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INSTITUTE OF CALIFORNIA

California's Political Reforms: A Brief History

Technical Appendices

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Appendix A: A Narrative History of the Redistricting Reform Measures

California’s modern history with redistricting began with a stalemate between Republican Governor Ronald Reagan and the Democrats in the state legislature over the 1970s districts. The stalemate threw the process into the courts, who promptly appointed a commission of retired judges called “Special Masters” to draw the lines in the legislature’s place. Democrats were wary of the Special Masters’ plans, but generally did well under those plans in the ensuing decade, and Republicans also seemed content with the outcome. But in the ensuing decades, Democrats became the clear majority party in the legislature and had no interest in abandoning control, while in future fights Republicans did as well or better when the courts drew the lines. In this way, the involvement of judges in the redistricting process—and even the notion of a commission of any kind—became tainted with partisan implications, at least in the minds of the political class. In the decades to come, the perspective on a commission or any judicial involvement in a redistricting process became a fairly effective shorthand for Democratic and Republican opinions of the process.

By the time of the next redistricting, Democrats in the legislature faced a Democratic governor, Jerry Brown. By all accounts, they took advantage of the opportunity. The legendary Democratic politician Rep. Phil Burton (D-San Francisco) was responsible for the congressional lines, and he showed no compunction about drawing whatever sort of districts he needed to squeeze every last Democratic seat he could out of the process, at one point bragging that the plan was his “contribution to modern art” (Schrag 2002).¹ Republicans immediately cried foul, and submitted the state Assembly, state Senate, and U.S. House maps to the voters in a referendum on the 1982 primary ballot. Voters chose to throw out all three, sending the legislature back to the drawing board in the middle of the campaign season (Heslop 2003; Kousser 2006).

In the meantime, however, there remained the important question of how to draw new districts for the 1984 campaign season. Since any plans that might emerge from the legislature could be just as bad (from a Republican point of view) as the old ones, Republicans outside the legislature felt the need to change the process so they could change the outcome. Toward that end, they placed Proposition 14 on the November 1982 ballot, the first of many commission-style reforms that would be proposed over the next few decades.

This first commission did not entirely remove the legislature from the process of drawing districts. In fact, the legislature was allowed to fill four slots on the commission, and the major parties were given another two. Thus, six of the 10 seats on the commission were directly connected to the political class.² However, the new law sought to ensure a different outcome in two important ways. First, it empowered a panel of justices on the California appeals court to appoint four commission members, explicitly urging “geographic, social, and ethnic diversity” for these four members “to the extent practical.” These four members would also be especially powerful, since any plan adopted by the commission would need at least three of their votes. The commission also forced partisan balance at every step along the way, from the panel of appeals court justices, to the members they appointed, to the political appointees, to the votes required for passage. At no

¹ While the evidence for a gerrymander of the Assembly and Senate plans is mixed, the congressional plan was strongly biased in favor of Democrats for the one election cycle in which it was used (Stephanopoulos and McGhee 2014).

² The initiative also allowed each smaller party with at least 10 percent of the legislature’s membership to appoint one more member to the commission. In this way, the commission could actually have more than the 10 members described above. However, since no third party has held the required 12 seats in the ensuing 33 years, it seems likely that this provision would never have been used. Moreover, none of their votes were explicitly required for passage in the way they were for the members appointed by the courts or the major parties.

point would one party have been able to pass a plan without any votes from the other. This was an obvious departure from the legislative process, where the Democrats had recently controlled the line-drawing process at every step along the way. Nonetheless, the law also required the panel to be filled in order of seniority, and older judges might have held different political views, regardless of party.

For those paying attention to Proposition 14's progress, the signs of partisan combat would have been hard to miss. Though the measure was strongly supported by California Common Cause, its primary backers were all affiliated with the Republican party, and it was equally strongly opposed by Assembly Speaker Willie Brown and other Democrats in the legislature. In a sign of arguments to come, Democrats called it a power grab by Republicans and claimed that the composition of the commission would fail to reflect the state's diversity (Stephanopoulos 2007). The measure ultimately went down to defeat by a comfortable 9-point margin, losing in 51 of the state's 58 counties. Since voters at the same time elected a Republican, George Deukmejian, as governor, the Democratic legislature quickly passed a new redistricting plan in December and sent it to Gov. Brown for his signature before Deukmejian could take his place.

Proposition 14 would not be the last failed attempt at redistricting reform, nor would it lose by the largest margin. But it did set the tone for all subsequent attempts. Each of the next three attempts at reform shared two common characteristics with this first one: the commission they developed always reserved some direct role for the courts; and the coalitions on either side of the initiative had a distinctively partisan cast.

The next commission-style reform was Proposition 39, proposed and largely funded by Gov. Deukmejian himself and placed on the fall 1984 ballot. The courts were directly involved again; in fact, the commissioners were to be drawn by lot from separate lists of retired Democratic and Republican jurists. As before, party balance was key, but the commission process would offer no role at all to the legislature. Indeed, apart from two nonvoting members appointed by statewide officeholders, there was no significant role for anyone outside the retired justices and the courts that would review the plans they drafted.

Again, the forces arrayed on either side of the measure had a clear partisan bent. Deukmejian was a visible proponent of the measure, and pro-business groups such as the California Manufacturers Association and the California Chamber of Commerce endorsed it as well. Democrats, for their part, spent even more money than they had the first time, and brought minority rights groups such as the Mexican American Political Association and the National Association for the Advancement of Colored People into the fray in a way they had not for Proposition 14. The message, however, was similar: the initiative was a power grab by Republicans, and judges could not be trusted with the redistricting process. This proposal fared no better than the last one, losing by a similar 10-point margin.

