

INTRODUCTION

California's Open-Primary Reform Leaves Open Questions as to Its Effect on Golden State Politics

By Bill Whalen

A funny thing happened to California on the way to its moment of glory as the decider of the fate of the next Republican presidential nominee. Texas Senator Ted Cruz and Ohio Governor John Kasich abruptly quit the race in early May, a month before California's June 7 vote, leaving the California landscape wide open to Donald Trump.

Quicker than you can say "Lucy pulls the football away," the Golden State found itself flat on its back, once again without a significant role in the selection process. (The Democratic contest between former Secretary of State Hillary Clinton and Vermont Senator Bernie Sanders has been pretty much a given going back to March.)

The last time California was a real player in primary season? Ronald Reagan needed the Golden State to stay alive, [in 1976](#), during his challenge to Gerald Ford. Otherwise, we're looking at 1968 and Robert F. Kennedy's [fabled run](#) that ended in tragedy—and 1964 and [the GOP ideological rift](#) that pitted the conservative icon Barry Goldwater versus the decidedly moderate Nelson Rockefeller.

This isn't to suggest that California is irrelevant in 2016. In fact, the Golden State offers a lab course in political science thanks to [a revamped primary system](#) that creates a single ballot open to all registered voters, with the top-two finishers in congressional and state elective offices to advance to the general election regardless of party affiliation.

(Note: For June 7, California's Republican presidential primary is open only to Republicans; the Democratic primary is open to both Democrats and non-affiliated voters.)

In other words, two Republicans could advance to a general election run-off, as could two Democrats or two members of a lesser party (one complaint about the open-primary system being that minor party candidates have little chance of making it to the November ballot).

Where California's open primary may have its greatest impact in 2016 is November's election to replace the retiring Senator Barbara Boxer. In a state that's become [far more Democratic than Republican](#) in the 24 years since Boxer first took office (registration today tilts 43.1% to 27.6% in favor of Democrats versus 46.8% to 39.6% in 1992), there's a good chance the two finalists in that Senate contest will be a pair of Democrats—State Attorney General Kamala Harris and Representative Loretta Sanchez from Orange County.

Should that scenario occur, look for plenty of loud complaints from California Republicans—most of all, conservatives who disliked the idea in the first place when it was championed by then-Governor Arnold Schwarzenegger and more moderate Republicans looking for more centrist influence in California lawmaking (actually, [neither state party was thrilled](#) by the idea of replacing the ideologically tilted primary system with something less predictable).

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Meanwhile, proponents of the open-primary system will dig in their heels—in at least two regards:

- It improves the chances of more competitive elections come November. For instance, in 2010, the same year voters approved the current open-primary rules, only 3% of all congressional and legislative races were “close”—i.e., a margin of victory of less than 5%; in 2012 and 2014, the first two election cycles after Proposition 14 went into effect, that figure rose to 10%.
- The new law has had at least one positive impact on California's State Legislature: [moderate Democrats](#) who likely couldn't win a traditional left-leaning Democratic primary stand a better chance of making it to November. Once elected, these “mod Dems” tend to break with party orthodoxy on issues affecting labor and environmentalists—which is why some of these lawmakers [are in the special-interest crosshairs this year](#).

For this issue of *Eureka*, we figured that the days leading up to California's June 7 primary provided an opportunity to discuss the pros and cons of this major political reform. We also decided to look into what other significant political reforms could be coming California's way in the near future.

And, with the state on the verge of stating its presidential preferences as America's primary season comes to a close, we commissioned a Hoover [Golden State Poll](#) to gauge Californians on a variety of election topics, including their feelings about the parties' two likely nominees—Donald Trump and Hillary Clinton.

This *Eureka* issue includes:

- [Hoover research fellow Carson Bruno analyzing the latest Golden State Poll](#) and what it says about Californians' confidence in their voting system and their attitudes toward the presidential field;
- [Pete Peterson, Dean of Pepperdine University's School of Public Policy](#) and the 2014 runner-up for California Secretary of State, explaining that while there has been a moderating effect on California's State Legislature, the open-primary era comes with some caveats: most of the moderation come from the Democrats and it's hard to apportion the credit between Propositions 11/20 and 14;
- [Steven Greenhut, Senior Fellow and Western Regional director of the R Street Institute](#), countering that the open-primary system disenfranchises too many Californians—loyal-opposition voters who are left out when the choice is two candidates from the same party and “protest” voters who can't register a complaint as minor parties can't land a spot on the fall ballot;
- And finally, [Jim Heerwagen, a Los Altos software entrepreneur and state political activist](#), laying out a blueprint for making the Golden State a leader in campaign

finance disclosure—a movement that was headed for the November ballot until the Legislature indicated a willingness to act on the topic.

