



**NEW AMERICA**  
F O U N D A T I O N

November 9, 2009

To: the Cities of Oakland, Berkeley and San Leandro

From: Steven Hill, Director, Political Reform Program, New America Foundation

Re: Analysis of Perata and De La Fuente letters regarding instant runoff voting

I have been asked by concerned Oakland, Berkeley and San Leandro residents to respond to recent letters written by Oakland mayoral candidate Don Perata and Oakland Councilmember Ignacio De La Fuente regarding Oakland's upcoming use of instant runoff voting (also known as ranked choice voting). As a way of introduction to readers of this memo, the New America Foundation's Political Reform Program is one of the nation's experts on electoral systems, including instant runoff voting. I have studied the impact of instant runoff voting in other jurisdictions that have used it, including San Francisco for six elections, Burlington, Vermont for two elections, as well as other American cities and counties, in the states of Louisiana, South Carolina and Arkansas for overseas voters, and in the city of London, Republic of Ireland and Australia (the last two have used IRV at national and local levels for decades). I have authored three books on electoral systems and political reform, all of which discussed instant runoff voting, and have authored numerous opeds and research studies. I also have given testimony on instant runoff voting to many charter commissions and state legislative committees.

Mr. Perata and Councilmember De La Fuente have raised important concerns, and I am happy to respond to them. Naturally, whenever a jurisdiction undergoes a change to its electoral system, that fosters an understandable degree of questions, concerns and even anxieties regarding how such a change may impact voters, election administration, and candidates' or incumbents' chances of electoral success.

I will address Mr. Perata's concerns first, followed by Councilmember De La Fuentes'.

**PART A. Mr. Perata's Concerns.**

Mr. Perata raised his concerns in a letter dated September 11, 2009 addressed to County Administrator Susan Muranishi. His concerns are listed below in italics, quoting verbatim from his letter, followed by my response:

*1. What is the status of the Sequoia instant runoff software and how, specifically, does it define ranked voting? Has it received the required governmental certification?*

The software (as well as hardware) of Sequoia Voting Systems' optical scan system is the same basic package as that which has been used in Alameda County for several years. That system has been modified to run IRV elections, and it has been tested at the federal level and approved by the Secretary of State for use in San Francisco. The application for use in Alameda County, which is identical to the one approved for San Francisco, is pending; registrar of voters Dave Macdonald was quoted recently in the Oakland Tribune saying that approval should come very soon, possibly within days.

The Sequoia system for Alameda County defines ranked voting in a way that produces majority winners in a single election. That is the same as how it is defined for San Francisco, and has been approved by the Secretary of State and tested by state and federal testing authorities.

*2) Have specific protocols and safeguards been established to determine precisely how IRV would be implemented at the polling place -- as well as in absentee, vote by mail, balloting?*

Yes, specific protocols and safeguards have been established for the polling place as well as for absentee and vote by mail balloting. According to the state certification process, the vendor (Sequoia Voting Systems) must develop these protocols and safeguards as part of its application for certification, in consultation with county election administrators. These protocols and safeguards were approved by the Secretary of State for San Francisco's use, and Sequoia's application for use in Alameda County is identical as that for San Francisco.

*3) What is the county plan, and estimated cost, for poll worker training and supervision, vote by mail instructions, and provisions to assist bilingual voters?*

Registrar of voters Dave Macdonald has estimated that the cost to Oakland for implementing IRV will be approximately \$727,000 for the first election. That includes all the expenses raised by Mr. Perata in his query above, as well as many other expenses. The costs then will drop dramatically in subsequent years, since all of the costs for software modification, creation of education materials and other expenses will be paid for in the first year. Mr. Macdonald has also stated that the cost of a June primary election for Oakland is about \$800,000, so the first-year costs for implementation will be more than offset by the savings from not having a June primary for local races. In subsequent years, with the initial costs for implementation having been paid for, the savings from not having a June primary will be significant. All told, the city of Oakland will save millions of dollars over time (that figure is consistent with millions of dollars already saved in San Francisco). In addition, the city auditor's office estimated at the time that Measure O was on the ballot in November 2006 that "the city of Oakland will save approximately \$463,997 each year by eliminating June elections for candidates."

