

ROSE INSTITUTE

Q&A

**California's
Top-Two Election
System**

**Rose Institute of State & Local Government
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Overview

In 2010, California voters, frustrated with gridlock and dysfunction in state and national politics, passed **Proposition 14**. This measure, implemented in 2012, adopted a top-two system for elections for the state legislature, U.S. Congress, and most statewide offices. These elections use simple rules: ***any voter can vote for any candidate in the primary and the two candidates with the most votes advance to the general election.***

Despite a decade of experience and the simplicity of the election rules, journalists, policymakers, scholars, and interested citizens still have many questions about what the top-two system does and how it has affected the state's politics. This inaugural edition of the Rose Institute's *Questions and Answers* series addresses these issues.

This *Overview* offers a brief outline and summary of the *Q and A*. The four sections of the *Q and A* group questions thematically, beginning with providing detail and context about the new system, moving on to describing what has already happened, and then addressing the more complicated questions about political effects. The final section provides even more information about some of the more significant issues. Despite the growing body of valuable scholarly literature, referenced extensively in the *Q and A*, **not all of these questions have easy or undisputed answers.**

Section I: The Top-Two System

Proposition 14 created a *nonpartisan top-two election system*. Confusion about the top-two begins with its name: **although often called the "top-two primary," these procedures affect both primary and general elections in California.**

California's top-two system has three essential characteristics, setting it apart from prior procedures used in California, the rules used to elect California offices unaffected by Proposition 14, and related systems in other states.

1. ***It is nonpartisan in participation.*** Voters can participate in the primary election and choose any candidate for any office covered by the top-two, regardless of party affiliation.
2. ***It is nonpartisan in competition.*** All candidates compete against each other in the primary to be the two finalists in the general election, and some contests will have general elections between candidates of the same party.
3. ***It is not nonpartisan in information.*** Unlike some other nonpartisan election systems, California's top-two system still provides partisan information on the ballot. Voters know the party affiliation preferences of the candidates (listed next to their names). Parties also can make official endorsements.

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The top-two provides greater freedom of choice not only for independent voters but also for registered partisans. Twenty-nine percent of California's voters are not registered with the Democratic Party or the Republican Party. The top-two system allows these voters to participate meaningfully in elections without facing additional procedural requirements and without requiring the assent of the major parties. More subtly, the top-two also allows Democrats and Republicans

greater opportunities to express their views. For example, in 2022, the *Los Angeles Times* endorsed a Democrat (Gavin Newsom) for governor and a Republican (Lanhee Chen) for California controller. Under the old partisan primary procedures, not a single voter in California could have expressed such a preference on the primary ballot.

Section II: Election Outcomes

Some outcomes are readily observable: what types of general elections take place, how competitive they are, and how many people vote.

Election Types

Although most general elections in California still feature a Democrat facing a Republican, same-party general elections do occur. **The same-party elections are more common in open seats and in places typically lacking significant cross-party competition.**

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Same-party general elections create meaningful competition in districts that would have otherwise effectively been won in the primary under the old partisan election system. The potential for same-party general elections creates a new kind of electoral risk for all candidates in partisan safe seats. All officeholders know they could, at some point, have to win a majority of the voters in their community without relying on their party label alone.

Turnout and Participation

Although one clear claim supporting Proposition 14 was that it would increase turnout, **participation is surprisingly complicated to assess.** Participation was highly variable statewide across years with the top-two procedure, from a low of 25.2% in 2014 to a high of 47.7% in 2016.

These statistics largely miss the point, though. In districts that have same-party general elections in otherwise safe seats, the decisive contest has moved from the primary election to the general election. The participation comparison really ought to be between the general election under the top-two rules and the primary election under an alternative partisan system.

To briefly illustrate this point: in the 2010 partisan primary election that renominated Democratic U.S. Senator Barbara Boxer, there were just over 2.4 million votes cast in the Democratic primary, which she won handily. Surprising no one, Boxer would go on to win the general election, as did every other statewide Democrat. The 2018 election—another midterm, but of the top-two era—sent two Democrats to the general election ballot for the U.S. Senate. Some Republicans declined to vote in this Democrat-on-Democrat race; nevertheless, just over 11 million Californians cast ballots in a 54%-46% general election contest between longtime Democratic incumbent Dianne Feinstein and challenger Kevin de León. Comparing the 2010 midterm Democratic primary to the 2018 midterm general election—both of which selected which Democrat was going to be in the U.S. Senate—shows an increase in participation of more than four times the number of votes.¹

Addressing Concerns

Several concerns exist about the top-two election system.

One fear is that split support among the majority party's candidates will result in a same-party general election featuring only candidates of the weaker party, shutting a majority party out of a seat it otherwise ought to win. This risk is real but small. In the several hundred California top-two elections in the past decade, there is only one clear example where the majority party was shut out of the general election—the election in Congressional District 31 in 2012.

Another concern is that, in general elections between candidates of the same party, some voters without candidates of their own party on the ballot (sometimes called “orphans”) will skip voting in those contests. This behavior is now well-documented in political science research. This concern, like many of the other issues related to the top-two, prompts a discussion about trade-offs. The abstention of some orphaned voters in same-party elections is the cost of removing partisan barriers to participation in the primary and the potential participatory and political value of competitive same-party general elections in safe seats.

Another criticism of the top-two system is that third-party candidates do not often earn enough votes to make the general election ballot. Although there are no formal restrictions, Democratic and Republican primary candidates typically appeal to more voters. This does not change the fact, though, that third parties were not successful before the top-two either, nor very successful in other states. In some ways, new or third parties have unrealized opportunities in the top-two

¹ In 2010, Boxer won 81% of the primary vote and then won the general election by a comfortable 52.2%-42.2% margin, with third party candidates winning the remainder of the vote. In 2018, Feinstein came in far ahead of de León in the primary, winning 44.2% to his 12.1% for first and second place, before the general election was decided 54.2%-45.8%.


system, as well: for the right party at the right time, the nonpartisan structure could actually help a new or alternative party compete by locally replacing one of the major parties. This has not happened yet, though.

Other concerns about the top-two are addressed throughout the *Q and A*.

Section III: Impact on Politics

Proposition 14 promised to help produce “less partisan” and “more practical” elected officials. The proponents sought to change not only who won, but also how politics worked in California.

Political scientists continue to evaluate whether the top-two system has produced more moderate or pragmatic officeholders. Not all studies have reached the same conclusions. These studies raise some very interesting questions, including what it means for someone to be “less partisan” and “more practical;” how such concepts can be measured and observed; and how changes in outcomes can be attributed to one particular change in the state’s political institutions.



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California politics have changed since the passage of Proposition 14. In the Public Policy Institute of California (PPIC) statewide survey **at the time Proposition 14 was adopted, only 9% of California voters approved of the state legislature; by the 2020 election, this had risen to 49%** (and remained at that level in the May 2022 PPIC survey). The yearly crisis over the state budget, a sign of the previous era’s gridlock and a reason for the passage of Proposition 14, has largely disappeared. Furthermore, voters tend to report liking the top-two system.

Nevertheless, there are substantial reasons to be cautious in interpreting such findings or attributing results to Proposition 14.

The top-two was only one of many changes introduced at approximately the same time in California politics—including adopting a redistricting commission (Proposition 11, 2008; Proposition 20, 2010), ending the supermajority vote requirement for the state budget (Proposition 25, 2010), changing term limits (Proposition 28, 2012), and improving the state’s financial position by increasing taxes (Proposition 30, 2012). All of these changes were implemented in the context of a changing economy, a declining state Republican Party, and significant events like the Covid-19 pandemic. The top-two had been crafted, in part, to help obtain the necessary compromise in the state legislature to get a budget passed. Sorting out what the contribution was from any particular reform or change can be difficult.

Section IV: Additional Details

To some extent, this *Q and A* is a plea for the interested public and opinion-makers to remember that American politics involves a complex array of institutions and participants. Short and simple answers are hard to come by. The final section follows up on the earlier questions, providing more detail about the “shut-out” risk, turnout, and moderation. It also provides additional information about competing reforms including the “Final-Four” system in Alaska and proposals for a “Final-Five” primary (with ranked-choice-voting). It concludes by highlighting the unique attributes of the 2022 and 2024 election cycles.

Evaluating Reform

This edition of *Questions and Answers* responds to many questions – save one: **which electoral institutions are best?** Electoral institutions—the rules we use to conduct elections—are important. They turn abstract concepts of democracy as “rule by the people” into the reality of handing power to some people and not others. Altering election procedures can change who wins, the incentives winners face while in office, and even which democratic values a society embraces. For those reasons, parties, advocates, elected officials, and citizens have battled over American election procedures for generations; the passage of Proposition 14 in California in 2010 was an extension of debates begun in the state at least a century before in the Progressive Era.

Yet, all institutional choices come with trade-offs; scholars have known for a long time that there is no such thing as an inarguably perfect election system, and which trade-offs make sense may depend on the individual values of the person making the assessment. For that reason, this *Q and A* does not endorse or oppose any particular election procedure.

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The questions explored in this edition of *Q and A* are intended to help readers form their own judgments about the top-two system and the trade-offs involved in using it.

In evaluating the top-two, there are also two distinct approaches. Should it be judged on the basis of what it does, or whether it has met the objectives of its advocates? These are not the same standards, and

may not yield the same answers. For example, the top-two could provide real benefits, and be better in some way than the alternatives, while still falling short of what advocates had promised or hoped to achieve. Both ways of evaluating the top-two are intellectually defensible, but represent different lines of inquiry.

A thoughtful evaluation of the nonpartisan top-two election system also acknowledges that new elections happen every two years. The answers to some of the questions in this *Q and A* may change in light of new facts and new circumstances. Although California implemented the top-two a decade ago, we learn more about it in each election cycle.

Questions and Answers: The Top-Two

These are the questions addressed in this edition of *Questions and Answers*.

I: DESCRIBING THE TOP-TWO ELECTION SYSTEM

How does the top-two election system differ from traditional partisan elections?

How does the top-two election system differ from the “blanket primary” we used to have in California?

How are local elections different from the elections controlled by Proposition 14?

Does California still use partisan ballots for presidential primaries?

II: LOOKING AT ELECTION OUTCOMES

What are the pathways for the top-two system to change how politics works?

How often, and under what circumstances, do same-party general elections occur?

Do same-party elections promote competitiveness?

Can a party be “shut out” of an election it ought to win?

Do independent or third-party candidates often win elections?

Has voter turnout increased?

III: ASSESSING THE IMPACT ON POLITICS

Why is it so hard to get a simple answer about the effect of the top-two?

What do voters think of these kinds of election systems?

Did the top-two produce more moderate or collaborative legislators?

What other impacts might there be beyond moderation?

Did the top-two system make the Republican Party uncompetitive in California?

IV: ADDITIONAL DETAILS

What happened in CD31 in 2012?

How should we count turnout?

What does moderation mean?

How does top-two compare to final-four or final-five?

