

INTRODUCTION

The Year of Living Dangerously: 2017

By Bill Whalen

The calendar year is about to end. What have we learned about California?

In political terms the rich got richer and the poor a whole lot poorer.

Fiscally 2016 was a win for the status quo. Governor Jerry Brown signed a \$167 billion budget that didn't contain a dime in so-called [blue-pencil reductions](#) to individual spending items. The last time that occurred was in 1982 (the governor then was some dude named Jerry Brown).

A couple of months later in 2016 Brown signed into law sweeping legislation requiring California to slash greenhouse gas emissions [by the year 2030](#). Bold? Yes, but not as revolutionary as it sounds, as it builds on a law signed by then-governor Arnold Schwarzenegger over a decade ago.

One could argue that the November election was more of the same old same old:

- Hillary Clinton lost the national electoral vote, but in perma-blue California she carried the state by a wider margin than the more popular Barack Obama. Donald Trump's nearly 4.3 million-vote shortfall in California more than accounts for [his smaller deficit nationwide](#).
- Democrats achieved two-thirds supermajorities in both chambers of the State Legislature. Raising taxes and passing constitutional amendments by party-line votes will be a distinct possibility in 2017 and beyond, though a cadre of moderate Democrats in the State Assembly may think otherwise.
- On the initiative front voters tilted left by extending higher taxes on higher-end earners ([Proposition 55](#)), slapping a \$2 tax on cigarette packs ([Prop. 56](#)), approving billions in school bonds ([Prop. 51](#)), legalizing recreational marijuana ([Prop. 64](#)), signing off on more firearms restrictions ([Prop. 63](#)), and reinstating bilingual education in public schools ([Prop. 58](#)).
- Not that it was an entirely southpaw mentality. California voters did have their right-of-center moments: most notably rejecting yet another initiative run at repealing the state's death penalty ([Proposition 62](#)) and voting down a measure that would have controlled state drug prices ([Prop. 61](#)).

As proof that one door closes, another opens: two state lawmakers (Lieutenant Governor Gavin Newsom and state Treasurer John Chiang) announced their intentions to replace the term-limited Governor Brown, who can't run in 2018. Watch for a musical game of chairs in Sacramento in the coming months as lawmakers sniff out opportunities for upward mobility.

Otherwise, 2016 might best be remembered as the year that California set itself up for a clash with the coming Trump administration on the following lines:

TABLE OF CONTENTS

INTRODUCTION

The Year of Living Dangerously: 2017
by Bill Whalen

FEATURED COMMENTARY

Sacramento: Like Washington, A Company Town—With Little in Common with D.C.
by Bill Whalen

Ending the California Coastal Commission Lolly Scramble
by Terry Anderson

Top-Two Primary Limits Voters' Choices
by Steven Greenhut

Is It Time to Reconsider California's Initiative System?
by Carson Bruno

POLL ANALYSIS

Golden State Poll Studies California Voters in Unconventional Election
by Tammy M. Frisby

CALNOTES

FACTS ON THE ISSUE



- If the new president makes good on his promise to crack down on sanctuary cities, will he [withhold federal funds](#) from such cities as San Francisco and Los Angeles if they refuse to cooperate with Washington on the deportation of illegal alien criminals?
- What will be the effect on California's climate-change agenda should the president-elect make good on promises to pull out of the [Paris climate agreement](#), dump the [Clean Power Plan](#) for existing power plants, and deep-six other Obama environmental regulations?
- With marijuana use now legal in California, does a Trump Justice Department [crack down](#) on what's still a Schedule I substance or turn a blind eye to the state's leafier landscape?

We'll further explore the California-Washington divide in the next issue of *Eureka*, coming early in the New Year.

Meanwhile, we look back on 2016 with the following:

- First, I have this look at why Sacramento is a lot like Washington, DC; it's a company town, though with [little in common](#) with the nation's capital.
- Hoover senior fellow Terry Anderson bemoans the [money scramble](#) otherwise known as the property-redistributing California Coastal Commission.
- Steven Greenhut, a senior fellow and the western region director for the R Street Institute, critiques [California's top-two primary system](#) (which helped generate a snoozer of a US Senate race).
- Carson Bruno, formerly a Hoover Institution research fellow and now an assistant dean at the Pepperdine School of Public Policy, taking on the question of whether it's time [to reconsider California's initiative system](#)?
- Finally, Hoover research fellow Tammy Frisby's astute analysis of [a preelection Golden State Poll](#) that proved to be an accurate read of the California electorate.

We hope you enjoy this latest installment of *Eureka* and that it gets you thinking about where California stands and if we're moving in the right direction.

Happy reading!

Happy New Year!

Bill Whalen is a Hoover Institution research fellow, primarily studying California's political trends. From 1995 to 1999, Bill served as Chief Speechwriter and Director of Public Affairs for former California Governor Pete Wilson.



FEATURED COMMENTARY

Sacramento: Like Washington, A Company Town—With Little in Common with D.C.

By Bill Whalen

“East is east and west is west, and never the twain shall meet.” Rudyard Kipling was referencing the British Empire. He might as well have been talking the divide between Washington, D.C., America’s capital, and Sacramento, the capital city of America’s nation-state.

How do the two political hubs contrast? With a nod to another English scribe, let us count the ways.

The Big Speech: Last week, official Washington came to a halt for President Obama’s final State of the Union address. The big speech didn’t lack for drama or theatrics—the White House purposely [leaving an empty seat](#) in the First Lady’s gallery to highlight gun-related deaths. With all commercial and cable news networks covering the speech live and in prime time, that gesture didn’t go unnoticed.

Now, the Sacramento contrast. Governor Jerry Brown’s State of the State Address will be live at 10 a.m. on the West Coast this Thursday. That forces local stations to choose between a

NAME RECOGNITION IMPROVES DURING GUBERNATORIAL TENURE, BUT APPROVAL DROPS

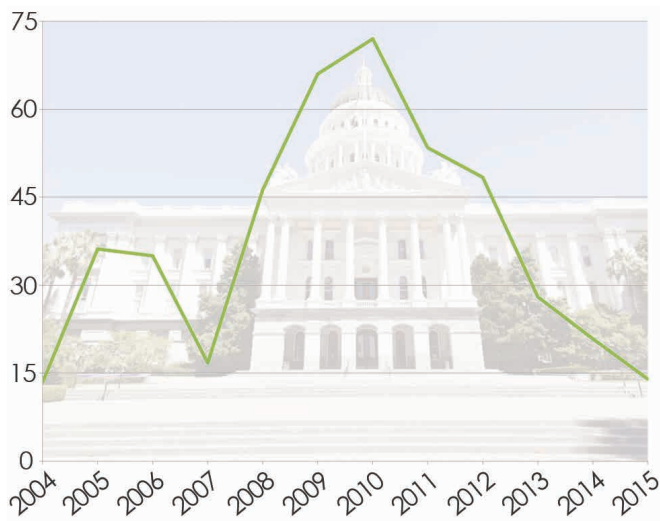


Source: *Field Poll Job Performance Trend*
 Note: Jerry Brown has yet to complete final term; Known Approval=Approval Rating/Name Recognition

FACTS ON THE ISSUE



STATE LEGISLATURE'S NET DISAPPROVAL RATING (% DISAPPROVE LESS % APPROVAL AMONG LIKELY VOTERS)



Source: Public Policy Institute of California Statewide Surveys

FACTS ON THE ISSUE

policy speech or such civic-minded fare as *The View* and *The Price Is Right*.

