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Title

The Aftermath of Redistricting Reform in California

Permalink

<https://escholarship.org/uc/item/48r243gw>

Journal

California Journal of Politics and Policy, 3(3)

Author

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Publication Date

2011-09-20

DOI

10.5070/P2HG6S

Peer reviewed

THE CALIFORNIA *Journal of*
Politics & Policy

Volume 3, Issue 3

2011

**The Aftermath of Redistricting Reform
in California**

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Abstract

In 2009, Matthew Jarvis and I offered differing opinions in this journal about the potential effects of redistricting reform on California's budgetary process. Jarvis suggested redistricting reform could help the process by either reducing legislative polarization, or giving Democrats the supermajority necessary to pass their budget without partisan gridlock. I argued the best approach would be to eliminate supermajority requirements for fiscal policy. Now that the new district lines have been released under the process created by Proposition 11, we revisit our arguments. I expect California's legislature to remain polarized. While a two-thirds Democratic supermajority is possible, it is not probable, and legislative dysfunction will likely remain.

Keywords: redistricting, redistricting reform, California politics, political polarization

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The Aftermath of Redistricting Reform in California

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Rejoice, for California's new golden era is upon us! Evidence notwithstanding, real people know that the source of political dysfunction in California has always been the evil and corrupt redistricting process, so by passing Proposition 11, the citizens of California have wrestled control of "the system" away from the scheming politicians whose district lines make a mockery of democracy. In contrast with previous redistricting plans produced by the likes of the nefarious Phil Burton, the good and glorious "citizen's commission" brings real political competition to the process. Obviously, this means that peace shall reign in California. Rampant partisanship will come to an end, and Democratic and Republican state legislators will sit together and sing Kumbaya while flowers grow in the heart of Death Valley and butterflies flit about in the air. Right? Well, maybe not. . . .

Of course, it is as fashionable to be cynical as it was to inveigh against the redistricting process before Prop. 11, so those who have pushed vehemently for redistricting reform now face a choice. They can either adopt a position on the future of California politics that is as Pollyannaish as their previous rhetoric was apoplectic, or they can acknowledge that redistricting reform may not be all that it is cracked up to be. However, they cannot simultaneously maintain their cynicism and their attribution of so much blame to partisan manipulation of the redistricting process.

In 2009, Matthew Jarvis and I wrote dueling articles in this journal (Buchler 2009, Jarvis 2009) on the question of whether or not redistricting reform would help the dysfunctional political system in California, particularly its budgetary process. While many "good government" advocates have spoken of the redistricting process as though it were central to political dysfunction in the past, Jarvis's argument was significantly more measured, and to be clear, the remarks in the initial paragraph of this piece are directed only at the most avid "good government" reformers, not at Jarvis. Nevertheless, he and I came to very different conclusions about how best to address political dysfunction in California.

I would like to acknowledge the helpful comments provided by Matthew Jarvis and Joe White in the process of writing this paper.

At the heart of both of our critiques was the observation that California had a unique problem. Legislative polarization is a prominent feature of the U.S. Congress and state legislatures across the country, but California's unique budgetary process made polarization especially problematic. When we wrote our 2009 articles, passage of the budget itself required a two-thirds supermajority in both chambers of the state legislature. Since then, the passage of Proposition 25 has changed the process such that the budget itself can pass on a simple majority vote, but a tax increase still requires a two-thirds supermajority.

Fundamentally, then, the rules are still supermajoritarian because the Democratic majority¹ must either bargain with ideologically distant Republicans in order to find votes from two-thirds of the legislature, or accede to the Republican's ideologically extreme demand that taxes *never* increase in order to pass a plan without Republican votes. Either approach requires a process that is essentially supermajoritarian, so the structure of the budgetary rules is still fundamentally supermajoritarian.

In the context of supermajority requirements even more difficult to meet than the U.S. Senate's, polarization creates gridlock even under unified party control of government because the majority party always needs to negotiate with even a small and ideologically distant minority. The difficulty of doing so puts a strain on the political process itself.

