

# Voice for Democracy

NEWSLETTER OF **Californians for Electoral Reform**

February 2014

## Californians Face Tough Trade Offs in Voting Rights Act Lawsuits...Or Do They?

by Michael Latner

A recent wave of lawsuits confronting local California leaders is bringing greater attention to requirements for fair representation under the California Voting Rights Act (CVRA), performance of local electoral systems, and reforms designed to remedy violations of the CVRA.

Across the state, in smaller cities and school districts from Santa Clarita, Visalia, Palmdale and Whittier, and even big cities like Anaheim, citizens face legal challenges to their election systems. In these systems, which are popular in the Western U.S. and associated with progressive-era reforms at the turn of the last century, the candidates who receive the most votes win city-wide, or “at-large” seats, regardless of whether or not their votes represent a majority of voters. For example, if five candidates compete for two seats, two candidates could take those seats with slightly more than 40% of total votes cast. The more candidates that run, the less likely the election is to yield a majority winner.

Further, because these are typically multi-seat elections (two or three seats are up for election every two years for a five-seat city council), well-organized “slates” of candidates, supported by the most organized voting bloc, frequently take every contested seat in this “winner-take-all” system.

Legal challenges to at-large, plurality systems have arisen as the percentage of Latino residents in these jurisdictions begins to reach parity, and in many cases surpasses, the percentage of non-Latino whites, while local elections continue to badly under-represent Latino voting preferences. For example, the majority of residents in Anaheim and Palmdale are of Latino descent, but Anaheim has only elected three Latinos to council in its history, and Palmdale has always had an all-white council. In Whittier,

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## Little-Noticed Problems with California’s Top-Two Primary System

by Richard Winger

### Voter Turnout in Primaries

California has been using a top-two system for congressional elections and elections for partisan state office starting in 2011. Proponents of this system promised the voters that if the measure passed, voter turnout would increase dramatically. In practice, voter turnout in California elections for Congress and state office has been significantly worse since the top-two system went into effect.

Excluding special elections, California first used the top-two system in 2012. The June 2012 primary election turnout (i.e., the number of voters who participated, divided by the number of registered voters) was only 31.06%, the second-lowest primary turnout in California history, which had averaged 53.09%.

California has been holding primaries since 1910, and the only primary with a worse turnout than June 2012 was the June 2008 primary. However, 2008 was an unusual year in that it held one primary in Feb. for presidential candidates (57.71% turnout) and a second primary in June for all other partisan offices (28.22% turnout).

The poor turnout in the June 2012 primary is especially surprising, given that it included a presidential primary. Until 2012, there had never been a presidential primary with a turnout lower than 41.88%, and the average turnout had been 56.22%.

For reference, the Secretary of State’s June 2012 *Statement of Votes* contains a chart showing the primary turnout for each of the last 55 statewide primaries.

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## VOTING RIGHTS [CONTINUED]

nearly 66% of residents are Latino, yet only a single Latino has been elected to council since the city's founding in 1898.

The response to these lawsuits has largely been to resist change, and then eventually adopt single-member district representation, in lieu of at-large voting. In numerous federal voting rights cases, the remedy for a diluted minority vote has been to draw district boundaries to create "majority-minority" districts or districts that greatly improve the odds of the group in question being able to elect a candidate of its choice. Palmdale is still fighting reform even in the face of a Judge ordering district elections, and Anaheim has opted to put a district plan up for citizen approval through the initiative process. Whittier looks to be trying to avoid the legal costs that Palmdale has incurred by working with opponents early on. But all seem to be moving in the direction of district elections.

This remedy—district elections—has greatly improved the representation of African-Americans in Southern states, and has proven to be an effective remedy for the worst voting rights violations, but it comes with its own costs. It is important to recall that at-large elections were also a reform brought about by "good government" Progressives at the turn of the last Century. While the motivations of these earlier reformers ranged from the application of scientific management to government to outright racism, their goal was to weaken the political machines of partisan organizations, which were based on strong ethnic coalitions and patronage.

District elections can ensure better racial and ethnic representation, but they also amplify political fragmentation along the lines represented by boundaries, in this case racial differences. Indeed, recent electoral reforms at the state level have been designed specifically to ameliorate the partisan polarization and lack of competition caused by single-member districts. A recurring theme against single-member district representation is that instead of constituents choosing their representatives, it's the other way around, and empirical evidence supports this claim.

There is less competition in single-seat elections compared to multi-seat elections in California cities. Indeed, for each one-seat increase in the number of seats being contested, about two more candidates run on average. Having more seats also increases the probability that an election is not "saturated" with incumbents, which further increases competition and turnout. So it would seem that Californians must choose between "descriptive representation" (where elected officials look like the diversity of the community they represent) and genuine

competition for leadership. *But that is not the case.*

While the CVRA is often interpreted as favoring the adoption of district elections, there are a number of alternatives that can improve representation, save voters money, and sustain competition and accountability. Preferential voting formulas like ranked-choice (voters order their preferences) and cumulative voting (voters can combine multiple votes for a single candidate) have improved the quality of descriptive representation throughout the country, including California. They also eliminate the need for costly run-off elections. Moreover, even where districts can improve neighborhood representation, such as in large cities, preferential formulas can be used in small multi-member districts (2-3 seats) to make sure that every vote counts equally.