Republicans tried once more to pass a commission-style reform during the 1980s redistricting cycle, this time on the June 1990 primary ballot, right before the next redistricting was set to begin. Like its predecessors, Proposition 119 involved the courts, although this time the judges would select the members of the commission rather than serving directly on the commission themselves. As with the previous two attempts at reform, there were requirements for partisan balance, including among the justices who would choose the commission and the commissioners themselves. But despite these tweaks, the dynamics of the campaign were predictable. Republicans were fairly united in favor, and Democrats in opposition. The Democrats also outspent the Republicans by a considerable margin at least \$5\$8 million to \$1 million with a campaign that emphasized the same themes as before: the reform was a Republican power-grab, and the commission would be dominated by "old, white men." In an interesting twist, two of the most prominent good government organizations—the League of Women Voters and Common Cause—presented conflicting public

faces, with a leader of the League, Ellen Elliott, speaking strongly in favor, and Common Cause actually recommending a no vote. Even Republicans were split, with many of the party's incumbents fearing the impact of a fairly strong competitiveness requirement in the measure and erstwhile reform advocate Governor Deukmejian playing a relatively reserved role (Stephanopoulos 2007). Proposition 119 fell harder than its predecessors, losing by almost 30 points and falling short in every one of the state's 58 counties.

Ironically, Republicans got the judicial involvement they were looking for anyway. A Republican, Pete Wilson, was elected governor in 1990, and in a replay of the 1970s redistricting, he and the Democratic legislature stalemated, throwing responsibility for drawing the lines once again to a group of judicially-appointed Special Masters. Unlike the 1970s, however, this 1990s plan more clearly favored Republicans—whether intentionally or not—leaving Democrats unhappy and Republicans more or less satisfied (Stephanopoulos and McGhee 2015). What followed was a period of relative calm in the redistricting wars, as Republicans had no incentive to rock the boat and Democrats did not generally trust that any reforms they might pursue would aid their chances.

This lull ended with the redistricting of 2001. As in 1981, Democrats controlled both the legislature and executive branches (this time with Governor Gray Davis); unlike 1981, they now knew that outright control of the process might prove illusory. In fact, Republican Senate leader Jim Brulte resurrected the specter of the 1980s redistricting by threatening another referendum if the Democrats again attempted to exclude Republicans from the line drawing process.³ Fearing another protracted battle, Gov. Davis and his fellow Democrats agreed to a bipartisan plan that could pass as an urgency measure in the legislature with a two-thirds vote, thus ensuring it could not be referended. To assemble this coalition, the Democrats agreed to set the status quo in stone by giving most legislators and virtually all members of Congress a seat that could only be won by a candidate of their own party. Many Republicans were pleased with the immediate result, since it protected all of their members at a time of declining Republican registration in the state.

While this deal addressed the immediate need to pass a plan, it prompted a negative reaction from observers across the political spectrum. Democrats immediately lost an important ally, as civil rights groups attacked the plans for protecting incumbents and ignoring the needs of women's and minority representation. Kathay Feng of the Coalition of Asian Pacific Americans for Fair Redistricting (who was later to play an important role in reform as the director of California Common Cause) argued that minority communities had been respected only if it could be done "without running against the (Democratic) party or an incumbent" (Rojas 2001b). Others called the plan an effort to protect an "old boys' network" (Rojas 2001b). The Mexican American Legal Defense and Education Fund (MALDEF) eventually sued to overturn the new districts, arguing that they protected incumbents at the expense of Latino voters (Rojas 2001a). While the lawsuit was not successful, this open dissatisfaction among the civil rights community signaled an important fissure in the coalition that had always opposed redistricting reform in the past.

Other groups also felt wronged by the plan. Good government advocates complained that the plans sapped elections of all competition and would end up producing ideologues on either side (Walters 2001b; Herdt 2003). Many Democrats felt despondent that, in ensuring a floor for Republicans' seat share, they had also ensured a ceiling for theirs (Walters 2001a). And despite feeling like they escaped with a relatively good deal in 2001, Republicans outside the legislature continued to be some of the strongest supporters of reform,

³ Brulte later admitted that this threat was a bluff, and that the Republican party did not actually have the financial resources to wage another referendum fight (Sanders 2005e).

perhaps feeling that the redistricting plan had left them in a permanent minority status and thus limited their opportunities as well.

However, all lawsuits were eventually dismissed and the plans went into effect. The elections of 2002 came and went, and a few seats were even won by a different party than expected—a bit of a surprise for a plan that was supposed to be entirely predictable (Walters 2004). But dissatisfaction continued to percolate just below the surface.

The reform movement gathered steam again when, in the midst of the campaign to recall Gray Davis in 2003, Arnold Schwarzenegger publicly advocated for a commission composed of retired judges (Smith 2003). After the election, an organization headed by Fred Keeley and Dan Schnur called Voices of Reform drafted a set of reform principles in collaboration with the reform organization California Forward (Sonenshein 2013). Ted Costa, the conservative activist behind the recall, introduced an initiative to implement a commission of judges (Hannah 2003),⁴ while Kevin McCarthy, at that time the Republican leader in the state Assembly, introduced a similar measure in the legislature.

Although none of these efforts made it to the 2004 ballot, let alone became law, the reform idea was now more directly part of the public discussion again (Sanders 2004a). When the 2004 election failed to produce any turnover in the legislature or congressional delegation, reformers were emboldened to try again. Ted Costa began to drum up support for another reform measure very similar to the one he had proposed in 2003. Likewise, Gov. Schwarzenegger had plans to call a special election in 2005, and wanted to make redistricting reform one of the key initiatives he supported in that election. He signaled this idea quickly after the election, and eventually decided to support Costa's measure as his preferred vehicle for reform (Quinn 2005).