In California, television doesn't accommodate the political class. The Governor's big speech won't go live, save for the California Channel (think: [C-SPAN for state government](#)) and folks with enough bandwidth to handle Internet streaming.

In fairness to Brown, this has plagued all California governors not on a first-name basis with the movie-going public. Two decades ago, when I served as a speechwriter for then-Governor Pete Wilson, we scheduled the State of the State for 5 p.m. California-time, to coincide with local news. Then, we had to twist arms to get on the air—albeit, [with mixed results](#).

The Big Speakers: Then again, Barack Obama and Jerry Brown make for Democratic apples and oranges. Both are history-makers—Obama, the nation's first black president ([sorry, Bill Clinton and Toni Morrison](#)); Brown, California's oldest and longest-serving governor.

Obama has a bully pulpit and intends to use it in 2016 by issuing executive orders, traveling abroad, and generally not laying low while the nation chooses his successor.

Brown likewise has a bully pulpit—but rarely exercises it beyond Sacramento. California's Governor occasionally ventures beyond the Capitol comfort zone during the fall's bill-signing season. Otherwise, he's not one for high-profile events in big media markets.

But here's the funny thing: at this point in their respective tenures, Brown may be the one with more power to exercise. Unlike Obama, he doesn't have a dysfunctional legislature that, when it's not fighting among itself, is trying to stifle the presidential agenda. Because California's governor has line-item veto authority that allows the executive to "blue-pencil" spending—permanently removing items from the budget unless the State Legislature overrides the action—he enjoys strong leverage in the budget debate. It also works to the governor's advantage that under [Proposition 25](#) the State Legislature is racing against the clock to cut a spending deal.

Brown understands all of this, which is one reason why he released his budget plan only a few days after the State Legislature returned to Sacramento earlier this month. Anticipating a showdown once the state budget goes through its May "revision," Brown wanted to underscore the point that he had [no intention](#) of blowing through this year's revenue surplus, despite the State Legislature's tendency to spend money [as quickly as it's minted](#).

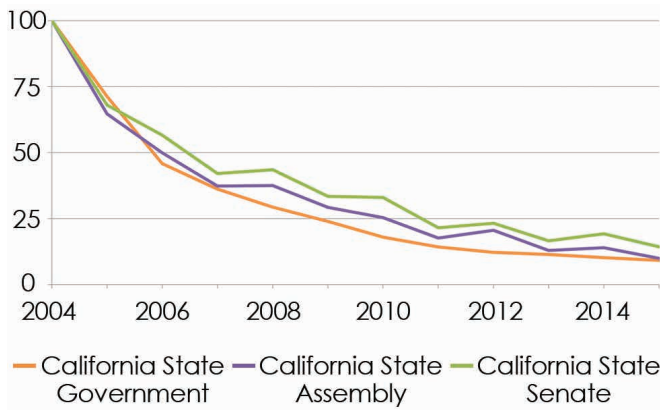
As for Obama: earlier this month, he vetoed a Republican budget bill meant to unravel Obamacare. However, his proposed spending plan for the next fiscal year won't be revealed until next month, [a week later than first advertised](#). Whereas Sacramento likely will complete its budget before the July 1 fiscal deadline, Washington's spending debate could be an unappetizing hash of threatened government shutdowns, continuing resolutions, election-year posturing, and new and creative [ways to undercut presidential executive actions](#).

Legislative Bodies: Both the U.S. Congress and California's State Legislature are under one-party control. From there, the similarities end. First, there's the matter of volatility. Congress has changed hands three times in the past 20 years. In Sacramento, Democrats have run the State Legislature for the past 45 years—save for a brief moment in the mid-1990's when Republicans ruled the State Assembly.

And there's the matter of tenure. Thanks to California's voter-approved term-limits law, Sacramento's legislative leadership is a revolving door. Dating back to 1991 and the beginning of term limits, the state's seen four governors and 12 Assembly Speakers. In Washington: four presidents and six House Speakers.

Another way to look at it: only two Democrats—Richard Gephardt and Nancy Pelosi—have led the House Democratic caucus the past two decades, while majority Democrats in Sacramento constantly reshuffle their deck (note: this may change with [2012's Proposition 28](#) altering California's term-limit restrictions).

GOOGLE TRENDS AVERAGE SEARCH TERM INTEREST



Source: Google Trends



Search interest in California's government has consistently dropped since 2004 falling an average of almost 90% in the last decade.

FACTS ON THE ISSUE

The Media: Mark Twain famously quipped: “there is no native criminal class except Congress.” That’s a compliment, compared to what’s said these days on social media and conservative talk radio. According to a December 2015 Gallup survey, Congress saw an approval rating of just 13%. As you’ll see [here](#), the public’s felt this way for some time.

In California, voters **divide evenly** on the State Legislature—41% approve; 40% disapprove, per the Public Policy Institute of California. A year ago, the Legislature’s approval stood at 49%.

Why the difference? You can argue the appearance of being hard at work: Sacramento lawmakers passed more than 700 pieces of legislation in 2015, down from 1,000 in 2014. The present Congress can claim less than 500 enacted laws or passed resolutions.

And there’s the matter of harmony: while Brown and the Golden Dome have their differences over spending and a few other high-profile matters, it’s nothing like the partisan combat zone that stretches from the White House to Capitol Hill.

Here’s one other possibility as to why Sacramento outpolls Washington: lack of a media microscope. Once Arnold Schwarzenegger left town in 2011, out-of-town television bureaus promptly bailed on the State Capitol. At the same time, California’s newspapers have slashed their Sacramento bureaus.

In Washington, news organizations like *The Washington Post*, *The New York Times*, and *Politico* engage in bidding wars for top writing talent. In Sacramento, 2016’s hottest news organization may be [CALmatters](#)—a nonprofit venture featuring former state journalists.

The bottom line: out-of-sight, out-of-mind may be a boost to lawmakers’ approval numbers. But a contracting Capitol press corps does not bode well for California’s future.

Like many an American, I’ve had the good fortune to live on two coasts. I was born and raised in the nation’s capital. Work took me to California’s capital. Before taking Horace Greeley’s advice, I was assured I’d enjoy Sacramento because—and this isn’t the kind of thing the local Chamber of Commerce brags about—it was an easy escape to Lake Tahoe, Wine Country, San Francisco, and Yosemite; a short flight to Los Angeles or Las Vegas.