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

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.



POLL ANALYSIS

California's June Primary: Laying the Foundation for What Is to Come

By Carson Bruno

Since 2000, on average, 44% of registered voters have cast a ballot in the California Presidential primary—a whopping 31 points below the average Presidential general election turnout. There has been much debate about the causes and consequences of low primary turnout, but at the end of the day, it is apparent that while the June primary lays the foundation for the November general election, Californians don't have much urgency to be a part of that masonry. Based on the [May 2016 Golden State Poll](#), California's electoral foundation isn't necessarily much different than what other electorates are laying.

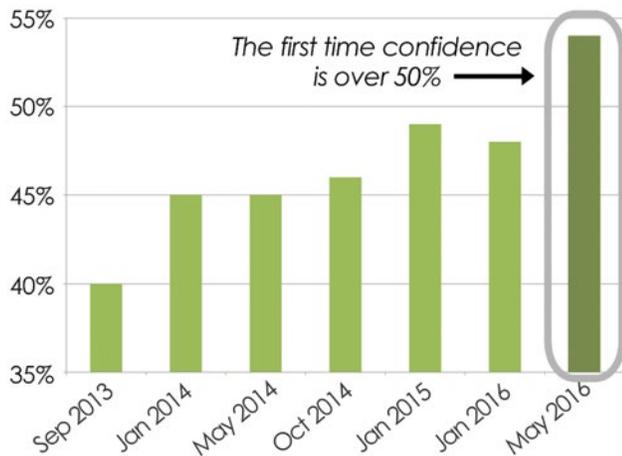
“It's the economy, stupid”

Made famous by Bill Clinton's 1992 strategist James Carville, the notion that elections are all about the economy is one rooted in political science research. Despite campaigns pushing all sorts of issues on the campaign trail, at the end of the day, voters are concerned about their pocketbook.

And despite signs of improving economic confidence, there remain hints of lingering angst among certain Californians. Since the last pre-primary Golden State Poll in [May 2014](#), those saying they are better off compared to a year ago have surged 8 points versus 9-point drop among those saying they are worse off. Still not an overwhelming sense of economic confidence considering a vast plurality (46%) still believe their finances are stuck in neutral, but the general trend is positive. Looking forward, while a majority of Californians



A MAJORITY OF EMPLOYED CALIFORNIANS ARE CONFIDENT IN JOB MOBILITY FOR THE FIRST TIME SINCE SEPTEMBER 2013



Source: [Hoover Institution Golden State Poll, May 2016](#)

Note: See survey cross-tabs for question and methodology

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think their finances will remain the same over the next six months, again we see general movement in the better-off direction. Moreover, for the first time a majority (54%) of employed Californians are confident in their ability to find a similarly paying new job in the next 6 months.

But while the overall news is good, it does mask some remaining economic anxiety. Self-identified Republicans are more likely to say they are financially worse off than a year ago (35% vs. 25% for all Californians) and more likely to be pessimistic about their future financial situation (23% vs. 13%). Like we are seeing nationally with Republicans more likely to be frustrated about the state of the economy, Californian Republicans—even when taking into consideration the smaller sample size and the higher margin of error—remain less economically confident than Californians overall. Could this be enough for them to overlook ideological differences in the Presidential race? Time will tell.

Last in the Nation: Unique, but not Different?

California is among the last Presidential primaries in the country. And while California likes to view itself as a special place, its Presidential primary contests aren't likely to yield too much differing results from what other electorates have decided.

Take for example the Democratic contest. Hillary Clinton and Bernie Sanders continue to battle it out, despite Clinton's sizable popular vote and delegate leads. Nonetheless, Sanders has promised to give all Democrats a choice this primary season. But with Clinton leading Sanders 51% to 38%, Senator Sanders shouldn't expect a victory from the Golden State.

However, while Clinton does have a solid 13 point lead over her competition, a closer look shows that Clinton still isn't closing the gap within the Democratic constituencies she has struggled with all primary season—even though she is effectively the presumptive Democratic nominee. Her lead among white voters is a negligible 4 points—well within the margin of error. Among young voters, Sanders is winning a resounding 61%, even as Clinton holds double-digit leads among all other age groups. And while it is a very small sample size, Clinton is underwater by 40 points among NPP voters who plan to vote in the Democratic Presidential primary. Sanders has, across the country, forced Secretary Clinton into a tough battle for the nomination on the backs of young, white, Independent support. California's Democratic electorate is no different.