This reform bill, which eventually became Proposition 77, unabashedly sought to enshrine the formerly ad-hoc Special Masters process into law. Like Proposition 39 from 1984, it appointed retired judges themselves to the commission by drawing randomly from a list of those retired judges who volunteered to serve. But it also signaled its provenance by making the number of commissioners match the number of Special Masters who had drawn the 1991 lines, and even using the name "Special Masters" in the text of the law itself. In so doing, it ran the risk of framing itself as the latest weapon in a decades-long partisan struggle.

It probably did not help matters that Proposition 77 insisted on a mid-decade redistricting, to be completed in time for the 2006 election. Texas had just endured a protracted partisan fight where the new Republican majority in the state's legislature decided to redraw the lines in the middle of the redistricting cycle. The highly visible battle produced the drama of Democratic legislators fleeing the state to avoid providing the Republican majority a quorum for the vote. In attempting a similar mid-decade revision—albeit through a commission, not the legislature—Proposition 77 offered opponents an easy means of demonizing the plan, and they were happy to capitalize on it (Nunez 2004).

Proposition 77 also became strongly associated with a single person, Gov. Schwarzenegger, to an extent that other measures had not. Schwarzenegger was the measure's primary advocate and funder. The same had been true of Deukmejian with Proposition 39, but Proposition 77 was part of a group of initiatives that all

⁴ This was, in fact, the eighth redistricting initiative Costa had filed with the Secretary of State in the previous four years. The other seven had all come between 1999 and 2001, at a time when Republicans were afraid they would be steamrolled in the redistricting process. One of them had even qualified for the March 2000 primary, before it was thrown out by the state Supreme Court for including unrelated provisions about legislator pay (Schrag 2003).

owed their presence on the ballot—indeed, the fact of the election itself—to Schwarzenegger. Proposition 77 was accompanied on the ballot by three other measures also actively favored by Schwarzenegger (Propositions 74, 75, and 76), making it easier for those paying attention to know that Proposition 77 fit into a larger agenda promoted by the governor.

Proposition 77 struggled throughout the process. Polling for the measure was never strong, and Democrats and Democratic-allied groups attacked it openly. Many members of Congress from both parties gave money to the opposition campaign, since they had no term limits to force them out and therefore benefited directly from the safe seats of the 2001 plan (Walters 2005). Worse still, at the beginning of July, Democratic Attorney General Bill Lockyer sued to take the measure off the ballot, pointing to discrepancies between the wording of the measure that was submitted to the Secretary of State and the one used to collect signatures (Bluth 2005). State Assembly Speaker Fabian Nunez and state Senate President Pro Tem Don Perata, both Democrats, soon asked to join the suit (Sanders 2005d). When the suit eventually failed in the state Supreme Court, it fit perfectly into the Democratic campaign message that questioned the impartiality of judges. “It shows why a small group of unaccountable, politically appointed judges should not be given sole power to determine who represents Californians,” Nunez commented to the press (Sanders 2005f).

In short, if the reform had meant to rise above politics, it had failed. The end result was a twenty-point loss. It was far from the worst-performing measure on the special election ballot, and it did about four points better than its predecessor, Proposition 119, in 1990. It even won a majority in five of the state’s counties, something Proposition 119 had not managed to do in even one. But it was not nearly enough to claim victory, and it sent reformers back to the drawing board.

Though they had spoken out against Proposition 77, Nunez and Perata insisted that they were not opponents of reform, at least in principle. In the wake of the Proposition 77 failure, they pointed to the specifics of the reform, especially the decision to rush a mid-decade redistricting, as the true source of their opposition, and explicitly said they were open to commission-style reform. Nunez claimed they were already working on the problem and would have something “sooner rather than later” (Sanders 2005a). In fact, reform groups—including some who had not been supporters of Proposition 77—had indeed come together quickly after the election, and negotiations with Nunez and Perata had begun in earnest. All the key players in the reform coalition believed that the legislative approach had to be given a chance to succeed before any initiative effort was to move forward. State Senator Alan Lowenthal was a central figure in many of these legislative efforts, and the reform coalition worked both with him and with the legislative leaders to try to craft a workable proposal (Sonenshein 2013). This process continued through 2006 and well into 2007, and a number of ideas and bills were floated. But in the end, it proved impossible to get the necessary support in the legislature to put a measure on the ballot.

With the legislative option closed, the reform coalition continued the negotiation process outside the legislature, holding numerous meetings with stakeholders to search for consensus on reform. These meetings included a broad array of interests, including both supporters and opponents of Proposition 77 and organizations that had never been involved in the redistricting reform issue before. Several of the organizations and individuals who were part of these meetings did not ultimately support reform, but their involvement informed the product that came out of the process.

As this process was ongoing, frustration with the California legislature continued to build. The gap between the parties in the legislature grew steadily wider, and approval of the legislature was beginning a slow decline that would continue for the next several years and take support to its lowest level in the era of

modern polling. Perhaps not coincidentally, budget fights had been growing more protracted for several decades, leading to countless negative stories in the press about the legislature's incompetence at performing its most basic function. Indeed, just as the reform coalition was abandoning its efforts with the legislature, the legislature itself was wrapping up one of the latest budgets ever passed—a feat surpassed only the next year with a record delay of over three months. To those participating in the redistricting meetings, these seemed compelling reasons to continue down the path they were on.

Proposition 11 was the ultimate outcome of this deliberation, and it immediately signaled a departure from the previous efforts at reform. Most significantly, it proposed a panel of citizens, and omitted the judiciary from any role in the process.⁵ It also laid out a far more elaborate process for selecting the commission to ensure that none of the commissioners was beholden to any politician who might directly benefit from the lines. Finally, it set more limited sights by leaving the power to draw congressional districts in the hands of the legislature and only empowering the commission to redraw state legislative lines.⁶

The campaign to pass the measure had a very different feel from the others. The partisan rhetoric that had so characterized the campaigns of the past was far more muted. The congressional delegation did not get involved in the campaign, since their districts were not affected, making it a purely state-level matter. And the partisan forces that normally mobilized for the campaign did not come forward. Republicans were generally in support and Democrats generally opposed, but neither side was aggressive in making its case. And while Schwarzenegger again invested significant amounts of money in passing the measure, he adopted a lower profile throughout the campaign, a tack that was undoubtedly helped by the fact that Proposition 11 was not part of a larger package of reforms pushed by the governor at the same time.

