AT ISSUE

PUBLIC POLICY INSTITUTE OF CALIFORNIA

OPEN PRIMARIES

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As a part of the February 2009 budget deal, the state legislature placed a "top-two-vote-getter" (TTVG) primary reform initiative on the June 2010 ballot. If passed, TTVG would allow voters in all state, U.S. House, and U.S. Senate primaries to cast ballots for any candidate, regardless of their own or the candidate's party identification. The two candidates receiving the most votes—again, regardless of party—would proceed to a fall runoff election. The most commonly cited goal of this reform is to make it easier for relatively moderate candidates to be nominated for and elected to public office.

This At Issue describes the proposed reform and places it in the context of recent primary law in California; presents some of the arguments for and against the reform; describes the legal basis for some of its provisions; and evaluates the effect the law is likely to have on voter behavior and candidate moderation.

REFORMING CALIFORNIA'S PRIMARIES

In the June 2010 primary election, California voters will consider a top-two-vote-getter initiative that would allow voters to choose any candidate, regardless of party, in the primary election for all state and national races (U.S. Senate, U.S. House, California Assembly, and so on) with the exception of the presidential race. The two candidates receiving the most votes in these races—again, regardless of party—would advance to a fall runoff election. The law would not affect local elections, which already use a runoff system similar to the one in the TTVG measure.[1]

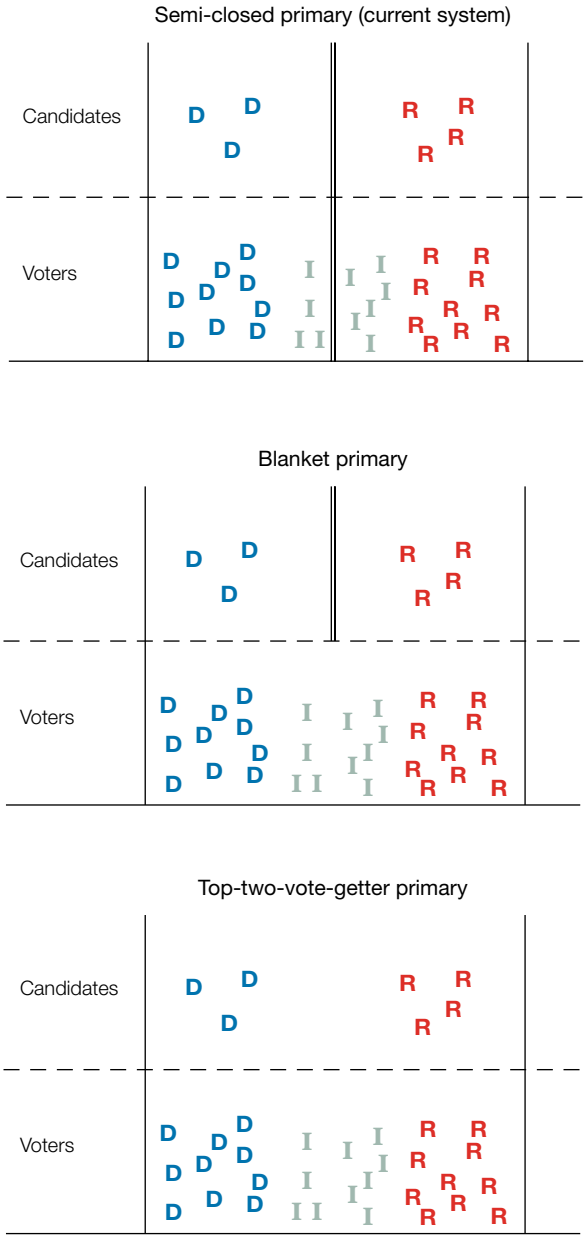
How does TTVG differ from California's existing primary system? Under the current "semi-closed" system, voters must register with a party to vote in its primary, but the parties may allow "decline-to-state" voters (California's official name for independents) to participate as well. Except in presidential elections, the two major parties have always allowed independent voters to participate in their primaries.[2] Independents receive information about party options before every primary election, and can make a request to vote in a party's primary at their polling place without notifying their registrar of voters in advance.[3]

