

## **Why the Top Two Primary Fails California Voters**

Steven Maviglio

In their 2010 ballot argument for Proposition 14, the proponents of the Top Two primary made some bold promises to voters. They said the Top Two would “reduce gridlock,” “give independent voters an equal voice in primary elections,” and “elect more practical individuals who can work together for the common good.”

So far, the self-appointed “good government” groups are 0 for 3.

Gridlock in Congress is worse than ever. The California Congressional delegation is splintered and partisan, perhaps more so than in a generation.

Meanwhile, in Sacramento, a case can be made that the Legislature is finally getting things done (even though voters don’t seem to think so, given approval ratings of less than 40 percent in recent PPIC polls). But the progress that has been made is because of lopsided Democratic majorities that are working with a Democratic governor, the elimination of the need for a super-majority for approval of the state budget, and the revision of term limit laws. Experts widely agree that the Top Two primary has had minimal impact in changing Capitol culture compared to the other more significant reforms.

What about independent voters having more influence? It’s hard to make that case; fewer of them are showing up to vote. Voter turnout hit 40-year lows in both June and November.

That’s totally at odds with what Prop. 14 proponents predicted. With voters free to pick candidates from both parties in June, they argued, the top-two primary would attract hordes of voters who didn’t declare allegiance to either of the major parties. Instead, record low turnouts have given hard-core partisans greater influence.

No candidate that ran under the banner of “independent” instead of belonging to a political party came close to finishing in the Top Two. Republican turned Independent Secretary of State candidate Dan Schnur, whose candidacy was heralded as Exhibit A for how an independent candidate could succeed, received a dismal 9.2 percent of the vote, finishing fourth behind scandal-plagued State Sen. Leland Yee (D-San Francisco).

In a key Assembly race last June, moderate Orinda Mayor Steve Glazer tried to advance to the general election by squeezing between a progressive Democrat and a conservative Republican. Despite millions of dollars in independent expenditures by corporate interests, this “different kind of Democrat” failed to woo enough independent voters and finished a distant third.

In November, a battle between a moderate Democrat and a more progressive Democrat went to the moderate. But according to a Sacramento Bee analysis, it wasn’t because Republican voters threw their more conservative weight to the moderate. There was no discernible difference in the vote tally between areas with more GOP voters and those with less.

Then there's the Moderate Myth – that the Top Two has caused ruling Democrats to swing to the middle to attract independent voters. But let's look at the results.

There were eight Democrat-on-Democrat races, all but two won by the candidate who won the primary. One, Assemblyman Raul Bocanegra's upset by the unheralded Patty Lopez in southern California, was considered a fluke. The other was in the Bay Area, where Tony Thurmond topped Elizabeth Echols in the East Bay. Assemblyman Thurmond is about as progressive as they come; it's not as if the seat flipped to a moderate.

There were four showdowns between two Republicans. Two flipped after the primary: in District 74 the more conservative candidate (Matthew Harper) won in November after coming in second in June. District 26 is the one example where a more moderate candidate who came in second in the primary went on to win in November. So it was a wash.

What about the claim that the Top Two favored "practical individuals who can work together for the common good"? Supporters of the Top Two would be hard pressed to point out any data to support that claim.

Newspapers continue to report examples of how special interests are getting their way in Washington from California's Congressional delegation, as well as in Sacramento – whether it be production film credits for Hollywood donors at the state level or continued massive subsidies for Big Oil as the result of Congressional action.

If the broken promises of Top Two proponents weren't bad enough, the new system seems to have made matters worse for California.

In many parts of the state, general election voters were forced to choose the lesser-of-two-evils candidate of a party they didn't belong to. Democrats either held their noses and voted for a Republican or stayed at home in solid red areas of the state, and Republicans did the same in solid blue regions.

Data shows that a significant number of voters didn't vote for either candidate in those races. Is that the good government group's idea of democracy – not casting a vote?

Meanwhile, minor party candidates did not appear on November ballots anywhere in the state. That dealt another blow to voters being able to cast their ballots for candidates they believe in – or cast "protest" votes when candidates of neither party appealed to them. This too may be responsible for a significant undervote in many contests across the state.

But perhaps the biggest downside of the Top Two primary has been the introduction of new games and gimmicks to manipulate voters, and also a massive infusion of special interest money into California elections.

Let's begin with the first.

The Top Two primary allows voters to cast ballots for candidates they want to advance to the November election. My vote in the June election, for example, was for Tea Party Republican Tim Donnelly. It wasn't because I wanted him to be governor. It was because I wanted Governor Brown -- the candidate I wanted to triumph in November -- to have a weaker opponent.

Unfortunately (or perhaps fortunately!), Donnelly didn't advance (it's hard to believe that his campaign would have been any worse than Neel Kashkari's). But the Top Two primary gave voters the opportunity to influence races in a way they never had before. There's not too much evidence that occurred, but why even give voters the opportunity for such shenanigans? Shouldn't you vote for the candidate you want to succeed?

Political consultants around the state, engaged in new rules of the game, also were enjoined in funny business. I know of several Democratic candidates in D vs. D battles who mailed to Republican voters with conservative-sounding themes while mailing to Democratic voters with

Democratic messaging. Elected officials can't be all things to all people, but their mail sure promised that.

And then there's the money. Barrels full of it.

Independent expenditure campaigns – and special interest contributions to them – reached new heights in 2014, both from labor and corporate interests, shattering records for off-year elections. Part of the reason, say many political consultants, is that interests on both sides spent heavily to determine the November electoral line-up by pouring money into the June election, and then again in November with another round of a bout between the two candidates who finished 1-2 in June.

Case in point: the State Senate race between two Assembly members in the Sacramento area, Roger Dickinson and Dr. Richard Pan. (Disclosure: I did some consulting work for Dr. Pan in the November election.)

Pan's backers (both campaign and IE) started and ended their campaign with a full-court press, putting resources in both the June and November elections. Pan finished second in June. But his backer's campaign attacks (and resulting spending) were relentless, and he outpaced Dickinson in November.

There are some differences between the two candidates, but they aren't significant. This brutal race was largely seen as a proxy battle between Pan's medical association and labor interests, and Dickinson's trial lawyer backers. It's difficult to see how voters benefited from the contest, which would never have happened twice under the former party primary system.

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