On election day, Proposition 11 narrowly passed with 50.8% of the vote—one of the slimmest successful margins of any initiative in California history, and small enough to leave the outcome in doubt for some time after election day. But in the end it was successful, and in so doing became the first successful commission-style initiative in California history.

Ironically, Proposition 11 was not the end of the redistricting reform saga in California. A follow-on measure to extend the new commission's authority to congressional districts, Proposition 20, appeared on the fall 2010 ballot. Despite the potential for intense opposition from the congressional delegation, the success of Proposition 11 appeared to have sapped enthusiasm for the fight. Opponents did place a competing measure on the ballot, Proposition 27, that would have eliminated the redistricting commission entirely. But this effort fizzled. The pro-reform side, aided by substantial support from wealthy moderate Republican activist Charles Munger, outspent the anti-reform side roughly four to one. About six in ten voters supported Proposition 20, and about the same share voted against Proposition 27. Thus, despite carefully avoiding a fight over congressional districts in Proposition 11 and still barely winning, reformers saw congressional districts incorporated anyway, and with even stronger support from the voters.

⁵ The law did specifically allow the commission's plans to be contested in the courts, but the drafters could hardly have forbidden judicial involvement at that stage even if they had wanted to.

⁶ Proposition 11 also gave the commission the power to draw Board of Equalization districts. The Board of Equalization is a four-member body that deals with certain specialized tax issues. Its small membership and limited purview tends to make its redistricting less controversial.

Appendix B: A Narrative History of the Primary Reform Measures

Like redistricting reform, primary reform had both successes and failures. However, while redistricting suffered consistent failures before finally achieving success, primary reform had early successes. Furthermore, the path that led to the passage of the top-two reform in 2010 was very different. These differences are important for understanding the lessons that can be taken from the experience.

Experimentation with primary systems begins much farther back in California's history. In 1914, just four years after the state began using a publicly contested primary, it adopted a system called "cross-filing" that allowed candidates to seek the nomination of more than one party at a time (Gaines and Tam Cho 2002). Because these cross-filing candidates were not required to designate their true party identification on the primary ballot, incumbents could leverage their name recognition to win both major party primaries and then run uncontested in the fall (Masket 2009). After World War II, Democratic activists began to believe that cross-filing was protecting Republican incumbents from the consequences of growing Democratic registration in the state, and by 1959 they had successfully pressed to abandon it in favor of a traditional closed primary system.

At first, there was not much discussion about the idea of returning to a less partisan nomination system. However, in the ensuing decades the parties gradually grew farther apart in the legislature and the congressional delegation (Masket 2007). Meanwhile, the number of registered independents had been steadily rising, from about three percent of the electorate in the late 1960s to around 10 percent by 1980. Both trends seemed to suggest the need to rethink the usefulness of a closed primary system. In 1979, 1984, and 1986, initiatives were filed with the Secretary of State to establish a primary system where all candidates could be listed on the same ballot, though none of these measures qualified. The issue was enough a part of the public discussion that the Field Poll asked a series of questions about different primary systems in 1983. Moreover, both polarization and independent registration continued to grow, only increasing the pressure for some kind of change.

By 1995, a small group of moderates in the state legislature and congressional delegation and a few moderate figures in the state's business community decided to propose a "blanket" primary for California. The blanket primary was a reform that was already in use in Washington and Alaska. Though nominally nonpartisan like cross-filing, it actually turned the cross-filing approach on its head. Rather than locking voters in party primaries and allowing candidates to move across the boundaries, the blanket primary locked the candidates in party primaries by forcing them to compete only against other candidates of the same party, but allowed voters to cross party lines to support any candidate they chose, race by race. The candidates who received the most support within each party primary would advance to the fall election.

This initiative qualified for the primary ballot in 1996 as Proposition 198. The campaign in support was reasonably robust and visible, but the opposition never seriously materialized and the measure largely flew under the political radar. Only four in ten voters had heard of the measure in a Field Poll conducted a week before the election, putting it on a par with low-key bond measures on the same ballot that had been placed there by a broad bipartisan coalition of legislators and did not seem to generate much opposition. By contrast, in the same poll, at least six in ten voters were aware of the most contentious measures on the ballot, which pertained to car insurance and attorney's fees. Likewise, spending on Proposition 198, both pro and con,

also more closely resembled the bond measures, which received solid funding in favor but almost no money in opposition. The more contentious measures, by contrast, generated millions in spending by both sides.

However, the interests lined up on either side of Proposition 198 were different than they had been with the effort to undo cross-filing, or for that matter with efforts to reform the redistricting process. Those movements had been partisan, promoted by one side against the other; Proposition 198, by contrast, was equally opposed by both major parties. The two parties actually joined forces in an organization called the California Coalition for Fair Elections in an effort to thwart the measure. But in a pattern that would repeat itself with future primary reform initiatives, this bipartisan coalition would largely eschew campaign politics. The California Coalition for Fair Elections reported neither receiving nor spending any money.⁷ A separate organization, Californians Against 198, did receive money from the California Republican Party and conservative media mogul Rupert Murdoch, but it spent only half the money it raised. In the end, Proposition 198 supporters outspent opponents 19 to 1, and the measure passed with almost 60 percent of the vote.