While Jarvis and I agreed with this assessment of the problem, we disagreed on the best options to address it. Jarvis argued that the redistricting process should be reformed in order to draw more competitive districts. In contrast, I argued that weakening the supermajority requirements would be a more fruitful avenue for reform. Since then, California has implemented Proposition 11, creating a new redistricting process, and the hope of many reformers was that we would see more competitive districts as a result. Since this hope was in line with Jarvis's recommendation, and in contrast with my recommendation, the release of the new district lines provides us with the opportunity to revisit the debate and assess the current state of California politics in the new era of redistricting.

I see very little likelihood that the new redistricting process will reduce legislative polarization, nor that it will smooth out the budgetary process. It is possible that the Democrats will win enough seats in the legislature to pass anything they want by reaching the two-thirds threshold in both chambers, but the odds are somewhat against that. Other recent reforms have the potential to reduce polarization in the long run, such as new primary rules, but short-term decreases in polarization are unlikely. Other reforms have changed the supermajority requirements, but the fact that raising taxes still requires a two-thirds supermajority means that in the context of highly constrained budgets, legislative gridlock is likely to remain a prominent feature in California, in contrast with the hopes of reformers. The best procedural

solution to California's political paralysis remains the continued weakening of supermajority requirements.

Revisiting the Arguments

First, consider the argument posed by Jarvis in his 2009 article. He recommended that California adopt a new approach to redistricting with the aim of creating more competitive districts for two reasons. First, he argued that gerrymandering is a small but important contributor to polarization, and increasing the number of competitive districts might increase the number of moderates in the state legislature, which would make it easier to negotiate across party lines to attain the two-thirds supermajority necessary for passing a budget (or in the post- Proposition 25 world, a budget with at least some tax increases).

Jarvis also argued that drawing more competitive districts might yield Democratic Party supermajorities of sufficient size that polarization would become procedurally irrelevant because if Democrats held two-thirds of the seats in both chambers, they would not need to negotiate with Republicans who are too ideologically distant for constructive negotiation to occur anyway. It is important to note that this argument acknowledges the fact that drawing more competitive districts creates partisan disproportionality in the legislature, which many reformers ignore, but the point is to create a legislature that is more functional rather than one that is representative in a purely mathematical sense. After all, under supermajoritarian rules, strict proportionality does not necessarily yield policy outcomes that are congruent with public opinion. To be sure, Jarvis did not argue that redistricting reform would necessarily alter politics in a fundamental way, nor that these reforms would necessarily work, but that for lack of a better policy tool available, it was a reasonable desperation move with a small but nonzero chance of success.

In contrast, I argued that the only real solution to California's most pressing dysfunction would be to eliminate supermajority requirements for budget passage. While I agreed that the central problem was the interaction between supermajority requirements and legislative polarization, I argued that redistricting reform would not work. As I have argued in several other contexts, including a more recent book (Buchler 2011), competitive districts undercut representation. I also expressed skepticism about the idea of using the biases induced by competitive redistricting plans to create artificial supermajorities, both because of the inherent risks and the representational consequences.

Finally, I argued that reducing polarization through competitive redistricting plans would be nearly impossible because legislative polarization has roots far deeper than redistricting. After all, empirically, it is difficult to explain polarization with the disappearance of competitive districts. To make that point in my 2009

article, I demonstrated two points. First, at the national level, while polarization in Congress has increased, competitive districts didn't disappear, contrary to conventional wisdom.

I demonstrated that polarization was as much of a trend in competitive districts as it was in noncompetitive districts. Therefore, I argued that polarization had deeper roots that were unrelated to redistricting. More specifically, I pointed to three factors—candidate policy preferences, the primary/general election structure, and general patterns in voting behavior. Polarization occurs because officials themselves have extreme policy preferences to which they adhere once in office, because the primary system tends to favor the nomination of extremists, and because voters do not punish extremism at the ballot box. So, have these factors changed since 2009?