This would not be the first time California has experimented with its primary system. In 1996, the state's voters approved Proposition 198, which established a blanket primary for all state and federal elections.[4] Like TTVG, the blanket primary placed all candidates on the same ballot and allowed voters to choose one candidate for each office without regard to party labels. But unlike TTVG, the blanket primary advanced the top vote-getter *within each party*. In other words, candidates in blanket primaries compete only against other candidates from the same party, whereas in the TTVG system each candidate competes with all other candidates, regardless of party.

The U.S. Supreme Court overturned the blanket primary in 2000, after which California adopted the current semi-closed system. As we have seen, in the semi-closed system only independent voters can participate in the party primary of their choice, while both the blanket and TTVG systems let partisans as well as independents "cross over" to support a candidate of a different party in any or all races. But only the TTVG removes party boundaries for voters and candidates alike (Figure 1).

The TTVG reform is currently popular with California voters. A September 2009 PPIC Statewide Survey found that 68 percent of likely voters—including equal shares of Democrats, Republicans, and independents—supported the general outlines of the reform (Baldassare et al. 2009).[5] But a similar proposal was rejected in November 2004 by a margin of 54 to 46 percent after it led in early polls. Thus, the fate of TTVG will probably depend on the campaign waged by each side and on the broader political context of the election.

FIGURE 1. TTVG ELIMINATES PARTY BOUNDARIES FOR VOTERS AND CANDIDATES



PROS AND CONS OF TTVG

What are the arguments in favor of TTVG? Its advocates most commonly cite its potential to increase moderation in the state's political parties. Currently, members of the California legislature and congressional delegation vote mostly along party lines. Many TTVG supporters feel that this partisanship prevents legislators from finding pragmatic solutions to the state's problems. They suggest that semi-closed primaries are at least partly to

blame because the primary voters in each major party tend to be ideologically extreme: Democrats are more liberal than the general electorate and Republicans are more conservative. These voters tend to nominate extreme candidates, who become the only viable choices in the fall campaign, leaving voters in the middle without a moderate alternative.

Supporters of TTVG see open primaries as one solution to this problem. They argue that if voters could cross over to support candidates from other parties, moderate candidates could build winning coalitions of their own parties' moderates and crossover supporters. As a result, candidates with moderate views would be more likely to run and donors would have more reason to support them. In the end, more of these moderate candidates would be nominated and go on to win public office in the fall campaign.[6]

In addition to bolstering political moderation, supporters argue, TTVG is likely to increase both competiveness and voter turnout, since a broader range of voters would be able to cast a vote in each race. This argument may have special force because of the large and growing number of decline-to-state voters, who do not explicitly identify with any political party and who may feel especially constrained under the current system.

What about the cons? One of the most common objections to TTVG is that it will encroach upon each party's right to control its own fate. Open primaries give voters who have not taken an interest in the success of a party—and may even have actively opposed its goals—as much say in deciding its nominees as those who have been dedicated followers (Jones 1996). Opponents express particular concern about *raiders*: voters who seek to clear the way for their own party's nominee by voting for the weakest candidate in the opposing party. Since this weak candidate may also be more extreme, substantial raiding could undermine TTVG's moderating effect.

Another concern is that the TTVG system will limit choice. Smaller parties are likely to be excluded from the fall election, since their candidates rarely manage to finish first or second in a primary. And a TTVG primary can result in two candidates of the same party facing each other in the fall. How often has this happened in the two TTVG primary states, Louisiana and Washington? Since 1991, 17 percent of Louisiana's House primaries, 12 percent of its Senate primaries, and 9 percent of its U.S. House primaries have produced same-party runoffs.[7] In Washington, which began using TTVG in 2008, the numbers are lower: 6 percent of its House primaries, 2 percent of its Senate primaries, and none of its U.S. House races produced same-party runoffs.[8]

Finally, some TTVG opponents argue that weakening party influence in elections will create a vacuum that will be filled by organized interests with agendas that are less transparent and public-spirited. For instance, the liquor lobby had enormous and outsized influence over the California legislature in the 1940s and '50s, when a form of open primary was in use and party control was generally weaker (Masket 2004).