Within eight months of the measure's passage, opponents had filed a lawsuit in Federal court that challenged the constitutionality of the measure on the grounds that it infringed the parties' first-amendment rights of free association by forcing them to allow non-members to participate in choosing the parties' nominees. Over the next three and a half years, the lawsuit worked its way up to the U.S. Supreme Court. In a 7 to 2 decision, the court held that Proposition 198 did, in fact, intrude on the parties' right to associate with whomever they chose, and struck it down (Persily 2002).

The state now needed to replace the blanket primary with something different. Steve Peace, one of the principal backers of Proposition 198, carried a bill in the legislature (SB 28) to implement a semi-closed primary where independents could participate in partisan primaries if the parties decided to let them. As a solution to the immediate problem of finding a replacement for the blanket primary, this change was not controversial, passing both chambers of the legislature by large bipartisan margins. In the meantime, Peace and others worked to develop a version of the blanket primary that could pass muster with the courts.

This effort emerged as Proposition 62 on the November 2004 ballot, and it represented the first time that California voters were asked to review a top-two primary proposal. Superficially, the top-two primary and the blanket primary are very similar. Both place all candidates on a single primary ballot, and permit voters of any party to vote for any candidate. But the top-two is different in ways that have proved important to the courts. While the blanket primary advances the top vote-getter within each party—and so sends to the fall ballot any party that runs at least one candidate in the primary stage—the top-two primary advances only the two candidates receiving the most votes, regardless of party. To the courts, this agnosticism suggests the candidates who run in the fall are not actually nominees of the parties in any technical sense, and that voters do not (or at least should not) see them that way. Indeed, the Supreme Court said as much in the decision overturning the blanket primary, laying out a clear roadmap that lessened the legal danger of future reform but also greatly constrained the available options (see *California Democratic Party v. Jones*, 530 U.S. 567 (2000)).

Though the top-two might be an effective strategy in the courts, this first effort to pass it with the public was a failure. Ironically, many of the dynamics of the campaign for Proposition 62 resembled those of the successful campaign for Proposition 198. The measure was slightly better known, with about half of voters having heard of it in the final Field Poll before the election, compared to the four in 10 for Proposition 198.

⁷ See <http://www.sos.ca.gov/prd/bmc96/tableofcontents1.htm> for details on campaign spending in the 1996 primary election.

But it still lagged far behind the most contentious and heavily-financed measures, which concerned Indian gaming rights, stem cell research, and the three strikes criminal sentencing law; 70 to 80 percent recognized those measures. Likewise, both major parties were firmly opposed, but they and other opponents only put about one tenth as much money into the effort as supporters did for their side, and almost all of it came from the Republican party.⁸ And Proposition 62 had the support of high-profile moderates in the state's politics, including former Los Angeles Mayor Richard Riordan and state Controller Steve Westly (Schrag 2003).

In place of a visible election campaign, the measure's opponents pursued an insider strategy. A large bipartisan majority of the legislature placed a competing measure on the ballot, Proposition 60, which did nothing more than ratify the existing semi-closed primary system.⁹ As such, it directly contradicted Proposition 62's radically different system. The tactic was a clever one: the status quo would certainly be preserved if both measures failed; but it would also be preserved if both measures passed and Proposition 60 received more votes. The bar had suddenly been raised: the reformers had to tear down Proposition 60 as much as build Proposition 62 up. Tony Quinn effectively summed up the view of reform supporters: "Knowing they cannot defeat the open primary in a fair election, [legislators] want to trick voters into doing it for them" (Quinn 2004).¹⁰

The legislature also pressed its legal advantages in the initiative process. California election law gives the legislature the first opportunity to provide the ballot arguments for and against any measure it puts before voters (California Election Code Sec. 9042). Moreover, the law empowers the Assembly Speaker and the Senate President Pro Tempore to appoint legislators for the no argument from among those who voted against the measure in their respective chambers (California Election Code Sec. 9067). Though the two legislators chosen to oppose Proposition 60 in the ballot pamphlet, Bill Morrow and Sarah Reyes, had undeniably voted against the measure, the nature of their opposition was decidedly peculiar. Rather than argue for the merits of Proposition 62 or the drawbacks of the current system, they complained that Proposition 60 did not go far *enough* to protect the rights of parties and defend them against future assaults of the kind attempted by Proposition 62. Meanwhile, the arguments for and against Proposition 62 made no reference to Proposition 60, despite the zero sum nature of support for the two measures.¹¹

In short, the legislature did everything in its power outside of the election campaign to ensure that Proposition 62 did not succeed. Whether this strategy was the right one or not, in the end, things worked out as they had hoped. Proposition 60 passed with a commanding majority of 68 percent. Proposition 62, by

⁸ Some on the GOP side questioned even the small amount the Republican party did put forward. Speaking of the opportunity cost of spending money on the open primary fight instead of key legislative races, Tony Quinn noted: "Although both parties intensely oppose the open primary, the California Republican party is so paranoid about losing its sweetheart system of closed primaries that it is even willing to sacrifice its electoral chances this fall to retain it."

⁹ The specific bill that placed this measure on the ballot was SCA 18, carried by Ross Johnson. The legislators who opposed this measure included many of the most visible moderates in the legislature, including Republicans Abel Maldonado and Keith Richman, and Democrats Joe Canciamilla and Nicole Parra.

¹⁰ Opponents also sued to change the ballot language for Proposition 62, contending that the measure was not, strictly speaking, an "open primary." A Sacramento judge agreed with them, requiring that any such references be stricken from the ballot materials (Skelton 2004). The voter pamphlet ultimately referred to the "Voter Choice Primary," even though the text of the law itself—also printed in the ballot pamphlet for anyone interested enough to look—continued to refer to the "Voter Choice Open Primary." While this may or may not have been an important development, the act of removing the positive connotations of "open" from the ballot materials was not likely to help Proposition 62's cause.

