ABOUT CALIFORNIA 100

The California 100 Initiative envisions a future that is innovative, sustainable, and equitable for all. Our mission is to strengthen California’s ability to collectively solve problems and shape our long-term future over the next 100 years.

California 100 is organized around 15 policy domains and driven by interrelated stages of work: research, policy innovation and engagement with Californians. California 100’s work is guided by an expert and intergenerational Commission. Through various projects and activities, California 100 seeks to move California towards an aspirational vision—changing policies and practices, attitudes and mindsets, to inspire a more vibrant future.

This California 100 Report on Policies and Future Scenarios was produced as part of California 100’s research stream of work, in partnership with 20 research institutions across the state. California 100 sponsored grants for data-driven and future-oriented research focused on understanding today and planning for tomorrow. This research, anchored in California 100’s 15 core policy domains, forms the foundation for the initiative’s subsequent work by considering how California has gotten to where it is and by exploring scenarios and policy alternatives for what California can become over the next 100 years.

The California 100 initiative is incubated through the University of California and Stanford.

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READ MORE ABOUT THE FUTURE OF GOVERNANCE, THE MEDIA, AND CIVIL SOCIETY IN CALIFORNIA

For additional background information, read the related Facts-Origins-Trends report at California100.org. The Facts-Origins-Trends report contains all of the references and citations to support the content of this report.

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THE FUTURE OF GOVERNANCE, THE MEDIA, AND CIVIL SOCIETY

A CALIFORNIA 100 REPORT ON POLICIES AND FUTURE SCENARIOS
CALIFORNIA 100
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This Report is one of 15 reports that will be released in 2022 as part of the California 100 Initiative. We are proud to partner with the following research centers and institutes across California on our work:

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THE FUTURE OF GOVERNANCE, THE MEDIA, AND CIVIL SOCIETY
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FOREWORD

“As California Goes, So Goes the Nation, Alas.” That was a headline from a Los Angeles Times opinion column on April 30, 1989, which noted that, even though “Californians have long considered their state the cutting edge of social and political change... [it] no longer seems the vanguard of political innovation. Other states rarely look to California for policy initiatives.”

Fast-forward to 2022, and few would proclaim that California lacks in policy innovation. Quite the contrary. The state has enacted a variety of policies ranging from expansions in immigrant rights and voting rights to health care and higher education, and from large-scale experiments in guaranteed income to ambitious moves towards net-zero emissions in a variety of sectors. And despite the periodic waves of “doom and gloom” reporting about the state, California’s economic output over the last 25 years has grown faster than the national average, and on par with GDP growth for the state of Texas.

Even so, much remains to be done. The California Dream has always been marred by a high degree of racial exclusion, and it remains out of reach for millions in the state—whether measured by health outcomes, unaffordable housing, or massive disparities in income and wealth. California also recognizes that future progress depends on recognizing and correcting historical wrongs. Its Truth and Healing Council, for example, will provide recommendations aimed at prevention, restoration, and reparation involving California Native Americans and the State. If California’s racial diversity represents America’s demographic reality by 2100, our work is essential—not only for the long-term success of the state, but also for our country’s innovative and equitable future.

This future-focused work is especially pressing today. The COVID-19 pandemic has scrambled a state and nation already undergoing significant changes in economics, politics, and society. The harmful consequences of climate change are at our doorstep,
with forest fires and droughts that grow in frequency and intensity each year. The weakening of local media and the growth of disinformation threaten both our civic health and our public health. And staggering inequities in income and wealth, homeownership and health, threaten the state’s reputation as a haven for migrants, domestic and international alike.

In addition to immediate threats that affect our long-term future, we also see plenty of opportunity. Record increases in federal and state spending mean that billions of additional dollars are flowing to state, local, and tribal governments in California. Many jurisdictions are looking to invest in infrastructure that meets the long-term needs of their communities. Philanthropic institutions and individual donors are also looking to make transformative investments that have enduring impact. We have an opportunity to inform and enrich all of these plans and conversations.

