

Polarization Interrupted?
California's Experiment with the Top-Two Primary

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Abstract

In 2010, frustrated by party polarization and legislative gridlock, California voters passed Proposition 14, which created a top-two primary for the state's legislative and congressional elections. This paper investigates the extent to which the new primary rules have affected elections in the 2012 electoral cycle in California, and to which the state's parties are attempting to overcome the limitations placed on them by the new law.

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Introduction

In the summer of 2010, California's voters, annoyed by legislative polarization in an increasingly dysfunctional state government, launched an statewide experiment by passing Proposition 14. This initiative instituted a top-two "jungle" primary for the state's partisan offices, beginning in 2012. The idea was that by changing the very nature of the primary – placing candidates of all parties within the same primary contest – the state could encourage the election of more moderate state legislators and discourage excessive partisanship among elected officials.

This paper is an attempt to assess just how successful this reform has been in changing the nature of California's elected officials. To be sure, it is still quite early. At the time this is being written, the 2012 general elections have not even been held yet, and we do not know how the members elected in those elections will govern once in office. Nonetheless, this past June featured the first top-two primary election in state history, and we can glean some useful information from those results.

What those results suggest is that Proposition 14 was disruptive to some longstanding political patterns, creating greater competition in elections and reducing the electoral security of incumbents. The political parties, however, responded to this change quickly and have sought ways to control the top-two ballot and make it as close to a closed primary election as possible. The district-level results of the 2012 primary in California suggest a legislature that will not be dramatically different from those that preceded it.