Consider, first, the issue of candidate policy preferences. Candidates are not pure office-seekers. They have policy preferences, and those policy preferences are among the primary factors in their decisions to run for office in the first place. If those preferences are extreme, then candidates are unlikely to feign moderation to win office because doing so would defeat one of the main purposes of running. Has this changed? No. Public office is still appealing primarily to those who care deeply about policy, and those who care most deeply are generally not moderate, at least in the current political atmosphere.

If there is no reason to believe that politics have suddenly become less attractive to extremists and more attractive to moderates, then we should expect the pool of candidates to be roughly the same post-Prop. 11 as pre-Prop. 11. Thus, to the degree that legislative polarization is driven by extreme policy preferences on the part of the officials themselves, legislative polarization is likely here to stay for the foreseeable future.

The second factor I discussed in my 2009 article was the primary/general structure of elections. Of course, this has changed. With the passage of Proposition 14, California now has an electoral system closer to that of Louisiana, in which all candidates run in a single primary, and the top two candidates face each other in the general election, even if they are the same party. The motivation is the belief that if we can get Democrats to seek votes from Republicans in the primary, and get Republicans to seek votes from Democrats in the primary, then the candidates will have fewer reasons to run to the extremes to win primaries.

Advocates of loosening primary participation rules hope that such reforms will bring more “independents” into the primary process, which could provide another moderating influence. Of course, true independents are generally less than 10% of the population, and they tend to be less politically attentive than partisans (Keith et al. 1992), so hoping for their participation in any primary system is probably futile. If we cannot reasonably hope that a sudden infusion of independent voters into the

primary system will provide a moderating influence, then the only way for Prop. 14 to have that influence would be through changes to the habits of partisan voters.

In order for that to happen, voters have to look at the primary process in a fundamentally different way. In principle, partisan voters might begin to engage in crossover voting more regularly because the new primary system reduces the cost of doing so. Specifically, they could engage in “hedging,” meaning that they could vote for the candidate in the opposing party that they find least objectionable, which would generally be the most moderate. If that happened on a large scale, the new primary system could serve as a moderating influence.

These same voters were allowed to “hedge” as much as they wanted during California’s experiment with the blanket primary. Yet, prior to the Supreme Court’s ruling in *Democratic Party v. Jones* striking down the blanket primary, California was not marked by significant legislative depolarization driven by changes in primary voting patterns, so there is little reason to expect depolarization in the immediate wake of Prop. 14. In principle, it could happen, but it would require voters to change how they view primaries. That is possible, and more likely than a redistricting-based solution, but hardly a realistic prediction for the short term.

The final factor I discussed in my 2009 piece was the basic pattern of voting behavior. Voters do punish extremists at the polls, but not very harshly. Extreme candidates only win slightly fewer votes than moderates, and as long as extremists don’t lose that many votes, there is little reason for them to change their behavior. As I discussed empirically, even competitive districts have seen their legislators grow more polarized because voters don’t punish polarization very harshly.

Ultimately, the voters of California must bear the responsibility for the dysfunction caused by a polarized state legislature, and just grouping them into slightly more competitive districts won’t force them to punish extremism or reward moderation. As I have argued in a recent book (Buchler 2011), elected officials are essentially just public employees, and if their employers—the voters—do not punish and reward them for their behavior appropriately, then that is the fault of the employers, not the employees, and if employers do not change their behavior, they cannot expect employees to change their behavior.

If the fundamental factors underlying legislative polarization remain in place, then there is little reason to think that polarization will diminish by altering what is, at most, a minor contributor (redistricting). So, regardless of the plans that could have been produced by the new redistricting commission, the state legislature is likely to remain as polarized as ever unless the long-term consequence of the new primary participation rules in California is to encourage the type of cross-over voting that reformers had hoped to facilitate. If successful, though, such results would not be attributable to redistricting reform. So, redistricting reform is unlikely to

depolarize the state legislature, but that does not mean that redistricting plans are irrelevant. So, we must now discuss the new lines and their likely consequences.