In terms of the county plan, Mr. Macdonald has been holding public meetings in which he has been announcing his plans for things like poll worker training, bilingual voters and other details. His office also has designed a two-fold education brochure which it has been circulating to community organizations and concerned citizens for feedback. Many of those plans are based on those that have worked effectively in San Francisco.

*4) Are costs available for San Francisco's initial attempt to implement IRV? Note: IRV has been sold principally as a cost-saving measure, but San Francisco holds a separate, stand-alone municipal election, whereas Oakland election is concurrent with the state election. It seems this would mean IRV would cost more not less.*

San Francisco initially spent \$1.6 million to modify the software and voting equipment (whereas Alameda County spent approximately \$400,000, with Oakland paying approximately \$300,000 of that). San Francisco also spent approximately \$750,000 on voter education and outreach (whereas Oakland will pay the Registrar of Voters an estimated \$170,000 for voter education and outreach, considerably less money but Oakland has less than half the number of registered voters as San Francisco). The city of Oakland can conduct additional voter education and outreach beyond what the county is planning to do. Indeed, the Oakland city charter stipulates that the city of Oakland SHALL conduct voter education, though the charter is silent on how extensive that education must be (voter education costs will be discussed more extensively below; Minneapolis, which has about the same number of registered voters as Oakland, recently held its first IRV election, which was widely hailed as a success, and spent approximately \$110,000, or \$0.50 per registered voter. A comparable amount for Oakland would be \$100,000 in voter education expenditures).

*5) What safeguard and security are in place to prevent "gaming" the system? Has a comprehensive review of known concerns and abuses been solicited from experts in computation and mathematical systems?*

Sequoia Voting Systems IRV voting equipment has been tested at both federal and state levels. It has been approved for use in San Francisco by the Secretary of State. The testing process includes troubleshooting to ensure that the system cannot be accessed by hackers, malicious code or other attempts to game the system. The IRV component of Sequoia's system is tested just as all other components are for evidence of gaming, hacking, and other illegal practices. The Secretary of State's "top to bottom" review of all voting equipment in California included many experts in computers and math from the University of California-Berkeley.

Mr. Perata's letter also makes other statements and assertions that deserve a response. He asks:

*1) Whether a new IRV system can be implemented in time for the 2010 election cycle.*

The short answer is: yes. In fact, with the November 2010 election still a year away, and with the voting equipment already modified for IRV and the outlines of an education plan already drafted, Alameda County is way ahead of other jurisdictions that previously implemented IRV. San Francisco, for example, did not have its equipment approved for its first IRV election in November 2004 until July 2004. And the bulk of the voter education in San Francisco occurred in the months of September and October 2004, and that resulted in a very successful first IRV election. To its credit, Alameda County is way ahead of schedule.

*2) Mr. Perata states that: "The city, county and state each must "sign off" on various pieces of the untested system."*

Technically speaking, this statement is not correct. The city of Oakland actually has no role to play in signing off on IRV. Measure O changed the city charter, which now states that "The City shall [italics mine] use ranked choice voting once the Alameda County Registrar of Voters is able to conduct the election on behalf of the City." Dave Macdonald, registrar of voters, already

has stated that he is able to conduct the election on behalf of the city. In fact, in a public meeting on October 19, Mr. Macdonald stated that not only is he ready but that he has already begun expending money and utilizing staff time to prepare for that election. The Secretary of State has a role to play in that it must approve the voting equipment for use, and that approval is expected to come very soon (however, according to state law the Secretary of State does *not* have jurisdiction over the voter education plan, only over software, hardware and procedures used with voting equipment. More on that point later in this document). It is important for Mr. Perata and others to understand that, according to the charter, the city of Oakland (including the city council) is not a “controlling authority” in terms of whether or not IRV proceeds in Oakland. The charter gives no power or role to any official in Oakland, whether elected or appointed, to decline to implement the charter provision for IRV. Technically speaking, with the Registrar of Voters saying that he is “able to conduct” the election for Oakland, there is no longer a provision in the charter for a June election. In other words, any attempt by Oakland officials to use a June election would be illegal.