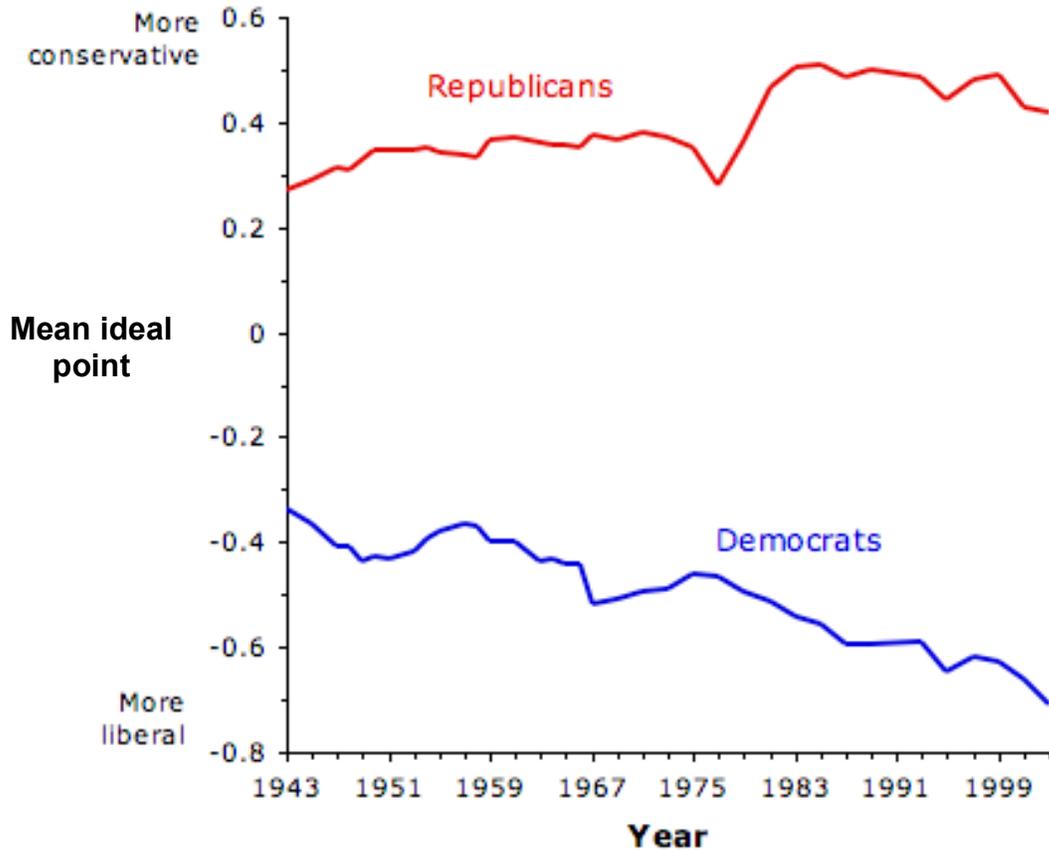
Polarization and its Remedies

Political observers and practitioners in California largely agree that the state is facing some sort of governing crisis. The state has faced numerous fiscal crises over the past few decades. Typically, an economic downturn leads to a decrease in state revenues, leaving lawmakers in a scramble for funds to pay the state's considerable obligations, many of which have been mandated by voters via a series of initiatives. Since running a deficit is technically illegal for the state (and most others), Democratic lawmakers often seek to raise taxes to cover the shortfall. However, the legislature's unusual two-thirds vote requirement for revenue increases often presents a barrier for the lawmakers; Democrats have held majorities for all but two years of the past four decades, but they have never consistently held onto super-majorities in both chambers. Any agreement on spending cuts or revenue enhancements must therefore be produced via bipartisan compromise.

This has generally proven impossible, largely because of the sharply polarized nature of the California legislature. Figure 1 charts the mean "ideal points" (estimations of legislators' ideological preferences based on their roll call voting patterns) by party in the state Assembly since the 1940s. For a variety of reasons, California's parties have moved dramatically apart in recent decades. Even while some moderate legislative districts remain, voters in those districts must increasingly choose between a very liberal Democrat or a very conservative Republican to represent them in the state Assembly, Senate, or the U.S. House of Representatives (Masket 2009). Although polarization is a common phenomenon across the United States, California's case stands out. As Shor and McCarty (2011) demonstrated in their study of all 99 state legislative chambers,

California's chambers are by far the most polarized in the nation, surpassing the U.S. Congress, as well.

Figure 1: Polarization in the California Assembly



In such an environment, convincing even a handful of state legislators to vote against the rest of their party is virtually impossible (Kousser 2010). Republican party leaders have sometimes threatened legislators of their party, warning them that a vote to raise taxes would be their last in the legislature, and they have, on occasion, followed through with these threats, proving their credibility (Halper 2003; Halper and Vogel 2003; Cannon 2002).

Given the relative frequency of these budgetary crises in California, many political observers, reformers, and officeholders have converged on the goal of mitigating party polarization as a remedy to the state's many ailments. Indeed, reducing partisanship is seen as a cure for many of the state's problems, beyond just budgetary impasses. California's reformers have pushed two specific reforms over the past few years toward this end – redistricting reform (placing a bipartisan panel of citizens, rather than the state legislature, in charge of redrawing legislative districts) and the top-two primary.

Advocates of the top-two primary proceed from the assumption that legislative partisanship is driven strongly, if not exclusively, by the rules governing who may participate in party nomination contests. California, along with over a dozen other states, has used a “semi-closed” system in its primary contests in recent years; only registered members of a party may participate in that party's primary, although unaffiliated voters may participate in a party's primary by requesting that party's ballot. In theory, primary rules that allow unaffiliated voters to participate in the contest might allow for the nomination of more moderate officeholders. Not only would there be more votes available for those advocating moderate positions, but candidates would have more incentive to move towards the center to seek those votes.

The top-two primary is perhaps the most “open” form of primary rules. Not only can all voters participate, but they may choose among all candidates for office, not just those within one party. Furthermore, one possible outcome of a top-two primary is two candidates of the same party going to a runoff election. Theoretically, the more moderate of the two candidates would be well positioned to win such a contest, as she could win

the support not only of some of her fellow partisans, but also of independents and perhaps most of the voters of the other party.

The top-two primary won considerable support among political observers as a potential remedy to some of the country's political ailments. In a *Ventura County Star* opinion piece, for example, Thomas Elias advocated the top-two primary as an effective means to rapidly de-polarize the government:

That's the quickest way to assure putting at least some moderate centrists into the state Legislature. It's also the quickest way to give a voice to millions of voters who now essentially have no representation in state government. And it's the first step toward making state government work better, far faster and surer than a constitutional convention or any other tactic (Elias 2009).