The fact that California's primary is essentially closed—NPP voters are allowed to vote in the Democratic Presidential contest, but have to specifically request a Democratic Presidential ballot versus just receiving one—will mostly be the reason Clinton pulls off a victory.

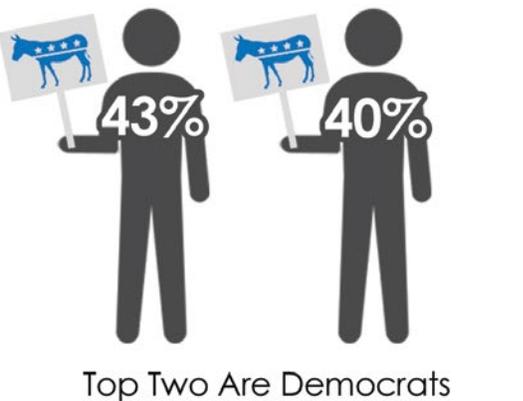
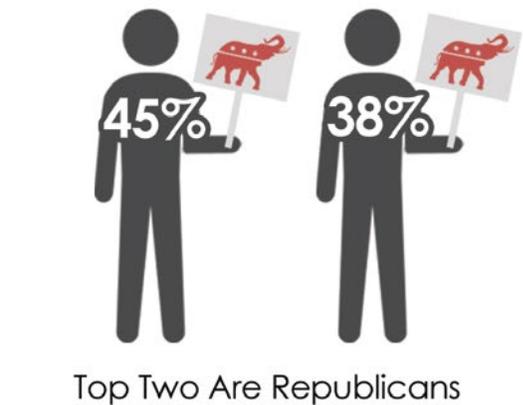
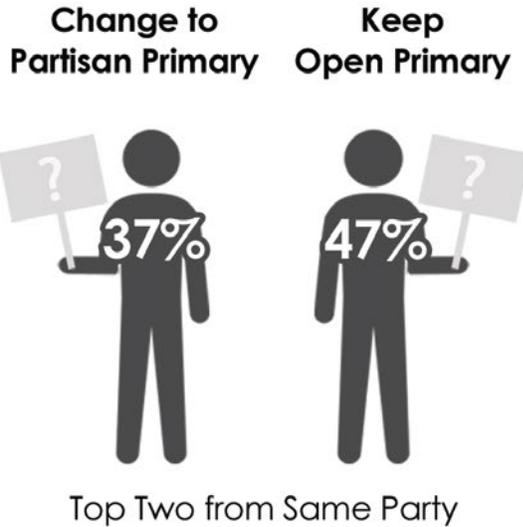
Even with Donald Trump the presumptive Republican nominee, he will still share the ballot with Ted Cruz, John Kasich, Ben Carson, and Jim Gilmore, and as a result, the Golden State Poll has Trump winning just 66% of the Republican primary vote. This should be of concern to the Republican nominee as 1) he faces no organized, active opposition, 2) California Republicans' lingering economic angst plays well into his narrative, and 3) historically, California has given an overwhelming victory to the party's presumptive nominee; for instance in 2012, Mitt Romney won 79.5% when he shared the ballot with Rick Santorum, Ron Paul, and Buddy Roemer.

If Trump remains in the mid-to-high 60's as the Golden State Poll predicts (caveat: 9% remain undecided and given the finality of the Republican race, those supporting other candidates could vote for Trump or not vote, both of which would boost his final percentage), it wouldn't be unlike the other recent primaries, such as Nebraska and Oregon, where Mr. Trump, without any opposition, only managed to win 65% and 67%.

California's Top Two Still Figuring Itself Out

The Golden State has a unique electoral system in place—**PROPOSITION 14**—and in many ways candidates and voters

HAVING AN INTRA-PARTY STATEWIDE CONTEST MAY TEST PROPOSITION 14'S STAYING POWER



Source: Hoover Institution Golden State Poll, May 2016
 Note: See survey cross-tabs for question and methodology

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are still trying to figure it out. In a number of occasions Congressional and state legislative races have featured an intra-party general election, but an intra-party statewide contest hasn't occurred . . . yet.