*3. Ranked choice voting gives greater weight to some votes than to others.*

This claim reveals a lack of understanding of how IRV works. Note that, while instant runoff voting has not been litigated in many places, in two court cases in Michigan and Minnesota the plaintiffs raised this very point raised by Mr. Perata, and both courts emphatically rejected it. Most recently in June 2009, the Minnesota Supreme Court unanimously rebuffed such arguments, specifically stating “we reject the central premise of appellants’ unequal weighting argument.”<sup>1</sup> The Michigan court specifically ruled that IRV upholds the “one person, one vote” principle.<sup>2</sup>

That’s because with instant runoff voting, all voters and ballots are treated equally. For each and every voter, your ballot counts as one vote for your highest ranked candidate who is still in the race in every round of counting. Just like in a traditional two round runoff, your ballot counts first for your favorite candidate; as long as that candidate remains in the race, your ballot counts for her/him. If your top candidate is eliminated, only then does your ballot count for your runoff choice, which is your next-ranked candidate. In this respect, IRV is no different than a traditional two round runoff election. Every voter has one and only one vote in each round of counting, and your ballot counts for your top candidate until that candidate loses, and then your ballot counts for your next lower ranked, i.e. runoff candidate.

In any runoff method, whether IRV or two-round, the voters of candidates who have been eliminated get to select among the remaining candidates and help decide who the majority winner will be. In a two round runoff, voters who return to the second (runoff) election pick between the final two candidates. Those voters who selected one of the two finalists in the first

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<sup>1</sup> Minnesota Voters Alliance, et al. vs. The City of Minneapolis, et al., June 11, 2009, File Number A09-182, Minnesota State Supreme Court, p. 12. Plaintiffs were attempting to stop the first use of IRV in Minneapolis for the November 2009 election, but were unsuccessful. The election occurred and went smoothly, see “Success For Ranked Choice,” by Steve Brandt, Minneapolis Star Tribune, November 4, 2009, and “New voting system runs smoothly on Election Day,” by James Nord, Minnesota Daily, November 3, 2009.

<sup>2</sup> See Stephenson v Ann Arbor Board of City Canvassers File No. 75-10166 AW Michigan Circuit Court for the County of Jackson. This court decision can be viewed at [www.fairvote.org/library/statutes/legal/irv.htm](http://www.fairvote.org/library/statutes/legal/irv.htm).

round continue to vote for her/him, while all other voters must pick one of the finalists as their second choice. With IRV, voters are asked to rank their runoff choices at the same time as their first choice, and the runoff rankings are used to determine a majority winner so that voters do not have to return for a second election. In both of these methods, all voters are treated equally (or, as Mr. Perata frames it, all votes have “the same weight”) – each has one ballot to cast for a single candidate in each round of voting.

Ranked ballot methods are widely known and studied by political scientists all over the world. IRV is so well-regarded methodologically that Robert’s Rules of Order recommends it over plurality voting, even though the latter is the most widely employed method in the United States, used to elect members of Congress and state legislators in most states. IRV also is used to elect the president of the American Political Science Association, a nationwide professional organization of 15,000 political scientists, and its members presumably know a thing or two about fair methods for electing officeholders.

*4. Ranked Choice Voting fails to provide a reliable method of counting votes.*

Mr. Perata’s claim that software for tallying votes is “still in development” is incorrect. Sequoia’s software already has been developed, tested and approved for use in San Francisco by the California Secretary of State. The claim that ranked choice voting “would likely require that votes be tabulated entirely by hand count” is similarly wrong. The voting equipment is ready and available so there would be no reason to do a hand count. San Francisco has not needed to conduct a hand count with the Sequoia system, and neither would Alameda County. Mr. Perata refers to a “study” conducted by the “National Election Data Archive,” and he is likely unaware that, despite its impressive sounding name, the so-called National Election Data Archive is essentially a single person, a blogger by the name of Kathy Dopp, whose primary academic credential is as a former high school math teacher. Dopp’s research has been called into question by the New York Times, FairVote and other credible organizations. Ms. Dopp is a well-known anti-IRV activist whose research has never been peer reviewed, and her “National Election Data Archive” is not considered a bona fide organization. It appears likely that Mr. Perata picked up this information from the Internet, which of course can be notorious for bogus claims masquerading as fact.

