

**The Top-Two, Take Two:
Did Changing the Rules Change the Game in Statewide Contests?**

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Abstract

Did the new rules implemented by California's top-two system change the electoral game in the statewide primaries of 2014? This article looks first at overall turnout dynamics before focusing on the closely contested races to gain a spot on the November ballot in the governor's, secretary of state's, and controller's races. Drawing on an original analysis of polling data as well as interviews with candidates themselves, I find that the top-two shaped the field of candidates who entered the primary, the partisan ballot designations that they chose, and the campaign tactics that they employed. Yet the new rules did not, in the end, discernibly alter the outcomes of the 2014 primaries.

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California's second test run of its top-two primary – a reform intended to open up primary participation to a broad electorate – took place under the lowest levels of turnout in state history. With little competition in the races at the top of the ticket and the absence of citizen initiatives on the ballot, three quarters of California's eligible voters did not bother to cast a ballot. The top-two structure of the election, which has generated so much attention from scholars and political observers across the nation, was not enough to pique voter interest. Yet it certainly captured the attention of campaign operatives and the candidates themselves, who sought to tailor their strategies and messages to the new rules. Did it change ultimate outcomes in any discernable way, and were these changes for the better?

The June 3, 2014 election provides an important yet unique case in which to study the impact of the top-two, put in place by voters through Proposition 14 and implemented in June of 2012. It featured the first application of the new rules to top-of-the-ticket statewide contests. The wide-open structure places candidates of all political stripes on the same ballot column and allows all voters, regardless of party affiliation or the lack thereof, to support any of them. The two leading candidates advance to November, even if they affiliate with the same party. When these new rules were implemented in 2012's congressional, state senate, and state assembly races, they appeared to have little effect on who won those contests (Ahler, Citrin, and Lenz 2013) or overall levels of moderation and ideological representation (according to Kousser, Phillips, and Shor's 2013 analysis of campaign positions, but see Grose 2014 for evidence of moderation in the voting records of state legislators).

Yet perhaps these effects and non-effects were driven by the fact that, at the level of legislative contests, voters have little information about candidates, making it difficult for them to discern moderates from extremists of the same party. At the top of the ballot, where candidates make more of an impression on voters, dynamics may be different. This election post-mortem focuses on statewide contests, asking what the application of the top-two primary to these offices teaches us about the reform. It is journalistic in nature, seeking to look beneath the election returns to learn about what may have motivated the behavior of candidates and of voters. Importantly, the lessons learned from the June, 2014 primary will not necessarily apply to all top-two contests in California and in other states. Because so few statewide offices were expected to be competitive, turnout was historically poor and campaign spending extremely low at the top of the ticket compared with past California elections. Electoral patterns, and the impact of the new rules, might be very different in the 2018 primary, which promises to deliver closer

statewide contests. What we learn from 2014 may not predict what we will see in California's future elections or in other states. The purpose of this essay is not to divine ironclad general laws but to look closely at one case – California's first running of statewide races under the top-two rules – and read its tea leaves.

I conclude that the new rules set the primary campaigns on a different path but did not change their final destination. The top-two shaped the field of candidates who entered the primary, and how they ran their campaigns. Candidates had new opportunities, including the ability to run independently of the major parties, and had to overcome new obstacles such as the danger of splitting a major party's vote across so many candidates that none would advance to November. In the end, though, the new rules did not seem to change the outcomes of any statewide races. Independent voters did not swing any contests, and the leading "no party preference" candidates did not make it through to the general election. The final results of the primary look much as they would have looked under the state's old rules. To reach these conclusions, I draw on historical patterns, polling data, and interviews with three of the candidates in one key race. I begin by discussing the level of turnout and its composition, which set the stage for some of the election's surprising results. I then focus on three contests – the races for governor, secretary of state, and controller – which reveal the most about the impact of the top-two in 2014.

I. Why Was Turnout So Low, and Who Showed Up?

Perhaps the most notable result of California's 2014 primary, and the one fact about it that is likely to be recorded in history books, is that the rate of voter turnout by far exceeded the state's record for low turnout. The 4.46 million voters who took part constituted 25.2% of the state's registered voters and 18.4% of the eligible electorate.¹ Figure 1 sets these turnout rates in historical context, comparing them to turnout in other midterm primary elections.² The figure avoids the unfair comparison to presidential primaries, bigger draws which have featured turnout as high as 57.7% of registered voters as recently as 2008. Still, even compared to midterm primaries in the modern era, turnout this year was sharply down. This was not simply a result of rising registration and population levels driving the turnout *percentage* down, since the *number* of voters was also shockingly low. In order to find a primary election with a smaller raw number of votes cast, 4.00 million, one has to look back to June 7, 1960. Why was participation in this year's contest so historically abysmal?

Two of the key conditions that contributed to 2014's drop in turnout were set in place in 2010 and 2011. The first and most obvious came on November 2nd, 2010, when a landslide set of general election results solidified California as a blue state in the minds of many observers, potential candidates in future contests, and, critically, contributors. Not only did Jerry Brown and Barbara Boxer win top-of-ticket races by large margins, but the election also delivered every statewide office to Democrats. This included four officeholders who would be eligible run for reelection in 2014 and one, John Chiang, who switched from controller to the treasurer's race.