There are currently 34 candidates vying to replace retiring US Senator Barbara Boxer and the Republicans have a math problem. The Golden State Poll finds Attorney General Kamala Harris leading the splintered field with 26% of the vote followed by Orange County Congresswomen Loretta Sanchez at 13%. But the problem for Republicans is that both Harris and Sanchez are Democrats.

The three main Republican contenders—Duf Sundheim, Tom Del Beccaro, and Ron Unz—are all clustered together at 6%. There is still hope that a Republican can surpass Sanchez's support; for instance, 42% of registered Republican likely voters remain undecided. If these undecided Republicans do vote and move en masse to support one candidate, one of the Republicans could prevent a Democrat vs. Democrat general election.

But what if California has its first statewide intra-party general election? Will this sour voter opinion of the top-two system? When asked whether Proposition 14 should be changed back to partisan primaries or kept the same if two candidates from the same party advance in the US Senate race, a strong plurality (47%) of likely voters said keep it. However, when specifically asked about two Republicans (38%) or two Democrats (40%) advancing, support for Proposition 14 fell. Overall, Harris and Sanchez advancing will test the lasting power of California's top two.

Looking Forward to November

In a (very) early look at the general election between Hillary Clinton and Donald Trump, Clinton starts off as the favorite—unsurprisingly given California has voted for the Democratic nominee by double-digits since 1992. But there appears to be hesitation for both candidates. Clinton leads 45% to 33% for Donald Trump with Libertarian Gary Johnson winning 4%. Another 8% say they will write someone in, 9% remain unsure, and 1% say they just won't vote.

And this brings us full circle to "it's the economy, stupid:" another Clinton on the ballot and another reminder that voters' pocketbooks—or at least the perception of their pocketbook—matter. Among those who say their finances are better off than last year, Clinton's lead increases to 31 points—about the margin Obama beat both Romney and McCain. But among those who say their finances are



worse off or have stayed the same, Clinton's lead falls to just 5 points.

While it's unlikely Trump can keep Clinton to the single-digits (or even the moderate double-digits), at the end of the day, Californian voters aren't much different than the rest of the nation's and what influences primary voting decisions influences the general election.

Carson Bruno is a Hoover Institution research fellow, studying California's political, electoral, and policy landscapes. Prior to joining Hoover, Carson structured municipal bond issuances at J.P. Morgan Securities, Inc.



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, US 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.

in the middle of the night and put on the ballot by a couple of politicians and Arnold Schwarzenegger." The nay-sayers went on to abjure, "voters may be forced to choose between two candidates from the same political party . . . Can't politicians ever do anything without scheming something that's in their own self-interest?" Sounds positively Trump-ian.

However, two recent research papers on Proposition 14's actual impacts demonstrate the merits of the proponents' arguments. But while the academics agree that while the California Legislature did indeed moderate in the 2012 and 2014 election cycles, it is nearly impossible to pull apart the relative effects of the Top Two with the second major electoral reform, which was also in place for these last two elections: new district maps drawn by the **CITIZEN'S REDISTRICTING COMMISSION**. As University of Southern California Professor Christian Grose argues in his clearly-titled, "[The Adoption of Electoral Reforms and Ideological Change in the California State Legislature](#)," this pair of significant changes in how Californians voted in 2012 and 2014, make it "difficult to distinguish which of these reforms had the greatest effect on changing legislative politics in California." What is not in doubt, however, is that change has come to Sacramento.

Looking specifically at the 2012 election results, Dr. Grose compared voting patterns of the Top Two's first winners in 2013 versus 2011. In both the California Senate and Assembly, he found the median legislator "is more moderate post-reform than pre-reform." Interestingly, Grose not only points to actual voting records of elected legislators, he also alludes to the impact of the Top Two on the decisions candidates (including incumbents) make to run for California office

FEATURED COMMENTARY

From the Ivory Tower to the Mean Streets of Santa Monica

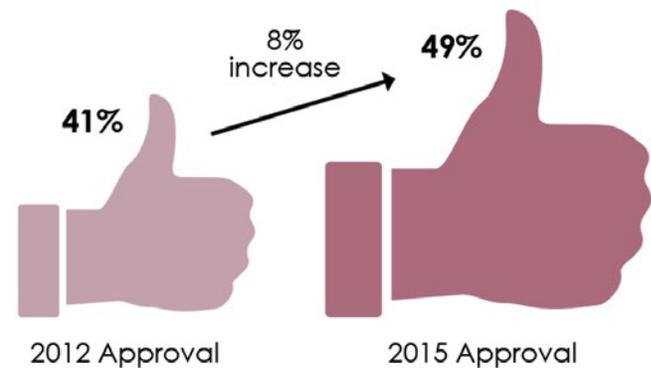
By Pete Peterson

With two elections under the belts of California voters using the "Top Two" primary system, the verdict is in: the new primary is accomplishing the goals stated by supporters when Proposition 14 was passed in 2010. Well . . . sort of.

