

TOP TWO PRIMARY

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INTRODUCTION

Much of the debate about various political reforms focuses on outcomes – does the reform in question bring about the desired results. There are two methodological problems with this approach. First, it assumes there is a desired outcome against which the reform can be measured. Second, it assumes that it is possible to objectively evaluate the extent to which a reform caused, or did not cause, a particular outcome.

Politically, such an approach to reform keeps things as locked down as does maintaining the status quo. It is fundamentally anti-democratic. Expanding the franchise to include African-American men and then, later, all adult women, were not undertaken to achieve particular outcomes. These reforms were the necessary response to a demand that our democracy be fully inclusive and allow all citizens to participate on an equal footing. Danielle Allen address this issue beautifully in her book on the Declaration of Independence, *Our Declaration*, when she writes, on p. 269:

“The point of political equality, then, is not merely to secure spaces free from domination but also to engage all members of a community equally in the work of creating and constantly re-creating that community.”

Top-two derives from this vision of equality. An electoral system that excludes people who are not members of a political party from full participation in every phase of the process by which our representatives are chosen does not meet this standard of equality.

Top-two is a radical restructuring of our elections to eliminate party primaries and replace them with a non-partisan, two-step process. In the first step, all candidates are listed on a single ballot and all voters vote for their favorite. The top two vote getters go on to the general election ballot. Candidates can be allowed to list their party preference. The State of Washington has also adopted a top-two system, which was upheld by the U.S. Supreme Court in *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008).

Contrast this to the closed primary system in effect in many states, where the primaries are major party affairs paid for by the government, and in which only enrolled members of those parties can participate. A characteristic of these closed primaries is that the major party nominees are chosen by a small minority of the party's membership. And one of those nominees invariably wins the general election. In districts where one party is dominant, the election is effectively over after the primary of that party. Our public officials are often chosen by less than 10 percent of the electorate.

In the case of top-two, the experts who have been evaluating this reform to date (with a particular focus on California where it was adopted by referendum in 2010) have assumed that the desired outcome was to achieve legislators who would govern in a less partisan manner and produce legislative outcomes that were more moderate in nature. The result of these evaluations is as confusing as the underlying approach is methodologically flawed.

In my opinion, the success of top-two turns not on this or any other outcome, but on the nature of the reform itself, its decisive step towards political equality. Like the 15th and 19th Amendments to the U.S. Constitution, top-two is self-executing. The future consequences of this change depend entirely on what the American people do with this opportunity for full and equal participation by all voters (including the 42 percent who are not affiliated with a party) in every phase of the electoral process. There is no pre-ordained outcome; no policy goal by which it is to be measured. Democracy is self-fulfilling. It is not an instrument to accomplish some other end.

We can take an honest look at what has happened in CA since the adoption of top-two, but top-two has already succeeded. Exclusionary partisan primaries have been eliminated, and all voters can now participate equally in every phase of the election.

I will briefly address the criteria adopted by the Democracy Slam organizers below.

THE CRITERIA

Voter turnout and political participation: 5

Top-two allows every voter to participate on an equal footing. How many actually do depends on the quality of the candidates, the effectiveness of their organizing, and the extent to which voters believe voting for one of them can make a difference. According to one analyst, voter turnout in CA in the first election under top-two was the second lowest on record. (“Voter Turnout in Primary Elections,” May 2014, Eric McGhee, Public Policy Institute of California)

California’s 2003 non-partisan recall election saw 135 candidates on the ballot and a 61.2 voter turnout. In that election, Governor Gray Davis was recalled and independent-minded Arnold Schwarzenegger was elected with 48.6% of the vote. Arguably, the combination of a non-partisan election with easy ballot access and substantial voter interest in the outcome combined to produce this high level of participation. (See http://en.wikipedia.org/wiki/California_gubernatorial_recall_election for a full account of this election)

Fair representation of parties and political groups: 4

This is a matter of opinion. Candidates representing all parties and groups have equal access to the primary ballot. Not every party or group has a candidate on the general election ballot. Minor parties do not like that.

Fair representation of racial minorities and women: 1

Top-two is neutral and not designed to increase or decrease the representation of any ethnic or gender grouping. Its goal is to treat all candidate and voters the same. The 2014 Senate race in Mississippi demonstrates how this can benefit the minority community. The State's open primary system allowed African Americans to join with moderate Republicans to defeat a far right candidate for the Party's nomination. In this heavily Republican State, the winner of the Republican primary is assured of victory in November. (<http://www.jacksonfreepress.com/news/2014/aug/21/sept-trial-likely-miss-election-challenge/>)

In the Chicago 2015 mayoral election, a run-off between two Democrats allowed the building of a Black/Latino alliance that came close to unseating incumbent Rahm Emmanuel. (<http://www.chicagotribune.com/news/local/politics/ct-chicago-mayor-race-latino-vote-met-20150401-story.html#page=1>)

At a time when 52% of Hispanics age 18 to 25 years of age and 38 % of Blacks are independent, open primaries, such as top-two, further the goal of minority inclusion. (<http://www.people-press.org/2015/04/07/2014-party-identification-detailed-tables-black-non-hispanic/>)

Electoral competitiveness: 4

General elections are more competitive. Instead of a non-competitive general election between marginal minor-party candidates and major-party candidates in districts in which one party is dominant, top-two results in general elections in which the two candidates are more evenly matched and either has a change of winning if she or he can put together a winning coalition of voters.

In the first election under top-two, incumbent legislators were significantly more vulnerable. According to a report of the Schwarzenegger Institute of the University of Southern California:

“The post-reform election ushered in a large number of new members. In the first elections in which the top-two primary and CCRC's districts were used, 38 of 80 Assembly members elected were new, and 9 of the 20 senators in seats up for

election were new. In the Assembly, new Members are more moderate than returning incumbents.

- Sixteen of the new Assembly members elected in 2012 came from districts where the incumbents were defeated or chose not to run again. Excluding term-limited seats, these new members make up 27.6 percent of the Assembly in 2013. This 27.6 percent exit rate in 2012 is 10 percentage points higher than the rates of incumbent voluntary exits and defeats during the years in which the 2002 legislature-drawn redistricting map was used.
- Three Assembly incumbents lost in 2012. From 2004 to 2010, no Assembly incumbents lost reelection. In 2002, two Assembly incumbents were not reelected. None of the new Senators elected in 2012 defeated incumbents, consistent with high incumbent reelection rates in the Senate between 2002 and 2010. A larger percentage of Senators voluntarily exited the Senate in 2012 than in the 2002 to 2010 period.”

Alleviating polarization: 2-4

The experts strongly disagree. According to the Schwarzenegger Institute:

“Early evidence suggests electoral reforms in California are associated with an ideological shift in the State Legislature, toward the center.

Since the introduction of top-two primaries and independently drawn district lines, the Legislature is becoming more moderate and less polarized.

Since the reforms took effect:

- Senators and Assembly members are more moderate overall, and
- Polarization between the two parties, as demonstrated by an analysis of members’ votes, has been reduced by 15 percent in the Assembly and 10 percent in the Senate.

During the same time period, polarization between the parties has increased in the U.S. Congress.”

On the other hand, we are told by Betsy Sinclair in *The California Journal of Politics & Policy*, (“Introduction: The California Top Two Primary”)

“There is a limited, if any, moderating effect as a consequence of the 2012 election, the first use of the new primary. Yet this research is fairly nascent;

it provides a snapshot of what the baseline effect might be. Campaigns, candidates, and voters have had little time to adjust to the reform. Consequently future elections may demonstrate different findings and this essay concludes with a section of ideas for future research.”

Dated: New York
April 13, 2015