Most institutions and organizations in California are focused on immediate challenges, and don’t have the luxury of time, dedicated talent, and resources to focus on long-term futures. California 100 is grateful for the opportunity to provide added value at this critical time, with actionable research, demonstration projects, and compelling scenarios that help Californians—government agencies, stakeholder groups, and residents alike—to envision, strategize, and act collectively to build a more innovative and equitable future.

Karthick Ramakrishnan, Ph.D.
Executive Director

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Governance is the way that societies make decisions and solve problems. Governance is harder when society faces challenging problems and when it is divided in its values. More complications arise when a lack of trust in institutions makes it difficult for government to overcome division. Problems cannot be solved fairly when political participation slants toward some groups and not others and when there is not enough reliable information and structured debate in the media. Decisions may not even be reached when the governing apparatus has too many veto points where small groups can hold-up or put a stop to a decision. Finally, even after a decision is made, governmental agencies may lack the personnel and capacity to implement and administer policies.
In a society facing hard problems, partisan division and polarization, a lack of trust, and the decline of the media, democratic safeguards are often used in ways that stifle good decision-making.

While California’s governance system has solved some hard problems, its governance system suffers from significant challenges in all these areas:

- **Hard Problems:** California has solved many hard problems in the past, but as other California 100 reports document, California faces difficult challenges in climate change, immigration, water resources, housing, poverty, homelessness, education, transportation, and other areas.

- **Partisan Division and Polarization:** Growing ideological polarization of public opinion and elite opinion in California manifests itself in significant differences across the two major parties that makes agreement on solutions hard to reach.

- **Lack of Trust in Institutions:** Trust in most institutions, including government, has been declining in America and in California, making it difficult to make decisions that are viewed as legitimate and trustworthy.

- **Biased Participation:** Some groups are left out of the conversation because they face barriers to participation or because participation requires resources such as money that they do not have.

- **Demise of Local Media and the Paucity of Reliable Information:** The demise of local media and the cacophony on the internet and social media mean that information is unreliable and debate is chaotic.
• **Veto Points in Governing Institutions:** The American Founders designed American representative democracy to limit power and the possibility of tyranny. During California’s Progressive era in the early twentieth century the public was empowered directly through the recall, initiative, and referendum in order to overcome entrenched sources of power. More recent efforts to ensure public review of projects such as the California Environmental Quality Act (CEQA) have added additional points where objections can be voiced about projects requiring governmental approval. In a society facing hard problems, partisan division and polarization, a lack of trust, and the decline of the media, these democratic safeguards are often used in ways that stifle good decision-making.

• **Lack of Agency Personnel and Capacity to Solve Problems:** California has a very skilled civil service, but it needs constant training and upgrading given the demands of modern governance. California consolidated its personnel administration through reorganizations in 2012 and 2013 and there have been incremental efforts to reform the state civil service since then, but more needs to be done to modernize the state civil service and to ensure that it has the best possible technical competence.

**HARD PROBLEMS SOLVED IN THE PAST**

The following examples show that California has made important advances on solving hard problems in the past with varying degrees of bipartisan support:

**DESIGNING A HIGHER EDUCATION SYSTEM TO MEET THE NEEDS OF CALIFORNIA – THE MASTER PLAN OF 1960**

With the support of Governor Pat Brown, the University of California President Clark Kerr worked with the UC Regents, the California State Board of Education and others in 1960 to devise an innovative master plan for higher education. Propelled by a belief among both Republicans and Democrats that California’s greatness depended upon educating the young and the confidence that the already prominent University of California, the well-regarded community colleges, and a newly created California State University system could do the job, California devised a plan that many believe created the greatest public higher education system in the world.
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DESIGNING A PLAN TO DEAL WITH CLIMATE CHANGE, 2006