¹¹ The supporters of Proposition 62 gave as good as they got, with their own lawsuit against Proposition 60. The legislature had originally combined the election law provisions of Proposition 60 with provisions that steered the sale of public property to pay down bond debt. Fearing that the innocuous fiscal provisions would help carry the obscure and confusing election law provisions to victory, Proposition 62 supporters sued to have the whole proposition removed from the ballot. The courts agreed that the two parts of the law were incompatible and so violated the single subject rule for initiatives, but instead of dumping the measure from the ballot entirely, they split it into two parts, creating a Proposition 60A to handle the fiscal matters. The supporters of reform cried foul, arguing that the courts should not have the power to rewrite measures that otherwise would not have qualified. In a sign of the testiness between the two sides, a major opponent of reform said supporters should "stop their whining and openly debate their proposal" (Sanders 2004b).

contrast, managed only 46 percent of the vote, failing to meet even the expectations of pre-election polls, let alone the lofty heights that would have been required to carry the day against Proposition 60.

Despite the loss, many of the structural factors that had been emboldening supporters of redistricting reform—low legislative approval, delayed budgets,¹² inability to move forward on key issues facing the state—also encouraged supporters of primary reform and kept them working at the issue. Through his Independent Voter Project, Steve Peace began drafting a revised version of Proposition 62 and worked to gather reform supporters for another attempt. This largely behind-the-scenes effort included sophisticated message testing to develop a list of potential voters who would support the measure and to craft the messages that would bring them to the polls. It also involved detailed drafting with a bipartisan group of lawyers, to work through any lingering legal problems that might hold the measure back. During this time, proponents were highly sensitive to potential arguments against the measure. For example, when a very similar top-two initiative was defeated in Oregon in 2008, proponents in California aborted signature collection on their measure so they could revise it to reflect opponents' arguments in the Oregon campaign.¹³

The circumstances that took this measure from behind-the-scenes drafting to a place on the ballot and ultimate success were unusual, to say the least. In the fall of 2008, the economy fell into a tailspin, and the state's sudden, dramatic loss of revenue forced an extraordinary mid-year session to pass a budget that would reflect the changing facts on the ground. By February 2009, the basics of an agreement had been hammered out, but Senate President Pro Tempore Darrell Steinberg found himself in negotiations with Republican Senator Abel Maldonado for the final vote needed to pass it. Maldonado, a noted moderate and long-time supporter of primary reform, made his vote conditional on placing a primary reform measure on the ballot. Under pressure to get a budget in place, there was no time to follow the normal legislative process to draft a reform measure. Given these pressures, Peace's draft measure was the only clear option, and the legislature swiftly picked it up and passed it with virtually no changes, placing it on the June 2010 ballot as Proposition 14.

The way reform reached the ballot made for an important departure from the circumstances of Proposition 62. Whereas a bipartisan two-thirds majority of the legislature had voted to place Proposition 60 on the ballot with the express goal of undermining reform, a similar two-thirds majority was now on record *supporting* reform. There was no confounding measure or other legislative opposition. The parties generally were not excited about reform, but a good portion of the potential opposition had been neutralized through the manner in which the measure had reached the ballot.

In other respects, the dynamics around Proposition 14 looked very similar to past efforts. Campaign opposition to Proposition 14 was minimal, with proponents significantly outspending opponents by about 18 to 1. It certainly did not hurt that Gov. Schwarzenegger—who had given no money to Proposition 62 and had only endorsed it two weeks before the election—endorsed Proposition 14 early and gave it substantial financial support. Nonetheless, as was also the case with past efforts, the primary reform measure was still overshadowed by higher-profile initiatives, this time concerning electricity regulation and automobile insurance, as well as by a highly competitive primary campaign for governor on the Republican side. On election day the measure passed with a healthy if modest majority of 54 percent, bringing radical primary reform back to California again.

¹² In fact, Steve Peace, one of the major supporters of reform, had been experiencing the frustration of the delayed budgets first hand as Finance Director for Gray Davis.

¹³ Personal conversation with Steve Peace, September 16, 2014.

Appendix C: Additional Data Analysis

TABLE C1
Factor analysis of initiatives: 1982 General Election

	Factor Loading	Uniqueness
Prop. 14: REDISTRICTING COMMISSION	0.05	0.99
Prop. 11: BEVERAGE CONTAINER RECYCLING REFUND	0.40	0.84
Prop. 12: STATEMENT OF CONCERN ABOUT NUCLEAR WEAPONS	0.43	0.82
Prop. 13: WATER REGULATIONS	0.37	0.86
Prop. 15: GUN CONTROL	0.49	0.76
χ^2		56.56
Prob(χ^2)		0.000
N		510

SOURCE: Field Poll Nos. 82-05, 82-06, 82-07.

NOTE: Factor analysis was coerced to extract one factor.

TABLE C2
Factor analysis of initiatives: 1984 General Election

	Factor Loading	Uniqueness
Prop. 39: REDISTRICTING COMMISSION	0.35	0.90
Prop. 36: TAX LIMITATION	0.35	0.88
Prop. 37: STATE LOTTERY	0.06	0.99
Prop. 38: ENGLISH-ONLY VOTING MATERIALS	0.32	0.90
Prop. 40: CAMPAIGN FINANCE LIMITS	0.15	0.98
Prop. 41: PUBLIC ASSISTANCE LIMITS	0.24	0.94
χ^2	462.53	
Prob(χ^2)	0.000	
N	1962	

SOURCE: Field Poll Nos. 84-05, 84-06, 84-07.

NOTE: Factor analysis was coerced to extract one factor.