That might be the best argument in Sacramento’s favor—even if it is a backhanded compliment.

Bill Whalen is a Hoover Institution research fellow, primarily studying California’s political trends. From 1995 to 1999, Bill served as Chief Speechwriter and Director of Public Affairs for former California Governor Pete Wilson.



CALNOTES:
PROPOSITION 25



Passed by voters in 2010, Proposition 25 removed the two-thirds supermajority requirement to pass a state budget. To enforce an on-time passage of the budget, legislators forfeit their salary between the June 15 deadline and passage of the budget. In 2011, State Controller John Chiang declared the passed-budget not-balanced and withheld salary payments to legislators. Democratic legislators promptly sued the Controller stating that it was the State Legislature’s prerogative to determine whether a budget is balanced, an argument with which the state courts ultimately agreed.

Ending the California Coastal Commission Lolly Scramble

By Terry L. Anderson

Coming from the “big sky country” of Montana where beautiful views are common around every bend in the road, I am still impressed by the green hills overlooking Point Reyes, the



coastal cliffs plunging into the Pacific at Big Sur, and the vistas at San Simeon once enjoyed by Randolph Hearst. How can California, with a population of nearly 40 million and land values among the highest in the country, maintain so much open space?

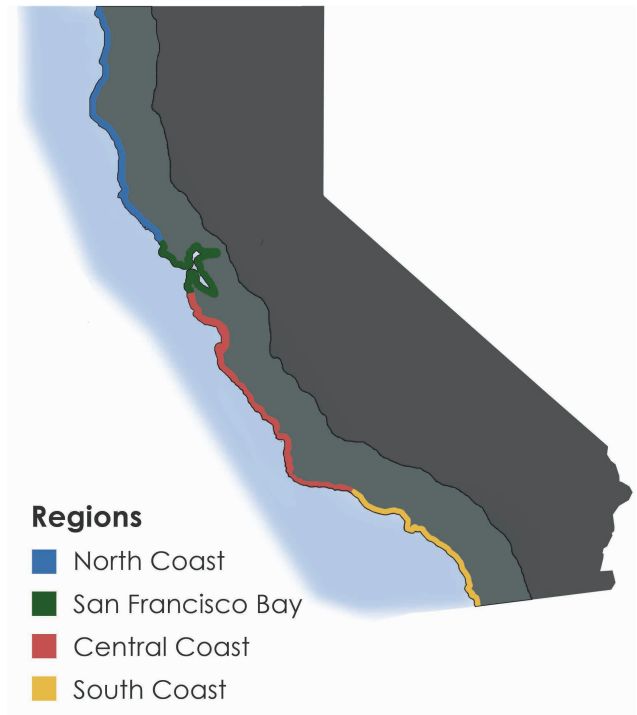
The answer in three letters is the CCC—the **CALIFORNIA COASTAL COMMISSION**. Established by the California Coastal Act in 1976, the commission has spent 40 years preserving the views I enjoy. It does this by redistributing property rights from coastal landowners to those of us who bear none of the cost of maintaining open space. In some—perhaps most—cases the redistribution enhances the wealth of other coastal homeowners by dictating that nearby property cannot be developed or, if it is, by wrapping projects in red tape and then restricting building location, height, width, and construction materials. Put simply, the CCC redistributes property rights in what New Zealanders call a “lolly scramble,” a children’s party game in which the candy is tossed on the floor and kids scramble to get it while they can before others do. The CCC’s lolly scramble is made worse, however, by the fact that the lollies are continually up for grabs in the commission’s ever changing regulatory game.

At its inception, the CCC’s task was to regulate development if it caused, “any change in the intensity or density of land use.” This could reasonably mean limiting home building on unstable cliffs in the interest of public safety or maintaining unique natural beaches for future generations. But it did not take long for the reach of CCC regulation to expand.

The over-reach of the CCC took a giant leap forward with the case of *Nollan v. California Coastal Commission* (1987), and fortunately it failed. The Nollan family wanted to tear down a dilapidated bungalow and replace it with a three-story home in Ventura County. The CCC conditioned approval of the building permit, however, by requiring that the Nollans grant a public easement for a strip of their beachfront to allow public access. The CCC argued that the house would prevent the public “psychologically from realizing a stretch of coastline which exists nearby that they have every right [as provided by the California Constitution] to visit.” The Nollans won in the Superior Court with the judge saying the CCC could impose the condition only if it showed that “the proposed development would have an adverse impact on public access,” which it did not. Ultimately the case made it to the U.S. Supreme Court where the late Justice Antonin Scalia called the permit requirement “an out-and-out plan of extortion.”

Despite this early legal setback, the “extortion” has continued and gotten worse as the CCC has encroached on what should be local issues resolved by neighbors. For example, consider the question of who gets to surf which waves. Yes, that is

THE COASTAL COMMISSION JURISDICTION GENERALLY EXTENDS, 1,000 YARDS FROM THE MEAN HIGH TIDE OF THE SEA



Source: *California Coastal Commission Statewide Map of CCA Regions*

FACTS ON THE ISSUE

something the CCC has taken under its purview on the grounds that increased competition for “surf breaks,” as they are called, constitutes a “change in the intensity or density of land use.” Use of surf breaks could be subject to the “tragedy of the commons,” meaning that surfers would race to catch waves and in the process interfere with another’s enjoyment of the break.

The potential for such interference might be a reason for government intervention, but in example after example, economists and political scientists have documented how local groups create rules for preventing the tragedy of the commons. Just as [cattlemen’s associations](#) established rights to grazing territories on the western frontier long before the government sanctioned homesteading, [“surfer gangs” have created local rules](#) for determining who gets to use the best waves, usually local surfers who are better than others.

Like all rules, however, those regulating the use of surf breaks require enforcement often in the form of verbal reprimands or even physical sanctions (e.g. interfering with non-local riders considered interlopers). Despite the rules created by surfer customs and culture, the CCC intervened in a surfing dispute contending that verbal and physical interference to allocate the use of surf breaks constituted “development”

and required a coastal development permit to determine the use of waves. The upshot of the surfing example is that top-down CCC regulation became a heavy-handed substitute for a bottom-up solution.

Another example going beyond what a reasonable person might call development is a CCC regulation that required a landowner wanting to put cows in a previously ungrazed field to obtain a permit. Again the CCC “rationale” was that the grazing constituted a “change in the intensity or density of land use.” As with the surfing example, cattle grazing is a local issue involving long-standing agricultural uses and community values. If neighbors found the grazing offensive, they had the option of consulting with the landowner to find a win-win solution rather than relying on the CCC to take the landowner’s property rights through regulatory procedures.