The "[Arguments in Favor](#)" statement promoted Proposition 14's benefits in moderating the State Legislature. "Proposition 14," these supporters predicted, "will help elect more practical officeholders who are more open to compromise."

Opponents questioned everything from the measure's origins to its impact. saying that, "Proposition 14 was written

SINCE PROPOSITION 14, VOTERS ARE MORE APPROVING OF THEIR INDIVIDUAL LEGISLATORS



Source: [Public Policy Institute of California, Statewide Surveys 2012 & 2015](#)
 Note: Questions asked: Do you approve/disapprove of the way your U.S. Representative/State Legislators are handling their jobs?"; Likely Voters

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in the first place. Grose writes, “Sixteen of the new Assembly members elected in 2012 came from districts where the incumbents were defeated or chose not to run again.”

The influence of the Top Two and independent redistricting on whether more moderate candidates decide to run (and later win) is supported in new research by PPIC’s Eric McGhee and Georgetown’s Boris Shor in their wider study, “Has the Top Two Primary Elected More Moderates?” published in late March. Looking at both the 2012 and 2014 election cycles and comparing results between California and Washington state (which has Top Two, but not independent redistricting), the scholars found that the greater moderating influence is seen in encouraging moderate candidates to run and more extreme candidates to bow out. “The prospect that an open primary system will produce more moderate elected officials *on average* (original emphasis) does not logically depend on the prevalence of crossover voting,” McGhee and Shor discovered, “it depends only on the willingness of moderate candidates to run for office and their ability to win votes once they do so.”

Both studies agree that the greatest moderating effects seem to fall on one side of the aisle: California Democrats. In large part, this is because the leveling occurs most frequently in Democrat vs. Democrat races produced by the Top Two, and there are just, frankly, more of these deep blue districts than bright red ones. As Professor Grose found, “Assembly

general elections featuring two Democrats running against one another tended to elect more moderate legislators than districts with a Democrat-Republican general election contest.”

McGhee and Shor allow that while “a more careful examination of the individual cases of California and Washington finds inconsistent evidence of a [moderating] effect for the Top Two primary,” they conclude, “the main exception is California Democrats: not only have they moderated, but redistricting explains only about half the change.”

Leaving the ivory towers of academic research and heading to the mean streets of West Los Angeles, I’ve witnessed these effects in my own voting booth. I’m a Republican living in Santa Monica, and in the 2014 election I voted for a Democrat to represent me in the State Senate.

Of course I didn’t have a choice, as there were only two Democrats running in the General Election. Or did I? The People’s Republic of Santa Monica sits comfortably inside the 26th State Senate District, which has twice as many Democrats as Republicans, and more “Decline to State” voters than Republicans.

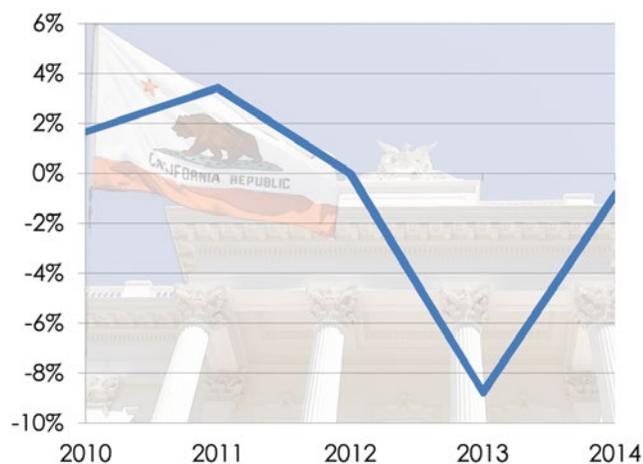
Democrat Ben Allen, a local school board member (full disclosure: someone I know and like), claimed the top spot out of the primary beating liberal activist, Sandra Fluke, by 3 points. As a Republican, of course, I’d love to have a Reagan-type represent me in Sacramento, but in a town where friends have had their “McCain for President” yard signs set on fire, that’s not going to happen.

Without Proposition 14, the most liberal Democrat could have easily won the June primary and then beaten the Republican in November with significant ease. I’d feel better about voting for that Republican in November, but only up until the polls closed, and the race was declared for the far left candidate.