California has been a leader in the regulation of air pollution since at least 1947 when Los Angeles County set up the first air pollution control district in the nation. With the recognition of climate change in the 1990s, it became clear that carbon dioxide, methane, and other “greenhouse gases” produced by carbon based fuels (e.g., coal, natural gas, and petroleum) had the effect of raising worldwide temperatures posing threats to California’s coastal areas through rising sea levels, to its forests through increased wildfires, and to its water supply through decreased snowfall in the mountains. On June 1st, 2005, at the United Nations World Environment Day Conference in San Francisco, Governor Schwarzenegger announced an Executive Order with stringent greenhouse gas reduction targets for the state. Democratic members of the California State Assembly had already been working on environmental legislation, and in April 2006, state legislators put forth Assembly Bill (AB) 32 creating a mechanism to implement the Governor’s goals. The competition between the Republican Governor and the Democratic legislators to put forth meaningful environmental legislation overcame possible veto points and ultimately led to a landmark bill that included emissions trading and a strong regulatory mechanism for achieving goals. California has continued to lead the nation with the passage of legislation such as Senate Bill (SB) 32, “The California Global Warming Solutions Act of 2016” carried by State Senator Fran Pavley that expanded upon AB 32 and AB 617 carried by State Assembly member Cristina Garcia that provided a framework for addressing concerns for environmental justice.
FINDING A WAY TO GET BUDGETS DONE ON TIME, 2010

California’s Constitution requires a balanced budget, which prohibits the legislature from sending the Governor an unbalanced one. Until late 2010, the state Constitution required a two-thirds vote in each house of the state legislature to pass a budget bill, resulting in budgets that were on average 55 days late in the preceding decade. When the budget was 115 days late in summer of 2010, extensive media coverage and public indignation provoked a change. In 2010, Proposition 25 solved the problem by requiring only a majority vote in each house of the legislature and by penalizing lawmakers by withholding their wages permanently for each day the budget is late. Californians passed the proposition 55 percent to 45 percent. Since 2010 there have been no late budgets.

IMPLEMENTING A NEW PROGRAM – COVERED CALIFORNIA AND THE AFFORDABLE CARE ACT, 2013

With the passage of the federal Affordable Care Act (ACA) in March 2010, states faced decisions about whether they would participate and, for those who decided to do so, how they would provide coverage to the new populations covered by the ACA—popularly known as “Obama Care”—by the 2013 date when enrollments would begin. California was the first state to move to enable ACA legislation and to create its own state run marketplaces for health care policies called “Covered California.” Its first Executive Director, Peter Lee, provided exceptional leadership. As an “active purchaser,” the state negotiated rates, standardized benefits, and required improvements to program delivery such as incorporating immigrants. Through these and other efforts, Covered California received high marks for reducing the uninsured rate more than any other state as of 2017, reducing coverage inequities across racial and ethnic groups and geographic areas, providing coverage during the COVID-19 pandemic, and keeping costs low, especially in those areas with an abundance of insurers and providers.

DEALING WITH OTHER HARD PROBLEMS

California has also innovated in other areas. It led the national tax revolt with Proposition 13 in 1978, and it abolished affirmative action in state universities and colleges with Proposition 209 in 1996. Both remain controversial. In 2020 Proposition 15 sought to modify Proposition 13, but it narrowly failed with a 52 percent no vote. At the same election, Proposition 16 sought to modify Proposition 209. It lost with a 57 percent vote.

Despite the successes of Covered California, the state still faces big challenges to control health care costs, create a system that deals with the social and structural determinants of health, and make the California health care system more coordinated and accessible. It faces challenges in the solution of its water problems, and it faces difficulties in solving its housing and homelessness, transportation, poverty, and water problems. The state also
has to develop ways to support the flow of immigrants, to welcome them to California, and to coordinate its policies with the federal government. And California has to develop a coherent policy for the arts that recognizes both their economic and cultural value. Finally, California has to find ways to reduce the volatility in the state’s tax system and to cope better with the various restrictions on its taxing and spending such as Proposition 13 (limitations of property taxes) and Proposition 98 (mandated expenditures on education).