The Post-2010 Plan

Jarvis (2011) aptly summarizes the vital features of the redistricting plan adopted by the citizens commission, so there is no need to duplicate the full description in this article. In many ways, the results were surprising, and not entirely anticipated either by my 2009 argument, nor by Jarvis's 2009 argument. Jarvis argued for the creation of more competitive districts, and many advocates of redistricting reform pushed the new process precisely because they believed it would lead to more competitive districts.

However, the new redistricting plan does not uniformly increase competition. In order to count the number of competitive districts, Jarvis uses a variety of methods, including voter registration figures, 2008 presidential voting patterns, 2010 gubernatorial voting patterns, and two other group estimates. Referring to Table 1 of his current (2011) article, by most measures, the new redistricting plan appears to give the Assembly *fewer* competitive districts than it had under the post-2000 map. By the same measures in Table 1 of Jarvis's article, the Senate will have at most three new competitive districts. If we accept the proposition that reducing the number of competitive districts increases legislative polarization, this would suggest that the Assembly would become paradoxically more polarized.

I have rejected that argument, both here and in my original 2009 piece, but in any case, it is nearly impossible to argue that the new lines will reduce legislative polarization in any significant way. The staunchest advocates for redistricting reform would have to express some disappointment that the commission did not produce more competitive districts, but the simple and practical fact is that drawing competitive districts in a state in which voters self-sort into regions that are relatively politically homogeneous is hard unless we show utter disregard for protecting communities of interest, geographic and political boundaries. Regardless, the changes to the number of competitive districts in California are unlikely to provide the relief that Jarvis had hoped in his original 2009 article.

There is another way that the citizen's commission plan could reduce legislative gridlock. If Democrats were to gain a two-thirds supermajority in both the Assembly and Senate, then the ideological chasm between the party caucuses would become irrelevant since Democrats could pass whatever plan they like including tax increases without any Republican votes, assuming that the (currently) Democratic governor is included in the negotiations so that the plan passed is one that he would be willing to sign. As Jarvis notes, the state Senate lines may very well give the Democrats a two-thirds supermajority. Citing Redistricting Partners analysis, Jarvis

notes that there are 24 safely Democratic seats, two Democratic-leaning seats, and two swing seats out of the 40-seat state Senate. Thus, if the Democrats win all 26 Democratic and Democratic-leaning seats, they only need to win one swing seat to gain a two-thirds supermajority in the Senate. Random chance actually favors that result.

However, a two-thirds supermajority in the state Senate without a comparable majority in the Assembly doesn't give Democrats the seats they need to overcome all supermajority requirements, and the odds do not favor a two-thirds Democratic supermajority in the Assembly. Jarvis estimates the likelihood of a Democratic supermajority in the Assembly using several methods—analysis of 2008 presidential voting overlaid with the new districts, 2010 gubernatorial voting overlaid with the new districts, and Redistricting Partners district classifications. Since 2008 was an unusually good year for Democrats, and 2010 saw an unusually weak Republican gubernatorial candidate in Meg Whitman, neither of those approaches are especially informative, so let us focus on the Redistricting Partners district classifications, as I did above with the state Senate.

According to Redistricting Partners' data, Jarvis notes that the Democrats should be expected to win 48 safe districts, and two leaning districts. In order to reach two-thirds of the 80-seat Assembly, though, he notes that they would then need four out of five districts classified by Redistricting Partners as swing districts. Assuming statistical independence and equal chances in a swing district, each permutation of outcomes in five swing districts has a 0.03125 chance of occurring (since $0.5^5 = 0.03125$). Since there are six permutations of equal probability that would yield at least four Democratic victories in the swing districts (five permutations with precisely four Democratic victories, plus one permutation consisting of a Democratic clean-sweep), there is an 18.75% chance of a two-thirds Democratic supermajority in the Assembly ($0.03125 * 6 = 0.1875$).