THE LEGALITY OF OPEN PRIMARIES

California's adoption of the blanket primary in 1996 sent shock waves through the political community. The state was not the first to adopt the blanket primary—Alaska and Washington had been using it for some time—but it was the largest and therefore most politically consequential.[9]

The most commonly cited goal of this reform is to make it easier for relatively moderate candidates to be elected to public office.

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California's parties sued, and the U.S. Supreme Court overturned the blanket primary in 2000, ruling in *California Democratic Party v. Jones* (530 U.S. 567 2000) that the law violated the parties' first amendment right to free association. Of particular importance was the idea that voters who were not members of a party could help select a candidate who would be the party's official nominee and standard-bearer. The majority on the court felt that this forced the parties to associate with voters they might otherwise have excluded from their organizations.

In the wake of this decision, the California legislature adopted the state's current semi-closed system in 2001. As we have seen, this was not the final word on the subject: California voters considered and rejected a TTVG proposal in 2004. Proposition 60, a competing measure on the same ballot that simply ratified the current semi-closed system, passed with 68 percent.

At the same time, Washington voters passed a TTVG reform with 60 percent of the vote (their blanket primary had also been struck down in the *Jones* decision). In a critical 2008 case (*Washington State Grange v. Washington State Republican Party et al.*), the U.S. Supreme Court upheld the constitutionality of this reform. The court reasoned that since the law asks candidates to identify only a party "preference," which could differ from a candidate's actual party registration, voters would not consider candidates to be officially connected with a party organization.

Since the drafters of California's TTVG initiative have copied the Washington law in virtually every respect, the initiative's constitutionality is not in serious doubt.

CROSSOVER VOTING

Is crossover voting common? What motivates it? And does it change electoral outcomes?

First, it is important to note that most decline-to-state voters do not take advantage of their options under the current system. The PPIC Statewide Survey has asked these voters which primary they intend to choose—Democratic, Republican, or nonpartisan (with only initiatives and nonpartisan candidates on the ballot)—in every gubernatorial and presidential primary since the adoption of the semi-closed system. Since the March 2004 primary, a majority of decline-to-state voters has always chosen a nonpartisan ballot (Baldassare 2004, 2006; Baldassare et al. 2008).[10] In June 2008, the Secretary of State released official estimates of crossover voting based on actual turnout that closely mirrored the earlier numbers from the Statewide Survey (see Figure 2).

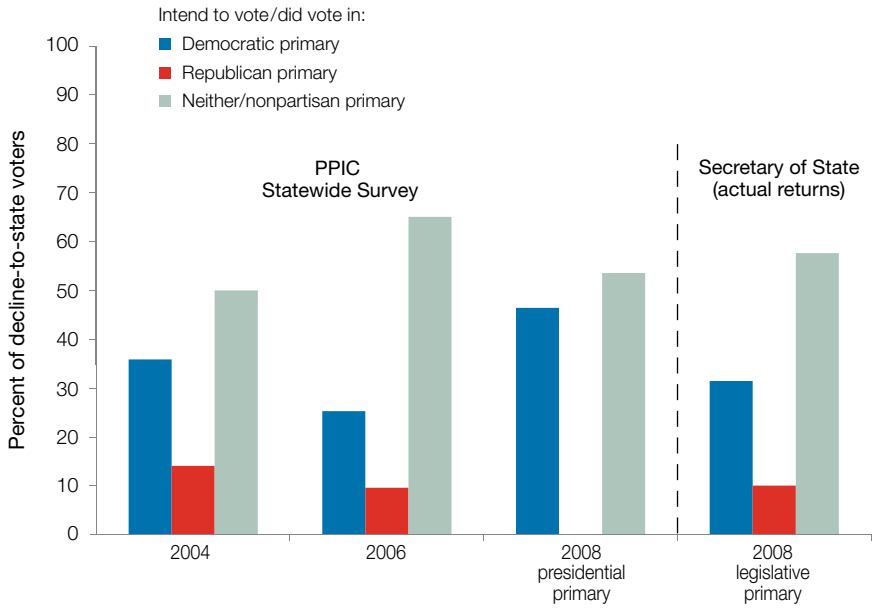
How many voters might cross over under TTVG? The best evidence on this question comes from California's experience with the blanket primary. Under that system, crossover voting was sometimes quite high, especially among Republicans in heavily Democratic districts and Democrats in heavily Republican districts (Alvarez and Nagler 2002; Kousser 2002; Sides et al. 2002). In the presidential primary of 2000, fully 27 percent of ballots were crossovers in one direction or the other. Thus, it seems reasonable to expect that crossover voting would be prevalent under TTVG, at least in some races.