Ranked-choice voting also brings other benefits. For example, a 3-seat multi-member district provides the best possibility for three different constituencies to gain representation. This system also eliminates vote-splitting and the "spoiler" effect, both of which inhibit minor party and independent candidates.

California citizens do not have to give up electoral competition and accountability in order to realize the core democratic principles of voting equality and effective representation. City and other local officials should be encouraged to look at the alternatives already at work in several major cities here and across the country, that are proving the viability of preferential electoral voting. §

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## TOP-TWO [CONTINUED]

### Voter Turnout in Special Elections

The turnout for special congressional and legislative elections, under the top-two system, is also markedly lower than the turnout in special elections held before top-two went into effect. California has held 19 special congressional and legislative elections under the top-two system—in 2011, 2012, and 2013. The total of 19 includes the first round, and if a second round was held, it includes that as well. The median voter turnout for these special elections has been only 13.84%, and the average has been only 15.80%.

By contrast, in the special elections held during 2009 and 2010, before top-two went into effect, the median turnout was 20.27%, and the average turnout was 21.93%. Thus special election turnout under the top-two system is down approximately one-third. These calculations exclude all special elections that were held simultaneously with a regular statewide election.

### Flexibility for Late-Entry Candidates

Another little-discussed problem with California's top-two system is that it is virtually impossible for a new candidate to emerge after the first week in March. Under the old system in effect before 2011, an independent candidate was permitted to qualify for the November ballot if he or she submitted a petition by mid-August. In 2010, three independent candidates for U.S. House used the independent procedure; in 2008, two of them did so, and one of them—Cindy Sheehan in San Francisco—outpolled the Republican nominee.

Under the top-two system, no one can get on any ballot (primary or general) unless the candidate qualifies for the primary ballot, and the deadline for doing that is in early March. For 2014, the deadline is March 7. It is true that a write-in candidate in the primary can file as late as May, but generally, being a write-in candidate in a primary and then hoping to place first or second in that primary is not a realistic strategy for appearing on the November ballot, except for the races that are so uninteresting, only one candidate filed for the primary.

Cutting off the ability for candidates to emerge in the second half of the year, for a November election, tends to cement the status quo into place. If an unexpected major event occurred in the second half of the year, leading to a public demand for new candidates, the top-two system thwarts such a development. Examples of unexpected events that caused a demand for new candidates include the assassination of Robert Kennedy in June 1968, and the surprise passage of the Kansas-Nebraska Act in 1854 by Congress, a law that opened up slavery in the formerly free

territories of Kansas and Nebraska, and which so upset anti-slavery voters that the Republican Party was formed on July 6, 1854. §

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Richard Winger is the publisher and editor of *Ballot Access News* ([www.ballot-access.org](http://www.ballot-access.org)), was a founding member of the Coalition on Free and Open Elections ([www.cfoe.org](http://www.cfoe.org)), and currently serves on the board of CfER.

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## Primaries and Partisanship

by Steve Chessin and Jim Stauffer

On NPR's "Morning Edition" Wednesday morning December 18th, 2013, David Greene and Shankar Vedantam did a story ([www.npr.org/2013/12/18/255185863/is-the-primary-system-to-blame-for-partisanship](http://www.npr.org/2013/12/18/255185863/is-the-primary-system-to-blame-for-partisanship)) concerning research performed by political scientist Nolan McCarty ([http://en.wikipedia.org/wiki/Nolan\\_McCarty](http://en.wikipedia.org/wiki/Nolan_McCarty)). After studying thousands of elections, McCarty concluded that open primaries do not reduce partisanship, because the moderates whom reformers expect to vote in those primaries just don't.

The way to reduce partisanship, according to McCarty, is to have stronger political parties, because parties want to win elections, and parties that have better control over whom they nominate can nominate moderates. But how do we get stronger political parties? McCarty doesn't say, but CfER believes that that requires proportional representation (PR). PR will allow the extremists frustrated with their "big tent" parties to split off and form their own parties, allowing the larger parties to become more focused and thus stronger.

Also, the September 1, 2013 issue of *Ballot Access News* contained an article titled "Five New Papers Issued on Relationship Between Primary Systems and Polarization" ([www.ballot-access.org/2013/09/september-2013-ballot-access-news-print-edition/](http://www.ballot-access.org/2013/09/september-2013-ballot-access-news-print-edition/)).