But by appealing to Republicans like me with targeted mailers showing [Republican and business endorsements](#), Allen went on to win in November by over 20 points. In 2015, Senator Allen earned the third highest rating of any Senate Democrat by the [California Chamber of Commerce](#), and was in the top ten in the [Howard Jarvis Taxpayer Association](#) rankings.

Of course, this is only one story, and just two softly positive research studies, but after only two statewide elections with the Top Two, we know enough to say that signs of a moderating California legislature are, well, fair to middling. And for a Republican living in Santa Monica, that’s not a bad thing!

SINCE PROPOSITION 14, AVERAGE STATE LEGISLATURE IDEOLOGY HAS MODERATED BY 10% ANNUAL PERCENT CHANGE IN WEIGHTED ASSEMBLY/SENATE IDEOLOGY



Source: [Aggregate State Legislator Shor-McCarty Ideology Data, June 2015](#)
 Note: Weighted Average Assembly and Senate Ideology based on number of seats in each chamber



Pete Peterson is the dean of Pepperdine University's School of Public Policy. Pete also serves on the Leadership Councils of PPIC and California Forward and was the 2014 runner-up for California Secretary of State.



CALNOTES:

PROPOSITIONS 11 AND 20



Propositions 11 and 20 passed 51% to 49% and 61% to 39%, respectively, in November 2008 and November 2010. Together, these two ballot initiatives amended California's Constitution to create the California Citizens Redistricting Commission to draw new state legislative, Congressional, and Board of Equalization districts after each new census. Previously, the state legislature would oversee the redistricting process. The Commission, meant to reflect California's electorate, consists of 14 individuals—5 Democrats, 5 Republicans, and 4 Unaffiliated/Other Party members—selected by a complex, tiered system involving the State Auditor, the Legislature, and the Commission itself.

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 US 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.

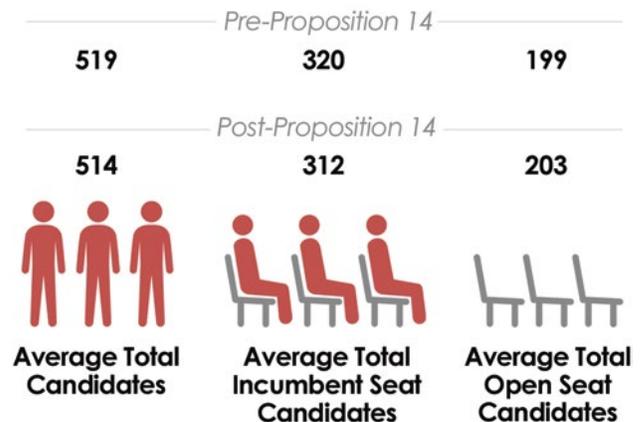
This presidential year, Americans are faced with what many of us view as distasteful alternatives: Donald Trump or Hillary Clinton. Many voters are seeking alternatives and looking to third-party choices. Why shouldn't voters have the same chance to seek out alternatives in lower-profile races?

I've voted in almost every election over the last 36 years, yet in the last election I declined to vote for US 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.

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,

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

The average number of candidates in races with and without incumbents went from 2.9 and 4.5 before Prop 14 to 2.8 and 4.8.

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.”

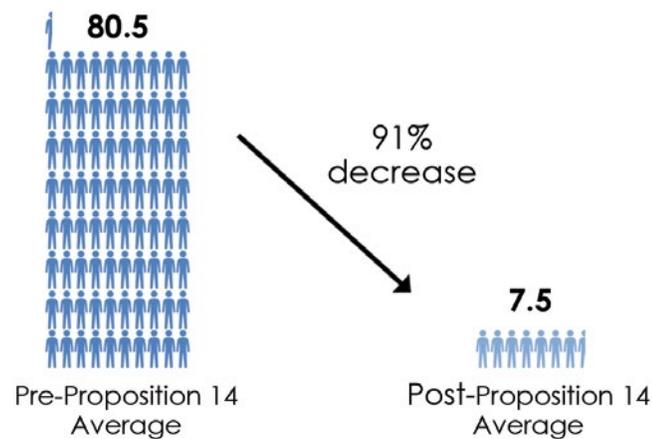
Glazer came in second and then won the general election—but the Top Two makes such game-playing more likely even if it occasionally leads to a good, moderate candidate beating out a union ally. It rarely leads to a clearer choice for voters.