Jonathan Alter similarly claims that the top-two could reduce incidence of undesirable behavior among legislators. "If the concept spreads," he suggests, "the jackass quotient in state legislatures and Congress will decrease. Moderates have better manners" (Alter 2009). California's former lieutenant governor Abel Maldonado similarly reasoned,

We have a system today where, with... a closed right primary and a closed left primary, which is Republican and Democrat, we have folks that come up there—and, frankly, they're concerned about the next election, their next position. They're concerned about party bosses. They don't worry about what's really important, and that's the state of California. We get this partisanship (Vocke 2010).

In fact, evidence that primary rules changes can alter the partisanship of a legislature is modest, at best (Gerber and Morton 1998; Kanthak and Morton 2001; Alvarez and Sinclair 2012). A recent large-scale study of two decades of state legislative behavior and primary election rules found no consistent relationship between primary participation restrictiveness and legislative polarization at all (McGhee et al. 2010). Washington state has employed a top-two primary system for several years now, and the state's legislature remains one of the most polarized in the nation (Shor and McCarty 2011). Yet it should be noted that Louisiana has had such a system for decades and has one of the least polarized state legislatures in the country.

It is also worth noting that California's legislature was once distinct for its relative *lack* of partisanship, due in large part to the rules affecting its primary elections. From 1913 to 1959, candidates for partisan office could cross-file, meaning they could run in as many party primaries as they wished. Through this system, many (and in some years, most) incumbents won the nominations of both major parties and many minor ones, effectively winning reelection during the primary.¹ Aiding this was the fact that, up until 1952, party labels did not appear on the primary ballot, giving voters little idea of just whom they were voting for in the primary. This gave cross-filing incumbents little incentive to adhere to extreme ideological positions, and legislative partisanship collapsed during this period. While this era was notable for its bipartisan comity within the chamber, it was also notorious for its corruption – wealthy lobbyists easily bribed state legislators and assembled their own legislative coalitions, providing a structure to

¹ In 1946, for example, Earl Warren was the gubernatorial nominee of both the Republican and Democratic parties.

the chamber that the parties could not (Masket 2007, 2009; Buchanan 1963; Samish 1971).

In summary, the evidence on the manipulation of primary rules to mitigate legislative partisanship is decidedly mixed. There is certainly no guarantee that a reform like the top-two primary will have any kind of effect on polarization, and if it does, it could carry with it some significant costs. Suffice it to say that Californians' embrace of the top-two primary was based more on theory and hope than evidence.

The Parties Respond

The switch to the top-two primary was seen as a serious threat to the state's major political parties. After all, the direct primary was established more than a century ago as a means by which parties could pick nominees – a somewhat more transparent and decisive means than the traditional approach of nomination via convention (Ware 2002). Even when the decision over nominations is opened up to a large group of voters, the choice of nominee still remains in the hands of “the party,” broadly defined.

In the eyes of the law, parties have associational rights that allow them to determine who may or may not participate in their decision-making processes. This right is not absolute; the courts have held that limiting participation in primaries based on race, as was often done by Democratic organizations in the South in the early 1900s, is unconstitutional (*Smith V. Allwright* 1944). But within broad boundaries, parties are free to determine who may vote in primaries. As the U.S. Supreme Court ruled in *California Democratic Party v. Jones*, when the state declares that anyone may participate in a

primary (as it did under a “blanket” primary system in the late 1990s), including members of another party, it threatens to undermine the entire party system:

[U]nder California’s blanket primary system, the prospect of having a party’s nominee determined by adherents of an opposing party is far from remote – indeed, it is a clear and present danger.... [A] single election in which the party nominee is selected by nonparty members could be enough to destroy the party (*California Democratic Party V. Jones* 2000).

The only way to get around this rule is to completely redefine the purpose of a primary election, and that’s just what the authors of Proposition 14 did. The initiative defined the contest as a “voter-nomination primary election” rather than a party contest. In doing so, it deprived parties of their most important power, the selection of candidates for the general election ballot.