Is raiding common in an open primary? Evidence from California's blanket primary suggests it is not, perhaps because successful raiding requires difficult coordination among voters (Alvarez and Nagler 2002; Sides et al. 2002). Some voters might well use their new

freedoms to sabotage another party, but the great majority would probably vote for the candidate they liked best.[11]

Voters might be drawn to candidates they like, but they will not cross over to support a candidate they have never heard of. This basic fact has important implications. Many voters cross over to support the incumbent because the incumbent is familiar, and still more cross over in order to participate in a competitive contest (Alvarez and Nagler 2002; Kousser 2002; Salvanto and Wattenberg 2002). Candidates with well-funded campaigns are generally better known and more competitive. One can presume, then, that disparities in campaign funding will continue to matter greatly under a TTVG system.

FIGURE 2. MOST DECLINE-TO-STATE VOTERS HAVE NOT OPTED TO CROSS OVER UNDER THE CURRENT SYSTEM



SOURCES: PPIC numbers are from the last Statewide Survey conducted before each year's primary election (Baldassare 2004, 2006; Baldassare et al. 2008). Secretary of State numbers are from the official statement of the vote.

NOTES: For details about the numbers, see note 10. Republicans did not allow decline-to-state voters to participate in their 2008 presidential primary. In 2008 California held its presidential primary in February and its state legislative and U.S. congressional primary in June.

Does crossover voting change many outcomes? The evidence on this point is not as clear because we do not have data on crossover voting from a broad enough number of races. Crossover voting cannot change an election's outcome unless the gap in votes between candidates is smaller than the number of crossover voters *and* crossover voters vote differently from regular partisans. In the California races that have been studied, crossover voting rarely met both criteria. This does not mean that crossover voting never changes outcomes, only that it did not do so in the year (1998) and the races (governor, U.S. senator, and some House and Assembly districts) that have been closely examined (Alvarez and Nagler 2002; Sides et al. 2002).

INCREASED MODERATION AND OTHER POSSIBLE EFFECTS OF TTVG

Do open primaries increase moderation? Reformers clearly believe they do, but some have argued that they are just as likely to have the opposite effect: too many moderates will run and split the moderate vote, allowing extreme candidates to advance to the fall campaign (Hill 2009). Which of these perspectives is correct?

The evidence—much of it from California's experience with the blanket primary—points toward a slight advantage to moderate candidates. Moderates were more likely to be elected to the Assembly in the blanket primary years of 1998 and 2000 (Gerber 2002; Paul 1998). Voting in the Assembly was more bipartisan during those years (see the technical appendix).[12] And it is often argued that a higher number of strongly liberal bills were killed at the committee stage.