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.

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.

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



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:



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.

Now's the Time to Leverage Technology and Transform California's Campaign Disclosure Laws

By Jim Heerwagen

This year's national election may be unlike any we've seen before, especially at the top of the ticket. But a disconcerting constant remains up and down the ballot: the influence of large sums of undisclosed money.

While media coverage tends to fixate on "Super PACs" and key actors on the national stage, a host of individuals and organizations of all political persuasions exert significant influence on our democracy at all levels—from local city council races to ballot measures. And they increasingly do so through secret or "dark" money moving through nonprofits and other vehicles.

According to the [Center for Responsive Politics](#), "spending by organizations that do not disclose their donors has increased from less than \$5.2 million in 2006 to well over \$300 million in the 2012 election." And secret spending at this point in the 2016 cycle is up five times over 2012, a trend that predicts

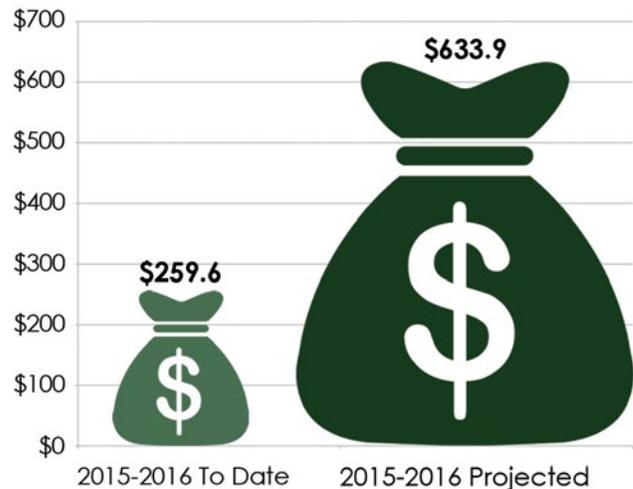
well over \$1 billion in dark money this cycle. Despite these statistics, the reality is no one can reliably say who is spending how much to shape decision-making in our country.

The issue is twofold. One: a campaign finance regulatory scheme that cannot keep pace with the "innovations" that subvert it. *Citizens United* has become a meme used by reform groups discussing the ills of modern campaign finance system. While this ruling was a stepping stone toward unlimited political expenditures, it is only the most prominent of a series of rulings dating back to the Watergate-era that have eliminated existing and proposed restrictions on campaign spending, affirming the notion of political spending as "protected speech."

This rising tide of political money has fostered a latticework of new and proposed regulations across states and localities. While many of these schemes are well intentioned and perhaps effective in narrow ways, their practical effect is to make true understanding of the scope and scale of money's influence on our democracy all but unknowable.

Indeed, a robust regime of disclosure, enabled by technology, holds promise for making the "brought-to-you-by" known to citizens. As Supreme Court Justice Anthony Kennedy wrote in the *Citizens United* decision, "With the advent of the Internet, prompt disclosure of expenditures can provide shareholders

TOTAL ITEMIZED CONTRIBUTIONS TO FEDERAL CANDIDATES IN CALIFORNIA COULD REACH A RECORD BREAKING \$634 MILLION THIS ELECTION CYCLE (\$ MILLIONS)



Source: [OpenSecrets State Summary](#)

Note: Projected calculated using a weighted average percent change from previous presidential cycles

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and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.”

The problem with Kennedy’s belief in real-time disclosure is that loopholes in disclosure law make it possible to hide spending. Just last year in an interview with Harvard Law School Dean Martha Minow, Justice Kennedy [observed](#) that disclosure is “not working the way it should.”

This leads to the second major issue, outmoded systems for reporting and disclosure. Disclosure documents may not be available until elections are decided, and siloed systems preempt efforts to piece together influence across state lines and varied levels of government. Technology is ready to help, but its implementation by our government is woefully behind.

In California, the central repository of state lobbying and campaign finance was launched in 2000, when most Americans hadn’t yet used the Internet and did not have cell phones. Today, less than one hundred of the state’s more than 5,000 local agencies even have online filings, meaning that if you want to know who is giving to your mayor or school board, you probably have to go to city hall or a district office and

sort through reams of paper filings—if you’re lucky, they’re in PDF form.

The bottom line: if you’re wondering who’s pulling the strings, there may not be an answer for you. That is frightening, it’s unacceptable, and it’s going to get fixed.