*5. Rank choice voting would require voters to use two different voting methods in the same election.*

Mr. Perata claims that using two different voting methods will result in “widespread voter confusion.” Yet, in the half dozen jurisdictions that have used this method at the same time as other voting methods there has been little evidence of voter confusion. In fact well over 99 percent of ballots cast by first time IRV voters in every U.S. jurisdiction adopting IRV have been valid. San Francisco, which has used IRV for six elections since 2004, uses three different methods, IRV for electing the Board of Supervisors, mayor and other citywide offices, a second method (at-large bloc voting) to elect the board of education and community college board, and a third (plurality, first-past-the post) to elect state and federal offices, with all three methods used simultaneously during even year elections. Yet there have been no signs of voter confusion exhibited in several exit polls and other analyses of San Francisco’s elections. One study found that the percentage of “residual votes” (i.e. those uncountable ballots that marked more than one candidate as first choice, or skipped the race altogether) in IRV races were about the same as in

the presidential election. The number of residual votes in districts with the highest concentration of African American voters was lower in the IRV election than in the presidential election and other plurality races.

Furthermore, there is strong evidence that voters of all demographics understand IRV, like it and have used their IRV rankings effectively. In San Francisco State University's exit polls in 2004 and 2005, for example, 87 percent of San Franciscans polled said they understood the voting system "perfectly well" or "fairly well." Ethnic and minority voters reported a very high level of understanding of IRV: Hispanic/Latino 89.8 percent (higher than the citywide average), Asian/Pacific Islander 85.7 percent, African American/Black 84.8 percent, White 87.8 percent, Other 85.3 percent. Other findings were that voters preferred IRV over the old two round runoff system by 3 to 1. That was true for every grouping of voters, as measured by age, race, language, income and education. Also, according to the 2005 study, racial minorities were more likely to use all three of their rankings, including Hispanic/Latino 67.4 percent, Asian/Pacific Islander 64.7 percent African American/Black 72.1 percent, and White 51.4 percent. Finally, voter turnout citywide nearly tripled, and in the six neighborhoods with the highest concentrations of racial minorities voter turnout quadrupled.<sup>3</sup>

In 2006, the Asian Law Caucus conducted an exit poll of voters for a Board of Supervisors race in District Four, a majority Asian district. The ALC survey found that 66 percent of Asian respondents called IRV "helpful" compared to 57 percent of non-Asian respondents. And 82 percent of Asian respondents ranked two or three choices, while 84 percent of non-Asians ranked two or three choices.<sup>4</sup>

Finally, minority candidates have realized an unprecedented degree of success in San Francisco's Board of Supervisors races using IRV. Currently 7 out of 11 Supervisors (64 percent) are minority, the most in San Francisco's history.

In contrast to these positive results from San Francisco, Oakland's *current* election method greatly discriminates against traditionally disenfranchised voters. That's because most elections have been decided in either a June or March primary election, when voter turnout not only is much lower citywide but is disproportionately even lower among minority communities.<sup>5</sup> Comparing voter turnout differences between the June/March and November elections in

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<sup>3</sup> See "An Assessment of Ranked Choice Voting in San Francisco 2004 elections, Final Report" Public Policy Institute, San Francisco State University, May 2005, [www.sfgov.org/site/uploadedfiles/election/Elections\\_Pages/SFSU-PRI\\_RCV\\_final\\_report\\_June\\_30.pdf](http://www.sfgov.org/site/uploadedfiles/election/Elections_Pages/SFSU-PRI_RCV_final_report_June_30.pdf); "An Assessment of Ranked Choice Voting in San Francisco 2005 elections, Final Report" Public Policy Institute, San Francisco State University, July 2006, [http://bss.sfsu.edu/fneely/SFSU-PRI\\_RCV\\_final\\_report\\_July\\_17\\_2006.pdf](http://bss.sfsu.edu/fneely/SFSU-PRI_RCV_final_report_July_17_2006.pdf); "Ranked Choice Voting and Voter Turnout in San Francisco's 2005 Election," by Christopher Jerdonek, February 4, 2006, [www.sfrcv.com/reports/turnout.pdf](http://www.sfrcv.com/reports/turnout.pdf); and "Instant Runoff Voting and Its Impact on Racial Minorities," by New America Foundation and FairVote, June 2008, [www.newamerica.net/files/irvracememo.pdf](http://www.newamerica.net/files/irvracememo.pdf).