Many of the CCC regulations could have been handled with far less acrimony and bureaucratic red tape by local people clarifying property rights and negotiating over the use of those rights. The *Nollan* case shines as a beacon for how such issues could be resolved if only the CCC would clarify property rights rather than redistribute them. Because beach access is subject to the “tragedy of the commons,” meaning there is crowding, littering, and general competition for use, coastal landowners would have an incentive to limit access, perhaps with courtesy, customary rules, or even pay booths. This would increase the value of California beaches. Come to think about it, this is precisely what the state has had to do to with its user fees and limits on beach access, but at a much higher cost.

Recently [J. David Breemer, writing for the Pacific Legal Foundation's blog](#), concluded that “The Commission needs to re-focus on truly state-wide problems or take a ‘mission accomplished’ victory lap and disband.” The latter is unlike to occur given the nature of bureaucracies, but the former provides a fruitful suggestion. If the CCC would focus on clarifying and strengthening private property rights to coastal land use and delegate more authority and responsibility to local entities, be they governmental or non-governmental (e.g. as surfing clubs or environmental groups), it could end the lolly scramble and encourage productive, private solutions to environmental conflicts. On its 40th anniversary, it is time to rein in the CCC by limiting its actions to public health and safety rather than perpetuating a childish game.

Terry Anderson is the John and Jean De Nault Senior Fellow at the Hoover Institution and the William A. Dunn Distinguished Senior Fellow at the Property and Environmental Research Center. Terry’s research helped launch the idea of free-market environmentalism.



CALNOTES:

CALIFORNIA COASTAL COMMISSION



Established in 1972 by Proposition 20, the California Coastal Commission is a quasi-judicial-regulatory agency tasked with protecting, conserving, restoring, and enhancing California's coastline via reviewing and permitting development. As defined by Proposition 20, development is that which changes the density of intensity of use of the land. The Commission consists of 12 voting members—four each appointed by the Governor, Senate Rules Committee, and Assembly Speaker—and Secretaries of the Resources and the Business and Transportation Agencies and the Chair of the State Lands Commission, who are non-voting members.

Top-Two Primary Limits Voters' Choices

By Steven Greenhut

If a California-style Top Two primary were in place for presidential races, in 2008 the nation’s voters would have had to choose between Barack Obama and Hillary Clinton in the general election. There would have been no “third party” candidates on the ballot—and no chance for voters to show their disgust by writing in “Mickey Mouse.”

How’s that for a choice that reflects, as the “Top Two Candidates Open Primary Act” promises, “the right of every Californian to vote for the candidate of his or her choice?”

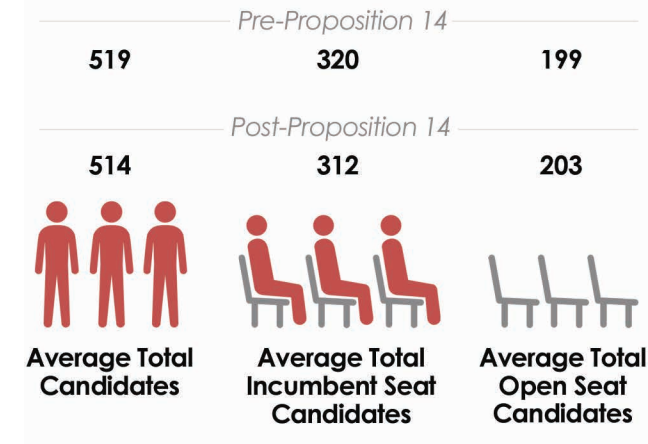
Of course, Top Two doesn’t exist for presidential races. California’s system—whereby the top two vote-getters in the primary face off in the November general election, even if they are from the same party—applies to statewide races, legislative races, and to U.S. Senate and congressional races. But that “what if” illustrates its fundamental flaw; instead of enhancing voter choice, this reform significantly contracts it. The only way to protest the choices is to not vote at all.

This presidential year, Americans are faced with what many of us view as distasteful alternatives: Donald Trump or Hillary Clinton. Many voters are seeking alternatives and looking to third-party choices. Why shouldn’t voters have the same chance to seek out alternatives in lower-profile races?

I’ve voted in almost every election over the last 36 years, yet in the last election I declined to vote for U.S. Congress and some other races given the unacceptable “either-or” choice on the ballot. As a registered Libertarian, I can vote for my preferred candidate in the primary—but the general election is what really matters.

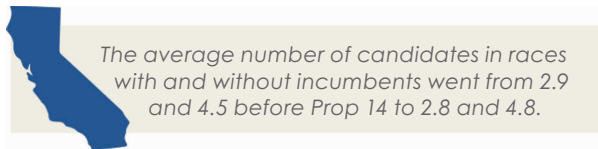


SINCE PROPOSITION 14'S IMPLEMENTATION, THERE HASN'T BEEN ANY CHANGE IN THE TOTAL NUMBER OF CANDIDATES RUNNING FOR CONGRESS OR THE STATE LEGISLATURE



Source: California Secretary of State

Note: Doesn't include write-in candidates



FACTS ON THE ISSUE

The Top Two ballot initiative promised a lot. “Our state government is broken . . .,” explained the argument in favor of Proposition 14. “It’s time to end the bickering and gridlock and fix the system.” Supporters said its passage would result in the election of more moderates who would work across party lines because the primary election would force candidates to seek out votes from everyone—not just party loyalists.

The problems Proposition 14’s backers pointed to in 2010—12% unemployment rates, \$20-billion-plus budget deficits, gridlock—have subsided. But it would be fanciful to give this system credit. Voters also approved Proposition 25 in 2010, which allowed the Legislature to pass budgets with a simple majority rather than a supermajority. Democrats no longer need Republican votes to ram through budgets. Furthermore, voters agreed to raise their taxes thanks to Proposition 30. The economy has recovered. None of this has led to less partisanship—but the general-fund budget crisis has subsided as one party gained more power over the other.

Richard Winger, publisher of Ballot Access News and a long-time critic of the Top Two system, was the one who clued me into the fact that in 2008, because of a crowded split field, there would have been no Republican candidate under a Top

Two system. He also points to a [2013 study](#) in the *American Journal of Political Science* that examines primaries and partisanship across the country. “It studied 18,000 legislators between 1992–2010,” Winger explained. “It finds no correlation between type of primary system and the degree of polarization and partisanship in legislatures.” So it’s questionable this loss of choice is providing much in return.

Winger notes another likely side effect: declining voter participation. “California turnout declined more than any other state between November 2010 and November 2014,” he added. No wonder. When the general election choices often are between two members of the same party, there’s little motivation to vote. There’s plenty of motivation to leave blank the ballot in some major races.

The Top Two is like many other gimmicks good government activists have embraced over the years. Term limits, for instance, was meant to replace career politicians with citizen legislators. Instead, it created a game of musical chairs. Politicians always jockey for the next office. That reform also reduced the Capitol’s institutional knowledge.

