these reports shall be made available to the public prior to the commencement of the manual tally.

(10) Continuing the tally to two candidates. If a winner is declared when there are three or more continuing candidates (including the winner), and if the vote tabulating system allows for it, additional rounds of tallying shall occur until there are only two candidates left.

a. A preliminary version of the comprehensive report shall be made available to the public prior to the selection of precincts for the public one percent manual tally, as provided by state law.

b. After each round of the manual tally, the next choice votes shall be assigned based on the candidate totals in the summary round-by-round report for the entire contest.

(11) Changes to Procedures. For the purposes of this subsection: "voting equipment" shall mean all ballots and/or voting devices, vote tabulating systems and/or similar or related systems to be used in the conduct of the City's election, including but not limited to paper ballot systems, optical scan systems, and touchscreen systems.

a. Number of rankings. In the event that the voting equipment cannot feasibly accommodate a number of rankings on the ballot equal to the number of candidates, the City Clerk may limit the number of choices a voter may rank to the maximum number allowed by the equipment. This limit shall never he less than three.

b. Voting Equipment. If the voting equipment cannot feasibly accommodate all of the procedures in subsections (5)-(10) above, the City Clerk may make changes to those procedures provided that ranked choice voting shall still be used and the smallest feasible number of changes made until such time as the voting equipment can accommodate those procedures in their entirety.

c. State Guidelines. If the State of California adopts guidelines for the conduct of ranked choice voting elections and the voting equipment used to conduct the City's election can accommodate the State's guidelines, the City Clerk shall have the option of adopting those guidelines, in whole or in part, in lieu of the ranked choice voting procedures in this section.

(12) Exception from Using Ranked Choice Voting. Notwithstanding any other provision of this Charter, the City shall use ranked choice voting once the Santa Clara County Registrar of Voters is able to conduct the election on behalf of the City in accordance with the requirements and procedures of this section, including any changes to such procedures made pursuant to subsection (11).

(13) Election Procedures if Ranked Choice Voting is Not Used:

a. In the event that the City is unable to use ranked choice

voting, the City shall hold Municipal Primary Elections for the nomination of officers and for such other purposes as the Council may prescribe, which shall be held on the same date the State of California holds its Statewide Primary Election. Any candidate receiving a majority of the vote cast for all candidates for that office at the Municipal Primary Election shall be declared elected.

b. If at any Municipal Primary Election there is any office to which no person was elected, then the two candidates for such office receiving the highest number of votes for such office shall be the candidates, and the only candidates, for such office whose names shall be printed upon ballots to be issued at the Regular Municipal Election; provided that, in any event, all persons receiving a number of votes equal to the highest number of votes received by any candidate shall also be candidates at such second election. The candidate receiving the highest number of votes cast for all candidates for that office at the Regular Municipal Election shall be declared elected.

Amend Section 1600(g) as follows:

A. (g) MAJORITY OF VOTES. No person shall be declared elected to the office of the Mayor or Council member at any municipal election unless the person receives a majority of the votes cast for such office as defined by Section 1600(d)(1)b.

4) Is this change feasible? *Think through the revision you are proposing. Is it legally possible? Is it practical? If there are questions you cannot answer, list them here.*	This change is feasible. It has been done in cities around the United States and the Bay Area, including Oakland, Berkeley, San Leandro, San Francisco, and most recently Albany.

5) Who might benefit from or be burdened by this change?	As stated above, current and historical data shows that representation of women and people of color increases under RCV systems.
Is there data that speaks to the potential impact of this change? What are the potential unintended consequences of this change?	Opponents have argued that RCV is confusing, and a new system that requires participants to understand the new mechanics of voting would have a negative impact on older and/or limited English proficiency speakers. However, a study from 2015 showed that at least 80% of voters in RCV jurisdictions rated RCV as easy to understand, regardless of age, race, education, or income-level. The only exception to this were 18-to-29-year old voters . In this group, 79% rated RCV as easy to understand. This was reinforced in 2020 where a study of 1000 2020 RCV Democratic voters showed that: (1) 80% had no difficulty ranking candidates; (2) though older voters were more concerned about voting incorrectly, they were more likely to vote correctly than younger voters, and (3) only 12% undervoted, and available data suggests that this was intentional rather than by mistake.