<sup>4</sup> "Ranked Choice Voting and Supervisor Race, San Francisco District 4," an exit poll survey conducted by the Asian Law Caucus, November 2006.

<sup>5</sup> Until 2006, Oakland held its primary election in March, but at that point it switched to June primary elections when the state of California also switched from a March to a June primary.

Oakland we see a disturbing pattern. For example, in the 2004 March-November election cycle, turnout for predominantly African-Americans census tracts was 97 percent higher – nearly double -- in November than March, 95 percent higher for Asian/Pacific Islanders and 88 percent higher for Latinos. But it was only 45 percent higher for whites. Another way of saying this is that voter turnout in Oakland’s March 2004 primary was at least 47 percent lower than in the November general election in every census tract predominantly made up of African-Americans, Asian/Pacific Islanders, and Latinos, but turnout was only 32 percent lower in predominantly white census tracts. This pattern holds in every election in which we looked going back to 1992.<sup>6</sup> Despite this clear disparity in racial voting patterns, three-quarters of Oakland’s city elections have been decided in the June or March primary election without ever going to a November election. So the vast majority of Oakland elections have been decided during low turnout June/March elections when minority voters have been disproportionately absent from the polls by significant numbers.

So while I can applaud Mr. Perata for being concerned about voter confusion, and the consequences of that such as disenfranchisement of minority voters, the fact of the matter is the *current* method already is causing substantial disenfranchisement of these minority communities. Yet Mr. Perata does not acknowledge that.

*6. Ranked choice voting requires a costly public education and outreach effort.*

A voter education effort certainly is necessary and advisable (and is mandated by the Oakland charter), but it need not be costly. Various jurisdictions that have implemented IRV have spent anywhere from \$0.25 per registered voter to \$1.70 per registered voter. Yet all of them have had successful IRV elections, with high percentages of voters casting valid ballots, using their rankings effectively and reporting high levels of understanding. Minneapolis just had its first IRV election on November 3, 2009, which was widely hailed in media reports as a success. Minneapolis with 220,000 registered voters has about the same size electorate as Oakland (204,000 registered voters), and the city spent \$75,000 on voter education, or \$0.34 per registered voter. In addition, private funding from the Minneapolis Foundation spent another \$35,000, for a total of about \$0.50 per registered voter. In addition, various nonprofit organizations utilizing volunteers contributed many hours toward education and outreach. Comparable spending levels in Oakland for voter education would amount to approximately \$100,000, and registrar of voters Dave Macdonald has created a voter education plan based on spending approximately \$170,000, well within the range of spending in Minneapolis and other jurisdictions.

A study we conducted of various IRV education efforts in various jurisdictions concluded that the key to a successful election is a well-designed ballot (which minimizes voter confusion), use of free media and news coverage, polling place visual explanations (posters, videos, etc.), a direct mailer to all registered voters, info placed in the Voter Information Pamphlet and poll worker training. Even though some voters in these places do not completely understand the details of how the IRV ballots are to be tallied, voters universally have had no difficulty ranking their IRV ballots effectively, 1, 2, 3 (just as voters easily vote for president without understanding the mechanics of the Electoral College). The role of the voter is relatively simple,

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<sup>6</sup> See “Oakland Voter Participation and Minority Turnout,” [www.fairvote.org/oaklandirv/webarchive/irvresources.html](http://www.fairvote.org/oaklandirv/webarchive/irvresources.html)

and voters are used to ranking things all the time, whether favorite sports teams or flavors of ice cream. They are able to rank their favorite candidates as well, when they are given the option of doing so. In addition, as previously stated, while the amount for voter education may appear costly, those costs are more than recovered by eliminating an unnecessary June primary election.

*7. Ranked choice voting is inconsistent with Oakland's campaign finance laws.*

Policymakers in Oakland may want to look at current campaign finance laws to see if they need to be adjusted to accommodate for the lack of a June primary election. Other cities using IRV, such as San Francisco, have been able to adjust their campaign finance laws without much difficulty. In preparation for its first IRV election in November 2009, Minneapolis changed its campaign finance disclosure requirements.