What should we watch for in 2022 and 2024?

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I. Describing the Top-Two Election System

How does the top-two election system differ from traditional partisan elections?

In June 2010, California's voters approved Proposition 14 and changed the election procedures for the state legislature, U.S. Congress, and most statewide offices. With this system, any voter can vote for any candidate in the primary; the two candidates with the most votes advance to the general election. The new rules, best described as a *nonpartisan top-two election system*, went into effect in 2012. Before moving on to the other questions, it is important to understand what this system—sometimes called the “top-two primary,” “open primary,” or “top-two open primary”—does and how it differs from election procedures in other states. The terminology can be confusing. The top-two system affects candidates as well as voters, has consequences for both the primary and general elections, and goes beyond what political scientists typically call an open primary, even though that language is used in the text of the proposition.

Most states use some form of partisan primary, as California did before Proposition 14. Starting more than a century ago, states began adopting direct primaries to provide legal regulation and opportunities for orderly mass participation in major party nominations.² In all types of partisan primaries, all of a party's candidates compete to be the party's sole representative on the general election ballot; general elections are contests between the nominees of all qualified political parties. The affiliation requirements placed on voters define types of partisan primaries: *closed* primaries require advance affiliation; *semi-closed* primaries allow independents to choose their party on election day; and *open* primaries allow all voters to choose a party on election day.³ In a partisan open primary, though, once a voter has chosen a party, the voter can only participate in that party's primary for every office on the ballot and the general election remains a contest between party primary winners.

From the perspective of voters, the top-two election system offers more choice over candidates in the primary election. In the primary, any voter can vote for any candidate, regardless of the party affiliation of either. In California's 2022 primary, for example, any voter can take the advice of the *Los Angeles Times*⁴ and support Gavin Newsom (a Democrat) for governor and Lanhee Chen (a Republican) for state controller—a vote combination that would have been impossible for any voter under the previous primary system. Furthermore, unaffiliated (called “No Party

² See Alan Ware, *The American Direct Primary: Party Institutionalization and Transformation in the North* (New York: Cambridge University Press, 2002).

³ This classification system comes from a key paper in this field: Elisabeth R. Gerber and Rebecca B. Morton, “Primary Election Systems and Representation,” *Journal of Law, Economics, & Organization* 14, no. 2 (1998): 304–24; for further development, see Kristin Kanthak and Rebecca Morton, “The Effects of Electoral Rules on Congressional Primaries,” in *Congressional Primaries and the Politics of Representation*, ed. Peter F. Galderisi, Marni Ezra, and Michael Lyons (Lanham, Maryland: Rowman & Littlefield, 2001), 116–31; Eric McGhee et al., “A Primary Cause of Partisanship? Nomination Systems and Legislator Ideology,” *American Journal of Political Science* 58, no. 2 (2014): 337–51, <https://doi.org/10.1111/ajps.12070>.

⁴ “L.A. Times Electoral Endorsements for 2022,” *Los Angeles Times*, April 27, 2022, <https://tinyurl.com/djj7aree>.

Preference”) and third-party voters may participate in the elections on an equal footing without additional formal barriers to accessing the ballot. Although in 2010 both major parties did allow unaffiliated voters to participate, this was a choice made by the parties⁵ that could be reversed; furthermore, the unaffiliated voters had to request the party ballot.⁶ In California, 29% of voters are not registered with the Republican or Democratic parties, and the full inclusion of these voters has the potential to alter the composition of the electorate.⁷

Proposition 14 also introduced a nonpartisan structure for candidate competition, changing not only the choices available to voters but also the meaning of their votes. Voters no longer select the nominees of political parties. In the primary, all candidates have to compete against all other candidates. Since the two candidates with the most votes advance to the general election, the primary winners can be from the same party. These same-party general elections cannot occur with any kind of partisan primary.⁸

Although Proposition 14 emphasized the “right to participate in primary elections,”⁹ the potential for same-party general elections means it is best categorized as a nonpartisan top-two election *system*. One problem is that the term “non-partisan” already has a different official meaning in the context of the state’s local elections (see: “How are local elections different from the elections controlled by Proposition 14?” below). Language emphasizing the “primary” part of the top-two, though, runs the risk of deemphasizing the important general election consequences.

Other states have experimented with nonpartisan elections, and several use variants currently. While sometimes these rules are described as “jungle primaries,” the term is not very descriptive and can be understood as pejorative; all of these alternative systems are nonpartisan in the structure of candidate competition and thus “nonpartisan” is a better neutral term. Washington State adopted a rule similar to the one used in California a few years before Proposition 14. Louisiana has used a variant of this election type, although the schedule is shifted: it holds a

⁵ The history of which parties permitted unaffiliated participation is available at California Secretary of State, “History of Political Parties That Have Adopted Party Rules Regarding No Party Preference,” accessed May 29, 2022, <https://www.sos.ca.gov/elections/political-parties/no-party-preference/history-political-parties-have-adopted-party-rules-regarding-no-party-preference-voters>.

⁶ As voters in California increasingly vote by mail, it becomes more difficult to administer these kinds of elections as a practical matter.

⁷ From the 60-day report of registration in California see California Secretary of State, “Report of Registration April 8, 2022,” accessed May 30, 2022, <https://www.sos.ca.gov/elections/report-registration/60day-primary-2022>.

⁸ In partisan primary systems, the workaround to this problem often involves candidates leaving their parties and running as independents, as former Republican Evan McMullin is doing in Utah against incumbent Republican Mike Lee in 2022. In rare cases, in states without “sore loser” laws, a candidate defeated in a party primary will find an alternative route to the ballot (former Senator Joe Lieberman did this in Connecticut in 2006 after losing in the Democratic primary; Senator Lisa Murkowski won an election as a write-in candidate in Alaska after losing her Republican primary). These are very unusual exceptions, though.

⁹ California Secretary of State, “Official Voter Information Guide: California Statewide Direct Primary Election, Tuesday, June 8, 2010” (California Secretary of State, Elections Division, 2010), <https://vig.cdn.sos.ca.gov/2010/primary/pdf/english/complete-vig.pdf>.

general election in November, and then a later runoff if no candidate gets over 50% in the primary.¹⁰ Nebraska's unicameral legislature is officially nonpartisan, using nonpartisan rules similar to California's local elections.¹¹ Alaska is using for the first time in 2022 a top-four primary followed by a ranked-choice general election ("Final Four"), and some advocates would like other states to adopt a similar rule using a top-5 primary ("Final Five").¹² The use of these alternative systems can provide more information about how, broadly, nonpartisan systems can influence politics. They also serve as reminders that election rules are embedded in states that differ in many ways; an election procedure provides some but not all of the incentives for politics, and even the same election procedure may not have the same results in all states due to these differences.

How does the top-two election system differ from the "blanket primary" we used to have in California?

In 1996, Californians passed Proposition 198 and established a "blanket primary."¹³ Alaska and Washington used similar systems at the time; when the U.S. Supreme Court struck down California's system as unconstitutional in *California Democratic Party v. Jones* (2000), each of these states had to seek alternatives.

The blanket primary was a partisan open primary in which voters could switch parties as they moved down the ballot. The structure of candidate competition remained partisan (e.g., there were separate Republican and Democratic primaries for governor) but the limitations on voters were not (a voter could choose to vote in the Democratic primary for governor and the Republican primary for controller). In fact, this is what caused a problem in the U.S. Supreme Court: the election was still determining a party's nominees while allowing voters explicitly choosing *not* to affiliate with that party to determine who the nominee would be, over the objection of the political parties.

The top-two system is framed to meet the Court's requirements: candidates' party preferences are their *personal* preferences, not an endorsement from that party.¹⁴ Parties are free to have some other procedure to make endorsements, and those endorsements can appear in the materials provided to each voter. Since the primary no longer chooses the official nominee of a

¹⁰ This year, Louisiana's runoff election is scheduled for December 10.

¹¹ For a paper on Nebraska, see Seth Masket and Boris Shor, "Polarization without Parties: Term Limits and Legislative Partisanship in Nebraska's Unicameral Legislature," *State Politics & Policy Quarterly* 15, no. 1 (2015): 67–90.

¹² The Final Five proposal is associated with Katherine Gehl and the Institute for Political Innovation: <https://political-innovation.org/final-five-voting/>.

¹³ For an excellent review of the blanket primary, see Bruce E. Cain and Elisabeth R. Gerber, eds., *Voting at the Political Fault Line: California's Experiment with the Blanket Primary* (Berkeley: University of California Press, 2002).

¹⁴ California Secretary of State, "Voter-Nominated Offices Information," accessed May 27, 2022, <https://www.sos.ca.gov/elections/voter-nominated-offices>.

political party, the general election can have two candidates of the same party—an outcome that could not happen under the blanket primary.¹⁵

How are local elections different from the elections controlled by Proposition 14?

California uses *multiple* kinds of nonpartisan elections, including for local offices and judicial elections, in addition to the top-two.¹⁶ The existence of different systems that truly can be called nonpartisan, in the same state at the same time, does cause some confusion.

To explain the differences, it is helpful to pose the question: what does it mean for an election to be nonpartisan? One can think about elections as being nonpartisan in three different ways:

1. *Nonpartisan in limitations placed on voters.* Any voter can vote for any candidate.
2. *Nonpartisan in the structure of candidate competition.* All candidates compete against each other, regardless of party.
3. *Nonpartisan in the information on the ballot.* No candidates have party labels attached to their names on the ballot.

Local Elections. California's local election process, with roots in the Progressive Era,¹⁷ is described in the state's election laws and ballot materials as "nonpartisan," and it is nonpartisan in all three ways listed above.¹⁸ (1) Voters can vote for any candidate in the primary. (2) All of the candidates compete against each other in the primary and there is a runoff in the general election between the first and second place candidate if no candidate earns over 50%. (3) Party affiliation does not appear underneath the candidate's name on the ballot. (Note that this procedure is also used for the statewide office of the Superintendent of Public Instruction.)

¹⁵ This feature of the top-two explains why it is not useful to refer to the system as a "top-two blanket primary" – the term also causes confusion between the old blanket primary and the top-two system, which have different potential consequences for general elections.

¹⁶ The now-unconstitutional blanket primary, as described above, was only nonpartisan in the first sense: it placed no limitation on voter choice over candidates. It was partisan in both the second and third, though; it was a partisan primary in its structure of competition and, because of that, also partisan in the information provided on the ballot. For those reasons, the old blanket primary is best classified as a variant of an open partisan primary.

¹⁷ Franklin Hichborn, *Story of the Session of the California Legislature of 1913* (San Francisco: Press of the James H. Barry Company, 1913), <https://ccl.on.worldcat.org/oclc/3041147>.