¹ Christopher Cadelago, "California Primary Election Turnout Headed for Record Low," *Sacramento Bee*, June 6, 2014.

² The turnout numbers in this table and later in the is paragraph were taken from California Secretary of State, "Historical Voter Registration and Participation in Statewide Primary Elections 1914-2012," accessed at <http://www.sos.ca.gov/elections/sov/2012-primary/pdf/04-historical-voter-reg-primary.pdf> in June 2014.

Figure 1. Historic Turnout Trends in Midterm Primary Elections



All of these incumbents scared off major challenges within the Democratic Party in 2014. The Democratic Party’s overall dominance in the state discouraged both challenges from many potential Republican candidates – such as former San Diego mayor Jerry Sanders, former Anaheim Mayor Curt Pringle, and former Secretary of State Condoleezza Rice – at the same time that it discouraged GOP contributors. In the governor’s race, Tim Donnelley raised less than half a million dollars, while Neel Kashkari raised \$4 million (half from himself). Contrast this with 2010, in which GOP competitors Meg Whitman and Steve Poizner spent \$80 million and \$24 million in the primary, respectively.³ Because he did not face such high-spending or well-known competition, Jerry Brown was not forced to spend or to campaign energetically. This meant that the primary featured far less mobilization, advertising, and press attention than the more competitive primaries of the past. Unless they lived in an area with an active legislative campaign, voters were left to decipher a stealth campaign.

³ Campaign finance data taken from the California Secretary of State’s website, cal-access.sos.ca.gov, accessed in June 2014, with Meg Whitman’s primary total taken from Daniel B. Wood, “Hefty Spending Key to Meg Whitman’s Late Lead in GOP Primary,” *Christian Science Monitor*, June 4, 2010.

The key event in 2011 came on October 7th, when Gov. Jerry Brown signed Senate Bill 202, moving all citizen initiatives – propositions qualifying for the ballot through the collection of signatures – onto general election rather than primary ballots. The ostensible argument for this change, which returned to the state’s historical practice before 1970, was that “there are dramatically more voters at a general rather than a primary election.”⁴ Savvy political observers suggested that the good-government reform was instead aimed specifically at hurting the cause of several Republican-backed measures, including one that targeted the political use of union dues, headed to the June, 2012 primary ballot.⁵ Regardless of the intent, the move had the effect of stripping primary ballots of one of their prime attractions: the high-stakes fights over controversial citizen initiatives, and thus exacerbating the turnout differential between November and June.

Initiative fights had led to significant expenditures in past primaries, with two citizen initiatives, Propositions 16 and 17, generating more than \$64 million in campaign spending in the 2010 primary.⁶ A voluminous literature in political science has shown that voters are drawn to the polls by these sorts of initiative battles (Smith and Tolbert 2004; Tolbert and Smith 2005; Tolbert, Bowen, and Donovan 2009; Schlozman and Yohai 2008; Tolbert, Grummel, and Smith 2001), with recent work showing that it is the mobilization done by the campaigns for initiatives that drives this effect (Childers and Binder 2012). In their study of state elections from 1870-2008, Childers and Binder (2012, p. 100) found that the presence of initiatives on the ballot during midterm elections increased turnout rates by 3.8 percentage points, controlling for a host of other electoral conditions. Stripped of all mobilizing citizen initiatives⁷ and of high-profile statewide contests, the June, 2014 ballot had little to attract most voters.

Of course, even though three quarters of registered voters sat out the election, a quarter did turn out, and found their voices magnified. This makes the question of who turned out critically important. The electorate in a primary rarely reflects the overall population of registered voters, and midterm elections tend to bring especially large distortions in electoral representation. Table 1 compares the partisan composition of registered voters with the composition of primary electorates. For 2008 through 2012, this composition is taken directly from the validated voting behavior of individual registrants in California’s official Voter File, calculated by UCSD political science professor Seth Hill. Since the 2014 version of this file was unavailable at the time of writing, for 2014 figures I rely upon the projections of the last public opinion poll conducted before the primary, the USC Dornsife/Los Angeles Times Poll.

The clear message of this table is that although Democrats today hold a 15-point registration edge in the electorate overall, that advantage shrinks dramatically in primaries, particularly during midterms. The Democratic edge was nine points during the 2008 presidential primaries, when Hillary Clinton was still challenging Barack Obama, and five points in 2012. Yet in the 2010 primary, which featured a close contest in the Republican gubernatorial primary but not in

⁴ See Edmund G. Brown, Jr, Signing Message for SB 202, accessed at http://gov.ca.gov/docs/SB_0202_Signing_Message.pdf in June 2014.

⁵ John Myers, “Good Government or Political Power Play,” *Capital Notes*, September 9, 2011.

⁶ Campaign finance data taken from the National Institute of Soft Money’s website, followthemoney.org, accessed in June 2014.

⁷ The ballot did feature two propositions placed on the ballot by 2/3 votes in both house of the legislature. Yet such propositions are typically much less controversial than citizen initiatives and attract much less spending (see de Figuieredo, Ji, and Kousser 2011), and Propositions 41 and 42 were no exceptions to that rule.