Losing the ability to choose its nominees is a serious blow to a political party², and traditionally they have not suffered such ignominies gladly. In California’s 2003 gubernatorial recall election, for example, party elites were active in narrowing the field of candidates through the channeling of campaign resources and in some cases outright bullying. The Republicans effectively nominated Arnold Schwarzenegger, and the Democrats (somewhat reluctantly) effectively nominated Cruz Bustamante, forcing many other high quality candidates out of the race, even though no primary or other nomination mechanism existed in that election (Masket 2011; Mathews 2006).

In the case of the top-two election, the parties adapted by formalizing a system of endorsements. The Republicans moved first on this front (Van Oot 2011), but the

² Arguably, a party that cannot determine its nominees is not a party at all (Schattschneider 1942).

Democrats soon developed a similar system of endorsements. Under the Republican by-laws, a candidate must receive at least two-thirds of the vote at either a county central committee or state central committee meeting to receive the party's endorsement.³ Under the Democratic rules, any candidate may be considered endorsed with a 70 percent vote at a county central committee meeting, or at the state central committee meeting with a 50 percent vote for incumbents or a 60 percent vote for challengers.⁴ The list of endorsees would then appear within the election handbook mailed to voters prior to the election. Notably, indications of endorsements did not appear on the sample ballot pages, but rather in a later page of the handbook.

The Effects of Reform

Political reforms have often proven disappointing for their backers, and have indeed often produced perverse results. Decades of campaign finance reform, for example, have hardly reduced the role of money in campaigns. Instead, they have largely made campaign finance a more byzantine and less transparent system, such that there are now hundreds of millions of dollars given to candidates from sources that are largely unknown, even to the recipient (Smith 1996). Open primaries were established in large part to deprive party organizations of their control over elected officials and to ensure representation of moderates, yet, as mentioned earlier, the elected officials produced by open primaries are often just as ideologically extreme as those resulting from closed primaries (McGhee et al. 2010; Kanthak and Morton 2001; Gerber and Morton 1998).

³ http://cagop.org/pdf/Standing_Rules_and_Bylaws_03-20-2011.pdf, sections 3.02.03 & 3.02.04.

⁴ <http://www.cadem.org/admin/miscdocs/files/CDP-BY-LAWS.pdf>, article VIII section 2.

The McGovern-Fraser reforms to the presidential nominating process in the early 1970s were designed to dethrone party insiders from their roles as kingmakers, and yet the last three decades of presidential elections have shown the insiders to have largely retained that power (Cohen et al. 2008).

Why would political reform movements have such an unimpressive track record? It's not as though they had no effects at all. Rather, they tend to induce a short-term shock that leaves parties reeling, but only for a few election cycles, or even one. Soon, they learn to adapt to the new regime.

How do they adapt? Parties are not monolithic, rigid entities. Rather, they are best thought of as loose networks of allies – ideological activists, donors, officeholders, opinion-makers, and others – who coordinate to control nominations and thus influence government (Bawn et al. 2012; Masket 2009; Schattschneider 1942; Schlesinger 1985; Heaney et al. 2012). If a new regulation makes it difficult for a network of allies to achieve its political goals, that group will generally seek new paths to exert influence. For example, campaign finance restrictions passed by voters in Colorado in 2002 prohibited parties from donating large sums of money to their preferred state legislative candidates. Wealthy liberal activists responded by coordinating (semi-officially) with Democratic party leaders to identify swing districts and devote millions of dollars to those races through the use of an intricate web of 527s. Through this system, liberal activists were able to achieve many of their policy goals outside the traditional campaign finance regime, as their work helped flip the state legislature from Republican to Democratic (Masket 2010).

Seen in this light, California's top-two primary reform might be expected to only have limited effects. To be sure, it would likely produce a short term shock to the political environment, as it changes calculations over which incumbents are vulnerable, which seats are winnable, and how funding should best be allocated. But in the long run, such a threat to the established parties must produce some sort of reaction from them, and party leaders will likely use endorsements to bring about the rough equivalent of party nominations. To what extent have we seen a shock to the system, and to what extent have the parties mitigated it? I turn to these questions in the next section.