Figure 3 shows the ideological location and range of opinions in each party on the economic and business regulation issues tracked by the Chamber of Commerce. The points represent the median opinion in each party caucus in each year, with dots closer to the middle of the vertical axis suggesting greater moderation (since legislators with higher Chamber scores tend to be more conservative). Longer vertical lines signify a broader range of opinions. The graph suggests that members of both parties, but particularly Democrats, were more moderate in the Assembly under the blanket primary. Each party—but again, the Democratic Party in particular—was also somewhat more diverse during that time, with more moderates alongside the usual partisans.[13] However, Figure 3 also shows that apart from a slight change among Republicans there was no comparable effect in the state senate. One possible explanation is that the effect of the blanket primary depended on the circumstances of each race—its competitiveness, for example, or the partisanship of the district. But efforts to confirm this hypothesis do not turn up much evidence for it.[14]

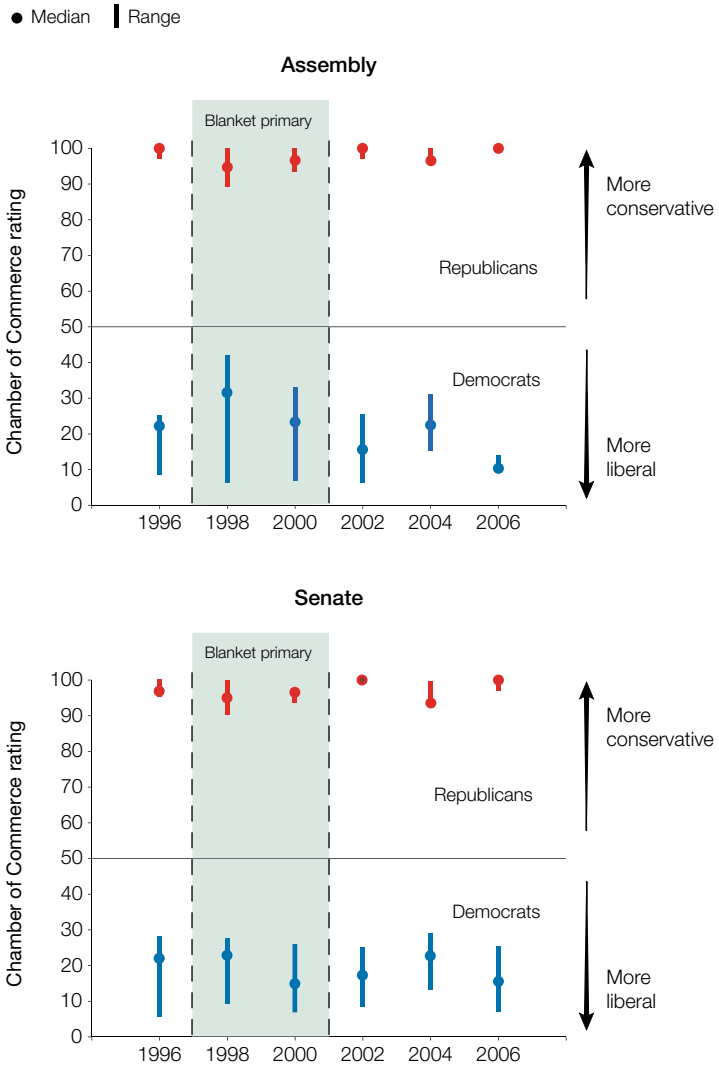
There is some evidence that California's U.S. House delegation was more moderate during the blanket primary period, but it is not very strong (see the technical appendix). A moderate (Gray Davis) won a contested Democratic primary for governor, though it is not clear that there was a more liberal candidate so the outcome may have been predetermined. A conservative (Matt Fong) won the Republican primary for the U.S. Senate, but many considered him to be more moderate than the other candidate in the race. The 2000 presidential nominees were not selected via the blanket system.

Studies focused on the nation as a whole have found some large moderating effects from open primaries but have also identified polarizing effects in some races (Kanthak and Morton 2001; Gerber and Morton 1998). This research suffers from two weaknesses. First, it draws on elections from the 1980s, when the parties were less polarized so it was less politically costly to be a moderate. Second, it attributes any differences in political moderation between open and closed primary states to the primary system, even though there may be other factors at play. States that have adopted the open primary might have more moderates for any number of reasons.