On that point, Jarvis and I agree. Notice, though, that 18.75% is not a staggeringly good bet, and the possibility comes not from competitive districts, but from the large number of safe Democratic districts. So, under "normal" conditions with the current lines, Democrats should not be expected to win the two-thirds supermajority necessary to overcome all supermajority requirements. Instead, the state legislature should be expected to exhibit extreme polarization, gridlock, and likely a significant partisan bias making the legislature itself somewhat unrepresentative of the California population. In essence, the plan resembles a weak Democratic partisan gerrymander, but not one significant enough to prevent legislative gridlock.

While acknowledging that an event with a 18.75% chance of occurring is not a good bet, Jarvis goes on to argue that a wave election creates a more realistic chance of a two-thirds supermajority. Jarvis asks us to consider an election in which each Democratic candidate has a two-thirds probability of winning a swing dis-

trict rather than a 0.5 probability, representing a significant but not overwhelming Democratic tide. In that case, there is a $(2/3)^5$ probability of the Democrats winning all five swing Assembly districts, and there are five permutations by which the Democrats would win precisely four out of five swing seats. Each of those five permutations has a $(1/3)*(2/3)^4$ probability of occurring. Since there are five such permutations, combined with the possibility of a total Democratic sweep of swing seats, the probability that the Democrats will win at least four out of five swing seats is $(2/3)^5 + 5*(1/3)*(2/3)^4$. Thus, there is a roughly 46% chance that the Democrats will actually win the two-thirds supermajority of the Assembly in a year in which Democrats have a two-thirds probability of winning any given swing seat.

Such a shift is certainly possible, but statistically unlikely even in the context of the hypothetical tide posited by Jarvis. Moreover, the result depends on a Democratic partisan tide, and that itself is far from a certainty. After all, the trouble with waves is that they don't always flow in the same direction. In general, Democratic waves are no more likely than Republican waves. That is particularly true for 2012. With a Democratic president, a Democratic governor, and a particularly weak economy, a Republican wave seems more likely than a Democratic wave for 2012. This is not necessarily the case, and demographic shifts in California clearly favor the Democratic Party. Latinos remain the fastest-growing demographic group, and their tendency to vote for Democrats, particularly in California, suggests that there are some long-term advantages for the Democratic Party. Combined with a plan that vaguely resembles a Democratic partisan gerrymander, a two-thirds Democratic supermajority is hardly out of the realm of possibility if a Democratic tide does occur.

However, political tides are tricky things. In another previous article (Buchler 2007b), I argued against the creation of competitive districts for precisely that reason. After all, even if two nonincumbent candidates of opposing parties have equal chances of winning a district, that does not mean that an incumbent in that district has a 50% chance of losing in any given election. Incumbents possess a wide variety of electoral advantages to ensure that their chances of reelection are generally greater than the pure political geography of their districts would suggest.

The trouble with a wave election is that its consequences last beyond a single election. So, we cannot simply look at the lines themselves. The first election with the new lines will be 2012. Given the abysmal state of the economy and the party affiliations of both the president and the governor of California, a Republican wave in 2012 is at least as likely as a Democratic wave. Moreover, incumbency advantages would insulate Republicans elected in such a wave for several terms, putting a two-thirds Democratic supermajority further out of reach until state legislative term limits force 2012 Republicans out of office.

While a hypothetical Democratic tide could give the Democrats the two-thirds supermajority necessary to overcome all supermajority requirements, the more likely result is a Republican tide that cannot possibly give Republicans the ability to pass their own budget over Democratic opposition, and creates entrenched gridlock for the next several legislative sessions. Evaluated from that perspective, the new lines create the possibility of a reduction in budgetary gridlock, but at least as much of a possibility of continued gridlock.