¹⁸ The state's local election system was once nonpartisan in even one more way: it prohibited parties from issuing endorsements. With that prohibition threatened in the courts in the 1980s, in 1986 Californians approved Proposition 49 to put the rule in the state constitution. Nevertheless, that effort did not hold up in federal court, falling in *California Democratic Party v. Lungren* (1996). Parties do not always agree on which candidates to endorse in local elections, though; for example, in 2022, the Los Angeles County Democratic Party did not reach the necessary consensus to issue an endorsement in the contentious contest for County Sheriff.

Legislative, Congressional, & Statewide Office Elections. The current top-two system is nonpartisan in only two of the three ways, and also advances candidates differently than the local nonpartisan system. As discussed above, it is (1) nonpartisan in the limitations placed on voters because any voter can vote for any candidate and (2) nonpartisan in the structure of candidate competition. One difference in candidate competition between the local election procedure and the top-two is that a general election always occurs for Proposition 14 offices, even if one candidate earned more than 50% in the primary.¹⁹

The most significant difference is that the elections for State Assembly, State Senate, U.S. Congress, and the statewide offices are not, (3), nonpartisan in their information. This matters because the information on the ballot provides a cue for voters about the candidates; in the primary election, and in most general elections (most feature one Republican and one Democrat), these party cues help voters understand their choice.²⁰ These party cues remain in same-party general elections, although they are no longer informative since both candidates come from the same party. There is a developing scholarly literature on what cues voters use instead, including candidate ethnicity²¹ and gender.²² Voters are also more likely to turn to Google to search for information about the candidates when the party does not provide a cue.²³

Does California still use partisan ballots for presidential primaries?

Yes. Proposition 14 did not change the procedures for presidential primaries. Presidential nominations involve states selecting delegates to national party conventions; it is not possible to extend the top-two system to presidential primaries.

California retains a party-option semi-closed partisan presidential primary. That means each party can decide whether it wants to allow NPP (“No Party Preference”) voters to participate. In 2020, the Democratic Party allowed NPP participation while the Republican Party did not.

¹⁹ Due both to the passage of time and the different primary and general electorates, some candidates winning more than 50% in the primary are defeated in November. For example, in the 2018 election in California’s 25th Assembly District, Republican Steve Knight won 51.8% of the primary vote; Democrat Katie Hill placed second with 20.7%. In the general election, however, Hill defeated Knight 54.4% to 45.6%.

²⁰ This addresses an objection to the nonpartisan systems in Nebraska (and earlier Minnesota) in Seth E. Maskett, *The Inevitable Party: Why Attempts to Kill the Party System Fail and How They Weaken Democracy* (New York, NY: Oxford University Press, 2016), 158–62.

²¹ Sara Sadhwani and Matthew Mendez, “Candidate Ethnicity and Latino Voting in Co-Partisan Elections,” *California Journal of Politics and Policy* 10, no. 2 (October 12, 2018), <https://doi.org/10.5070/P2CJPP10241253>.

²² Katelyn E. Stauffer and Colin A. Fisk, “Are You My Candidate? Gender, Undervoting, and Vote Choice in Same-Party Matchups,” *Politics & Gender*, June 10, 2021, 1–30, <https://doi.org/10.1017/S1743923X20000677>.

²³ Betsy Sinclair and Michael Wray, “Googling the Top Two: Information Search in California’s Top Two Primary,” *California Journal of Politics and Policy* 7, no. 1 (2015), <https://doi.org/10.5070/P2cjpp7125443>.

Presidential nominations are not the only remaining partisan elections in the state: the others are for party central committees.²⁴ Since 2012, these central committee elections have also taken place every four years, instead of every two years, coinciding with the presidential election.²⁵

²⁴ The direct election of party central committees is another legacy of the Progressive Era reforms in California. See Kay Lawson, "Challenging Regulation of Political Parties: The California Case," *Journal of Law & Politics* 2, no. 2 (1985): 263–86.

²⁵ California SB 1272.

II. Looking at Election Outcomes

What are the pathways for the top-two system to change how politics works?

There are at least five possible ways by which the top-two system can change politics. These suggest what kinds of election outcomes should be examined.

1. The mix of candidates. The top-two system can encourage more moderate, pragmatic, or competent candidates to run for office. Such candidates could be enticed into running based on the premise that the new electoral rules would increase their chances of winning: if they do win, politics would change because the officeholders would change. Skeptics can point to several interesting lines of scholarly research that suggest this effect may not occur because: it may be difficult to encourage such candidates to run for office under any circumstances;²⁶ parties may coordinate informally to shape the field, rendering the formal rules useless;²⁷ and parties may issue endorsements that help secure the election of their preferred candidates in contested elections.²⁸

2. The primary electorate. By allowing for the full participation of unaffiliated voters and by potentially encouraging more participation overall, the top-two system could change the composition of the electorate (who the voters are and what they want). A different type of electorate could either help different types of candidates win or provide incentives for the same types of candidates to behave differently. This effect could address the ideological extremity of primary electorates, a central concern of reformers.²⁹ Some initial findings were not particularly optimistic that the top-two system changed the electorate,³⁰ but this question requires careful and continued evaluation (see: “How should we count turnout?”).

²⁶ In a recent book, Andrew Hall argues that Congress would have polarized even if the most moderate available candidate won every House election because the candidates willing to run for office have grown more ideologically extreme. Since the benefits from officeholding are uneven and potentially small, more moderate citizens are disinclined to run for public office. See Andrew B. Hall, *Who Wants to Run?: How the Devaluing of Political Office Drives Polarization*, Chicago Studies in American Politics (Chicago: The University of Chicago Press, 2019), <http://chicago.universitypressscholarship.com/10.7208/chicago/9780226609607.001.0001/upso-978022660943>.

²⁷ Hans J. G. Hassell, *The Party's Primary: Control of Congressional Nominations* (Cambridge, United Kingdom: Cambridge University Press, 2018).

²⁸ Thad Kousser et al., “Kingmakers or Cheerleaders? Party Power and the Causal Effects of Endorsements,” *Political Research Quarterly* 68, no. 3 (2015): 443–56.

²⁹ See Ronald D. Hedlund and Meredith W. Watts, “The Wisconsin Open Primary 1968 to 1984,” *American Politics Quarterly* 14, no. 1–2 (January 1, 1986): 55–73, <https://doi.org/10.1177/1532673X8601400104>; Barry C. Burden, “The Polarizing Effects of Congressional Primaries,” in *Congressional Primaries and the Politics of Representation*, ed. Peter F. Galderisi, Marni Ezra, and Michael Lyons (Lanham, Maryland: Rowman & Littlefield, 2001), 95–115.

³⁰ Seth J. Hill, “Institution of Nomination and the Policy Ideology of Primary Electorates,” *Quarterly Journal of Political Science* 10, no. 4 (December 17, 2015): 461–87, <https://doi.org/10.1561/100.00015023>.

3. Voter choice in the primaries. Even without changes to the composition of the electorate, the behavior of the electorate could change. For example, Republicans in overwhelmingly Democratic districts could work with independents and centrist Democratic voters to support moderate Democrats in the primary (and then in general elections). Some of the earliest work on the top-two focused on this very possibility, although it appears that voters, at least initially, tended to vote “sincerely” in the primary—for a candidate they identify as having views most similar to theirs.³¹

4. Same-party general elections. When two candidates of the same party place first and second in the primary, the general election now has the function of a partisan primary: choosing which candidate of that party will represent the district. Yet: all of the voters can participate, in the higher-turnout general election, with voters of the other major party and all of the independents and third-party voters eligible to participate as well. So even if *nothing* changes at the primary stage, the same-party general elections can be a pathway to change the incentives of politics. The questions tend to be: do they happen often enough, and under the right circumstances, to meaningfully change politics?³²

5. Satisfying the public's values. There is a rapidly-growing literature in public administration regarding the consequences of administrative burdens, the demands policies and institutions place on citizens, and the ways citizens learn about their position in society based on their experiences.³³ The top-two, for independent voters, represents full inclusion in political life with neither formal barriers to participation nor additional requirements to request a party ballot. Similarly, for voters of all types, the top-two may appeal to their sense of fairness, increase their sense of political efficacy, or otherwise satisfy their expectations about what a good process ought to be.³⁴ In short: people might simply like it. This is a kind of good unto itself, but also has other potentially positive downstream effects in a society otherwise deeply polarized and with a rising sense of populist dissatisfaction.

³¹ See Douglas J. Ahler, Jack Citrin, and Gabriel S. Lenz, “Do Open Primaries Improve Representation? An Experimental Test of California’s 2012 Top-Two Primary: Do Open Primaries Improve Representation?,” *Legislative Studies Quarterly* 41, no. 2 (May 2016): 237–68, <https://doi.org/10.1111/lsq.12113>; Jonathan Nagler, “Voter Behavior in California’s Top Two Primary,” *California Journal of Politics and Policy* 7, no. 1 (2015), <https://doi.org/10.5070/P2cipp7125524>; R. Michael Alvarez and J. Andrew Sinclair, *Nonpartisan Primary Election Reform: Mitigating Mischief* (New York, NY: Cambridge University Press, 2015).

³² This is one of the main conclusions here: Alvarez and Sinclair, *Nonpartisan Primary Election Reform*; see also: Jesse Crosson, “Extreme Districts, Moderate Winners: Same-Party Challenges, and Deterrence in Top-Two Primaries,” *Political Science Research and Methods* 9, no. 3 (July 2021): 532–48, <https://doi.org/10.1017/psrm.2020.7>.

³³ See, among others Donald Moynihan and Pamela Herd, “Red Tape and Democracy: How Rules Affect Citizenship Rights,” *The American Review of Public Administration* 40, no. 6 (November 1, 2010): 654–70, <https://doi.org/10.1177/0275074010366732>; Pamela Herd and Donald P. Moynihan, *Administrative Burden: Policymaking by Other Means* (New York: Russell Sage Foundation, 2018).

³⁴ For some of these matters, see Betsy Sinclair and J. Andrew Sinclair, “Primaries and Populism: Voter Efficacy, Champions, and Election Rules,” *Journal of Political Institutions and Political Economy* 2, no. 3 (November 12, 2021): 365–88, <https://doi.org/10.1561/113.00000042>.

How will we know if the top-two system has worked? It is hard to assess whether the top-two has “worked,” in part because people have different definitions of what it means for the system to “work,” and in part because some political changes are difficult to evaluate. This section focuses on the observable outcomes that can feed into those five pathways for influencing the nature of politics in California.

It is also important to note that we do not actually need to observe *any* of these events occurring for the *potential* of them occurring to influence politics. That is, even if roughly the same number of people vote, and roughly the same kinds of candidates win elections, those same politicians *could* act differently once in office. Why? If the top-two procedure threatens their electoral prospects in a new way—or relieves pressure on them, with the threat of being “primaried” by partisan activists diminished—the elected officials may adapt to the new circumstances by changing their behavior.

How often, and under what circumstances, do same-party general elections occur?

Of the potential pathways for influencing politics, the risks and opportunities provided to candidates by same-party general elections come with the fewest demands on voters and can only occur with some version of nonpartisan rules.