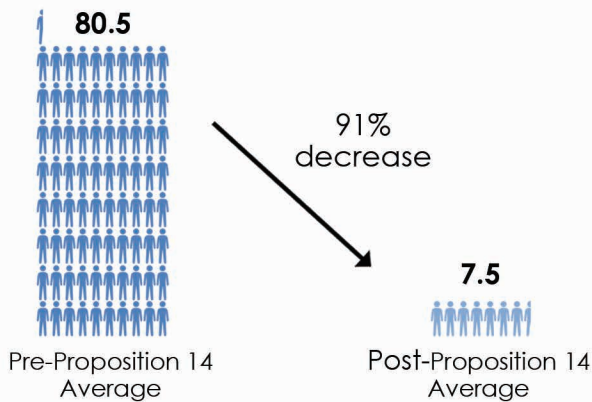
Top Two likewise has caused unforeseen consequences, as [the Atlantic explained in its December profile](#). The magazine looked, in part, at moderate Democrat Steve Glazer’s special State Senate election against liberal Democrat Susan Bonilla. This race is often used as evidence of the new primary’s success and, in my view, was the best outcome. But the details also spotlight the system’s flaws.

Bonilla had the backing of the Democratic establishment and unions and was the almost-certain winner if Republican candidate Michaela Hertle grabbed second spot. But Hertle pulled out and endorsed Glazer. As the *Atlantic* reported, “just before the election a flyer appeared on the doorsteps of voters in District 7 telling them to vote for her because she’s a ‘real Republican,’ in an apparent effort to trick voters into casting ballots for a candidate who was no longer running.”

Glazer came in second and then won the general election—but the Top Two makes such games-playing more likely even if it occasionally leads to a good, moderate candidate beating out a union ally. It rarely leads to a clearer choice for voters.

Top Two was conceived in backroom political shenanigans. Back when a supermajority was needed to pass a budget, moderate Republican **Abel Maldonado** agreed to support a budget deal in exchange for putting the new primary system before voters. Voters favored it 54% to 46%. But it’s troubling to change the election rules to achieve specific political outcomes—i.e., moderates passing reforms designed to elect more moderates.

THE AVERAGE NUMBER OF GENERAL ELECTION MINOR PARTY AND INDEPENDENT CANDIDATES DECREASED 91% AFTER PROPOSITION 14



Source: California Secretary of State
 Note: Includes write-in candidates

FACTS ON THE ISSUE

Often, interesting ideas come from the extremes. Liberal Democrats often back important civil liberties reforms (including asset forfeiture and police accountability) while conservative Republicans push useful fiscal measures. Rarely does much innovative policy come from the middle. Moderates may be more open to deal-making than legislators firmly grounded in a political philosophy. One can argue about the value of having more moderates in office.

Without question, though, the system fails at a key promise: giving voters more choices.

Steven Greenhut is a senior fellow and the western region director for the R Street Institute, a free-market inspired think tank. Steven has a weekly column at the OC Register and previously was a San Diego Union-Tribune columnist.



CALNOTES:
PROPOSITION 14



Passed by voters 54% to 46% in June 2010, Proposition 14 was a constitutional amendment that eliminated California's partisan primary for state legislative, Congressional, U.S. Senate, and statewide office elections in favor of a nonpartisan blanket primary. Under the new Proposition 14 regime, all candidates run on the same primary ballot and the top two vote getters, regardless of party, move on to the general election in November. Write-in candidates are allowed in the June primary, but not in the November election. All of California's ballot-qualified political parties opposed the initiative.

CALNOTES:

THE STORY BEHIND PROP 14



Before Proposition 25 (see Issue 1601), passing the state budget required a two-thirds majority in the Assembly and Senate, a mechanism to ensure the majority party didn't shut the minority party out of budget decisions, but often resulted in gridlock. In 2008-2009, California was facing a budget deficit of roughly \$40 billion with majority Democrats wanting to raise taxes and minority Republicans demanding spending cuts. Moderate, Central Coast Republican State Senator Abel Maldonado, in exchange for his vote on a budget that would raise taxes, demanded the Legislature put Proposition 14 on the ballot. Desperate, Democratic leaders and Governor Schwarzenegger agreed and it passed both chambers with mild bipartisan support.

Is It Time to Reconsider California's Initiative System?

By Carson Bruno

On November 8, 2016, Californians will once again have the opportunity to not only elect (or re-elect) local, state, and federal representatives, but also to directly participate in generating public policy. While California's initiative system is often romanticized, its inflexibility often leads California down a path ripe with unintended consequences and few options for fixing past mistakes.

FIRST ADOPTED IN 1911, California became the tenth state to create the initiative system, whereby voters could themselves put on the ballot statutes, constitutional amendments, and referenda. Supported by the progressive movement to blunt the influence of the railroad lobby over the Legislature, California's version of direct democracy has led to some of the Golden State's most notable—and infamous—policies, such as Proposition 13, medical marijuana legalization, the death penalty, and California's abbreviated period of banning same-sex marriage. And Californians love their direct democracy. In a [March 2013 PPIC survey](#), 62 percent of likely Californian voters were very or somewhat satisfied with the initiative process and 72 percent of likely voters said they thought it was a good thing "that a majority of voters can make laws and change public policies by passing initiatives."

And in 2016, Californians will have to make a decision on at least [seventeen ballot measures](#), including nine state statutes, two statute/constitutional amendment combinations, four constitutional amendments, one referendum,



and one advisory question. The topics are hefty, ranging from prescription drug price controls to voter approval of revenue bonds to taxes to the death penalty to gun control to regulating plastic bag use to recreational marijuana legalization.

The volume and magnitude of these measures generates a serious question, though. In an era of declining voter turnout, electorates that are largely uninformed on non-presidential candidates and issues, and a direct democracy system specifically designed to be inflexible, should Californians continue to be vested with such enormous public policy decisions?

Declining turnout

In 2016's California presidential primary, 48 percent of registered voters turned out to vote, a drop of ten points from 2008—the last presidential primary featuring two competitive, open contests. Even compared to 2000—the next most previous presidential primary with two open (but less competitive) primaries—turnout in 2016 was down about six points.