PPIC research conducted with more recent data and better methods suggests that open primaries offer at best a modest advantage to moderate candidates, a conclusion that stands up to many important counterarguments (see the technical appendix).[15] It might seem logical that the moderating effect of open primaries would be greatest in districts with a

roughly even mix of Democrats and Republicans, for the simple reason that more voters can cross over and vote in the dominant party's primary. But support for this hypothesis is also limited and weak (see the technical appendix).

FIGURE 3. MODERATION INCREASED IN THE ASSEMBLY BUT NOT IN THE SENATE DURING THE BLANKET PRIMARY YEARS



NOTE: Because the Chamber of Commerce tends to have a conservative perspective on economic and business regulation issues, legislators with higher scores are likely to be more conservative than those with lower scores. The dots in the graph represent the median (50th percentile) score of each party caucus. The vertical lines give a sense of the distribution in each caucus: for Democrats, they range from the lowest score to the 75th percentile; for Republicans, they range from the 25th percentile to the highest score.

Truly nonpartisan primaries, which do not print party affiliations on the ballot, can lead to a significant breakdown of party loyalty among elected officials (Masket 2009; Wright and Schaffner 2002). For example, from 1914 to 1959 California allowed candidates to "cross-file"—to seek nomination in more than one party primary without revealing their party affiliation. During this period party influence was weak; it began to rise again only after party affiliations were restored to the ballot (Masket 2009).

In sum, while open primaries do not necessarily foster more moderate representation, nonpartisan primaries of the sort that will be on the June ballot do sometimes have a moderating effect. A truly nonpartisan primary would probably have the strongest moderating effect of all. But, of course, it will not be considered by California voters in June 2010.

BEYOND MODERATION

Moderation is not the only effect that has been predicted for TTVG primaries. Three others are often mentioned as well. First, many supporters argue that turnout will be higher in the primaries if more choices are offered, because voters who feel left out under the current system would have a reason to show up at the polls. There is some evidence to support this claim. Turnout for the 1998 midterm election under the blanket primary was 2.9 percentage points higher than the average of the two midterms that preceded it (1990 and 1994), and 6.1 points higher than the average of the two that followed (2002 and 2006). It is not clear whether voter turnout should have been higher in 2000 as well, since crossover votes in the presidential race—which always has the highest voter turnout—did not count toward selecting the presidential nominees. Nonetheless, turnout was 4.6 points higher in 2000 than the average of 1992 and 1996, and 2.2 points higher than the average of 2004 and 2008.[16]

Second, supporters argue that TTVG primary elections will be more competitive because the ideological diversity of the TTVG electorate makes it harder for one candidate to build a broad base of support. But closed primaries can often host fiercely competitive nomination fights that have at least as much to do with personality as with ideology. At any rate, there is little evidence that primaries were more competitive under either the blanket system in California or the recent TTVG system in Washington (Hill 2009; Tam Cho and Gaines 2002).

TTVG skeptics often express concern about a third potential effect of TTVG. Several political consultants interviewed for this report suggested that more money would be spent on primaries as candidates sought to reach a broader swath of the electorate, which might give moneyed interests more influence in the political process. Recent experience does not support this theory: under the blanket primary, spending on primaries did grow, but at a rate consistent with the broader trend in campaign spending (Tam Cho and Gaines 2002).

Many supporters argue that turnout will be higher in the primaries if more choices are offered.

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LOOKING AHEAD

In short, TTVG would probably have a noticeable but modest effect on voting and representation in California. Crossover voting rates could be high, but perhaps in only a handful of races. Moderates might benefit, but only slightly more often than under the current system.