Additionally, transitioning to new systems will always require investments in education and outreach to minimize any of the challenges in switching to a new system. The ultimate question should be whether the change is worth the transition. |
| **6) What are the arguments against this proposal?** | 1. Opponents to RCV believe that it increases the chance that a non-monotonic winner may result. |
| *Summarize the arguments you expect or data you have found in opposition to this recommendation.* | Example: 2009 Burlington, Vermont mayoral race and 2010 Oakland California mayoral race. In these races, the candidate who ultimately won did not receive the most votes in the initial rounds of ballot allocation. Opponents argue that this this is not a desirable result because voters in the initial rounds of counting preferred other candidates. However, each voter only voted once, and the final result is still an expression of |

the will of the voters. The ultimate winner received the most votes. Having a lower rank among voter preferences does not indicate that any other candidate was entitled to the seat.

2. Opponents to RCV also argue that the system promotes collusion among candidates.

Example: This was one criticism of candidates Mark Leno and Jane Kim in the 2018 San Francisco Mayoral race. Leno and Kim issued ads urging their supporters to vote for each other in an effort to keep Ed Lee from winning. Leno and Kim gave this specific statement about why they were supporting each other while running against each other: "We're telling all of our supporters to vote for both of us," Sup. Kim told an assembled crowd Thursday. "Mark and I are opponents, as everyone knows, but we also agree that negative attacks don't serve us in an election cycle, and certainly don't educate our voters." Finding commonality among competitors is not collusion, and this aspect of RCV is a reason to adopt it rather than reject it.

3. Opponents argue that RCV is not a true majority system.

It is true that the ultimate winner in RCV elections do not necessarily have to receive a majority of *all votes cast*. The ultimate winner in an RCV election receives the majority of continuing ballots. However, our current system is not a true majority system either. Example: In AD-25, Alex Lee came in second in the primary with 15.4% of the vote, which practically guaranteed that he would win the seat in November.

7) Must this be a Charter revision? *Can this problem be addressed without changing the charter (e.g., Council action, cultural change)? If not, should this be a policy recommendation to be included in the Commission's report?*	Yes. The process defining the primary/general election system is currently outlined in the Charter under Section 1600, and must be amended to allow for RCV to occur.
8) Are there other examples of this change? *If you have found other examples of this change, please share them and any outcomes that have been observed.*	Oakland, San Francisco, Berkeley, San Leandro, and now Alameda have adopted Ranked Choice Voting. Studies showing their outcomes are listed in the Citations Section.

3) Proposal Research & Citations

List below the results of any research conducted to inform this memo.

List of citations *All data must be cited so that Commissioners who are not part of the Subcommittee in question may locate the source of information as needed.*	1. Tolbert, Caroline J. and Daria Kuzentsova. "Editor's Introduction: The Promise and Peril of Ranked Choice Voting." Politics and Governance, Open Access Journal, Volume 9, Issue 2 (2021). 2. Kropf, Martha. "Using Campaign Communications to Analyze Civility in Ranked Choice Voting Elections." Politics and Governance, Open Access Journal, Volume 9, Issue 2 (2021). 3. Coll, Joseph A. "Demographic Disparities Using Ranked Choice Voting? Ranking Difficulty, Under-Voting, and the

2020 Democratic Primary." Politics and Governance, Open Access Journal, Volume 9, Issue 2 (2021).

4. Juelich, Courtney L. and Joseph A. Coll. "Ranked Choice Voting and Youth Voter Turnout: The Roles of Campaign Civility and Candidate Contact." Politics and Governance, Open Access Journal, Volume 9, Issue 2 (2021).