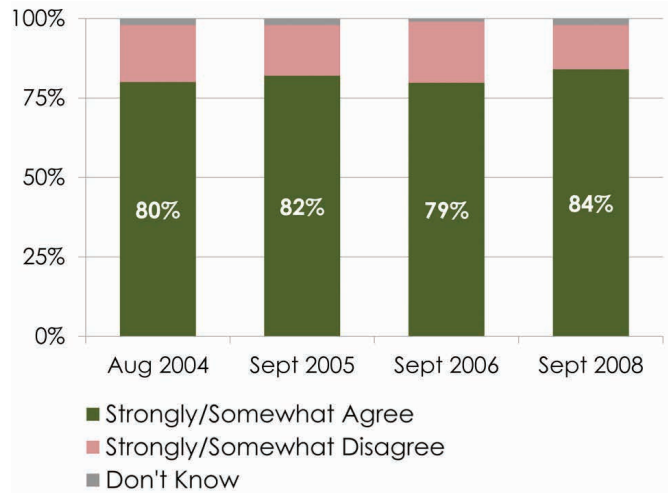
Looking at general elections, we also see a downward trend. In 2014's general election, 42 percent of registered voters voted, down from 60 percent in 2010, 56 percent in 2006, and 51 percent in 2002. In fact, 2014 was the only general election since California started recording participation where turnout fell below 50 percent. And even for recent presidential-year general elections, we see falling turnout. In 2012, turnout was 72 percent, down seven points from 2008 and four points from 2004. In just two presidential general elections since Ronald Reagan left office has turnout been lower than 2012's—1996 and 2000.

Even though voter registration is at all-time highs, voters appear to be becoming less interested in participating in politics. Whether this is because they don't like the candidates, don't think their vote counts, or don't prioritize voting isn't really that important; what is important is that we are relying on a less engaged—and possibly more partisan and extreme—electorate to make major policy decisions. We cannot expect voters to educate themselves on the issues they are to vote on if they aren't interested in voting in the first place.

An uninformed electorate

It may be controversial to say, but the average voter isn't that informed about non-presidential candidates and major policy issues. And between voters living their lives and media less interested in non-presidential politics—let alone serious policy analysis—it's hard to blame them. Truth be told, it can be hard for someone who's employed in the political or policy arena

CALIFORNIANS BELIEVE BALLOT MEASURE WORDING IS TOO COMPLICATED TO FULLY UNDERSTAND



Source: *Public Policy Institute of California, Surveys, 2004 to 2008*

Note: Question wording, "The ballot wording for citizens' initiatives is often too complicated and confusing for voters to understand what happens if the initiative passes."

FACTS ON THE ISSUE

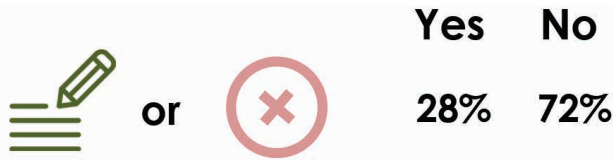
to be 100 percent informed on the candidates and issues. For those who aren't, it's understandably even harder to balance their actual jobs and personal lives with educating themselves about hundreds of candidates and complex policy issues.

Moreover, media outlets—largely driven by ratings and advertising dollars—rarely focus on political news not related to the presidency and major Washington, D.C. events. More problematic, the media do a very poor job of analyzing policy issues and debates.

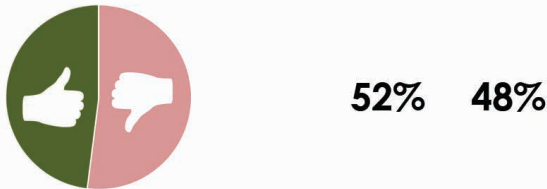
And as a result, even the likeliest of voters—those who are most engaged in politics—find themselves uninformed. In a [September 2015 PPIC survey](#), 15 percent and 11 percent of likely voters had no opinion of their *own* state representatives and their *own* U.S. Representative, respectively. These may seem like small numbers, but likely voters are the ones we'd expect to definitely have opinions of their elected officials.

This matters because ballot measures are very complex and voters are aware of this. In a [September 2008 PPIC survey](#), 84 percent of likely voters strongly or somewhat agreed that ballot initiative wording is "often too complicated and confusing for voters to understand what happens if the initiative passes." We are expecting average Californians to both live their typical lives *and* be full-time legislators. We don't even expect this of our *actual* full-time legislators.

SINCE 1990, VERY FEW BALLOT PROPOSITIONS HAVE SUCCESSFULLY AMENDED OR REPEALED A PREVIOUSLY PASSED MEASURE



Amend or Repeal Previous Measure?



Amend/Repeal Measure Passed?

Source: Ballotpedia, *List of California Ballot Propositions, 1990 to 2014*
FACTS ON THE ISSUE

A system designed to be inflexible

If negative unintended consequences or just plain bad policy outcomes stemming from passed ballot measures were easily reformed or repealed, having an uninformed and dwindling pool of voters deciding the measures’ fates wouldn’t be a major issue. But that’s not the case. In fact, California’s direct democracy is intentionally inflexible.

According to [Article II, Section 10 \(c\)](#) of the California Constitution, the Legislature cannot amend or repeal a passed proposition without voter input—unless said proposition specifically allows for legislative tampering. Considering that the whole point of the initiative process is to specifically circumvent the Legislature, very few ballot measures include such a provision.

Thus, to amend or repeal a law passed via the initiative process, the voters have to pass another ballot proposition. This is unreliable. Since 1990, fewer than three-in-ten of the 301 statewide ballot measures presented to voters for consideration would have amended or repealed a previously passed ballot measure. Of those, just about half actually passed. This is expensive. Over the last three elections, the average funds raised by the proponents and opponents of successful amending-or-repealing ballot measures were almost \$9 million. Adding those that weren’t successful to the mix increases the average to almost \$19 million. This suggests that the successful ones were largely non-controversial changes, something that isn’t always guaranteed.

The return of the indirect initiative?

However, allowing the Legislature to easily tamper with passed ballot measures or eliminating direct democracy entirely both have serious downsides.

If tampering were too easy, Proposition 13’s tax protections would have been eliminated years ago. And while Proposition 13 is far from perfect, it is definitely the best alternative. Moreover, eliminating the initiative system removes an important tool to force reforms on a good-government-lethargic Legislature. Despite Assemblymember Kristin Olsen’s multiple attempts to force transparency on the State Legislature, the ruling Democrats have silently killed her bills. But on November 8, voters can force those good governance reforms on the Legislature via [Proposition 54](#)—the Legislature Transparency Act.

A solution might be the reintroduction of the indirect initiative, which was allowed until [1966’s Proposition 1A](#) abolished it. The indirect initiative allows citizens to qualify a measure for the ballot, but it first goes to the Legislature for consideration. Legislators can then: a) not act on the measure, which sends it directly to the voters, b) pass the measure as written, c) amend and then pass the measure, or d) come up with their own law on the same subject and place both the citizen-initiated measure and the Legislature-written measure on the ballot. Nine states allow some form of the indirect initiative. The indirect initiative would work to alleviate some of the system’s inflexibility in a responsible manner, while also keeping the integrity of direct democracy’s intent.