Last year, some of the leading policy and technical minds in California joined me in starting the Voters Right to Know effort. Our goal: to foster government policy that is better aligned with citizens’ interests and increase citizen engagement with a democracy that they trust. We want to tear down byzantine structures used by special interests to veil their pursuit of election results, and give California and its people the tools to be vigilant in maintaining disclosure. We envision a systemic approach that leverages technology and new disclosure laws to transform the campaign disclosure system and reveal true donors of contributions, not just shell nonprofits with nondescript names.

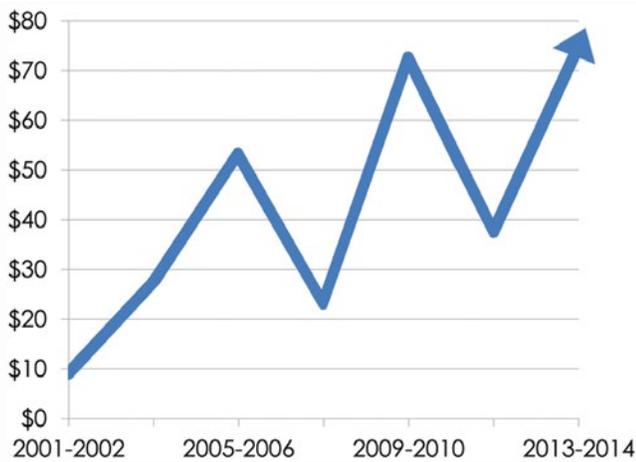
More importantly, we want to catalyze a culture of disclosure that we believe can—and must—be imbued into our politics at all levels. As Daniel Newman, President and Co-Founder of [MapLight](#), said: “Our research conclusively shows that knowing which funders are behind campaigns makes a big difference to voters. Depending on their opinion of the funder, voters were much more likely to believe—or disbelieve—a particular ad. In other words, this type of disclosure is key to providing voters with the information they need to evaluate political messages to make decisions in their own best interests.”

Right now, the legislature has an opportunity to act on a specific proposal from Voters Right to Know and finally reboot its failing [disclosure system](#). [SB 1349](#) was introduced by Senator Bob Hertzberg last month and includes best practices drawn from around the country, and enjoys broad support from business, labor, and reform advocates. We ceased our initiative signature-gathering efforts after Hertzberg engaged with our team.

Passage of SB 1349 will allow California’s Secretary of State to make this system easy to use—for campaigns, citizens, and the media. With this project, Californians will have among the most reliable, up-to-date, and easily understood view in the country of the money behind campaigns. This will shine a light on the flow of political money. We can envision this helping to align government policy with voters’ interests and to restore civic engagement in our democracy.

But in the future, Californians cannot count on this or any law to be effective at protecting their democracy in the face of campaign finance practices that will develop to subvert

INDEPENDENT EXPENDITURES FOR STATEWIDE OFFICE AND LEGISLATIVE ELECTIONS HAVE BEEN STEADILY INCREASING (\$ MILLIONS)



Source: [California Secretary of State](#)



Since 2001, there has only been one cycle-to-cycle decrease in IE spending, a 16% drop from 2007–2008 to 2003–2004.

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citizens' interests. For that, a comprehensive ballot measure must instruct regulators, legislators, and courts to establish and continuously update laws in protection of a new California constitutional right: a right to know about the sources and spending of election and influence money.

Qualifying for the ballot is a heavy lift. And this is not a ballot measure topic that will yield a financial return to vested interests. It will require committed Californians that are ready to catalyze the tilt back—to a government for and by the people.

California has a heritage of policy innovation that often sets the national agenda. Together with other states, we can show that the people demand equal access to their democracy, and showcase pragmatic steps on the road to that end. It's long overdue.

CALNOTES:

SENATE BILL 1349



Introduced by State Senator Bob Hertzberg of the San Fernando Valley, SB 1349 amends the Political Reform Act of 1974—a landmark ballot measure that created California's campaign disclosure and oversight regime—to include a public campaign finance disclosure mandate on California's Secretary of State in addition to public candidate finance filings. In essence it mandates the public identification of major donors to not just candidates, but also independent expenditure campaigns. California is a pioneer in online campaign finance disclosure with the advent of Cal-Access, created by the Online Disclosure Act of 1997.

Jim Heerwagen is the co-founder and CEO of IQVine, a crowd-sourced market research company. Jim is the lead proponent of Voters Right to Know, a state constitutional movement related to campaign finance reform.



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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CALIFORNIA'S POLICY, ECONOMICS, AND POLITICS

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