Table 1. Partisan Composition of Primary Electorates

Party of registration	Percent of Registrants	Percent of primary electorate			
		2008	2010	2012	2014
Democrat	43%	47%	43%	44%	43%
Republican	28%	38%	41%	39%	39%
Decline to State/ No party preference	21%	12%	13%	14%	12%
Other party	7%	3%	3%	4%	6%

Registration by party reported by California Secretary of State, “15-Day Report of Registration, May 19, 2014.” Primary composition from 2008–2012 compiled by UC San Diego’s Seth Hill from the California Voter File. Primary composition in 2014 projected by the USC Dornsife/*Los Angeles Times* poll.

the Democratic contest, the Democratic edge was a mere two percentage points. In 2014, according to the USC Dornsife/*Los Angeles Times* projections, the Democratic edge was four points. Republicans close the gap in primaries by turning out at high levels, while “no party preference” voters (NPP, the name currently given to independents in California) consistently stay at home. Though they make up 21% of the electorate overall, these voters make up only 12–14% of primary electorates. Notably, turnout among NPP voters has not risen since the implementation of the top-two primary. Since one of the aims of Proposition 14 was to open the door to their participation – the text of the initiative declared that “No voter shall be denied the right to vote for the candidate of his or her choice ... based upon his or her disclosure or nondisclosure of party preference” – the low turnout rates of independent voters remains a major challenge for those who wish to see a more representative electorate.

In sum, the group of voters who determined the top two contestants in the November 14 general election were smaller in number than any group since the Kennedy era, and significantly more Republican than the state’s overall electorate. Ironically, as the state’s politics turn a deeper shade of blue, making November elections less competitive and primaries even more critical, fewer Californians are participating in primaries, and those who do are significantly more likely to be Republicans.

II. Governor’s Race: Did the Top-Two Primary Save the Republican Party from Itself?

Over the past decade, the race for the Republican nomination for governor has often resembled a contest over control of the party’s ideological soul and its public image as well as over its electoral fortunes. When Republicans nominated traditional conservative Bill Simon over socially liberal Los Angeles mayor Richard Riordan in 2002, it was a turn away from the winning strategy of nominating centrists in the mold of Pete Wilson and George Deukmejian.

Simon promptly lost to unpopular incumbent Gray Davis. The party reversed this pattern by nominating moderate Meg Whitman over Steve Poizner in 2010, but the primary contest forced Whitman so far to the right on immigration issues that she could not recover her standing with the state's increasingly Latino general electorate by November (see Rarick 2012).

The 2014 primary played as a sequel to these dramas, but one cast with candidates who represented extreme versions of the GOP's ideological factions and who played their roles to the hilt. Tea Party favorite Tim Donnelly, an Assemblyman who rose to prominence as a Minuteman leader, had attempted to board a plane with a loaded handgun, and spoke of illegal immigration as "a growing insurgency, right here in Los Angeles" that was comparable to the insurgency in Iraq.⁸ Former Goldman Sachs executive and Treasury official Neel Kashkari combined fiscal conservatism with concerns about poverty and a set of liberal social positions that resembled those of Arnold Schwarzenegger. Kashkari favored not only abortion rights but same sex marriage and a path to citizenship for illegal immigrants.⁹ He ran toward the center while Donnelly rallied movement conservatives.

Though Kashkari appeared to offer the best chance of victory in November, in April he was so unknown that he trailed a registered sex offender in one private but much publicized poll.¹⁰ Some GOP leaders and strategists worried that a doomed Donnelly candidacy would discourage Republican turnout in the general election and further brand the party as hostile to immigrants and to the state's ever-growing Latino electorate. While few saw Governor Brown as vulnerable in 2014, the fight between Donnelly and Kashkari could determine whether the GOP had a future in California.

The third player in this drama was the top two primary itself, and its rules that allowed independent, minor party, and perhaps Democratic voters to play a role in picking the Republican standard-bearer. Would these voters, who presumably found themselves taking positions more closely aligned with Kashkari, be able to deliver him enough votes to overtake Donnelly's lead among the Republican base? When Kashkari began to spend in earnest and rise in the polls, this appeared to be happening. His major campaign advertisement¹¹ touted his outsider status and his willingness to cut government waste, playing to broadly popular themes while implying that he had perhaps earned his fortune splitting logs. Donnelly's campaign did not have the funding to respond with a statewide ad buy, allowing Kashkari to slip past him into second place on Election Day. Kashkari won 19% of the vote to Donnelly's 15%, falling far short of Jerry Brown's 54% but providing the GOP with a credible, decently funded candidate for November.

To explain this triumph of moderation, some observers credited moderate voters. "It's the top-two dynamic that allowed the California Republican Party to escape almost certain death in this election," veteran political analyst and USC senior scholar Sherry Bebitch Jeffe told the *San Jose Mercury News* in the wake of Kashkari's victory. Yet Stanford political scientist Bruce Cain warned that experts "will have to analyze how many independents voted for Kashkari and

⁸ Quoted in Seema Mehta, "In 2006 Speech, Tim Donnelly Compared Illegal Immigration to War," *Los Angeles Times*, April 7, 2014.

⁹ Seema Mehta, "Ex-Treasury Official Considers Challenging Jerry Brown in 2014," *Los Angeles Times*, Nov. 18, 2013

¹⁰ Carla Marinucci, "Neel Kashkari Trails Registered Sex Offender in New Governor Poll," SFGate Politics Blog, April 24, 2014.