Understanding how often, and under what circumstances, the same party elections occur can help us understand how the top-two procedure functions in practice.

How often. About one out of six general elections covered by the top-two rule features two candidates of the same party. While the exact percentage varies from year to year, so far it has always been more than 10% and less than 20% of all of the elections covered by this procedure in each year. Most of these same-party elections are Democrat-on-Democrat contests, although not all of them.

Where and when. Generally, same-party general elections are most likely to occur for open seats (elections without incumbents) and in highly partisan districts.³⁵ The reason we see more Democrat-on-Democrat races is that California has more heavily Democratic districts than equivalent Republican ones; with the Republican Party continuing a long decline over many years, Democrats dominate many areas of the state.

In a recent broad study of American primary elections, Shigeo Hirano and James Snyder argue that the benefit of primary elections – relative to other kinds of nominating systems – is that they “are contributing to the US electoral system especially in uncompetitive areas, where they are

³⁵ J. Andrew Sinclair et al., “Crashing the Party: Advocacy Coalitions and the Nonpartisan Primary,” *Journal of Public Policy* 38, no. 3 (September 2018): 329–60, <https://doi.org/10.1017/S0143814X17000149>. This paper uses data only through 2016, but the trends hold through 2020.

most needed.”³⁶ While the authors do not reach this conclusion themselves, it is a natural extension of their argument: the top-two system in California is doing the same thing, in bringing competition to uncompetitive areas, but sometimes moving that contest from the primary to the general election.

Do same-party elections promote competitiveness?

Yes.

The top-two creates competitive general elections in safe seats. In particular, there have been competitive Democrat-on-Democrat general elections in districts that would otherwise be very safe seats and effectively won in the primary (see “How should we count turnout?” for an example). It is very rare for candidates to be entirely unopposed in the general election, as well, although not all same-party general elections are equally competitive. An important question is whether such competitive same-party elections happen often *enough*, or whether parties are able to ensure that their preferred candidates avoid them.³⁷

Political scientists Gerald Gamm and Thad Kousser have demonstrated that states with cross-party competition enact different types of policies than states dominated by one party. Competition encourages legislators to pass “broad bills” that serve community interests rather than “particularistic policy” to benefit more narrow interests.³⁸ The problem is that it can be difficult to create cross-party competition in states with substantial majorities favoring one party. Occasionally, candidates from the minority party win elections—for example, Republican Arnold Schwarzenegger in California—but these tend to be extraordinary exceptions.³⁹ An important ongoing question is whether increased competition through same-party general elections is enough to encourage this kind of broad-based policymaking.

Does the top-two facilitate anti-competitive manipulation? In both partisan primaries and the top-two system, candidates and parties have incentives to behave strategically. This is part of

³⁶ Shigeo Hirano and Jr Snyder James M., *Primary Elections in the United States*, Political Economy of Institutions and Decisions (Cambridge: Cambridge University Press, 2019), 307, <https://doi.org/10.1017/9781139946537>.

³⁷ For a discussion, see Crosson, “Extreme Districts, Moderate Winners.”

³⁸ Gerald Gamm and Thad Kousser, “Broad Bills or Particularistic Policy? Historical Patterns in American State Legislatures,” *The American Political Science Review* 104, no. 1 (2010): 151–70; Gerald Gamm and Thad Kousser, “Life, Literacy, and the Pursuit of Prosperity: Party Competition and Policy Outcomes in 50 States,” *American Political Science Review* 115, no. 4 (November 2021): 1442–63, <https://doi.org/10.1017/S0003055421000617>.

³⁹ Not everyone gets to be the Terminator before running for public office. Notably, when Schwarzenegger was reelected in 2006, his personal brand was much better liked than the Republican Party as a whole; although the public sent Schwarzenegger back to Sacramento, it also sent substantial Democratic majorities in the legislature and Democrats for most statewide offices.

why election rules matter: any procedure a society adopts for aggregating its preferences can influence which outcomes and officeholders are chosen.⁴⁰

In particular, under the top-two rules, **a candidate of the majority party has an interest in clearing the field to prevent a same-party general election *because those elections are riskier and more competitive when they do occur***. If the candidate and party organization fail to keep out competitors, they may hope that enough voters will stick with a candidate from the weaker party in the primary to generate a more traditional Democrat-on-Republican general election race.

In most Democrat-on-Republican general elections, the winners obtain their party's district presidential vote share plus or minus a few percentage points. The party label does a lot of the work.

There is some anecdotal evidence about strategic behavior. In the 2022 primary, one emerging story is the apparent preference of the Democratic Party's endorsed candidate (or, at least, some of his supporters) for attorney general, incumbent Rob Bonta, to face a Republican instead of a Republican-turned-independent, Anne Marie Schubert.⁴¹ The effectiveness of such an effort can be evaluated after the primary; with two Republicans potentially splitting the Republican vote, encouraging Republicans to ditch one for the other runs the risk of accomplishing the reverse of the intended goal and actually helping Schubert.⁴²

In some recent research, political scientist Jesse Crosson found that "the key to the system's effectiveness lies in reformers' ability to find ways to encourage more same-party competition."⁴³ Some candidates did seem able to avoid these kinds of same-party races.

This topic comes up often, especially since political stories that involve intrigue and strategy are much more interesting than ones that do not. Still, the topic should be considered in light of three larger points of context:

1. Most "manipulations" aim to produce the circumstances that would have occurred if the state used a partisan primary: a Democrat-on-Republican race in an uncompetitive district. If the problem is that the top-two system does not produce *enough* same-party general elections, reverting to a partisan system that produces none is not a solution.

⁴⁰ William H. Riker, *Liberalism against Populism: A Confrontation Between the Theory of Democracy and the Theory of Social Choice* (Prospect Heights, Ill: Waveland Press, 1982).

⁴¹ Soumya Karlamangla, "A Lesson in California's Top-Two Primary System," *The New York Times*, May 24, 2022, sec. U.S., <https://www.nytimes.com/2022/05/24/us/california-primary.html>.

⁴² See Jack Pitney quoted in Alec Regimbal, "California AG's Supporters Could Put His Election Bid in Danger," *San Francisco Chronicle*, May 24, 2022, <https://tinyurl.com/37jt7eam>. The issue is that the California Republican Party has endorsed Nathan Hochman. The pro-Bonta group appears to be trying to help a different Republican, Eric Early. If they succeed in shifting votes from Hochman to Early, that may split the Republican vote, and help Schubert make second place in the primary.

⁴³ Crosson, "Extreme Districts, Moderate Winners," 547.

2. These same party elections do occur; when they occur, they can produce more competitive elections in places that otherwise would not have them; and elections in seats that ought to be competitive remain very competitive.
3. Strategic behavior happens in other kinds of primaries and happened in California before Proposition 14. The top-two procedure makes some kinds of strategic behavior difficult—e.g., voters “raiding” in a party primary⁴⁴ and campaigns supporting third-party candidates in an effort to siphon off votes from major-party general election candidates.⁴⁵

Any discussion of this topic needs to compare strategic behavior in the top-two to strategic behavior in other systems. **A famous example of attempted strategic behavior comes from California’s party primary era:** in the 1966 gubernatorial election, incumbent Democrat Pat Brown apparently viewed one of his two likely Republican opponents—the moderate Republican mayor of San Francisco—as a more serious threat than the other one, an inexperienced actor associated with the more right-wing of the Republican Party. Brown tried to influence the Republican primary, seeking to damage the Republican moderate by recirculating to journalists a prior conviction for violating a milk-pricing law when he had operated a dairy.⁴⁶ And the actor? Ronald Reagan. It turned out he was not easily defeated—for governor or, later, for president.

It is certainly the case that political scientists should continue to evaluate the strategic response of candidates and parties to the new institutions. Crosson put it well: this issue highlights “the importance of understanding how political parties and incumbents will react to institutional reforms, particularly when those reforms are not likely to benefit them.”⁴⁷ A balanced assessment of the top-two will keep both points in mind: there *is* some kind of strategic response, but it is a response to the threat posed by competitive same-party general elections.

Can a party be “shut out” of an election it ought to win?

Yes, although this happens only rarely.

⁴⁴ Raiding – voting insincerely for a weak candidate in the other party’s primary – is generally understood to be quite rare in party primaries. For a discussion in the context of California’s experiment with the blanket primary, see Cain and Gerber, *Voting at the Political Fault Line*. It is worth noting, though, that the top-two system means voters always put something at risk with *any* kind of insincere primary voting behavior because a vote for anyone other than their preferred candidate risks the primary defeat of their preferred candidate. That is not always true in partisan primaries.

⁴⁵ Third-party supporters may object to this characterization; advocates for instant runoff voting (IRV) also can observe that IRV mitigates this problem.

⁴⁶ Ethan Rarick, “When Dems Meddled in 1966 GOP Race, the Result Was Reagan,” *San Francisco Chronicle*, April 14, 2002, <https://www.sfgate.com/opinion/article/When-Dems-meddled-in-1966-GOP-race-the-result-2852310.php>; Rick Perlstein, *Nixonland: The Rise of a President and the Fracturing of America* (New York: Scribner, 2008), 72; Miriam Pawel, *The Browns of California: The Family Dynasty That Transformed a State and Shaped a Nation* (New York: Bloomsbury Publishing, 2018), 134.

⁴⁷ Crosson, “Extreme Districts, Moderate Winners,” 547.

Before the 2018 California primary, an editorial writer for the *Washington Post* warned:

[I]n several competitive Southern California districts in Republican hands, so many Democrats are running that party leaders fear the Democratic vote will end up badly splintered. That could mean no Democrat makes it to the November ballot in those districts, which would be an unexpected self-inflicted blow to the party's hopes of taking control of the House.

The author warned that the top-two was a “cautionary tale about how good intentions alone are not enough.”⁴⁸ This was a common concern in advance of the 2018 elections and has been raised as a possible objection to the top-two procedure. Some additional information may help put this threat in perspective.

There is one famous example. Most of the concern about the majority party being shut out of the general election is based on the outcome of a single contest, the Congressional District 31 election from 2012 (see: “What happened in CD31 in 2012?”). The state has now held hundreds of elections under the top-two. For a party to be left off the general election ballot for a seat it ought to win, a lot of things have to go wrong for that party's best candidate. It can happen but is an extraordinary event.

Any party can win a competitive seat. The House races that caused so much anxiety in 2018 all ended up with Democrat-vs-Republican general elections, and the Democratic Party handily won control of the U.S. House. Yet, what if one of those races had ended up as a Republican-on-Republican general election? The thought experiment is worthwhile: these were marginal seats, competitive between parties. That means, in states with traditional party primaries, it would not be surprising if *either party won the seat*. While the path to the result would have been unusual in California, the result itself—by definition—would not have been. It is not a shocking event for a Republican to win a competitive seat; either major party can win a competitive seat. It is really only in the *safe* seats for one party that a victory for the other party would produce something truly unusual and—from the perspective of representation—possibly concerning (of which, as above, there is one notable example: CD31 in 2012).