The five papers are:

- "A Primary Cause of Partisanship? Nomination Systems and Legislator Ideology"; Eric McGhee, Seth Masket, Boris Shor, Steven Rogers, and Nolan McCarty
- "An Experimental Test on the 2012 Primary"; Doug Ahler, Jack Citrin, Gabriel Lenz
- "Reform and Representation: Assessing California's Top-Two Primary and Redistricting Commission"; Thad Kousser, Justin Phillips, Boris Shor

*Continued on next page*



- “Primary Systems, Candidate Platforms, and Ideological Extremity”; Jon Rogowski
- “Primary Type, Polarization of State Electorates and the Ideological Composition of Primary Electorates”; Barbara Norrander, Kerri Stephens, Jay L. Wendland

These papers took different analytical approaches to studying the relationship between the type of primary and the partisanship of the resulting winners. In general, their conclusions were that, mostly, there was no strong correlation. But where a correlation was found, open primaries (i.e. primaries open to voters other than those registered with the subject party) tended to elect more partisan candidates than closed primaries (i.e. primaries in which only those registered with the subject party can vote). Of course, these studies concentrated only on the two major parties.

The implication is that moderate voters tend to register with a party while the more extreme voters tend to be independents. The use of non-partisan or open primaries lets the extreme crowd in, which affects who wins the primaries for the major parties. §

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Steve Chessin is President of Californians for Electoral Reform (CfER). Jim Stauffer is a CfER member and Editor of *Voice for Democracy*.

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## Corrections and Comments

We occasionally receive comments about, or correction to, articles in the newsletter. We welcome such submissions and are happy to print them.

"You folks do important work for a great cause. I appreciate it."

– Rich DeLeon, Professor Emeritus, San Francisco State University Political Science Department

"CfER, thank you for your good work. I read the *Voice for Democracy* for October. Referring to Jim Lindsay's Quiz, I just wanted to clarify that the Minneapolis and St. Paul school boards do not use IRV or ranking of any kind. They are not covered by the city charters."

– Bruce D. Kennedy

## President's Letter

I begin with two apologies. First, although this is the February 2014 newsletter, you aren't receiving it until March. As you know, CfER is an all-volunteer organization, and I was late in getting my President's letter to the editor. Life, as they say, is what happens while you are making other plans. I apologize for the lateness of this newsletter and will work to be more diligent.

The second apology has to do with an excellent publication, *Ballot Access News* (BAN), produced by one of our Board members, Richard Winger. Richard also handles the mailing of *Voice of Democracy*, and to thank him we (CfER) were going to mail a copy of his publication to our members in case any of them wanted to subscribe to it. Due to a miscommunication, the cover letter that I was supposed to write to go with that mailing didn't get produced and some of you might have thought that we gave your name and address to BAN without your permission. Please be assured that Richard does not keep a copy of the mailing labels we use to send *Voice of Democracy*. If you did receive an unexpected issue of BAN, I hope you enjoyed it. I am a subscriber myself.

The current Secretary of State, Debra Bowen, is termed out this year, and a variety of candidates are running to replace her. While CfER does not endorse candidates, we would like to see a Secretary of State who supports our issues. In particular, we would like a Secretary of State who supports the use of instant runoff voting and proportional representation by cities and counties and would require that all new voting equipment support ranked ballots. You can help by calling the candidates and letting us know how they respond. This is the list of candidates (as I write this, from the Secretary of State's website) and their contact information, in alphabetical order:

Roy Allmond (Rep.) 916-761-2568, 2014election@runroyrun.org  
 Derek Cressman (Dem.) 916-538-4564, info@DerekCressman.com  
 David Curtis (Green) 415-233-4721, davidscurtis@earthlink.net  
 Jeffrey H. Drobman (Dem.) 818-590-1603, jhdphd@alumni.ucla.edu  
 Alex Padilla (Dem.) 818-253-9140, ideas@alex-padilla.com  
 Pete Peterson (Rep.) 323-450-7536, campaign@petesos.com  
 Dan Schnur (No Party Preference) 424-209-2936, info@4schnur.com  
 Leland Yee (Dem.) 415-515-6101, info@lelandyee.com

Ask them if they support instant runoff voting and proportional representation, and then email your findings to [cfer-info@cfer.org](mailto:cfer-info@cfer.org). (We plan to ask them, too, but the more people they hear from, the more likely they are to support these reforms.) And don't forget to vote Tuesday, June 3rd, for the candidate you like best. §

– Steve Chessin, President



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## About CfER . . .

Californians for Electoral Reform (CfER) is a statewide citizens' group promoting election reforms that ensure that our government fairly represents the voters. We are a nonpartisan, nonprofit organization with members from across the political spectrum. Since our founding in May of 1993, our numbers have grown from about two dozen to hundreds of members participating in local chapters across California.

### OUR ELECTORAL SYSTEM IS IMPORTANT

The method by which we vote has dramatic consequences, and nearly one third of the state's electorate consistently goes without a representative that speaks for them in Sacramento. The choice of electoral system can determine whether there will be "spoilers" or vote-splitting effects, majority sweeps of representation on city councils, or pervasive negative campaigning. The choice of electoral system determines whether minority perspectives or racial and ethnic minority groups receive fair representation or get shut out of the process entirely.

### CFER IS THE LEADING ADVOCACY GROUP FOR THESE REFORMS IN CALIFORNIA

CfER works for legislation that would allow cities and counties to adopt voting methods that allow people to rank their preferences when they vote. CfER also works with activists in its local chapters to enact fair election methods in cities and counties across the state.

For more information visit [www.cfer.org/aboutus](http://www.cfer.org/aboutus)

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