¹¹ This advertisement can be seen at <http://www.neelkashkari.com/first-tv-ad-ax/>, accessed in June 2014.

whether they put him over the top” before crediting the top two rules with delivering the victory to a centrist.¹² An ideal data source to resolve this debate would be an exit poll. Unfortunately, there was not, to my knowledge, an exit poll conducted in this election, and the high rate of voting by mail would have complicated this task regardless. There was, however, a prominent public poll released just before the election – with much of its survey data coming from the reported votes of those who had already cast mail ballots – that predicted the final election results nearly perfectly. The USC Dornsife/Los Angeles Times Poll, in the field from May 21-28th, found support for Jerry Brown at 50% of likely voters, with 18% choosing Kashkari and 13% backing Donnelly. Taking the 10% of voters who were undecided at the time of the poll and splitting them up by these proportions delivers almost exactly the percentages that each candidate eventually won. This poll, then, can serve as a indicator of the basis of each candidate’s support to help resolve the question of whether the moderate Kashkari beat Donnelly because the top two allowed independents and other party registrants into their contest.

The answer, reported in Table 2, is an unequivocal “No.” Kashkari won by doing better than Donnelly among registered Republicans, according to the poll. Among GOP registrants, Kashkari won 32% of the vote and Donnelly captured 21%. Jerry Brown, who had devoted much of his first term to straddling the political center and restraining government spending, won a respectable 17% of those polled (probably drawing some support away from Kashkari). In a closed primary with only Republican voters, Kashkari would almost certainly have performed better than he did in the top two. In fact, his support was weakest among the types of voters whom the new rules allowed to help determine which Republican would advance. Donnelly outpolled Kashkari among Democrats (6% vs. 3%) and minor party registrants (21% vs. 7%), while running even among independents (both candidates won 9% of those with no party preference). If these figures are reliable – as their close correlation with the final results suggests that they are –the top two primary placed the Republican Party at risk of advancing an ideological extreme candidate to November, rather than delivering it from a self-inflicted electoral disaster.

How could a moderate like Neel Kashkari outperform the true conservative Donnelly among the Republican base? During the last month of the campaign, California and the nation’s GOP establishment rallied to Kashkari’s cause, worried about the damage that could be done to the party’s brand and infuriated by some of Donnelly’s statements. At the end of the advertisement that he ran statewide, Kashkari touted the endorsements of Mitt Romney, Pete Wilson, Jeb Bush, and Darrell Issa. His direct mail pieces noted the endorsements of these notable figures, referring to them as “Fellow Conservative Leaders.”¹³ Republican voters appeared to respond to these calls to pick a candidate who deviated from the party’s mainstream only on social issues over one positioned firmly in the Tea Party camp. Perhaps some did so for strategic reasons, choosing the candidate with better prospects in November. This should not be surprising, given the recent record of Republican primary electorates making similar choices. For all of the narrative that primaries exert a centrifugal force on politics, it is important to remember that GOP primary and

¹² Both scholars are quoted in Josh Richman, “‘Top-Two’ Primary Helps California GOP,” *San Jose Mercury News*, June 4, 2014.

¹³ For an image of one of these mailers, as well as commentary that depicts this race as a fight between the GOP’s establishment and its grassroots, see John Seiler, “Kashkari is the GOP Establishment’s Choice,” *Calwatchdog.com*, May 31, 2014.

Table 2. Support for Gubernatorial Candidates in the Last Pre-Election Poll

Candidate	Support Among Each Voting Block			
	Democrats	Republicans	No Party Preference	Other Parties
Jerry Brown	73%	17%	54%	39%
Tim Donnelly	6%	21%	9%	21%
Neel Kashkari	3%	32%	9%	7%
Someone Else	4%	4%	5%	11%
Undecided or Refused	15%	26%	24%	22%

Data adapted from the USC Dornsife/Los Angeles Times poll, accessed at http://gqrr.com/images/Blog_posts/documents/USC-LAT/060514_USC_LA_Times_bbk.pdf in June 2014.

caucus voters have delivered their presidential nominations to Mitt Romney, John McCain, and George W. Bush over challengers from the right. In those contests and in California's 2014 primary, Republican voters have known what is good for them, and not required rescuing by the top two's broader electorate.

III. Secretary of State's Race: How to Emerge from a Crowded Field

The contest providing the deepest and most intriguing field of candidates – including the first statewide candidate with “no party preference” in California history – was the race for Secretary of State. The race included two sitting Democratic state senators, Alex Padilla and Leland Yee, possessed of both resources and a modicum of statewide name recognition. Over the course of the race, though, Yee's fame would turn to infamy after his stunning indictment on charges of firearms trafficking and publication corruption in an FBI investigation. Derek Cressman, a longtime government reform leader with Common Cause, spent \$357,000 to present a competitive third option for Democratic voters, with Democrat Jeffrey H. Drobman and Green Party candidate David Curtis rounding out the set of contestants on the left. Dan Schnur, who had served both as chair of the Fair Political Practices Commission and as a spokesman for Gov. Pete Wilson, ran as a candidate with no party preference but nonetheless pitched his reform message toward Republican voters in the primary. Pete Peterson, executive director of a public policy institute at Pepperdine University of the civic engagement group Common Sense California, ran a poorly financed but well organized campaign as a Republican, while fellow GOP member Roy Allmond completed the field.