Parties lose winnable seats with other primary types too. In terms of representation, a strange event did happen in 2017: Alabama elected a Democrat, Doug Jones, to the United States Senate. Despite the endorsement of many national Republicans, including President Trump, incumbent (appointed) Senator Luther Strange lost to the more populist Roy Moore in the Republican primary. The electorate rejected Moore—barely—in favor of Jones in a state in which Trump beat Clinton by about 25 percentage points. Political scientist Andrew Hall has noted that nominating extremists in partisan primaries can sometimes produce moderation—because

⁴⁸ Dan Balz, “California's Open Primaries Are a Cautionary Tale about Political Reform,” *Washington Post*, June 3, 2018, <https://tinyurl.com/2ks88fup>.

periodically the extremists lose seats that a party ought to otherwise win.⁴⁹ These are rare events too, but can happen.

What about Republicans in statewide races in California? Significantly, the 2016 and 2018 U.S. Senate elections in California featured two Democrats. Is that a problem? A variety of arguments exist for and against the value of same-party general elections for these kinds of statewide offices. Those discussions ought to take place, though, understanding the context: President Trump won only about a third of the vote in 2016 and 2020 in California and the Democrat-on-Republican statewide races of the top-two era have not been competitive. The state as a whole meets most definitions of a safe Democratic seat; in presidential elections, California has been as safely Democratic as Alabama has been safely Republican.

This feature of the top-two is a significant difference between top-two and “Final Four/Five.” The new “Final Four” system in Alaska and the proposed “Final Five” reform essentially remove the risk of a majority shut-out by advancing more candidates to the general election. The trade-off is that the primary becomes much less important. There is a longer discussion of this issue at the end of this document (see: “How does top-two compare to final-four or final-five?”).

Do independent or third-party candidates often win elections?

Independent and third-party candidates have not been very successful under the top-two system, although they were not very successful before it either, and in some ways the top-two rule provides opportunities for credible third parties that have not yet been realized.

Have independent or third-party candidates won elections with the top-two?

Yes, but it is a rare event. In 2020, former Republican Chad Mayes won the election for State Assembly District 42 as an independent (“No Party Preference”) candidate. Mayes, the former Republican Assembly leader, had left the party along with fellow Assemblymember Brian Maienschein; Maienschein, though, became a Democrat and won his seat under that label.⁵⁰ Mayes was involved in an effort to create a third party (“New Way California”), which has not yet achieved electoral success.

⁴⁹ Andrew B. Hall, “What Happens When Extremists Win Primaries?,” *The American Political Science Review* 109, no. 1 (2015): 18–42.

⁵⁰ Laurel Rosenhall, “Another California Republican Defection: Former Party Leader Bails on the GOP,” *CalMatters*, December 5, 2019, sec. Politics, <http://calmatters.org/politics/2019/12/chad-mayes-leaves-california-gop-defection-former-party-leader/>.

Have independent or third-party candidates often won elections in the decade before the top-two?

No. The difference between California's old and new primary systems is the stage of the process when most third-party candidates are defeated. Under the old system, third-party candidates would appear on the general election ballot. With the new top-two system, third-party candidates occasionally make it to first or second place and appear against a Republican or Democrat in the general election, but most third-party or independent candidates are defeated at the primary stage.

Despite the growth of the No Party Preference voters in California, Republican and Democratic candidates have dominated politics in the state during both the eras of partisan and nonpartisan primaries. This pattern is largely the consequence of having single-member districts, which tend to support a two-party system.⁵¹ For that reason, some reformers would like to create multi-member districts in order to support more parties.⁵²

Are there opportunities for third parties in California?

Yes, although these opportunities have not been realized so far. The top-two system allows voters dissatisfied with the likely winner to coalesce around an alternative, in part because there are only two finalists. A district could have, for example, a Democratic finalist and a "not Democrat" alternative. That is, broadly, how the (former Republican) independent Assemblymember Chad Mayes was elected in Assembly District 42 in 2020: his presence in the three-way primary race narrowly pushed out the Democratic candidate and created a Republican-vs.-independent general election. Mayes won handily, 56%-44%.

Nevertheless, it is difficult to move beyond the American two-party system and the difficulty is not new. For example, progressive Republicans in the age of Hiram Johnson struggled with whether to stay in the Republican Party or break away to form a new party.⁵³ The alternative is using a party label while creating an identifiable subgroup brand (such as "progressive" or "Tea Party"); there are exceptionally low barriers to candidate affiliation with political parties⁵⁴ in the United States, so candidates of various types can be successful while using a single party label.

⁵¹ Gary W. Cox, *Making Votes Count: Strategic Coordination in the World's Electoral Systems*, Political Economy of Institutions and Decisions (Cambridge, U.K.; Cambridge University Press, 1997), <https://cd.on.worldcat.org/oclc/891590997>.

⁵² For a discussion on this point, see Lee Drutman, *Breaking the Two-Party Doom Loop: The Case for Multiparty Democracy in America* (New York, NY: Oxford University Press, 2020), <https://cd.on.worldcat.org/oclc/1128825597>.

⁵³ George E. Mowry, *The California Progressives* (Chicago: Quadrangle Books, 1963).

⁵⁴ Giulia Sandri, Antonella Seddone, and Fulvio Venturino, *Party Primaries in Comparative Perspective* (London ; Routledge, 2016), <https://www.taylorfrancis.com/books/e/9781315599595>; Reuven Y. Hazan and Gideon Rahaṭ, *Democracy within Parties: Candidate Selection Methods and Their Political Consequences*, Comparative Politics (Oxford ; Oxford University Press, 2010); J. Andrew Sinclair, "Party Nominations and Electoral Persuasion," in *The Oxford Handbook of Electoral Persuasion*, ed. Elizabeth Suhay, Bernard Grofman, and

Has voter turnout increased?

Increased turnout was one of the main expectations associated with Proposition 14.⁵⁵ Unfortunately, as with the election of more moderate or collaborative legislators, this effect is difficult to evaluate. There are several issues to consider: overall participation in the primary and general elections, participation in specific contests, and the meaningfulness of the participation. This answer provides a brief overview; see the additional questions at the end for a longer explanation (“How should we count turnout?”).

Beyond questions about how to count turnout, it can be very hard to distinguish the effects of changes to the primary system from changes in other political institutions. For example, starting in 2012, California moved all ballot propositions off the primary ballot to the November general election ballot, removing an important reason for voters to participate in primaries.⁵⁶

Overall participation. The Secretary of State’s office releases turnout numbers that reflect the total number of registered voters who cast *a ballot* in the election. This type of participation varies considerably from year to year, even without changes to the primary laws. Political circumstances or the heightened interest attendant to presidential election years can explain much of the variation.

California used typical partisan primaries between 2002-2010. In that period, the high and low turnout figures both came from the same year because, in 2008, California split its presidential primary from the primary election for the other offices. In this period, participation ranged from a high of 57.7% (February 2008) to a low of 28.2% (June 2008). In 2004, when both the presidential and non-presidential primaries took place simultaneously, the participation rate was 44.3%. In the more typical midterm years in 2002, 2006, and 2010 participation was, respectively: 34.6%, 33.6%, and 33.3%.

After the adoption of the top-two, for 2012-2020, primary participation ranged from a low of 25.2% (June 2014) to a high of 47.7% (June 2016), a gap of just under 23 percentage points. The 2020 combined presidential and regular primary also had a high turnout, 46.9%; that figure was a much higher number than the combined primary from 2012, at 31.1%. Both the 2016 and 2020 numbers were slightly higher than the participation in the 2004 presidential primary. Participation in the Trump-era midterm at 37.5% (June 2018) was much higher than the last Obama-era midterm’s 25.2% (June 2014), a gap of more than twelve percentage points. The 2018 midterm in California had a higher participation rate than the 2002, 2006, and 2010

Alexander H. Trechsel (Oxford University Press, 2020), 862–84,
<https://doi.org/10.1093/oxfordhb/9780190860806.013.48>.

⁵⁵ Eric McGhee, “Open Primaries” (San Francisco, CA: Public Policy Institute of California, February 2010),
https://www.ppic.org/wp-content/uploads/content/pubs/atissue/AI_210EMAI.pdf.

⁵⁶ An outstanding observation in Thad Kousser, “The Top-Two, Take Two: Did Changing the Rules Change the Game in Statewide Contests?,” *California Journal of Politics and Policy* 7, no. 1 (February 5, 2015),
<https://doi.org/10.5070/P2CJPP7125438>.

midterms; a national study by the Bipartisan Policy Center identified top-two rules as having the highest participation rates that year.⁵⁷

After the modest turnout in 2012, the low participation in 2014 caused alarm. Yet *Los Angeles Times* reporter Mark Barabak presented another possible explanation for that year's low turnout: "relative contentment + a sense of predestined outcome = little incentive to vote."⁵⁸ The 2014 election was the off-year for a U.S. Senate election and the statewide ticket was headed by relatively popular incumbent Democrat Jerry Brown, facing no meaningful opposition. It is not clear that the higher turnout in the more turbulent years of 2016, 2018, and 2020 is necessarily an indicator of healthier politics.

To sum up: overall participation varies a great deal year-to-year based on national context, the existence of simultaneous presidential primaries, and the state political mood. It is *not* the case that turnout immediately spiked with the adoption of Proposition 14; it *is* the case that the 2014 election had the lowest turnout of the 2002-2020 elections; and it *is* the case that the 2016, 2018, and 2020 elections had relatively high turnout compared to the period using more typical partisan primaries in 2002-2010.

Participation inequality. The participation numbers reported by the Secretary of State's office, while accurate, can also be misleading. The aggregate turnout reported by the Secretary of State reflects the *number of ballots*, not what voters did with those ballots. Not all participation is equal.

Before the adoption of the nonpartisan top-two, unaffiliated voters had to ask to vote on a party ballot; if they did not request a party ballot, they could still vote for all the nonpartisan offices and the ballot propositions. Many unaffiliated voters did not choose a party ballot. In every year using the old system, then, a substantial number of voters did not participate in the primary *for the offices to which the top-two system applies*. In 2010, for example, 8.5% of the total primary electorate did not vote on a party ballot including those offices.⁵⁹ That fact shrinks participation estimates: removing non-party voters causes total participation to drop to 30.5% that year. Since voters of the American Independent, Green, Libertarian, and Peace and Freedom Party were also excluded from the Democratic and Republican primaries – and, in the end, these parties did not elect any candidate to public office – the participation in the major party primaries amounted to 29.6%. While not very different from the reported 33.3% participation rate that year, this gap still represents many people in a state as large as California.

⁵⁷ John C. Fortier et al., "2018 Primary Election Turnout and Reforms," 2018, <https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/03/2018-Primary-Election-Turnout-and-Reforms.pdf>.