The effective efforts described above demonstrate that success requires overcoming partisan division and polarization such as the exceptional moment when a moderate Republican, Arnold Schwarzenegger, became Governor and partisan competition over the common goal of combating climate change led to AB 32. Success requires mutual confidence in the importance of an institution such as higher education that led to The Master Plan for Higher Education. Success requires structured debate, information, and political participation as when budget stalemates led to so much media coverage and popular indignation that Proposition 25 passed. It requires overcoming the veto points in governing institutions as in all of these examples, and it requires personnel and capacity to solve problems as with the leadership of Peter Lee at Covered California.
Governance would be easy if everyone agreed on the path forward, but human beings have different ideas about how to solve problems. Political parties embody these different perspectives and competition among them provides a way to resolve them. Difficulties arise, however, when differences are so great that they cannot be bridged. Partisan division and political polarization in the United States appear to be at their highest point since the late 19th century and California politics reflects these rifts.

Polarization in the Electorate

At first glance, party registration data (Figure 1) suggest that polarization is decreasing as more people now register as independents than in the past. Whereas in 1970, almost 95 percent of those registered chose to register as either Democrats or Republicans—leaving only 5 percent for other parties and “decline to state,” by October 2020, only 70 percent of the electorate indicated a major party preference. Although there was registration in some
minors (about 5 percent of the population), most of the rest of the electorate (24%) registered without stating a party preference. These data suggest a decline in party preference and partisan division since the fraction of “independents” (those without a party preference) has increased so dramatically.

However, survey data shows that most of those who register as independents say that they lean toward the Democratic or Republican parties, and in terms of their voting, they often behave like Democrats or Republicans. Upon careful analysis, the total percentage of independents in California has grown at

**Figure 1** Party Registration in California: 1922-2020

SOURCE: Authors’ calculations from California Secretary of State Data.
most by about 3 to 5 percentage points since the mid-1980s. More importantly, in a comprehensive 2004 article using survey and aggregate data on elections, political scientist Gary Jacobson argues that “compared with other American voters, Californians over the past three decades have been stronger partisans, more loyal to their parties, and more consistent in their party preferences.” Our extension of Jacobson’s work concludes that this is still true in California. All in all, these data suggest a convergence between Californians and those in the rest of the nation, but Californians are still slightly more partisan.

Perhaps even more importantly, partisans have become more ideological over the past decades. Figure 2 presents Gallup data for California and the U.S. showing that on a five-point measure of ideology where 1 means “very liberal,” 2 “liberal,” 3 “moderate,” 4 “conservative,” and 5 “very conservative,” partisans (as measured by people’s initial response to whether they are Democrats or Republicans) in California (the solid red and blue lines) have become more ideological over time – the lines spread out over time. Whereas California Democrats and Republicans were about one point apart on the scale in the 1990s, they are now about 1.5 to 1.75 points apart. California Democrats are generally somewhat more ideological than those in the rest of the country and California Republicans, until recently, were somewhat less ideological than Republicans elsewhere. Note that the average ideology of independents in California and the rest of the country is around the midpoint (3) of the scale. We get a similar result if we define partisans to include leaners, except that the difference in California between Democrats and Republicans goes from about .75 points in the 1990s to 1.25 points today.
All in all, the sum of strong, weak, and leaning partisans in California may have shrunk by about five percentage points over the past 50 years, but this is more than offset by the increase in ideological extremity. Because partisans are much more likely to participate in primaries than non-partisans, these results suggest that California’s representatives, those elected to the legislature, have become more polarized over time as well.
PARTISAN POLARIZATION AMONG ELITES