The indirect initiative, however, doesn’t preclude the necessity of California finding a way to educate voters on the complexities and nuances of ballot measures to ensure they are confident and capable of knowledgeably weighing the pros and cons of propositions. This, of course, requires a systematic change in how the Attorney General’s Office writes ballot summaries, how the Legislative Analysts’ Office analyzes the measures, and how state and local media outlets report on the propositions. And at the end of the day, if voters don’t feel confident in their understanding of a measure or have doubts about what the measure would accomplish, they should feel OK voting “NO.”

Carson Bruno is the Assistant Dean for Admissions and Program Relations at Pepperdine University’s School of Public Policy. Until recently, Carson was a Hoover Institution research fellow, studying California’s political, electoral, and policy landscapes.





CALNOTES:

1911 PROPOSITION 7



Placed on the October 10, 1911, statewide ballot by the State Legislature, Proposition 7 amended Section 1 of Article IV of the California Constitution to institute direct democracy. While legislatively referred statutes and constitutional amendments had been allowed, Proposition 7 permitted Californians to qualify and vote on initiatives and referenda. It passed overwhelmingly with over three-fourths of the vote. Since its passage, 379 citizen-initiated propositions have qualified, with the voters approving 123.

POLL ANALYSIS

Golden State Poll Studies California Voters in Unconventional Election

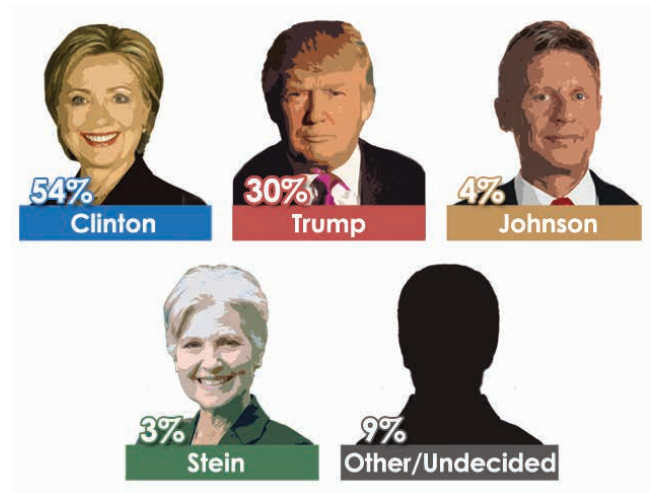
By Tammy M. Frisby

In an election year defined by breaks from tradition, the ballot before California voters next month fits right in. Beyond the historic and highly unusual presidential race, Californians will make their first general election choice between two Democrats for U.S. Senate. And among a fleet of propositions, the voters will be asked to legalize recreational marijuana and about a pair of initiatives that together give Californians the choice to repeal, reform, or keep as is the state’s death penalty. In addition, voters will be asked to extend 2012’s Prop 30 tax rate increases and to approve price controls for prescription drug purchases by state health agencies.

The most recent Golden State Poll set out to study the vote choices and opinions of Californians in this wild election season. The survey, administered by the survey research firm YouGov and designed in conjunction with Stanford University’s Bill Lane Center for the American West, was conducted October 4–14th, 2016. The survey’s sample is 1250 Californians who are likely voters in this November’s general election. The margin of error is plus or minus 3.28 percent for the full weighted sample.

The full survey questioned voters on the presidential election, the U.S. Senate race, and five ballot propositions: extension of Prop 30 taxes, repeal of the death penalty, reform of the death penalty process, price controls on prescription drugs in state health care programs, and marijuana legalization. The full results, with data reported by demographic and political groups, and are available [here](#). Among our most notable findings:

CALIFORNIANS PREDICTABLY CHOOSE CLINTON OVER TRUMP



Source: Hoover Institution October 2016 Golden State Poll
 Note: See cross-tabs for questions & methodology explanation; may not equal 100% because of write-ins and undecideds

FACTS ON THE ISSUE

Presidential Race

How poorly will Trump do in California? The October 2016 Golden State Poll has the Republican nominee winning only 30% of the state’s vote and Hillary Clinton claiming 54%. For Republicans, that would be an even worse showing than the 1992 election, when Ross Perot siphoned off voters from George H. W. Bush and left him with just 33% of the vote. Since that Bill Clinton victory, Republican presidential nominees have managed between 37% and 44%, with the last two GOP nominees, Romney and McCain, both winning 37%. Trump would need to claim all the undecided voters (7%) in our survey to even hit that low watermark for California Republicans in the post-Reagan era. It is certainly bad news for Trump that only 75% of self-reported registered Republicans said they plan to vote for their party’s nominee for president, compared to 87% of Democrats who intend to vote for Hillary Clinton.

U.S. Senate Race

The Golden State Poll finds that State Attorney General Kamala Harris enters the last weeks of the campaign with a large double-digit lead over fellow Democrat and U.S. Congresswoman Loretta Sanchez, who represents Orange County. Among likely voters who expressed a preference between the two candidates, Harris gathered nearly twice the support (41%) received by Sanchez (22%).

Striking in this high-profile Senate race is the large number of voters (37%) who told us they remain unsure about their vote for Senator Barbara Boxer's successor. That uncertainty in the electorate is driven primarily by self-reported registered Republicans, 64% of whom said they were not sure about how they intended to vote in the U.S. Senate election. This figure is especially eye-catching when compared to the 41% of No Party Preference (NPP) voters and only 19% of Democratic voters who said they were still unsure at this point in the campaign.

Harris holds a large lead over Sanchez with both Democratic (57%–24%) and NPP (39%–21%) voters. But among Republicans who did express a candidate preference, Sanchez has a slight advantage over Harris (21% to 15%), which suggests that Sanchez's push to appeal to undecided conservative voters in this last stage of the campaign is, indeed, her best hope of pulling off a surprise victory. Sanchez began her political career as a Republican with an unsuccessful bid for city council in the L.A. suburb of Palos Verdes Estates, and now it seems that her shot at becoming the first Latina to serve in the U.S. Senate depends on persuading and mobilizing Republican voters while running as a Democrat. With much made of the trouble for down-ballot Republicans with Trump at the top of the ticket, Loretta Sanchez could have her own Trump problem if his candidacy depresses turnout among the Republicans whose votes she needs.

Assessing the Open Primary

That the "Trump Problem" is bipartisan in California is due, of course, to California's adoption of the open primary and this November Senate election involving two Democratic candidates as a result of the June election voting. Looking beyond this Election Day to the coming assessment of this first Senate race under the new system, open primary defenders will have some reckoning to do.

The promise of the open primary is supposed to be a November election that produces a winning candidate who more closely represents the policy preferences of the median voter in the general election electorate. A more competitive general election was supposed to replace November races that were forgone conclusions involving candidates who represent the more extreme opinions of primary voters.