The Impact of the Top-Two System on the 2012 Primary Election

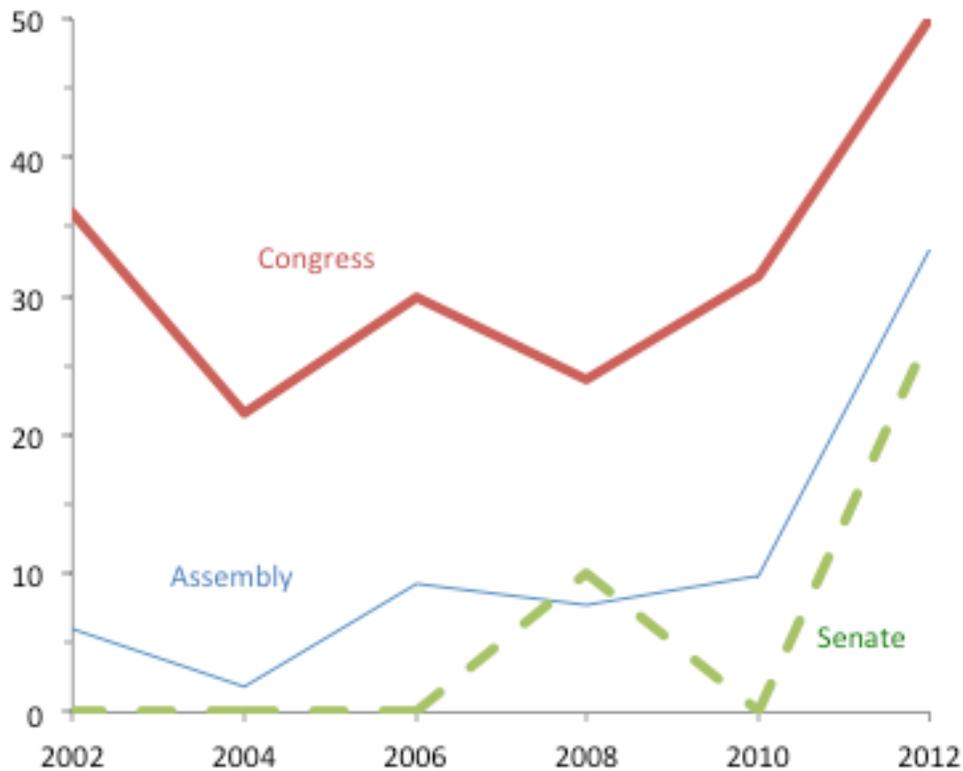
Did the top-two reform shake up the status quo? We can examine this from a number of different perspectives. I first look at levels of competition in California primary elections. California primaries are not known to be especially competitive, at least when an incumbent is in the running. Party organizations, both formal and informal, tend to protect their incumbents (unless they have committed some unusually egregious sin) by providing them with levels of funding, endorsements, and expertise that either overwhelm challengers or, more typically, deter them from even entering the race in the first place (Masket 2009). Open-seat primaries are typically more subject to competition, especially since the outcomes of general elections to the California legislature are rarely in doubt.

Primary challenges to incumbents are not terribly common throughout the country (Boatright (forthcoming)), although there are notable differences across different levels of government. Within California, as in roughly half the states, term limits ensure that

even the safest state legislative district will come open within a few election cycles. A safe congressional seat, conversely, may remain occupied by the same incumbent for decades. This difference has important effects on patterns in primary challenges. Challenging an incumbent is itself a potentially costly exercise, guaranteeing the challenger a set of enemies within her own party in an endeavor that is often doomed to fail. If an ambitious candidate seeks a legislative seat, it is usually in her interests to wait until that seat becomes open to avoid angering powerful people. If she seeks a congressional seat, however, it sometimes makes more sense to challenge the incumbent soon rather than wait the decade or two until the seat becomes open, during which time other rivals will be jockeying for position.

Figure 2 demonstrates this pattern in each election since 2002, charting the percentage of California's sitting Assembly members, state senators, and members of the House of Representatives who have been challenged by someone within their party in a primary. As can be seen, members of Congress have been far more likely to experience a challenge, with 20 to 30 percent of them typically facing a primary opponent. This number shot up in the 2012 election cycle, with fully half of congressional incumbents in California experiencing a challenge from within their party.