The Election Night results provided little drama. As expected, Democratic state senator Alex Padilla's record as an officeholder (and clean criminal record), bolstered by \$1.8 million in campaign expenditures, propelled him into the top spot. Only half a percentage point behind in the overall vote tally was Republican Pete Peterson, who managed to pull far ahead of his only GOP competitor, Roy Allmond. Schnur and Cressman ran respectably, but did not challenge for the top two spots, as Table 3 shows. The only surprise was the 9.4% of the vote that Leland Yee had won while battling charges that he had worked with Raymond "Shrimp Boy" Chow, the "Dragonhead" of a San Francisco-based gang to illegally import automatic weapons in exchange for laundered campaign donations.¹⁴ Because candidates caught in FBI stings typically do not win so many votes, the *Sacramento Bee* editorialized that the confused or prank-pulling voters who supported him were "embarrassing." Describing Cressman and Schnur's campaigns, the *Bee* wrote that "both ran on political reform platforms, not that many of us noted." Finally describing Schnur's unsuccessful candidacy, the *Bee* predicted that, "His defeat will be a cautionary tale for future candidates who don't state a party preference."¹⁵

What long-term lessons does this race teach, and how did the top-two structure affect the strategies and tactics of the candidates in this crowded field? The best way to probe their thinking is to ask the candidates themselves. I conducted interviews with three of them – Peterson, who has advanced to the fall, as well as defeated reform candidates Cressman and Schnur – and directed the conversation especially toward how the new rules affected how they played the electoral game. Their testimony provides important clues to how the candidates shaped their campaigns to the field and to the opportunities and obstacles present in a statewide top-two primary.

The new rules did, according to candidates themselves, affect their decisions about whether or not to enter the race. Dan Schnur, the "No Party Preference (NPP) candidate, was clearly encouraged to enter. I asked him whether, if it weren't for the top-two rules, he would have gotten into this race. "No," Schnur replied. "We knew getting in that it was an uphill fight, but under the old the rules we wouldn't have had any chance...under the old rules, an NPP candidate would have simply gotten squeezed between the two parties. Under the new rules, we saw an opportunity to split the party bases with multiple candidates on either side."¹⁶ In part because he worried these sorts of dynamics created by a crowded field, Derek Cressman was nearly discouraged from entering by the new rules. "If the Dem vote split four ways, it created an opportunity for the Republicans to get two candidates through to November,"¹⁷ Cressman recalled. "I was worried about that on its own, but I was more worried that the Democratic Party would be worried, and that they would try to dissuade me from running or otherwise squelch my campaign. That affected my decision early... But I got zero pressure from the Democratic Party to drop out. I was pleasantly shocked and relieved by that, because I believe that if both parties figure the top two out, they will develop mechanisms to avoid a scenario of splitting their vote and sending two candidates from the other party through to November."

¹⁴ Josh Richman, Howard Mintz, Jessica Calefati, and Robert Salonga, "State Senator Leland Yee Indicted on Arms Trafficking, Corruption Charges," *San Jose Mercury News*, March 26, 2014.

¹⁵ *Sacramento Bee*, "Editorial: An Election Not to Remember," *Sacramento Bee*, June 5, 2014.

¹⁶ This and all other quotes from Dan Schnur taken from an interview conducted by the author by telephone on June 24, 2014.

¹⁷ This and all other quotes from Derek Cressman taken from an interview conducted by the author by telephone on June 20, 2014.

Table 3. Secretary of State's Race Candidates and Results

Candidate	Party Preference	Ballot Designation	Vote Share
Derek Cressman	DEM	Voting Rights Advocate	7.6%
Jeffrey H. Drobman	DEM	Computer Scientist/Engineer	4.4%
Alex Padilla	DEM	California State Senator	30.2%
Leland Yee	DEM	California State Senator	9.4%
David Curtis	GRN	Dad/Designer	3.0%
Dan Schnur	NPP	Political Involvement Educator	9.2%
Pete Peterson	REP	Educator/Institute Director	29.7%
Roy Allmond	REP	California State Employee	6.4%

Source: Preliminary vote totals reported by the Secretary of State on June 24, 2014, accessed at <http://vote.sos.ca.gov/returns/secretary-of-state/>

For Republican Pete Peterson, the top-two rules played no role in his decision to enter the race. But the need to stand out from the other Republican in the race – as well as from Schnur, who had tight connections with many of California's GOP leaders – put a premium on winning endorsements. "Because I'm running as an "outsider" without a political background, we also wanted to have as many Republican endorsements as possible,"¹⁸ explained Peterson. "So we reached out the Republican legislative caucus, small though it is, and that was really important for me – someone who nobody knows – to get when I was trying to talk about my campaign in their legislators' districts." Schnur admitted that the nature of his candidacy put those endorsements out of reach. "By definition, traditional partisan organization endorsements were not available to an NPP candidate," Schnur recognized. "In this context, there was no way that partisan organizations on either side were going to endorse a non-partisan candidate."