5. Terrell, Cynthia Richie *et al*. "Election Reform and Women's Representation: Ranked Choice Voting in the U.S.." Politics and Governance, Open Access Journal, Volume 9, Issue 2 (2021).

6. Santucci, Jack. "Variants of Ranked Choice Voting from a Strategic Perspective." Politics and Governance, Open Access Journal, Volume 9, Issue 2 (2021).

7. Richie, Rob *et al*. "Lessons from the Use of Ranked Choice Voting in American Presidential Primaries." Politics and Governance, Open Access Journal, Volume 9, Issue 2 (2021).

8. Chessin, Steve. "Non-Monotonicity Explained." June 17, 2009.

9. 2009 Burlington mayoral election. Wikipedia. Accessed July 13, 2021.

10. Donovan, Todd, and Kellen Gracey. "Self-Reported Understanding of Ranked-Choice Voting." Social Science Quarterly, April 2019.

11. Lavin, Nancy. "Ranked Choice Voting: The New Norm Across the Bay Area." National Civic Review, Volume 107, Number 4.

12. 2010 Oakland Mayoral Race Results. Alameda Country Registrar.

13. John, Sarah and Caroline Tolbert. "Socioeconomic and Demographic Perspectives on Ranked Choice Voting in the Bay Area." Ranked Choice Voting Civility Project Research Report 4, April 2015.