But delivering on that promise depends on many voters making informed decisions based on real political and public policy preferences. Our survey data raises the concern that wide swaths of California voters in this U.S. Senate race might not be doing that. Pluralities—and even a large

majority—of independent and out-party (Republican) voters have not settled on a candidate even after a long campaign and despite in-party (Democratic) voters largely doing so. If, when faced with two candidates of the same political party, independents and the out-party voters effectively toss a coin or cast their vote for the candidate with better name recognition, that undermines the case for the open primary reform.

Legal Pot and "Liberaltarianism"

PROP 64, the legalization and taxation of recreational marijuana, seems poised for acceptance, with 56% of likely voters planning to vote yes and 34% voting no according to our survey. Self-identified liberals have far and away the highest levels of support for legalization (80%), compared to 56% for moderates and only 29% among conservatives. Against stereotype, self-reported Sanders primary voters were not more likely than Clinton voters to support legal pot. 68% of Sanders primary voters support Prop 64 as do 68% of Clinton primary voters.

If Prop 64 passes, it will mark the tipping point of social change on the issue of legalized pot in California. Even 6 years ago, on the November 2010 ballot, Proposition 19 legalizing marijuana failed 46.5% to 53.5%. Although that result did show growing acceptance, with more support than the 33.5% who supported the 1972 legalization effort.

Death Penalty Initiatives "Underscore the Worst about California Politics"

It has been almost 11 years since a California death row prisoner was executed. Over that decade the number of inmates on death row in California has only continued to grow as the death penalty has effectively become a life sentence with a perpetual and costly appeals process. This November's ballot offers Californians two chances to do something about a part of the criminal justice system widely seen as completely broken, with both death penalty opponents and supporters in agreement, though for different reasons. Proposition 62 would repeal the death penalty outright, while Proposition 66 would reform the appeals process with the objectives of saving the state money and actually carrying out the death penalty in at least some cases.

But Californians haven't coalesced into a majority around either policy change, although pluralities seem to understand that something should be done. On Prop 62, death penalty repeal, likely voters were split, with 42% intending to vote yes on repeal, 43% voting no, and 15% still not sure of how they would cast their ballot. Based on these figures, Prop 62 seems likely to be defeated, as was Prop 34, the November 2012



CALIFORNIANS PLAN TO SHIFT POLICY LEFTWARD VIA THE BALLOT BOX IN 2016

	Yes	No
Proposition 55	59%	29%
Proposition 61	51%	24%
Proposition 62	42%	43%
Proposition 64	56%	34%
Proposition 66	38%	24%

Source: Hoover Institution October 2016 Golden State Poll
 Note: See cross-tabs for questions & methodology explanation; Yes+No won't equal 100% because of "not sure"

FACTS ON THE ISSUE

ballot initiative to repeal the death penalty. Prop 34 failed 48%–52%.

On Prop 66, which would reform the death penalty system, 38% said they would vote yes, 24% no, and the remaining 38%—as many as said they would support the reform—responded that they remained unsure about their vote on the measure.

In an exchange about these findings with my colleague Bill Whalen, who provides guidance for the Golden State Poll rooted in decades as a participant in and observer of California politics, he keenly summed up the problem. “The death penalty initiatives underscore the worst about California politics. There is frustration with the death penalty in California, albeit that comes from different extremes. Yet we are headed for a result that will please no one.”

With neither opponents or supporters of the death penalty waging highly visible campaigns on either of these

propositions, it might be that activists overestimated the degree to which most voters have strong preferences on the death penalty one way or the other.

Prop 55: Continuity Amidst Change

In contrast to of the inability of death penalty activists on either side of the issue to build majorities for their favored propositions, our survey work on Prop 55 shows that Governor Jerry Brown and Prop 30 tax increase advocates have been successful in building support around Prop 55, which extends 2012’s Prop 30’s higher tax rates for an additional 12 years.

Back in 2012, Prop 30 passed 55%–45%. The most recent Golden State Poll measures support for Prop 55 and the extension of the Prop 30 tax rates as 59%. With another 13% of likely voters saying they were still not sure about their vote on Prop 55, this year’s vote on the tax rates could see support in the low to mid 60’s.

The success of campaign to tie Prop 30 and 55 to schools in the minds of voters is also reflected in how likely voters who support Prop 55 responded to our question about reasons they were in favor of the proposition. Among the five reasons presented, the top response, with 91% saying they strongly or somewhat agreed, was that K-12 schools and community colleges needed the money. This even came in ahead of the standard rationale that “The wealthy should pay more in taxes,” which was supported by 85%, or that “Ending Prop 30 might contribute to state budget deficits,” with 72%.

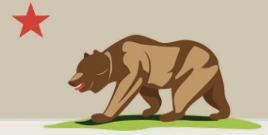
On the Cusp: Prop 61 Prescription Drug Price Controls

Among the five propositions we questioned voters about, the electoral fate of **PROP 61** has the greatest uncertainty. The measure, which would prohibit California state agencies from paying more for a prescription drug than the lowest price paid for the same drug by the U.S. Department of Veterans Affairs, received support from 51% of likely voters in our sample. That slim majority, combined with 25% of likely voters saying they were still not sure about how they would vote on the proposition, means that while the passage of Prop 61 seems likely, a narrow defeat should not be surprising.

Tammy Frisby is a Hoover Institution research fellow, who studies American national politics and public policy making. She leads survey design and data analysis for the Hoover Golden State Poll.



CALNOTES:



2016 PROPOSITION 64

Proposition 64 would legalize recreational marijuana use and establish the regulatory regime for cultivation, sale, and use of marijuana. Californians, in 1996, approved Proposition 215, which made medical marijuana use legal. Since then, attempts to legalize marijuana for recreational use have failed. Proponents say this is an important criminal justice reform that will also yield substantial new revenues

2016 PROPOSITION 61

If approved, Proposition 61 would mandate State of California agencies purchasing prescription drugs to pay the same prices the U.S. Department of Veterans Affairs pays for the same prescription drugs. Supporters of Proposition 61 claim this would fight price-gouging by the pharmaceutical companies ensuring better access and saving taxpayers money. Opponents, however, note it's far likelier that prescription drugs just won't be made available, especially for the most disadvantaged and vulnerable, and those that can get prescriptions drugs will actually see their prices increase.

Stay tuned in 2017 for more analyses on California policy from Eureka.

EUREKA

ABOUT THE PUBLICATION

Eureka was created to serve as an occasional discussion of the policy, political and economic issues confronting California. Like the Golden State motto from which this forum's title was borrowed, the goal here is one of discovery—identifying underlying problems and offering reasonable and common-sense reforms for America's great nation-state.

Ever since Archimedes supposedly first uttered the word, *eureka* has meant joy, satisfaction and a sense of accomplishment. Drawing on the combined wisdom of Hoover's policy experts and leading California thinkers, we hope that you'll find enlightenment in these pages. Hoover research fellow Bill Whalen, who has nearly two decades of experience in California politics and public policy, serves as this forum's editor.

For additional information and previous issues, visit www.hoover.org/eureka.

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