Because voters often cross party lines to support incumbents, a TTVG system would be just as likely as the current system to maintain the status quo. However, incumbency helps keep officials in office whether they are moderate or highly partisan. Thus, even a small moderating effect might build over time, as past moderate winners retain office and new ones arrive to join them. Moreover, there is evidence that it took voters and candidates several election cycles to take full advantage of both the passage of cross-filing in 1914 and its removal in 1954 (Gaines and Tam Cho 2002; Masket 2009). In other words, time may offer the best test of TTVG's effect on moderation.

The same could be said for TTVG's other potential effects on voter turnout, competitiveness, and campaign spending. These effects have not yet been tested over a long period of time.

Overall, the evidence underscores the need for patience in assessing the effects of TTVG. If voters approve TTVG, it will be unlikely to change California politics overnight. There may be a long period of adjustment before the state arrives at a new, potentially more moderate equilibrium. But TTVG's overall effect on California's political landscape would probably be modest.

ACKNOWLEDGMENTS

I would like to thank Bruce Cain, Tony Quinn, Karthick Ramakrishnan, and John Sides for especially penetrating commentary on earlier drafts, which made the final product much stronger than it would have been otherwise. Thanks also to Stephen Hill, Tim Hodson, Seth Masket, Zabrae Valentine, and Micah Weinberg for speaking with me and offering thoughts about this project as it took shape. Several anonymous campaign consultants, Democratic and Republican, offered valuable insights into the effects of the blanket primary, California's last experiment with nomination procedures. Finally, at PPIC, Jed Kolko, Max Neiman, and Lynette Ubois deserve special thanks for their insightful thoughts and reviews.

Notes

1 Local elections differ from the TTVG measure in two ways. First, a runoff is required in local elections only if no candidate receives more than 50 percent of the vote in the first round. In a TTVG system there would always be a runoff, pursuant to the Supreme Court's decision in *Foster v. Love* (522 U.S. 67 [1997]), which required that a vote be taken in each scheduled race in every fall federal election. Second, TTVG would allow candidates to indicate a party "preference," while local elections explicitly ban party labels from the ballot. Some voters would undoubtedly factor party preference into their voting decisions, which might give parties a larger role than they would otherwise have.

2 See the California Voter Foundation (www.calvoter.org/news/cvfnews/cvfnews021302.html) and the California Secretary of State (www.sos.ca.gov/elections/elections_decline.htm#parties) for further information about the parties' decisions in each election.

3 Conversation with Jacob Corbin, California secretary of state, October 6, 2009.

4 Presidential elections were later exempted in response to pressure from the national parties. The legislature passed
a bill in 1999 (SB 100) to establish a system of double counting: the results of the blanket primary would be tabulated and reported, but only the votes of party registrants would count toward delegate selection. On the Republican side, George Bush performed far better against John McCain with party registrants than with crossover voters, while there was no meaningful difference on the Democratic side in the contest between Al Gore and Bill Bradley.

5 The wording of the question was as follows: "Some people have proposed changing California's state primary elections from a partially closed system to a system where registered voters could cast ballots for any candidate in a primary and the top two vote-getters—regardless of party—would advance to the general election. Do you think this is a good idea or a bad idea?" See www.ppic.org/main/publication.asp?i=914 for more details.

6 It is tempting to expect that an open primary will make representatives more "responsive" in a generic sense to the district median voter. But an open primary does not make either the district or the primary median clearer to candidates; it simply moves the primary median toward the opposing party. For example, Democratic candidates to the left of their primary median might move toward the center under an open primary, as their primary median moves in the same direction. But Democratic candidates to the right of the Democratic median should not move at all—the median is already moving *toward them.* By the same token, Republicans to the right of their median might move toward the center, but those to the left should not move at all. In effect, relatively conservative Democrats and liberal Republicans have already escaped the centrifugal pressures of the closed primary, so an open primary should make little difference to their ideological positioning. Thus, responsiveness to the district median will improve only in an open primary with candidates who are too extreme.

7 These numbers exclude 2008 U.S. House races, because Louisiana dropped the TTVG system for House races starting that year.