There is, however, the representational question. Suppose the tide posited by Jarvis were to occur, and combined with the new district lines, it gave the Democrats an artificial two-thirds supermajority in the Assembly and Senate. What would that mean, in representational terms? Obviously, Democratic partisans would rejoice, but viewed from behind Rawls' "veil of ignorance," such an effect is more difficult to defend.

Current budgetary rules require a supermajority to increase taxes, although not to approve a budget itself. However, managing the budget of California without increasing taxes is exceptionally difficult, so the consequence is still legislative gridlock if neither party wins a two-thirds supermajority. One might argue, then, that supermajoritarian rules create a need for disproportionate supermajorities in order to ensure congruence between voters' actual policy preferences and actual policy output. However, the state legislature does more than simply pass budgets, and many of the things they do have no supermajority requirements. In such cases, disproportionate supermajorities pull policy output away from constituent preferences.

Perhaps more troubling is the possibility, and indeed, likelihood by Jarvis's own estimate, that the new redistricting plan will yield a Democratic supermajority somewhat short of the two-thirds necessary to overcome all political obstacles. The continued need to appeal to ideologically distant Republicans in order to raise taxes would maintain fiscal gridlock, while the disproportionality in the legislature would pull policy away from constituent preferences on nonfiscal matters anyway. From a Rawlsian perspective, that would be the worst of all possibilities.

So, what can we say about the new district lines and the consequences of redistricting reform? Gridlock appears to be here to stay. Contrary to the hopes of reformers (although consistent with my own normative arguments from Buchler 2005, Buchler 2007a, Buchler 2007b, Buchler 2009, and Buchler 2011), the citizens' commission did not create a large number of competitive districts. So, even avid reformers must admit that the new lines are unlikely to yield many new moderate legislators. Instead, we have a possible partisan bias, but not likely a bias significant enough to make supermajority requirements irrelevant.

California will continue to have a deeply polarized legislature, and consequently it will remain unable to operate efficiently because of the need to build super-

majorities across a wide ideological chasm. In fact, a likely Republican tide in 2012 may exacerbate legislative gridlock, and sustain itself for years to come due to the advantages of incumbency. The best case scenario from the perspective of reducing legislative gridlock would be that Democrats are “lucky” enough to win a disproportionate supermajority, but in aggregate, even that has representational consequences that are difficult to defend in the abstract.

Supermajoritarian Rules

Supermajoritarian rules and legislative polarization make for an untenable political situation. Eliminating supermajoritarian rules is far from easy, and Jarvis maintains that it is politically unrealistic. However, the passage of Proposition 25, which loosened supermajority requirements shows that such reforms are attainable. Moreover, if the alternative is merely to hope that an occasional election will give one party enough of a supermajority to govern on its own, it is time to think seriously about more fundamental reform.

It is unlikely that California will eliminate all supermajoritarian rules any time in the foreseeable future, but if one is concerned with the long-term political health of the state, then pursuing half-measures in the hope that they will work if assisted by some “good” luck may be less useful than attempting to move the political dialog in the direction of real reform. If a cancer-stricken patient resists chemotherapy, there may be something to gain from the placebo effects of “nontraditional” medicine, but to focus on such placebos and abandon attempts to sway the patient towards scientifically tested remedies does the patient no real good. Redistricting reform will not help California’s dysfunctional legislature. Only weakening supermajoritarian rules can accomplish that.

It should be noted that many critics of the U.S. Senate make similar arguments about the current norm of filibustering all major legislation. However, recall that in 1975, the U.S. Senate reduced the cloture requirement from two-thirds to three-fifths. Moreover, the rules for budget reconciliation allow the Senate to avoid filibusters on the very fiscal matters for which California requires supermajority votes. Disturbing as it may be, in some ways, California is more dysfunctional than the U.S. Senate, and it has nothing to do with how district lines are drawn.

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Notes

¹ A Republican majority in California’s legislature is nearly inconceivable in the modern political climate of the state.