If endorsements were important to Peterson, Cressman considered them paramount in the crowded Democratic field: "A key strategy of mine was to block Padilla and Yee from getting the endorsement, because they would have locked up the race. As an outsider, I had no hope of getting it myself." In the end, "Alex got 59%, and the shocking thing was that I came in second, ahead of Leland, and this was before he was arrested. It was successful, but I devoted far more time to that constituency in a very retail way; I hit probably 20 county committees in January and February. [Democratic Party] Chairman Burton recommended no endorsement; he was not only on paper neutral but actually neutral. I was very surprised that given the dynamic of the top two,

¹⁸ This and all other quotes from Pete Peterson taken from an interview conducted by the author by telephone on June 20, 2014.

the Party was so neutral.” Given the Democrats’ experience in the Controller’s race, discussed in the next section, in which an internal divide nearly cost the party any chance at winning the office, party leaders may exert a heavier hand in future top-two endorsement battles.

The new rules also had some impact on how candidates ran their campaign, shaping their messages and who they viewed as their key constituencies. According to Peterson, “it helped that the voters we were trying to reach in November were the same ones we were trying to reach in the primary. You need to have a message that is going to reach beyond just the people in your party. If anything, the top-two allowed us to think earlier on about who we needed to approach moving from the primary to the general, and in many ways helps to ensure a consistency in your message from primary to the general. Which isn’t to say that we were able to reach those people; I don’t whether we got any Democrats or independents, but at least we tried to earn those votes.

For NPP candidate Schnur, the top-two dynamic presented a complicated strategic choice and ultimately changed the audience toward which he targeted his message. “At the outset, we saw disaffected voters from both parties and independents as our constituency,” recalled Schnur. “But as the field came together, we targeted Republicans because they wouldn’t be hearing from other candidates, and we felt that provided an opportunity.... There were two well-funded Democrats, but no one with those kind of resources on the Republican side. So we targeted Republican voters: we sent out two direct mail pieces to Republican voters who turn out frequently in primaries. We targeted them not because my message, but because of the opportunity given Pete Peterson’s and Roy Allmond’s funding.”

Yet because he raised only \$500,000, Schnur’s fundraising advantage was not great enough to make a difference by making a clear impression on voters. All three candidates agreed that voters had so little information about this contest that their decisions came down mostly to what they saw on their ballot when it came time to vote. “The whole theory of my path to victory,” Cressman explained, “was based on ballot designations – which is far more important than name recognition in a race like this. People think that voters know who Alex and Leland are. Many don’t, but they know what a state senator is. I figured that voters registered to the Democratic Party would be more likely to think that being an incumbent was a good thing. My hope was that people who are not registered with a major party, some of who were quite progressive, would be more likely to support me as a ‘voting rights advocate.’”

Peterson, listed as “Educator/Institute Director,” agreed, saying, “I think that this year, ballot designation really was significant. I think that accurately being able to describe yourself as an outsider with experience can help.” It did not hurt Peterson’s cause that his sole Republican competitor, Roy Allmond, was listed as a “California State Employee,” a description that may not have been very alluring to GOP primary voters. When I asked him what information he thought voters had in their head when they cast a ballot, Schnur replied “Not much more than what they saw on their ballot. The Padilla campaign was able to communicate with a large number of voters, the rest of the voters just knew what they saw on the ballot.”

When I asked them about Leland Yee’s surprisingly strong performance, the two candidates who won fewer votes than the indicted senator were sanguine. “I was surprised about how well Leland Yee did, but I shouldn’t have been,” said Schnur. “If you asked most voters, they were aware of the scandals in Sacramento, but most of those voters wouldn’t have been able to recite who was involved in them. What most voters knew about the candidates was a combination of party affiliation, ballot designation, and surname. There was nobody reminding voters throughout the campaign about Leland Yee’s arrest. They may have remembered that there was an arrest, but didn’t remember name of the guy.” Cressman voiced a similar sentiment, admitting

that “I was thinking he would get more like 5%, as opposed to 10%. But when I was doing call time or doing my own events with Democratic Party activists, I’d ask if they knew who Leland Yee was, and a third of them would say “No.” Then when I explained that he was indicted by the FBI, they would go “oh yeah, yeah, yeah, that guy.” Even a highly politically engaged audience didn’t automatically associate him with the scandal. I was not that surprised. I’m not indignant about it either, it’s just the reality that people have very little information about these candidates.

Given this information environment, what are the chances that a candidate with the confusing label “No Party Preference” can succeed under the top-two? One possible conclusion is that a candidate like Dan Schnur, with deep links in the Republican Party and decent funding, should have run with the “REP” label. Yet Schnur recognized that while this might have increased his chances of doing well in the primary, it would not have lead to victory in a predominantly blue state. The chance to make it through to the general election, and then run to the middle, will make the top-two structure enticing for future NPP candidates. “Going in, we understood that running as an NPP created very significant challenges in the primary, but we also believed that there were benefits to it should I make it to the run-off,” said Schnur. “Our polling showed that in a run-off, the voters of the party not represented would flow to the NPP candidate. They may not know what an NPP was or love it, but they knew what the other party was and didn’t want any part of it. What we underestimated was what it would take to convince voters to move beyond their traditional partisan voting patterns.”