Any speakers who presented to the	None.

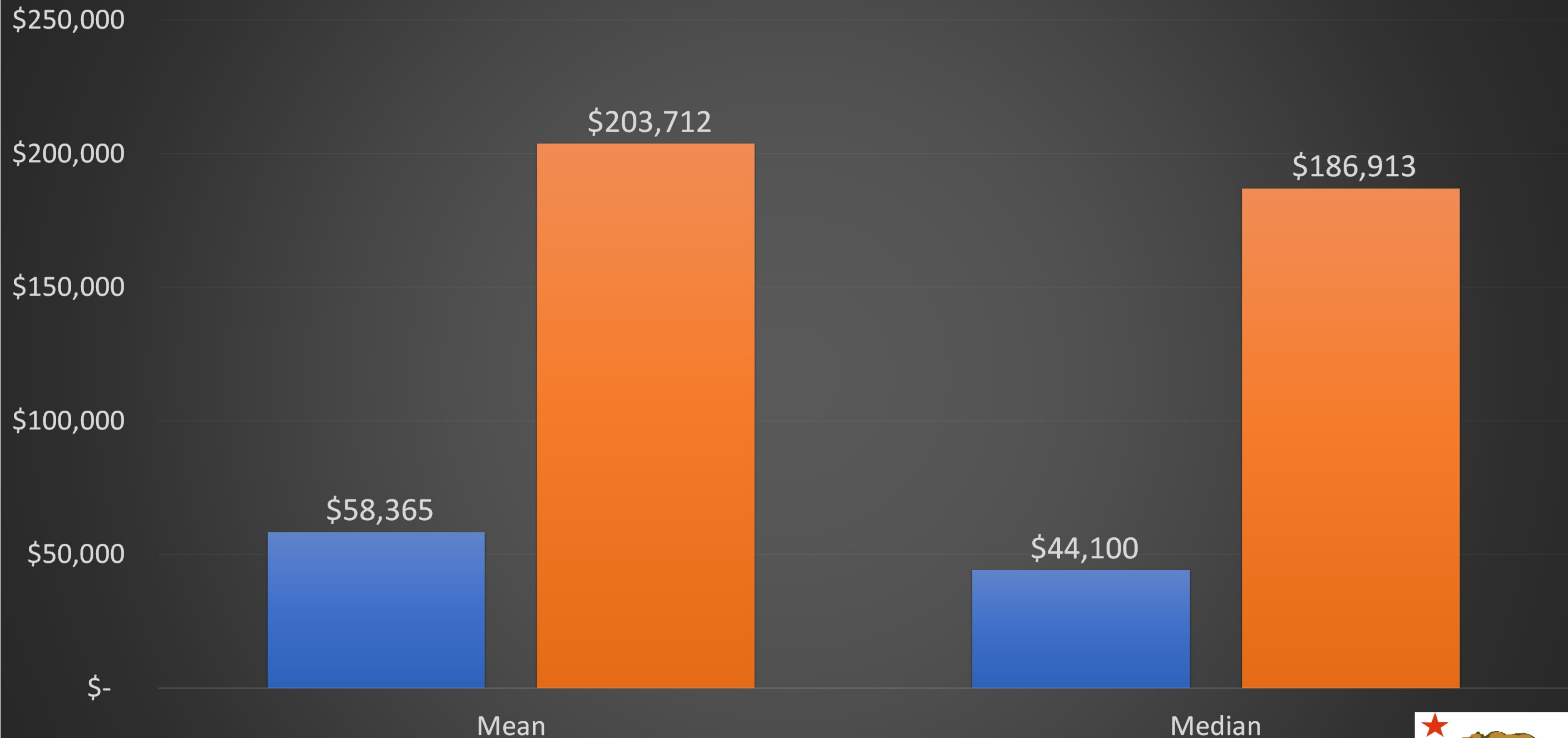|	
subcommittee must be listed. *Include name, title, affiliations, etc., along with a brief summary of the information presented by them.*	
Relevant Links *Provide links or locations of the information in this research as much as possible, otherwise provide attachments.*	1. Politics and Governance, Open Access Journal, Volume 9, Issue 2 (2021). https://www.cogitatiopress.com/politicsandgovernance/issue/view/251 2. 2009 Burlington mayoral election. Wikipedia. Accessed July 13, 2021. https://en.wikipedia.org/wiki/2009_Burlington_mayoral_election 3. "Self-Reported Understanding of Ranked-Choice Voting." https://www.researchgate.net/publication/332608727_Self-Reported_Understanding_of_Ranked-Choice_Voting 4. "Leno and Kim Endorse Each Other for Mayor." https://www.sfweekly.com/topstories/leno-and-kim-endorse-each-other-for-mayor/ 5. "Ranked Choice Voting: The New Norm Across the Bay Area." https://www.nationalcivicleague.org/ncr-article/ranked-choice-voting-the-new-norm-across-the-bay-area/ 6. 2010 Oakland Mayoral Race Results. Alameda Country Registrar. https://www.acgov.org/rov/rcv/results2010-11-02/rcvresults_2984.htm