TABLE C3
Factor analysis of initiatives: 1990 Primary Election

	Factor Loading	Uniqueness
Prop. 119: REDISTRICTING COMMISSION	0.24	0.94
Prop. 108: PASSENGER RAIL BOND ACT	0.61	0.63
Prop. 111: TRAFFIC CONGESTION RELIEF	0.46	0.79
Prop. 115: CRIMINAL RIGHTS	0.16	0.97
Prop. 116: PASSENGER RAIL BOND ACT	0.56	0.68
Prop. 118: REDISTRICTING RULES	0.28	0.92
χ^2	661.88	
Prob(χ^2)	0.000	
N	1310	

SOURCE: Field Poll Nos. 90-02, 90-03.

NOTE: Factor analysis was coerced to extract one factor.

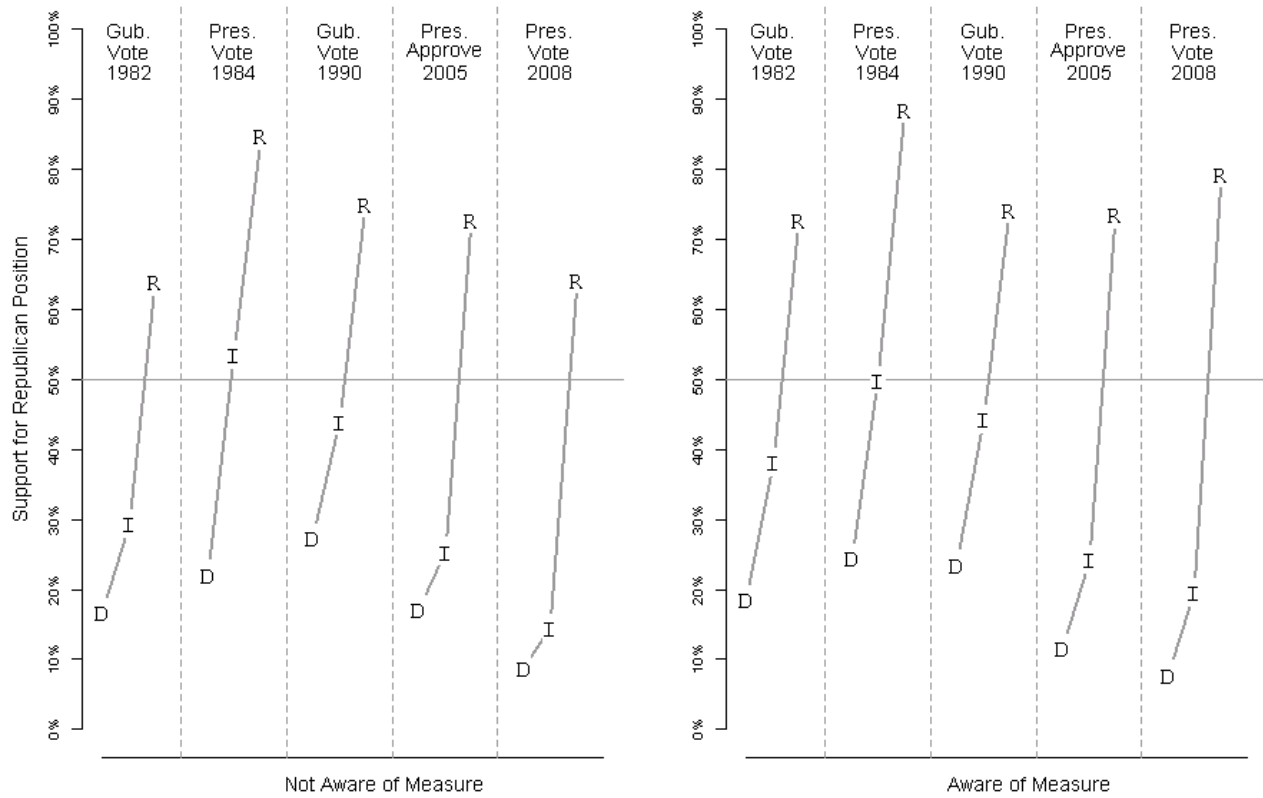
TABLE C4
Factor analysis of initiatives: 2005 Special Election

	Field Poll		PPIC Poll	
	Factor Loading	Uniqueness	Factor Loading	Uniqueness
Prop. 77: REDISTRICTING COMMISSION	0.58	0.67	0.59	0.66
Prop. 74: TEACHER TENURE	0.40	0.84	0.54	0.71
Prop. 75: UNION DUES	0.50	0.75	--	--
Prop. 76: SPENDING LIMIT	0.49	0.76	0.63	0.60
Prop. 78: PRESCRIPTION DRUG DISCOUNTS (DRUG COMPANIES)	--	--	0.13	0.98
Prop. 79: PRESCRIPTION DRUG DISCOUNTS (LABOR UNIONS)	--	--	0.19	0.96
Prop. 80: ELECTRICITY REGULATION	0.17	0.97	--	--
χ^2	172.90		258.27	
Prob(χ^2)	0.000		0.000	
N	426		2004	

SOURCE: PPIC Statewide Surveys, August, September, and October 2008; Field Poll Nos. 05-03, 05-04.

NOTE: Factor analysis was coerced to extract one factor.

FIGURE C1
Placebo test: engagement with redistricting campaign had no effect on partisanship of decisions about president and governor



SOURCE: Field Poll Nos. 82-05, 82-06, 82-07, 84-05, 84-06, 84-07, 90-02, 90-03, 05-03, 05-04, 08-06.

NOTE: To make the numbers comparable to Figure 5, the x-axis always measures the more Republican position: Republican vote for president or governor, or approval of the Republican president George Bush in 2005.