**PART B. Councilmember De La Fuente's Concerns.**

Councilmember De La Fuente's concerns, stated in a letter written to Secretary of State Debra Bowen dated October 21, 2009, amount to a heartfelt plea for adequate voter education and outreach. He believes there is "simply not enough time or resources to roll out RCV in a way that ensures a reliable and fully accessible voting system for Oakland this year," especially for less educated, non-English-speakers, and inexperienced voters. Corollary to that, he claims that due to a severe economic downturn, the city of Oakland simply does not have the financial resources to adequately fund a voter education campaign. Consequently, he urges Secretary Bowen "to not grant any approvals until you receive proof that sufficient resources have been allocated to actually implement an effective outreach and education plan in Oakland." He states, rather emphatically, "It would be irresponsible for the State to approve RVC [*sic*] without proof that sufficient resources have been allocated to conduct the required outreach and education."

While of course Councilmember De La Fuente is correct in calling for adequate voter education and outreach, a couple of important points need to be clarified. First, while input from the Secretary of State's office about voter education plans would be helpful and even desirable, the Secretary of State has no legal jurisdiction over voter education plans. The powers of the Secretary of State are enumerated in the state Elections Codes, Sections 19200-19217, and they are restricted to oversight regarding software, hardware and procedures used with voting equipment. They do not include legal authority over Oakland's voter education plan. Asking the Secretary of State to withhold approval of IRV over a voter education plan is asking the Secretary of State to exert an unauthorized extension of her office's power. California's Secretary of State has never withheld certification of voting equipment based on a voter education plan. There is simply no precedent in California's history for doing so.

Second, while one has to take seriously Councilmember De La Fuente's concern that "due to a severe economic downturn, the city of Oakland simply does not have the financial resources to adequately fund a voter education campaign," there is no provision in the charter for stopping the implementation of IRV due to the quality of the voter education campaign. The charter simply says "The City shall conduct a voter education campaign to familiarize voters with ranked choice voting." The charter does not comment on the extent of the voter education, and in fact the registrar of voters already is planning a voter education campaign that is being modeled after San Francisco's successful voter education efforts. The registrar's plan asks Oakland to spend

\$170,000, about \$0.83 per registered voter, which is a reasonable amount and similar to what Minneapolis just spent to hold its first successful IRV election on November 3, 2009.

Third, while Councilmember De La Fuente is rightly concerned about the impact that a transition to IRV may have on traditionally disenfranchised communities, he appears not to recognize how the *current* system already is disenfranchising those communities. As previously mentioned in this document, three-quarters of Oakland's city elections have been decided in the June or March primary election when minority voters have been disproportionately absent from the polls in significant numbers. Given Councilmember De La Fuente's concern about the adequacy of the voter education, it would make sense to use his office's time and energy to engage with the registrar, his fellow council members, and community organizations in fashioning the best voter education campaign possible. In fact, some community organizations, such as the League of Women Voters, already have committed to putting their own time and resources toward voter education. As mentioned previously, some jurisdictions have had successful IRV elections based on voter education plans that spent as little as \$0.25 per registered voter. With Oakland's approximately 204,000 registered voters, and an efficiently designed voter education plan, Oakland should have sufficient resources to both comply with its charter and have a successful IRV election.

In addition, Councilmember De La Fuente cites the diverse racial demographics of Oakland as a challenge for voter education, and certainly it is. However it is instructive to note that San Francisco (33 percent Asian, 14 percent Hispanic, 7 percent African American) has a fairly similar level of racial diversity as Oakland (16 percent Asian, 25 percent Hispanic, 32 percent African American), and actually has a greater percentage of residents who speak a language other than English at home (45 percent in San Francisco compared to 40 percent in Oakland).<sup>7</sup> Yet San Francisco has been able to administer six successful IRV elections since 2004.

With the November 2010 election still a year away, and with the voting equipment already modified for IRV and the outlines of an education plan already drafted, Alameda County is way ahead of other jurisdictions that previously implemented IRV, including San Francisco. San Francisco conducted the bulk of its voter education during September and October for its first IRV election in November 2004. So Alameda County is way ahead of the curve. Ironically, if Councilmember De La Fuente's concerns were to result in a delay in receiving the Secretary of State's approval of the voting equipment, that would likely result in a delay in implementing the voter education and outreach plan. Thus, Councilmember De La Fuente's actions may have the ironic effect of exacerbating the very problem he is rightly concerned about.

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<sup>7</sup> CitiLab, <http://citylab.news21.com/cities/33/>

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