EXHIBIT ONE

All Candidates Primary & General Fundraising

$250,000

$200,000 — $203,712

$186,913

$150,000

$100,000

$58,365

$50,000 — $44,100

$-

Mean

Median

■ Funds Raised by Candidates who only competed in Primary Elections

■ Funds Raised by Candidates who competed in Primary & General Elections

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Primary Fundraising for Top Two Candidates

$133,154

$111,898

$67,837

$55,502

Mean

Median

■ Funds Raised by Candidates who came in First in a Primary
■ Funds Raised by Candidates who came in Second in a Primary

Data from 2018 & 2020 San José elections provided by the San José City Clerk, compiled by Sam Gordon

CALIFORNIANS FOR ELECTORAL REFORM

Funds Raised by Top Two Candidates

$250,000

$200,000

$150,000

$100,000

$50,000

$0

$88,726

$79,783

$114,986

$95,435

$116,160

$68,918

Top 2 Candidates with no Majority Winner

Top 2 Candidates with a Majority Winner

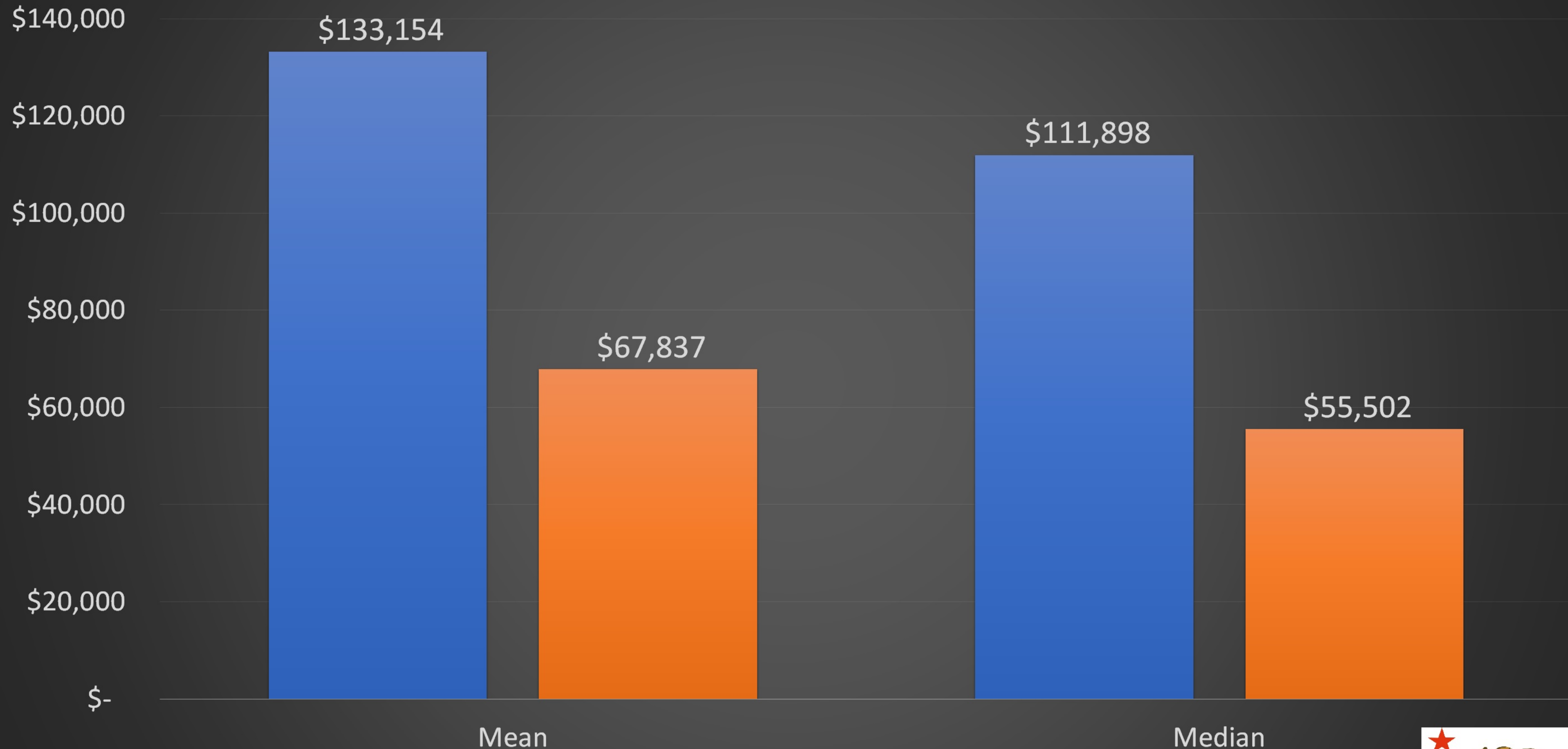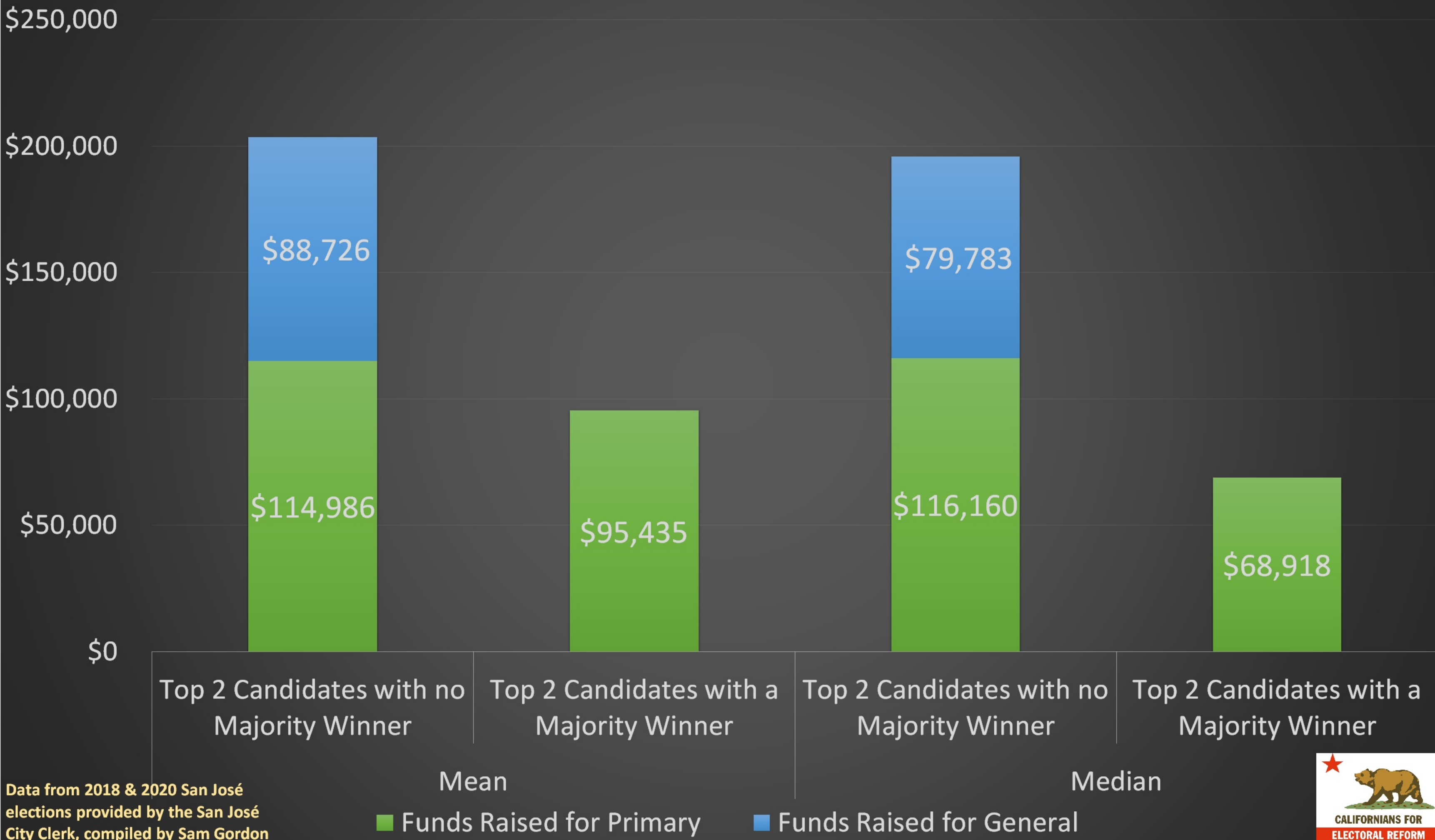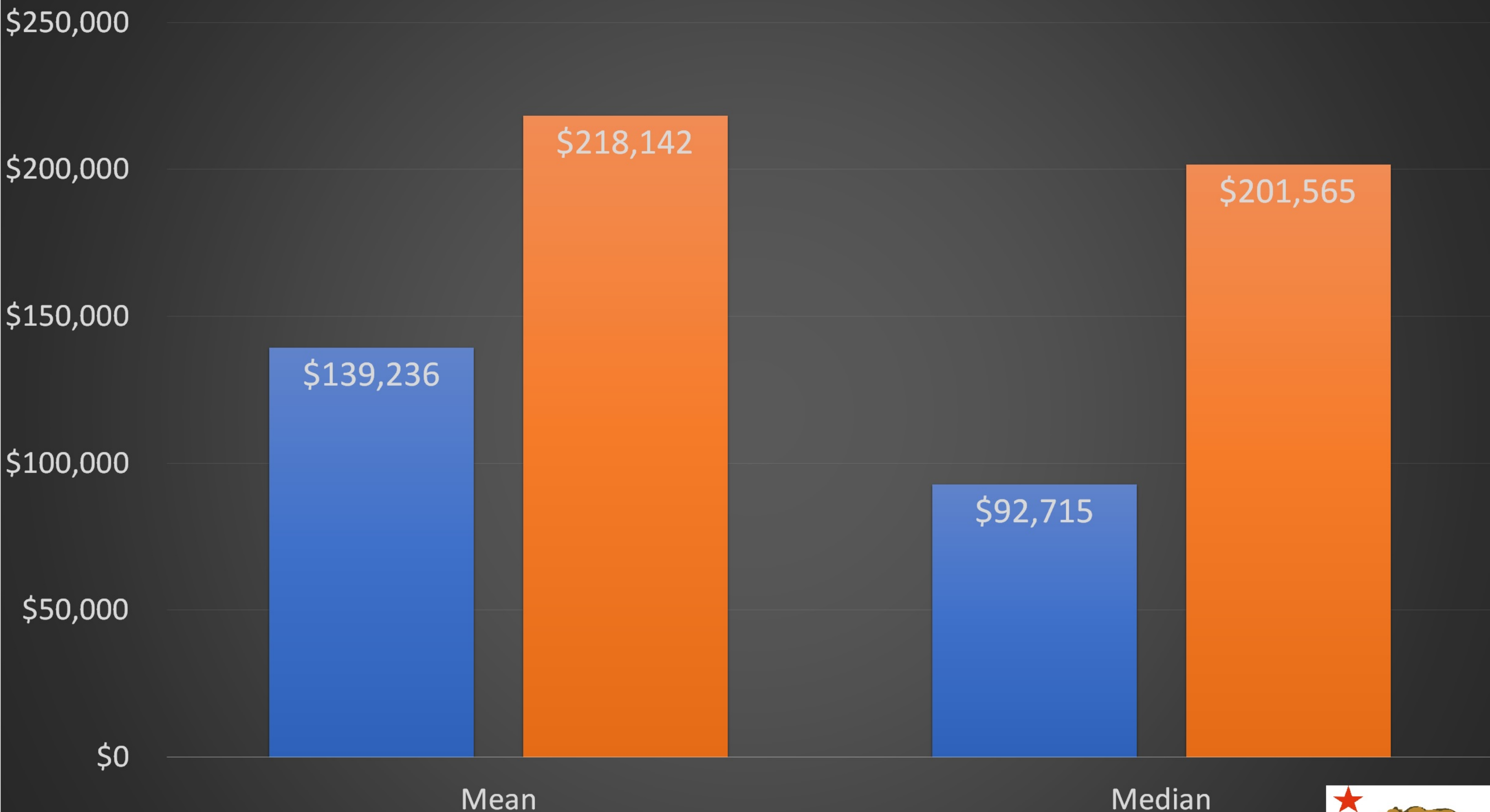Top 2 Candidates with no Majority Winner

Top 2 Candidates with a Majority Winner

Mean

Median

Data from 2018 & 2020 San José elections provided by the San José City Clerk, compiled by Sam Gordon

■ Funds Raised for Primary ■ Funds Raised for General

CALIFORNIANS FOR ELECTORAL REFORM

Winners' Fundraising

Chart showing mean and median fundraising amounts:

	Mean	Median
Funds Raised by Candidates who won a Primary with a majority	$139,236	$92,715
Funds Raised by Candidates who won Primary & General Elections	$218,142	$201,565

$250,000
$200,000
$150,000
$100,000
$50,000
$0

Funds Raised by Candidates who won a Primary with a majority
Funds Raised by Candidates who won Primary & General Elections

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