Is there any hope for an NPP candidate to successfully make this case to voters? “If we had started a year earlier, if we had decided to target independents and other disaffected voters, and if the governor and legislature had not moved initiatives to the November ballot, those three really big ifs may have given us the opportunity to win,” speculated Schnur. “Or maybe not. I don’t believe that my candidacy was a valid test of an NPP candidate’s chances. You’d need a more talented candidate with more time and a bigger bankroll to test the concept properly.” Looking forward, Schnur predicted that, “there will be NPP candidates elected to statewide office in CA in the not too distant future. In my best days, I thought we had a chance to make history. In my worst days, I thought we were making life a lot easier for the second NPP candidate in the history of California.

Looking toward November, Pete Peterson noted that the simple structure of how top-two primary votes are tallied, with all candidates counted together, could by itself change perceptions about his chances in the general election. He finished neck-and-neck with Democrat Alex Padilla, the presumed front-runner going into the primary. “Granted, votes get split up in different ways because of which candidates are in a race,” Peterson conceded, “but for me, even if I may be pulling many of the same votes as I would have in a partisan primary, I think having all of the votes tallied together makes people think about the results differently than if you had a purely partisan primary.” His ability to turn this perception into a fundraising and then an electoral reality in November will reveal whether the top-two will change the ultimate outcome of this race.

IV. Controller’s Race: Disaster Narrowly Averted

One contest that drew little attention all spring became the biggest surprise of Election Night. The race for state controller, the stepping stone of an office that helped boost the careers of Gray Davis and Alan Cranston, was seen as a straightforward internecine fight to determine whether Assembly Speaker John A. Perez or fellow Democrat and Board of Equalization member Betty

Yee would advance to certain victory in November. Yet because of the quirks of the top-two structure and a crowded field on the left side of the ideological spectrum, this race nearly yielded a Democratic – and, arguably, a small “d” democratic – disaster.

The initial results were so close that it appeared, for several days after the election, that two Republicans might advance to the general election, denying the Democratic Party any shot at this office in a state where they currently hold a fifteen percentage point registration edge over Republicans. The contest made an instant political celebrity out of David Evans, the California City accountant whose \$600 campaign run by his daughter was in a “dead heat with former Assembly Speaker John A. Pérez, the goliath who spent \$2 million and is the choice of much of organized labor, for the second spot in the top-two primary.”¹⁹ With Republican Ashley Swearengin, the sitting mayor of Fresno, holding a comfortable lead in the top spot, a runner-up finish by Evans would leave Democrats with no name on the November ballot. Certainly, this would have hurt the party’s cause. Arguably, it would have hurt the cause of democracy in California, depriving November voters of any official option – barring a write-in candidacy – from the party whose policy stances most closely reflect those of a clear plurality of voters. Citing this race as a “perverse and anti-majoritarian” consequence of the new rules, Harold Meyerson’s op-ed in the *Los Angeles Times* called the top-two an “asinine” idea that should be scrapped.²⁰

How did this happen, and what does it demonstrate about the top-two? Primaries in this state no longer help voters from one party coordinate their support on a single nominee, whom they can then unite around against the other party’s nominee in November. Partisans must find some way to coordinate before the primary, or risk dividing up their support across too many candidates and failing to get any of them through to the general election. This is what happened in California’s Democratic-leaning (by party registration) 31st Congressional District in 2012, when four Democrats finished behind the two Republicans. The controller’s race was nearly a sequel, with three Democrats and one Green Party candidate facing two Republicans. As Table 4 shows, the four candidates on the left captured 54.1% of the vote, but the close fight between Perez and Yee did not allow either to emerge clearly as the focal point for liberal voters. With the two Republicans so tightly matched – and with turnout favoring the GOP so much in this election – Evan’s \$600 campaign put him near the totals of the two powerful Democrats and nearly caused a crisis that would have led to more calls for the top-two’s repeal. In the end, Yee finished a mere 481 votes ahead of Perez, taking the second spot in the general elections but not resolving the debate about how the new rules had worked.

¹⁹ Dan Morain, “David Evans and His Smart Daughter Impress the Pros,” *Sacramento Bee*, June 5, 2014. Evans’s unexpectedly strong performance led to many creative and sophisticated explanations of how this relative unknown could perform so well against Swearengin, the mayor of a major city. Stanford professor John Krosnick explained to a reporter that “Evans’s last initial is in the first half of the alphabet, whereas his three top competitors’ last initials fall in the latter half. More people have last initials in the first half of the alphabet, Krosnick said, and research shows that voters tend to have better feelings about letters that are in their own initials.” (Quoted in Christopher Cadelago, “What’s in a Name? For David Evans, A Surprising Showing at the Polls,” *Sacramento Bee*, June 10, 2014). It is also possible that since neither candidate had a major statewide profile or ran a well-funded campaign, Republican voters simply picked nearly at random, with nearly half backing the male candidate in Evans and just over half supporting Ashley Swearengin.

²⁰ Harold Meyerson, “Jungle Primary? Tried It. Dump It.” *Los Angeles Times*, June 22, 2014.

Table 4. Controller’s Race Candidates and Results

Candidate	Party Preference	Ballot Designation	Vote Share
Tammy D. Blair	DEM	Administrator	5.0%
John A. Perez	DEM	California Assembly Speaker	21.7%*
Betty T. Yee	DEM	California State Board of Equalization Member	21.7%*
Laura Wells	GRN	Financial Analyst	5.7%
David Evans	REP	Chief Financial Officer	21.0%
Ashley Swearingin	REP	Mayor, City of Fresno	24.8%

Source: Preliminary vote totals reported by the Secretary of State on June 24, 2014, accessed at <http://vote.sos.ca.gov/returns/controller/>

* Yee finished with 878,195 votes, compared with Perez’s 877,714.