Figure 2 - Percentage of Incumbents Challenged from Within their Party in Primaries, by Office

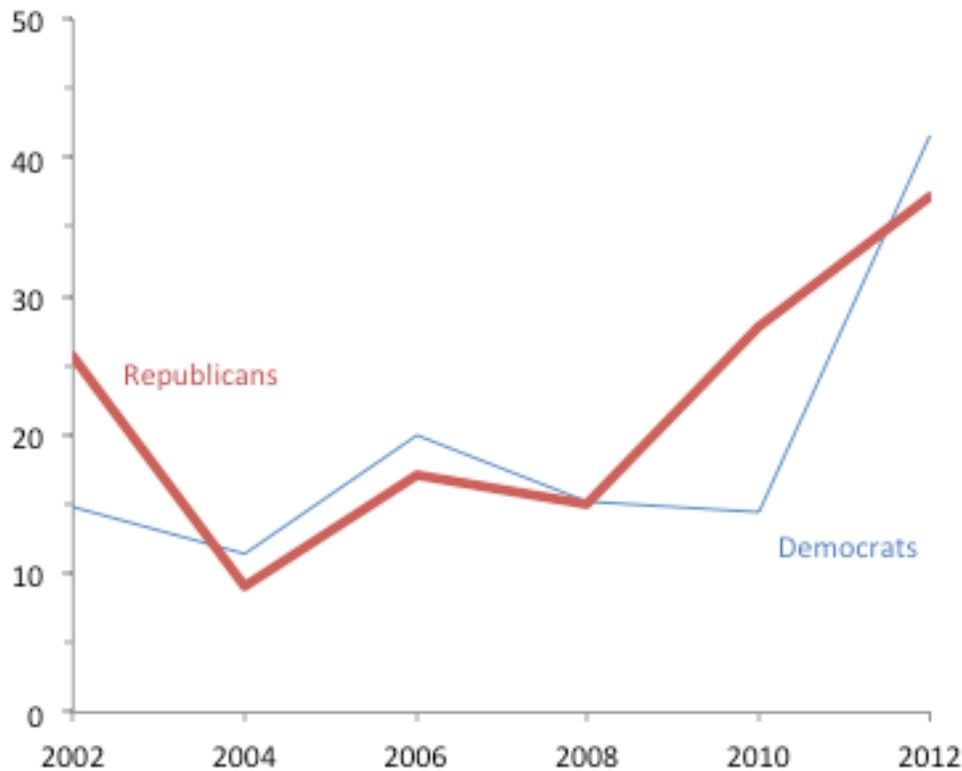


Source: California Secretary of State

The percentages of state legislators experiencing primary challenges was much lower during this time period. Less than ten percent of Assembly members typically experienced a challenge, and in more than half of the years under study, no state senator experienced a challenge at all.⁵ As with members of Congress, the rates of primary challenges increased dramatically in 2012 under the top-two system, with roughly a quarter of senators and a third of Assembly members experiencing a challenge.

⁵ California senators are elected to staggered four-year terms. In a given election cycle, 20 of the state's 40 senate districts are typically subject to an election campaign.

Figure 3 - Percentages of Incumbents Challenged from Within their Party in Primaries, by Party



Source: California Secretary of State

Figure 3 combines all the incumbent challenges across offices but breaks down the data by party. As can be seen, there were not extraordinary differences across party lines, either before the top-two primary or during it. But again the same pattern emerges, with both Democratic and Republican incumbents experiencing disproportionately high levels of primary challenges from their fellow partisans under the new regime.

It should be noted that the adoption of the top-two primary for the 2012 cycle was contemporaneous with the drawing of new district lines. Redistricting, of course, may produce a heightened number of primary challenges, as incumbents' name recognition among their constituents is typically compromised and challengers thus perceive them as vulnerable. However, 2002 was also a redistricting year, and while primary challenges

were more common then than they were from 2004 to 2010, they were nowhere near the levels of 2012. This additional level of incumbent insecurity can be attributed to the new top-two primary.

Electoral volatility in 2012 was not limited to primary challenges to incumbents. As McGhee and Krimm (2012a, 2012b) report, there were disproportionately high percentages of open seat contests in 2012, indicating that an unusually high number of incumbents decided to retire rather than face reelection in such an unpredictable environment. Additionally, the 2012 primary saw atypically high numbers of districts with multiple candidates of the same party and also of districts in which one major party fielded no candidate at all. Furthermore, as McGhee and Krimm show, competition within those districts was unusually high in 2012, with smaller percentage-point differences between the first and second-place vote-getters than was typical from 2002 to 2010.