⁵⁸ Mark Barabak, "Poor California Primary Turnout Explained: Contented People Stay Home," *Los Angeles Times*, June 3, 2014, sec. California, <https://www.latimes.com/local/politics/la-me-pc-california-primary-voter-apathy-20140603-story.html>.

⁵⁹ Counting unaffiliated voters and voters affiliated with minor parties denied official state recognition (they are reported in the same column in the Secretary of State's *Statement of Vote*.)

Since the adoption of the top-two election system, voters face fewer formal barriers to primary participation but potentially have reasons to abstain in same-party general elections. Voters without a candidate on the ballot from their party may decide to skip voting in the contest. This phenomenon has been a major focus of analysis for scholars of the top-two election system. Estimates for the “roll-off” of “orphans” in same-party general elections can be as large as 7%.⁶⁰ Abstaining is also not a random event: “orphaned” voters are less likely to abstain if they identify a candidate as being ideologically closer to their own views.⁶¹ It is possible that some of this roll-off could be countered by mobilizing unlikely voters, although campaigns have not necessarily done so.⁶²

To sum up: the old system made it more difficult for nonpartisan voters to participate in the primary, and many did not; in the new system, some voters choose to skip some races in the general election. This is an example of the trade-offs inherent in choosing electoral systems.

Meaningful participation. As mentioned earlier, Proposition 14 created a *nonpartisan top-two election system*, not just a “top-two primary.” This distinction creates some confusion about the appropriate turnout comparisons. For example, in the 2014 primary, participation was low—at 25.2%. It is possible to compare that percentage to the other primary elections and say that participation was lower because 25.2% (in 2014) is a lower number than 33.3% (in 2010). Nevertheless, the 2014 primary also had different political consequences than the 2010 primary: in some races, the 2014 primary did *not* decide which candidate would win the election, even in safe Democratic seats. Since some safe Democratic seats had competitive same-party general elections that year, in those districts, the correct comparison might be between the 2014 *general election* turnout and the 2010 *primary election* turnout.

Furthermore, if we are thinking about political incentives, it is important to recognize that elected officials do not always know in advance when they will face a serious challenge in their districts, but instead assess potential types of threats. In safe seats, elected officials have to recognize the *risk* that they will face the larger general election turnout in a same-party contest at some point in the future. Even if the total electoral risk is small, it is still real. In 2014, incumbent Democratic Assemblyman Raul Bocanegra easily won 62.5% of the primary vote in AD39. In the primary, Democrat Patty Lopez placed a distant second with only 23.6%. Yet, in the general election, Lopez

⁶⁰ Shawn Patterson, “Estimating the Unintended Participation Penalty under Top-Two Primaries with a Discontinuity Design,” *Electoral Studies* 68 (December 2020): 102231, <https://doi.org/10.1016/j.electstud.2020.102231>; Daniel D. Bonneau and John Zaleski, “The Effect of California’s Top-Two Primary System on Voter Turnout in US House Elections,” *Economics of Governance* 22, no. 1 (March 2021): 1–21, <https://doi.org/10.1007/s10101-021-00249-8>.

⁶¹ Colin A. Fisk, “No Republican, No Vote: Undervoting and Consequences of the Top-Two Primary System,” *State Politics & Policy Quarterly* 20, no. 3 (September 2020): 292–312, <https://doi.org/10.1177/1532440019893688>.

⁶² Seth J. Hill and Thad Kousser, “Turning Out Unlikely Voters? A Field Experiment in the Top-Two Primary,” *Political Behavior* 38, no. 2 (June 2016): 413–32, <https://doi.org/10.1007/s11109-015-9319-3>.

defeated Bocanegra 50.5%-49.5%, in one of the more shocking defeats of the top-two era—and in a general election in which more than twice as many votes were cast as in the primary.⁶³

⁶³ Bocanegra would come back to win the seat in 2016, only to be forced to resign in 2017 amid sexual harassment allegations.

III. Assessing the Impact on Politics

Why is it so hard to get simple answers about the effects of the top-two?

It can be frustrating for citizens, journalists, and advocates to have political scientists provide different assessments about the effects of the top-two reform. It is important to understand why these disagreements exist.

First: it is hard to isolate the effects of the top-two system because it was introduced at the same time as other major changes.

At the dawn of the new century, the annual failure to pass a budget on time amid partisan bickering in Sacramento caused a serious governance crisis. Californians, disapproving of elected officials and despairing of the condition of state politics, adopted several reforms.

In 2010, voters passed Proposition 14 to establish the top-two election system. They also adopted a citizens' redistricting process (2008), a simple majority budget requirement (2010), and new types of term limits (2012). Californians also passed new taxes on a ballot measure in 2012, supported by Governor Jerry Brown, which helped alleviate the state's chronic budget shortfalls.⁶⁴ Moreover, the state became more solidly Democratic during this period. These overlapping events make it quite challenging to evaluate what any particular reform accomplished.

The difficulty in assessing what any single reform has accomplished should not obscure what has happened. Approval of the state legislature on PPIC surveys went from 9% to 49% among likely voters in 2010 and 2020.⁶⁵ By 2016, the *Los Angeles Times* noted the on-time budgets and declared "fiscal gridlock" to be "a thing of the past."⁶⁶ Given a chance to recall the governor in 2021, Californians instead retained Gavin Newsom in office by a large margin. California is projected to have a budget surplus in 2022 of nearly \$100 billion instead of the yearly shortfall. This is not to say the state does not face real and serious policy challenges: of course, most voters have ongoing concerns. Nevertheless, the combination of budget shortfalls, policymaking gridlock in Sacramento, and voter frustration with elected officials have been diminished as the central theme of California politics.

⁶⁴ Ben Adler, "The Make-Or-Break Moment Of Jerry Brown's Second Governorship," January 3, 2019, <https://www.capradio.org/128438>.

⁶⁵ "PPIC Statewide Survey: Californians and Their Government - March 2022: Likely Voters - Time Trends," March 2022, <https://www.ppic.org/wp-content/uploads/time-trends-likely-voters-0322.pdf>. This is not just an artifact of the pandemic, either; legislative approval was relatively steady in 2019-2022.

⁶⁶ John Myers, "Remember When California's Budget Was Always Late? Here's Why Fiscal Gridlock Is a Thing of the Past," *Los Angeles Times*, June 18, 2016, <https://www.latimes.com/politics/la-pol-sac-california-budget-gridlock-over-20160618-snap-story.html>.

Did the top-two make the difference? Redistricting? Simple-majority budgets? Good fortune? All of them together? Figuring out the effect of any given reform is difficult.

Second: political science is a collective and ongoing endeavor. Scholars try a variety of approaches to answer questions and continue to develop new methodologies. Each election cycle has produced more data generated with varying external circumstances. Research done in 2012 would not capture the unusually low turnout year of 2014; research using 2012 and 2014 misses the increases in participation in 2016-2020. The entire 2012-2018 period of the top-two system took place in the very large shadow of the second governorship of Jerry Brown. Studies using different methodologies and conducted at different times may produce different findings without any of them being “wrong.” The variety of data, methods, and results helps scholars collectively build knowledge about how politics works.

What do voters think of these kinds of election systems?

Generally speaking, voters seem to like the top-two system and open primaries more broadly. Preference over systems does depend to some extent on partisanship, ideology, and worldview.

In a national survey of attitudes towards election rules in 2020, voters most closely aligned with President Trump were the least likely to support the nonpartisan top-two procedure.⁶⁷ This corresponds with earlier polling data in California from 2017 in the PPIC statewide survey: with a few years of experience using the system, 60% of Californians described Proposition 14 as “mostly a good thing” while only 26% thought it “mostly a bad thing” (the rest did not know or gave a mixed answer). There is clearly a partisan trend in those responses as well, with 71% of Democrats in California considering the top-two rules “a good thing” as compared to 45% of Republicans.⁶⁸ Nevertheless, even though support for the top-two is weaker among Republicans and supporters of former President Trump, overall levels of support are substantial among all types of voters.

Did the top-two produce more moderate or collaborative legislators?

The original proponents of Proposition 14 promised the system would produce representatives who were “LESS PARTISAN” and “MORE PRACTICAL” (emphasis in the original description).⁶⁹

⁶⁷ Sinclair and Sinclair, “Primaries and Populism.”

⁶⁸ “PPIC Statewide Survey: Californians and Their Government, December 2017” (Public Policy Institute of California, December 2017), https://www.ppic.org/wp-content/uploads/s_1217mbs.pdf.

⁶⁹ Bowen, “Official Voter Information Guide: California Statewide Direct Primary Election, Tuesday, June 8, 2010”; see also: McGhee, “Open Primaries.”

Scholars have attempted to evaluate this claim, although they have reached diverse conclusions. In short: some scholars have found little or limited evidence of moderation⁷⁰ while others have found some evidence of moderation.⁷¹ (For additional information, see: “What does moderation mean?”) Recent work by political scientist Christian Grose finds that not only top-two nonpartisan primary systems are associated with greater moderation, but that open partisan primary systems are, as well.⁷²

Skepticism of the moderating effect of the top-two system is rooted in scholarship focused on the ability of parties to bolster their preferred candidates before elections even begin,⁷³ the weakness of evidence for effects of different degrees of openness among partisan primaries,⁷⁴ polarization in the nonpartisan legislatures in Nebraska (and, for the time it was used, Minnesota),⁷⁵ and the potential to use endorsements to coordinate party voters.⁷⁶

Aside from the findings directly about moderation in the top-two, reasons for optimism for a moderating effect are grounded in the scholarly literature as well. The “blanket primary” (ruled unconstitutional in *California Democratic Party v. Jones*) in some sense provided weaker incentives for moderation than the top-two, but was associated with generating compromise in the legislature.⁷⁷ The mechanism of same-party elections seems like a plausible route for electing more moderate or collaborative legislators;⁷⁸ voters seek information about candidates in these same-party general election contests,⁷⁹ candidates try to adapt their campaigns to that

⁷⁰ Eric McGhee, “California’s Top Two Primary and the Business Agenda,” *California Journal of Politics and Policy* 7, no. 1 (February 5, 2015), <https://doi.org/10.5070/P2CJPP7125441>; Eric McGhee and Boris Shor, “Has the Top Two Primary Elected More Moderates?,” *Perspectives on Politics* 15, no. 4 (December 2017): 1053–66, <https://doi.org/10.1017/S1537592717002158>; Thad Kousser, Justin Phillips, and Boris Shor, “Reform and Representation: A New Method Applied to Recent Electoral Changes,” *Political Science Research and Methods* 6, no. 4 (October 2018): 809–27, <https://doi.org/10.1017/psrm.2016.43>.

⁷¹ Christian R. Grose, “Political Reforms in California Are Associated with Less Ideologically Extreme State Legislators” (University of Southern California Schwarzenegger Institute, March 2016); Steven Sparks, “Polarization and the Top-Two Primary: Moderating Candidate Rhetoric in One-Party Contests,” *Political Communication* 36, no. 4 (October 2, 2019): 565–85, <https://doi.org/10.1080/10584609.2019.1579772>; Christian R. Grose, “Reducing Legislative Polarization: Top-Two and Open Primaries Are Associated with More Moderate Legislators,” *Journal of Political Institutions and Political Economy* 1, no. 2 (June 10, 2020): 267–87, <https://doi.org/10.1561/113.00000012>.