These results demonstrated to all observers a lesson that savvy politicians had already learned: shaping the field can pay great dividends in the top-two primary. Clearing the field to a single candidate is the best way for party to bank on having a chance in the general election. Having two contestants is the optimal number for a party hoping to assure their November victory in June. Having any more than that can bring electoral risks. As a consequence, both California’s Democratic and Republican Parties have put more focus on making endorsements before the primary, to help coordinate voters (see Kousser, Lucas, Masket, and McGhee 2013). Notably, when he guided Assembly Democrats to a historic supermajority in the 2012 elections, Speaker John A. Perez did not allow any candidate coordination disasters like the one in the 31st Congressional District. Ironically, his bid for the controller’s office was undone by his inability to shape this field. Perhaps more ironically, a reform designed to “lessen the influence of the major parties” and “open up primary elections,”²¹ has put a premium on the role that party leaders must play to restrict the number of choices that their members have in the primary, or court the sort of disaster that nearly befell Democrats in the controller’s race.

V. Lessons of the Top-Two, Take Two

In California’s legislative contests, many of the same patterns seen in 2012 were repeated in 2014, though races were in general quieter because this year was not the beginning of a new redistricting cycle. The Public Policy Institute of California’s Eric McGhee and Daniel Krimm

²¹ These arguments appeared in the ballot argument in favor of Proposition 14, accessed at <http://voterguide.sos.ca.gov/past/2010/primary/propositions/14/arguments-rebuttals.htm> in June 2014.

reported that “Patterns of candidate competition have settled down somewhat,”²² with fewer open seats, fewer incumbents facing a challenge within their party, and more races contested by only one candidate. Yet again, the top two proved to be a tremendous obstacle for minor party candidates seeking a spot on November ballot. According to minor party advocate Richard Winger, the three minor party contestants in legislative races who made it to the general were write-in contestants who launched their efforts after seeing that only one candidate filed for office in a district. The same was true of three minor party candidates who appeared on November, 2012 ballots. This leaves intact the woeful record of minor parties in top-two primaries across the state. According to Winger, there have now been 111 cases in which a minor party candidate has run for federal or state office in a race that also featured at least two major party members. In all 111 of these cases, the minor party candidates finished outside of the top two.²³

It was in statewide offices, though, that 2014’s most interesting lessons about the top-two primary were revealed. Beyond debate, the new rules added drama to the few stiffly contested races and to the interpretation of their results. It is also clear that they held little interest for voters: opening up primaries to all California voters, regardless of party affiliation, attracted few independent voters to the polls and did nothing to halt the long-term decline in California primary turnout. A third firm lesson is that top-two rules affected campaign strategies and candidate entry decisions. The new opportunity to run as an independent tempted one prominent candidate into the secretary of state’s race, while worries about splitting up his party’s support nearly kept another out of that crowded field. All three candidates whom I interviewed about this contest made it clear that they tailored the conduct of their campaigns to the opportunities and obstacles presented by the new rules.

What is worth debating is whether the top-two changed the eventual outcome of any of California’s statewide races. In the five races that I have not covered in this essay, the answer is a definitive “No.” Democratic office-holders surged to strong victories against weak competition, with none facing a serious challenge in November. In the three races that I have covered, I found no evidence that the top-two changed the ultimate path of any contest. Based on highly predictive polling data, it is clear that Neel Kashkari would have carried a closed Republican primary. In the secretary of state’s office, one Democrat and one Republican separated themselves from their co-partisans to set up the same November contest that we would have seen under the old rules. The state’s first No Party Preference candidate finished well short. While an additional 30,000 votes captured by David Evans in the controller’s race could have guaranteed a Republican victory before any November votes were cast, the Democratic Party’s nightmare did not come to life this year. The top-two has generated strong reactions from many observers. The Ventura County Star’s influential columnist Timm Herdt called the top-two a “failure,”²⁴ the Sacramento Bee called this “An election not to remember,”²⁵ and Washington Post columnist Harold Myerson urged scrapping this “asinine” idea.²⁶ While it may live up to such incendiary language in the future – if a No Party Preference candidate can chart a path to the general, if

²² Eric McGhee and Daniel Krimm, “Just the Facts: California’s June 3 Primary Election,” Public Policy Institute of California, June 2014.

²³ Personal correspondence by the author with Richard Winger, editor of *Ballot Access News*, June 19, 2014.

²⁴ Timm Herdt, “State’s Top-Two Primary a Failure,” *Ventura County Star*, June 5, 2014.

²⁵ *Sacramento Bee*, “Editorial: An Election Not to Remember,” *Sacramento Bee*, June 5, 2014.

²⁶ Harold Meyerson, “Jungle Primary? Tried It. Dump It.” *Los Angeles Times*, June 22, 2014.

enough independent voters turn out to swing a close contest, or if a crowded field costs a major party any chance at a November victory – the lesson from 2014’s statewide races was that it generated much smoke, but little fire.

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