In other areas, the differences from other elections were more muted. Rates of campaign spending were unremarkable compared to the rates from 2002-2010, although spending in the general election may turn out to have very different patterns (McGhee and Krimm 2012b). Additionally, voter turnout was similar to that of previous primary elections. 22.5 percent of eligible voters participated in the 2012 primary election, as compared to the 24.5 percent that participated, on average, from 2002 to 2010. The 2012 rate was somewhat lower than that of other presidential primaries, although the presidential nominations of the two major parties had been functionally determined long before the June 5th election date.

Did the Parties Adapt?

As described above, the parties sought ways to adapt to this relatively chaotic electoral environment without completely losing control over their choice of nominees. They did so largely through the use of endorsements. The endorsement of incumbents was essentially automatic, and the parties also actively picked favorites in open-seat contests. To what extent did they succeed?

To a considerable degree, the parties got what they wanted. Every incumbent who sought reelection won a spot on the November ballot. Furthermore, of the 113 non-incumbent candidates for state legislature or Congress whom the parties endorsed, 101 advanced to the runoff election. And as McGhee and Krimm note, “establishment” candidates tended to do very well compared to their rivals: “88 of 102 incumbents led their closest opponent by more than 10 points, as did 98 of 113 endorsed candidates who are not incumbents” (McGhee and Krimm 2012b, 3-4).

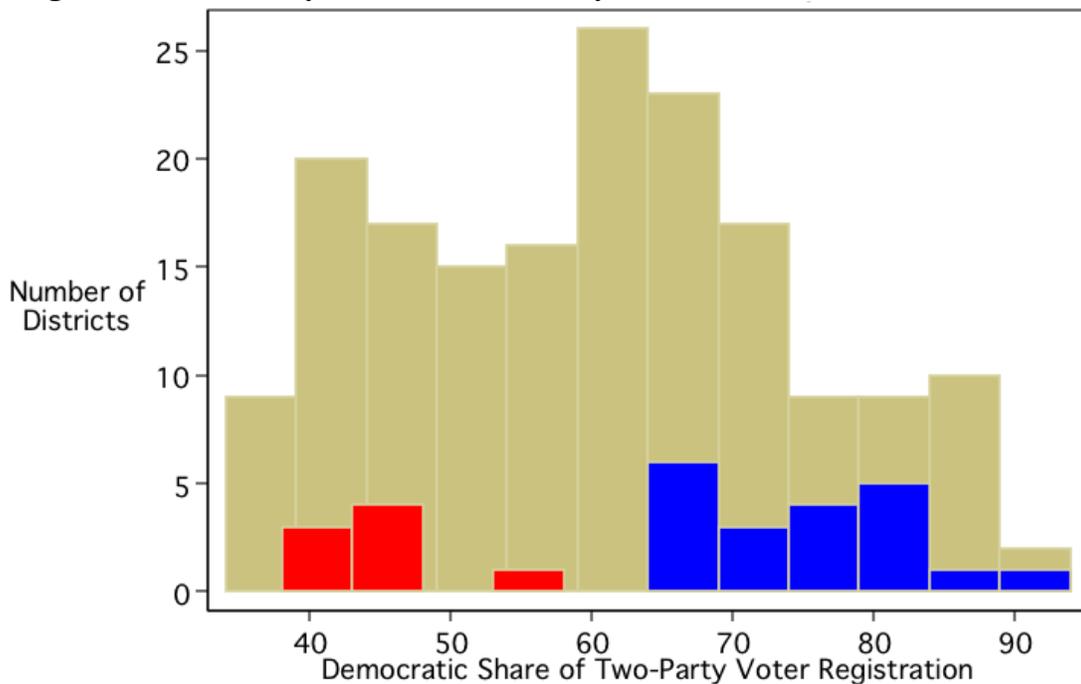
It is difficult to know the extent to which these establishment candidates succeeded *because* their party endorsed them. It is certainly possible that the parties were just being strategic, endorsing candidates who already had a good chance of winning. It is also quite possible that the party activists who dominated the county endorsement processes were impressed by candidate characteristics like charisma and coffers, much the same as voters might be.⁶