8 The TTVG systems in Louisiana and Washington differ somewhat: Washington always advances the top two vote getters, but Louisiana cancels the runoff if one candidate receives more than 50 percent in the first round (and holds its first-round election at the same time as the fall election in Washington, pursuant to *Foster v. Love* (522 U.S. 67 [1997]). The number of same-party races in Washington is even lower if races where one candidate received more than 50 percent of the vote in the primary are excluded.

9 The Alaska Republican party successfully sought exemption from the blanket primary from 1992 to 1996, at which time the Alaska Supreme Court ruled that the state's blanket primary statute required participation by all parties.

10 These numbers exclude those who did not know how they would vote or did not plan to participate in the primary election. A majority said they would choose a partisan ballot for the March 2002 primary, but their answers may have been influenced by the way the question was worded. The question asked if respondents planned to vote in "the Republican primary, the Democratic primary, or neither," which might have created the impression that abstention from voting was the only alternative to a partisan primary (Baldassare 2002). In subsequent surveys voters were asked if they planned to vote in "the Republican primary, the Democratic primary, or on the nonpartisan ballot." The surveys since 2002 have also informed respondents that their choice of ballot does not affect their ability to vote for statewide propositions, something the 2002 survey did not mention.

11 Raiding is just one type of strategic crossover voting. All strategic voters prefer a candidate of their own party but cross over to set up the contest they would most like to see for the fall. But while raiders support the weakest candidate in the opposing party, *hedgers* cross over to support the other party's best candidate, in order to ensure the best possible outcome in the fall regardless who wins. In short, these voters hedge their bets. The evidence suggests that hedgers are more common than raiders, but that sincere voters are the most common of all (Sides et al. 2002).

12 See the technical appendix to this At Issue, which is available on the PPIC website: www.ppic.org/content/pubs/other/210EMAI_appendix.pdf.

13 Party leadership might have played a role in the moderation of the Assembly. Robert Hertzberg was Assembly speaker for precisely the years the blanket primary was in effect, and he was widely acknowledged to be a champion for the moderate branch of his caucus. By contrast, John Burton, who was the Democratic leader of the State Senate, is generally known as a strong partisan. It is unlikely that Hertzberg could have led his caucus toward greater moderation if they had not been willing to follow him, but he might have had a moderating effect.

14 Specifically, there is not much evidence that the effect of open primaries in the California legislature is dependent on 1) whether the incumbent ran for reelection; 2) the district's partisan balance between Democrats and Republicans; 3) the share of the district's voters who identify as decline-to-state; 4) whether the primary was contested; 5) if the primary was contested, how close it proved to be; or 6) whether the member in question was forbidden to run for reelection under term limits (see the technical appendix at www.ppic.org/content/pubs/other/210EMAI_appendix.pdf).

15 As was the case for the California legislature, the influence of open primaries appears to be about as ambiguous vis-á-vis open seats as in races where an incumbent is running. However, the number of open seats available for testing this hypothesis is usually very small, since about 90 percent of incumbents typically run for reelection. There is some evidence that the effect of open primaries was conditional on the partisan composition of the district, but this variation was not itself consistent. Democratic legislators representing competitive districts were often more sensitive to the presence of a nonpartisan primary than were those representing uncompetitive districts, but less sensitive to the presence of a semi-closed system. There was no clear effect in either direction for Republicans.

16 The excitement generated by an election is always a significant factor. Turnout was actually 2.4 points higher in the 2008 presidential primary than in the 2000 primary, despite the fact that only the presidential race was on the ballot, the system was more closed, and decline-to-state voters could not cast ballots in the Republican primary. The 2008 presidential nomination was still undecided on both sides by the time California held its primary, which was not the case in 2000.

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RELATED PPIC PUBLICATIONS

Mark Baldassare et al., *Californians and Their Government*, PPIC Statewide Survey

"California Voter and Party Profiles" (Just the Facts, September 2009)

"California Independent Voters" (Just the Facts, January 2008)

Eric McGhee, *Redistricting and Legislative Partisanship* (September 2008)

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