⁷² Grose, “Reducing Legislative Polarization.”

⁷³ Marty Cohen et al., *The Party Decides: Presidential Nominations before and after Reform*, Chicago Studies in American Politics (Chicago: University of Chicago Press, 2008); Hassell, *The Party’s Primary*.

⁷⁴ McGhee et al., “A Primary Cause of Partisanship?”

⁷⁵ Masket and Shor, “Polarization without Parties”; Masket, *The Inevitable Party*.

⁷⁶ For an evaluation of the value of endorsements, see Kousser et al., “Kingmakers or Cheerleaders?”

⁷⁷ R. Michael Alvarez and Betsy Sinclair, “Electoral Institutions and Legislative Behavior: The Effects of Primary Processes,” *Political Research Quarterly* 65, no. 3 (2012): 544–57.

⁷⁸ J. Andrew Sinclair, “Winning from the Center: Frank Bigelow and California’s Nonpartisan Primary,” *California Journal of Politics and Policy* 7, no. 1 (2015), <https://doi.org/10.5070/P2cjpp7125445>.

⁷⁹ Sinclair and Wray, “Googling the Top Two.”

electorate,⁸⁰ and the efficiency of their campaign spending suggests that they can also persuade voters to support them.⁸¹

It is possible that the power of parties is pushing up against the incentives implied by the structure of the competition, and the outcome depends on the balance of these forces and the presence of outside factors. A very interesting study (discussed earlier) from political scientist Jesse Crosson suggests that the top-two system works through same-party elections to help advantage moderate candidates, but just not often enough to moderate the legislature.⁸²

It is safest to say, at this point, that scholars have not reached a consensus on the moderating impact of the top-two election system, despite valuable research in this area. It is not particularly surprising that the scholarship has presented a variety of conclusions: researchers are studying different facets of moderation, using different types of data and methods, using data from different elections, and even sometimes including different states.⁸³

What other impacts might there be beyond moderation?

The focus on moderation reflects the campaign promises of Proposition 14, and is certainly relevant for many of the most important debates in American politics today; nevertheless, it is not the only potential consequence of changing the election rules, nor did every voter supporting Proposition 14 have the same objectives or expectations for the reform.

For example, voters could reasonably hope for an increase in the competence of elected officials. Even if the ideology of legislators and executive officeholders remains largely constant, state government can produce better-designed programs, greater efficiency, decreased corruption, improved administrative oversight, and more effective representation. One of Hirano and Snyder's main findings in *Primary Elections in the United States* is that primaries (broadly) help select more qualified candidates and encourage voters to hold them accountable for performance while in office.⁸⁴ While these authors did not extend that claim to the top-two system *in particular*, these are types of outcomes that stand apart from ideological moderation.⁸⁵

⁸⁰ Sparks, "Polarization and the Top-Two Primary."

⁸¹ Steven Sparks, "Campaign Spending and the Top-Two Primary: How Challengers Earn More Votes per Dollar in One-Party Contests," *Electoral Studies* 54 (August 1, 2018): 56–65, <https://doi.org/10.1016/j.electstud.2018.04.018>.

⁸² Crosson, "Extreme Districts, Moderate Winners."

⁸³ E.g., are we studying California alone, the closely related California and Washington rules, or all (structurally) nonpartisan rules? There are good reasons to make all of these different choices as a researcher; these choices, though, influence the results and can help explain some of the divergence.

⁸⁴ Hirano and Snyder, *Primary Elections in the United States*.

⁸⁵ "There is some evidence from California and Washington that the top-two system has the potential to elect more moderate candidates. However, since it is such a recent reform in these two states and has only been used in one other state [for Congress], we cannot yet draw firm conclusions." Hirano and Snyder, 306.

It is worth observing, moreover, that some democratic goods voters seek, such as competence in their elected officials, descriptive representation, or performance accountability, might work at cross-purposes with achieving ideological moderation. Consider a Republican voter facing a choice, from his or her perspective, of Democrat A (more moderate, and possibly less competent) or Democrat B (more liberal, and possibly more competent). If the Republican voter preferred the more competent candidate despite that candidate's liberalism, is that necessarily a failure of the top-two system?

We also know that legislators do a great deal beyond simply occupying a location on the ideological spectrum. Some could be more effective at constituent services, more responsive, or better able to provide local political benefits.⁸⁶ In addition, research suggests that voters seek descriptive representation in same-party general elections (on the basis of race, ethnicity, and gender) when party cues are not available.⁸⁷ Even two candidates of roughly similar ideological orientations may choose to focus on different issues, affecting everyone working in those policy areas.⁸⁸ Politics is a very messy business with a host of inputs and a host of outputs; as additional research is conducted, we should gain a clearer insight into the main question (moderation or not) as well as more exploration of these other potential consequences. Even if these effects are not what the campaign for Proposition 14 promised, they may be outcomes that California voters like and are willing to sustain.

Did the top-two system make the Republican Party uncompetitive in California?

In brief, no. Other forces besides the top-two system are responsible for the Republican Party's weakness in California.

Political scientist Kenneth P. Miller has identified a range of factors that have contributed to the Republican Party's decline in California, such as the state's underlying progressive political culture, its demographic and economic changes, and the national realignment of the two parties. In combination, these and related factors caused the state's partisan balance to tip decisively in favor of Democrats near the turn of the twenty-first century—*before the introduction of the top-two system*.⁸⁹

⁸⁶ Not all the electoral outputs in the classics of legislative behavior are about ideology. See David R. Mayhew, "Congressional Elections: The Case of the Vanishing Marginals," *Polity* 6, no. 3 (1974): 295–317, <https://doi.org/10.2307/3233931>.

⁸⁷ Sadhwani and Mendez, "Candidate Ethnicity and Latino Voting in Co-Partisan Elections"; Sara Sadhwani, "Asian American Mobilization: The Effect of Candidates and Districts on Asian American Voting Behavior," *Political Behavior*, May 6, 2020, <https://doi.org/10.1007/s11109-020-09612-7>; Stauffer and Fisk, "Are You My Candidate?"; Sara Sadhwani, "The Influence of Candidate Race and Ethnicity: The Case of Asian Americans," *Politics, Groups, and Identities*, February 1, 2021, 1–37, <https://doi.org/10.1080/21565503.2021.1877749>.

⁸⁸ An argument made in Sinclair et al., "Crashing the Party."

⁸⁹ Kenneth P. Miller, *Texas vs. California: A History of Their Struggle for the Future of America* (New York, NY: Oxford University Press, 2020), 121–22.

By 2007, Republican Governor Arnold Schwarzenegger (the last Republican to be elected statewide) told the GOP state convention that the party was “dying at the box office.”⁹⁰ In 2008, Barack Obama, the Democratic candidate for president, won more than 60% of the statewide vote—a pattern that would be cemented in subsequent presidential elections.

In 2010, the last year with the prior partisan primary, and nationally a very good year for Republicans, the California Republican Party lost every statewide office. Democrats won the majority of the U.S. House seats, California Assembly seats, and had a comfortable majority in the State Senate as well.

As of yet, the top-two election system has not helped Republicans reverse this trend, but it is doubtful that it has accelerated the party’s decline, either. Whether by party registration, presidential voting patterns, publicly available survey data, or the outcomes of elections covered by Proposition 14, it is clear that most Californians are disinclined to favor Republican candidates.

In 2014, in the first statewide election using the top-two system, Republicans were equally as unsuccessful in the contests for statewide office as they had been in 2010 with the old partisan system. In 2010, despite vast expenditures and the “Tea Party” wave, Republican gubernatorial candidate Meg Whitman won only 40.9% of the general election vote against Jerry Brown. In the lieutenant governor’s race, Abel Maldonado—who, along with Governor Schwarzenegger, was one of the architects of the top-two system—won only 39% of the vote against Gavin Newsom. Fast forward to 2014: Republican gubernatorial candidate Neel Kashkari won 40% of the vote against Jerry Brown and the Republican candidate for lieutenant governor, Ron Nehring, won just under 43% of the vote against Gavin Newsom. Whitman, Maldonado, Kashkari, and Nehring are fairly different candidates – but they all carried the “R” label into the election in a state continuing to trend toward Democratic dominance.

The top-two election system does, though, provide a way to have competitive elections even as one party continues to decline. Competitive states, and districts within them, are rare. For California, and other states interested in such rules, nonpartisan election procedures are one potential way of continuing to have some kind of meaningful democracy even when the vast majority of a state’s citizens prefer one party.

⁹⁰ Evan Halper and Scott Martelle, “State GOP Is ‘dying at the Box Office,’ Gov. Says,” *Los Angeles Times*, September 8, 2007, <https://www.latimes.com/archives/la-xpm-2007-sep-08-me-arnold8-story.html>.

IV. Additional Details

What happened in CD31 in 2012?

This is the “Miller-Dutton” congressional election. It is also a commonly referenced example of something going wrong with the nonpartisan top-two election procedure.

The story takes place in California’s 31st congressional district, a fairly safe Democratic seat east of Los Angeles in San Bernardino County. The Republican (two-party) presidential vote share in 2012 was 42%. Yet, two Republicans, Bob Dutton and Gary Miller, advanced to the general election; Miller won the seat. What happened?

Redistricting set two unusually well-qualified Republican candidates on a path to conflict with each other that would also prove disastrous for the Democratic Party. Gary Miller was an incumbent U.S. House member with many years of experience in public life. As an incumbent member of congress, Miller possessed significant financial advantages over his opponents in both parties. Bob Dutton, though, was also a well-qualified candidate: had been the Republican’s leader in the State Senate. He also had long experience with public office and campaigns.

Four Democrats—Pete Aguilar and three others—also ran. Aguilar, the strongest Democrat, had been active in local politics in the city of Redlands, but both Republicans were very experienced campaigners, armed with meaningful amounts of campaign cash. The Democratic Party failed to mobilize enough resources and endorsements behind any candidate. The result was a divided Democratic vote amid a low-turnout election; paired with an even split of the Republican primary vote, only the two Republicans advanced.