Another way of determining whether the parties achieved their goals is to look at the distribution of same-party runoff elections. The possibility of a same-party runoff in a

⁶ I am conducting further analysis along these lines with Thad Kousser and Eric McGhee; initial results suggest that the party endorsement did have a measurable effect on primary voters, helping to coalesce party support around preferred candidates. A more comprehensive analysis should be available in early 2013.

competitive district is a serious threat to the excluded major party, and some advanced coordination may be necessary to avoid such a situation. After all, in a chaotic electoral environment like that of the 2012 primary, it would certainly be possible for a large number of candidates of one major party to so split the vote as to hand the runoff spots to two candidates of the other major party. In less competitive districts, this is less of a concern for the dominant party; a runoff in a San Francisco district between two Democrats will still achieve a reasonably desirable outcome for Democratic elites regardless of what happens in November. But the dangers of splitting the vote are very real in competitive districts, allowing for the possibility that one party could completely cede a seat to the other before fall campaigning even begins.

Figure 4 - Same-Party Runoffs in Assembly, Senate, and U.S. House Elections



Source: California Secretary of State

Figure 4 shows the distribution of same-party runoff elections based on the Democratic voter registration in Assembly, state senate, and U.S. House districts. The yellow bars show the frequency of all districts at various levels of Democratic party registration. Red bars illustrate instances of runoff elections featuring two Republicans, and blue bars show Democratic same-party contests. As the figure suggests, the overwhelming bulk of same-party runoff elections occurred in safe districts. Republican runoff elections occurred where Democratic voter registration was below 44 percent, and Democratic runoff elections occurred where Democratic voter registration was above 64 percent.

There is one notable exception to this, involving the runoff contest between Republicans Bob Dutton and Rep. Gary Miller in the 31st congressional district, a district with a 54 percent Democratic share of the two-party voter registration. The results represent a notable failure for Democrats. Not only did the district lean slightly Democratic, but four Democratic candidates split the primary vote, and Democrat Pete Aguilar fell short of a spot on the runoff ballot by fewer than 1,400 votes. Had any of the other three Democratic candidates withdrawn from the race, the runoff would likely have included Aguilar, who would have had a legitimate shot at winning in November. This example sends a strong message about the importance of coordinating prior to a top-two primary election. Nonetheless, it is still only one anomalous case out of the 174 state and federal districts in play this year.

Discussion

In many ways, it is far too early to be conducting this sort of analysis. At the time of this writing, of course, the November 2012 election has yet to happen, and those

results will give us much more information about the new electoral environment in California and the sort of elected officials we can expect it to produce. We will know even more after those elected officials have been in office for a few years and have produced roll call voting records that are either similar or dissimilar to those produced before the adoption of the reform. We simply cannot say today whether the top-two primary reform has been a success or a failure.

What we can see at this point, though, is a great example of the initial impacts of a party reform movement. Whether the reform de-polarizes California's politicians or not, we can see that it has definitely shaken up the status quo. At least this year, elections have been more volatile than usual, and incumbents, while still overwhelmingly prevailing in elections, are not doing so with the same safety margins they used to. California's elected officials, party elites, prospective candidates, and voters are in the process of charting out the contours of a new electoral regime, and it may take several years to reach some new equilibrium.

We also see the early indications of a party system adjusting and fighting back. If California election law now says that primaries are not the way that parties determine nominees, then parties will find some other way to determine nominees. Perhaps their endorsement system will prove sufficient. Perhaps the parties will make additional demands on candidates in the future in exchange for endorsements, and if candidates come to see the party's endorsement as the key to victory, then they will legislate to the ideological extremes to keep the parties happy, just as they did up until now. Conversely, candidates may come to see party endorsements as helpful but not vital, and possibly outweighed by the prospects of winning the votes of centrists who can now more easily

participate in primaries. Either way, California is truly serving as one of the nation's democratic laboratories, providing a high-leverage case about the power of institutions to affect partisanship.

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