References

- Baldassare, Mark. 2013. *At Issue: Reforming California's Initiative Process*. Public Policy Institute of California.
- Bluth, Alex. 2005. "Lockyer Sues to Bar Ballot Item." *The Sacramento Bee*, July 9.
- Burnett, Craig M., Elizabeth Garrett, and Mathew D. McCubbins. 2010. "The Dilemma of Direct Democracy." *Election Law Journal* 9 (4): 305-324.
- Cain, Bruce E. 2012. "Redistricting Commissions: A Better Political Buffer?" *The Yale Law Journal* 121 (180): 8-44.
- Gaines, Brian J., and Wendy K. Tam Cho. 2002. "Crossover Voting before the Blanket: Primaries Versus Parties in California History." In *Voting at the Political Fault Line: California's Experiment with the Blanket Primary*, ed. B. E. Cain and E. R. Gerber. (Berkeley: University of California Press).
- Hannah, Dogen. 2003. "Recall Crusader Targets Legislative Redistricting." *Contra Costa Times*, October 31.
- Herd, Timm. 2003. "Tilting in Two Directions." *Ventura County Star*, June 11.
- Heslop, Alan. 2003. "Redistricting Reform in California."
- Kingdon, John. 2003. *Agendas, Alternatives, and Public Policies*. New York: Longman.
- Kousser, J. Morgan. 2006. "Redistricting California, 1971-2001." In *Governing California: Politics, Government, and Public Policy in the Golden State*, ed. G. C. Lubenow. (Berkeley: Institute of Governmental Studies Press).
- Lindsey, Robert. 1984. "California Ballot Questions Dim Presidential Race." *New York Times*, October 8.
- Lupia, Arthur. 1994. "Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections." *The American Political Science Review* 88 (1): 63-76.
- Masket, Seth E. 2007. "It Takes an Outsider: Extralegislative Organization and Partisanship in the California Assembly, 1849-2006." *American Journal of Political Science* 51 (3): 482-497.
- Masket, Seth E. 2009. *No Middle Ground: How Informal Party Organizations Control Nominations and Polarize Legislatures*. Ann Arbor: University of Michigan.
- Matthews, Joe. 2008. "Redistricting Initiative 'Is a Power Grab,' Says Supporter of Redistricting Reform." *New America Foundation*, July 2.
- Nunez, Fabian. 2004. "Is California Itchin' to Follow Texas' Redistricting Blueprint?" *The Sacramento Bee*, December 2.
- Persily, Nathaniel. 2002. "The Blanket Primary in the Courts: The Precedent and Implications of *California Democratic Party V. Jones*." In *Voting at the Political Fault Line: California's Experiment with the Blanket Primary*, ed. B. E. Cain and E. R. Gerber. (Berkeley: University of California Press).
- Quinn, Tony. 2004. "A Sneak Attack on Open Primaries." *Los Angeles Times*, July 4.
- Quinn, Tony. 2005. "Arnold's Own Keystone Kops." *The Sacramento Bee*, July 26.
- Rarick, Ethan. 1996. "Top State Parties Oppose Measure for Open Primary." *The Contra Costa Times*, January 23.
- Rojas, Aurelio. 2001a. "Latino Group Sues over Redistricting Plan." *The Sacramento Bee*, October 2.
- Rojas, Aurelio. 2001b. "Redistrict Boundary Plan Criticized." *The Sacramento Bee*, September 11.
- Sanders, Jim. 2004a. "Gop Leader Targets Redistricting." *The Sacramento Bee*, February 4.
- Sanders, Jim. 2004b. "Put Divided Prop. 60 on Ballot, Court Says." *The Sacramento Bee*, July 31.
- Sanders, Jim. 2005a. "Democrats Embracing Overhaul of Redistricting." *The Sacramento Bee*, November 10.
- Sanders, Jim. 2005b. "Gray Davis Weighs in on Ballot Measures." *The Sacramento Bee*, July 29.
- Sanders, Jim. 2005c. "Panel's Makeup Is a Concern." *The Sacramento Bee*, October 27.
- Sanders, Jim. 2005d. "Perata, Nunez Seek to Join Suit." *The Sacramento Bee*, July 13.
- Sanders, Jim. 2005e. "Precursor to Prop. 77 'Orchestrated Well'." *Sacramento Bee*, October 19.
- Sanders, Jim. 2005f. "Redistricting on Ballot to Stay." *The Sacramento Bee*, August 13.

- Schrag, Peter. 2002. "Politicians Settle for a 'Draw' in Redistricting." *The Sacramento Bee*, February 17.
- Schrag, Peter. 2003. "Electoral Reform: The Schwarzeneggerian Lesson." *The Sacramento Bee*, November 5.
- Skelton, George. 2004. "Prop. 62's Open Primary Spun into Something Vague." *The Los Angeles*, August 12.
- Smith, Dan. 2003. "Schwarzenegger Tells How He'd Clean up the Capitol." *The Sacramento Bee*, September 19.
- Sonenshein, Raphael J. 2013. *When the People Draw the Lines: An Examination of the California Citizens Redistricting Commission*.
- Stephanopoulos, Nicholas. 2007. "Reforming Redistricting: Why Popular Initiatives to Establish Redistricting Commissions Succeed or Fail." *The Journal of Law and Politics* 23 (3): 331-91.
- Stephanopoulos, Nicholas, and Eric McGhee. 2015. "Partisan Gerrymandering and the Efficiency Gap." *University of Chicago Law Review* Forthcoming.
- Walters, Dan. 2001a. "As Republicans Rejoice, Some Democrats Glum over Redistricting." *The Sacramento Bee*, September 17.
- Walters, Dan. 2001b. "Democrats Opt for the Status Quo, Set up Intraparty Duels." *The Sacramento Bee*, September 7.
- Walters, Dan. 2004. "Gop Could See Gains in This Year's Assembly Races." *The Sacramento Bee*, February 4.
- Walters, Dan. 2005. "Congressmen Can Raise Big Bucks to Fight Redistricting Reform." *The Sacramento Bee*, August 22.



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