Aguilar, the leading Democrat, fell short of second place by 1,376 votes. Miller finished in first with 26.7%; Dutton came in second with 24.8%; and Aguilar came in third with 22.6%. In the general election between Miller and Dutton, Miller won 55.2% of the vote and the seat.⁹¹

This case of the district’s majority party being shut out of the general election may be a troubling outcome, but it is the exception that proves the rule: these are rare events. Out of the several hundred top-two elections, this is the *only* seemingly safe Democratic seat to be lost in this fashion. Furthermore, to pull this off in 2012, it took such low turnout (with no serious contest in the Democratic presidential primary to generate excitement, and an uncompetitive Senate race as well) that the sum of the vote of the two Republican candidates also exceeded the sum of the vote earned by the four Democrats in the primary – so, in the actual primary electorate at least, it was *not a safe Democratic seat*. Aguilar’s campaign also successfully reached relatively few of the available voters: he obtained only 14,181 primary votes in a district with 106,820 registered Democrats.⁹² While these conditions could recur, it is the sort of thing unlikely to

⁹¹ For primary vote totals, see California Secretary of State, “Statement of Vote: June 5, 2012 Presidential Primary Election,” <https://elections.cdn.sos.ca.gov/sov/2012-primary/pdf/13-sov-summary.pdf>

⁹² California Secretary of State, “Report of Registration as of October 24, 2016: Registration by U.S. Congressional

happen very often. Miller would not even contest the seat in 2014; Aguilar would go on to win it that year and to hold it every year since.

How should we count turnout?

This question returns to the topic of meaningful participation, highlighting:

1. Same-party general elections shift the meaningful choice from a lower-turnout primary to a higher-turnout general election.
2. Even with the roll-off of “orphaned” voters who have no candidate of their own party on the ballot, participation in the same-party general election is arguably more meaningful for those who choose to vote because they are doing more than selecting a near-certain general election loser.

Consider Representative Nanette Barragán of California’s 44th Congressional District in 2016, a heavily Democratic district in Los Angeles. This district’s Republican two-party presidential vote share in 2012 was 14 percent, declining to 13 percent in 2016 before increasing to 20 percent in 2020. To say that it would be hard for a Republican to win the seat would be an understatement. It is precisely the sort of district that would have been won, in practice, in the primary under the old system. How did Barragán get elected?

The 2016 primary contest featured eleven candidates, including eight Democrats. Barragán’s most serious rival was Isadore Hall III, an experienced Democratic politician, who declined to run again for State Senate and entered the contest supported by the endorsements of many elected officials in the state party. Hall placed first in the primary with 40% of the vote; Barragán came in second with 22%.⁹³ If this had been the result of a partisan primary, Hall would have won the primary and, almost by default, the seat. With the nonpartisan top-two system, though, the contest continued on to the general election. Barragán defeated Hall 52.2% to 47.8% in the general election.

What is the right way to think about turnout, then? Should we focus on the primary, or on the general election? In the primary, 100,276 votes were cast, including 90,141 split among the eight candidates from the Democratic Party. In the general election between Hall and Barragán, 178,413 voters participated. More broadly, comparing the *primary* participation in all of California’s congressional districts in 2002-2010 to the *general* participation in CD44 in 2016—the election that put Barragán in first instead of second—no other congressional partisan primary election in 2002-2010 had more voters participate. In fact, the 2016 Barragán-Hall general

District,” <https://elections.cdn.sos.ca.gov/ror/ror-pages/15day-general-12/congressional1.pdf>.

⁹³ Note that even though two Republican candidates in the contest evenly split the Republican vote, this did not result in a Republican-on-Republican general election; together, the two Republicans mustered only about 9%, with the leading Republican winning 5.5% of the vote.

election had more than double the average voter participation in the state's 2002-2010 congressional primaries.

The 2016 Barragán-Hall general election was also very competitive. Given prior research on the roll-off of orphaned voters, undoubtedly some of the district's Republicans, if they voted in the election for other offices, skipped the general election contest between Barragán and Hall. None of them were required to do so by law, though, and those that decided to participate had an opportunity to meaningfully influence who would represent them in Congress. Although the district was heavily Democratic, it had 35,682 registered Republican voters and 79,512 No Party Preference voters shortly before the election.⁹⁴ Under the old system, Republicans would not have been able to express a preference between Barragán and Hall; although the unaffiliated voters could have chosen to participate, they faced an additional barrier to doing so, and many would have likely not taken the Democratic ballot in the primary.

Something is lost, of course. The 35,682 Republicans in CD44 did not have an opportunity to express their preference for a Republican—however hopeless that candidate's cause—in the general election.⁹⁵ That is a different kind of participation: a group of voters preference-signaling rather than selecting. There are (small-d) democratic reasons to care about both kinds of participation. Arguments about the top-two system, though, should take into account the nature of this trade-off. In partisan primary systems, in the lopsided districts that make up most of the legislative districts of all kinds in the country, "the main purpose of the minority party primary is to choose the loser at the general election."⁹⁶ The top-two system offers potentially meaningful participation to all voters at both stages of the election, particularly in districts that ultimately field competitive same-party races.

What does moderation mean?

One source of confusion for journalists and practitioners trying to understand the top-two system: when political scientists say someone is more or less moderate, what does it mean? Consider moderation in these three different ways:

1. How candidates present themselves *in the election*.
2. How officeholders vote *once in office*.
3. What officeholders would vote for, if they could just enact *their own preferences*.

⁹⁴ California Secretary of State, "Report of Registration as of October 24, 2016: Registration by U.S. Congressional District."

⁹⁵ If, of course, one ran. This district did not attract a Republican candidate in 2012 or 2014, and districts are often unopposed in the general election with partisan primaries.

⁹⁶ The pithy quotation is from Benjamin Highton, Robert Huckfeldt, and Isaac Hale, "Some General Consequences of California's Top-Two Primary System," *California Journal of Politics and Policy* 8, no. 2 (April 7, 2016), <https://doi.org/10.5070/P2CJPP8230564>.

Assessing candidate ideology in all three ways can tell us something about the top-two system. It is possible to be moderate in one way and not in another: someone can sound moderate in a campaign and not vote that way; conversely, someone can sound extreme as a candidate and then turn out to be a centrist in office. And a politician who neither sounded moderate in the election nor voted moderate as a member of the legislature could turn out to be a moderate if circumstances provided an opportunity to express his or her real preferences.

Not all studies use the same definition, and not all studies use the same methods to try to measure these considerations, either. For example, some ways political scientists use to estimate ideologies of legislators treat them as fixed over time, meaning that any detected moderation could only come from officeholder replacement. Other measurement strategies allow for legislator changes over time but are not comparable across states. (For an excellent review of these issues in the top-two context, see the paper by Eric McGhee and Boris Shor in *Perspectives on Politics*: they use multiple measures in their paper and explain them clearly.)⁹⁷

It should not then be surprising that one paper on moderation—focused on how candidates present themselves⁹⁸—finds different results from another paper on how legislators behave.⁹⁹ Focusing on different time periods or different levels of office, as well as other methodological differences easily explains how high-quality scholarly papers can seem to point in opposite directions. More research will be required to further unpack this question.

It is also important to point out that the discussion about moderation often assumes a single-dimensional ideological space—a liberal to conservative spectrum. That may not well describe American politics; debates about the nature of political ideologies and the ways we ought to think about them are also ongoing in political science.¹⁰⁰

While the usual interpretation of the Proposition 14 language is that “less partisan” and “more practical” means “moderate,” there is another possible interpretation based on the context of the proposition’s passage: it means doing whatever is necessary for passing a budget on time and getting the mess in Sacramento off the front page of the newspaper. This gets to the third point about moderation: what officeholders might do in other circumstances. Due to the simple-majority budget reform, and the large Democratic majorities in the legislature along with Democratic governors, those same circumstances just have not come up again—legislators needing to take a tough vote to get the budget done. That kind of moderation, voting for a solution in a time of crisis, is very hard to measure without having a crisis requiring those tough votes.

⁹⁷ McGhee and Shor, “Has the Top Two Primary Elected More Moderates?”

⁹⁸ Kousser, Phillips, and Shor, “Reform and Representation.”

⁹⁹ Grose, “Reducing Legislative Polarization.”

¹⁰⁰ For example, see Hans Noel, *Political Ideologies and Political Parties in America*, Cambridge Studies in Public Opinion and Political Psychology (New York: Cambridge University Press, 2013), <https://doi.org/10.1017/CBO9781139814775>.

How does top-two compare to final-four or final-five?

As a practical matter: we don't know.

The Final-Four/Final-Five rules would allow voters to choose any candidate in the primary. The four (or five) candidates with the most votes would advance to a general election conducted with ranked-choice voting.

No state has yet used a final-four procedure; Alaska will for the first time this year. No state has adopted a final-five procedure. So, as of yet, there is no evidence to compare.

It is worth observing, though, that these systems are very closely related to the top-two. The top-two differs only in the sense that "ranking" in the second round is unnecessary; the chosen candidate is "ranked first" and the alternative is ranked second by default. They really differ in a single parameter: the number of candidates who advance.

This means the main difference is likely to be found in the meaningfulness of the primary. There is good reason for campaigns to care a great deal about primary campaigns in California: any time three or more candidates are in the race, each faces the risk that he or she could come in third and miss the general election. Candidates in California need to balance turning out an excited group of their core supporters in the primary with being able to win either a cross-party or same-party general election. Those incentives largely disappear in a top-four or top-five contest.

The potential benefit from a top-four (or top-five) election would be avoiding outcomes like CA's CD31 (discussed above). If, though, fewer than five (or six) candidates file for the office, there is effectively no primary at all.

Nevertheless, these systems are more alike than they are different. They are nonpartisan in the structure of their candidate competition. They erect no formal barriers to the participation of unaffiliated voters. They do all this and still conform to the single-member district system used in American elections, and can be adopted by states without too much change from their other current institutions. We will have to wait to see how the new Alaska system operates, and also how the "Final Five" works if any other state chooses to adopt it.

What should we watch for in 2022 and 2024?

The coming elections under the top-two system will offer much to watch. Will we see more uncontested elections? Will same-party general elections occur about as often as they did before? Will either party be "shut out" of a seat it should win? Are the same-party elections competitive or uncompetitive?

The 2022 elections provide an opportunity to see effects only revealed by the confluence of the nonpartisan election system and the work of the independent redistricting commission. Unlike in 2012, though, potential candidates and election consultants know more about how the top-two system operates. Generally speaking, incumbents have found separate districts in which to compete this year, avoiding a high-profile conflict such as the “Berman-Sherman” race in 2012. A notable exception is AD34, which features two incumbent Republican members of the Assembly.

Nevertheless, the large margins Gavin Newsom ran up in the 2021 California recall election, and the state’s overall political climate, have created a statewide context somewhat similar to 2014’s (reelecting Jerry Brown), but a national battle for control of Congress may generate more participation and interest in the general election.

Beyond redistricting, the 2022-2024 election cycle will also see the impact of California’s changes to redistricting. The first round of officials elected to the state legislature, under the new term limits, are approaching the end of their term-limited period. Enough legislators are running for different offices or retiring that CalMatters termed it “the Great Resignation.”¹⁰¹ We will start to see what a public service path looks like with the combination of the redistricting commission, the term limits, and the top-two system.

¹⁰¹ Ben Christopher, “What’s behind the ‘Great Resignation’ of California Lawmakers?,” *CalMatters*, January 10, 2022, sec. Politics, <http://calmatters.org/politics/2022/01/california-legislature-great-resignation/>.