Have legislators become more extreme as well? Jacobson shows that “since the 1970s, California’s legislative parties have represented increasingly divergent electoral constituencies” while “the parties in California government also became increasingly polarized along party lines.” Jacobson employs a range of data to make this case including scores that rate the ideology of legislators, based upon their roll-call votes, with negative scores being liberal and positive scores being conservative. Using these scores, our analysis shows that both the California Democratic and Republican delegations to the House of Representatives have been more extreme than the rest of the House over almost all of the past 50 years, with some convergence occurring in the past five years. Furthermore, considering the four largest states, California’s Democrats (along with New York Democrats) have been more liberal than the Florida and Texas Democrats until recently when these lines have all converged. California’s Republicans have typically been more conservative than Florida and New York Republicans but less conservative than Texas Republicans. The most telling result, however, is that the national parties have diverged over time with an increase of about 50 percent in polarization. Using similar data on roll calls across legislatures in all 50 states, the California Assembly and Senate have been the most polarized legislatures in the United States since the early 1990s, and polarization has been increasing until recently when it leveled off.
POSSIBLE CAUSES OF REDUCTIONS IN ELITE POLARIZATION

What could be the source of leveling and even downturns in these scorings of elites? There are three policy innovations that might explain it, and there is one trend—the growing dominance of one party in California.

TERM LIMITS

California has gone back and forth on term-limits. In 1990, California Proposition 140 limited terms to statewide offices such as the Governor to two terms, state senators to two terms (eight years total), and state representatives to three terms (six years total). The result was substantially increased turnover in the state legislature. While providing opportunities for new leadership, the proposition also reduced—as was its intent—the chance for people to make a “career” in the legislature and it changed the incentives for legislators to be responsive to their constituents. The title of one book on the subject summarizes the results: “Term Limits and the Dismantling of State Legislative Professionalism.”

Although proponents of term limits argued that they were needed to reduce incumbency advantage and to remind legislators that they are just temporarily there, before term limits, legislators could develop expertise and a reputation in a district over time for probity, decency, and thoughtfulness and make compromises without endangering their electoral prospects. With term limits, time was short so that there was little possibility or incentive for taking this route. Recognizing these problems, Californians modified term limits in Proposition 28 in 2012 allowing legislators to spend up to 12 years in either or both chambers of the legislature. The result has been reduced turnover and increased expertise.

REDISTRICTING

Proposition 11, “The Voters First Act” created a California Citizens Redistricting Commission (CCRC) in 2008, and Proposition 20, “The Voters First Act for Congress” gave it additional powers in November 2010. The CCRC is a state commission consisting of five Democrats, five Republicans, and four unaffiliated citizens chosen to develop fair boundaries for Assembly, Senate, Board of Equalization, and Congressional districts after changes of population recorded by the Decennial Census. The Commission was established to eliminate Gerrymandering – the process by which a party in charge of redistricting tries to maximize its own advantage – and to create fair and competitive districts.

TOP TWO PRIMARY

In June 2010, California passed Proposition 14 “The Top Two Candidates Open Primary Act” that created a common primary ballot for all political parties and that allowed all voters, regardless of their party registration, to vote in them. Animating this proposition was the theory that separate party primaries involving only members of that party and guaranteeing a place on the ballot to the winning candidate led to extreme candidates. Because the most
ideologically intense voters tend to vote in primaries, separate primaries led to the voters of just one party choosing a candidate in their primary, forcing Democratic candidates to go to the extreme left and Republican candidates to go to the extreme right. The Top Two primary would only guarantee the top two vote-getters a place on the ballot, providing an impetus for candidates to move to the center to attract as many voters as possible from Democrats, Republicans, and independents.

IMPACTS OF THESE POLICY INNOVATIONS

There is debate about the impacts of these innovations. One of the most careful assessments of the Top Two primary by political scientists Eric McGhee and Boris Short, compares two states that adopted the innovation, Washington and California. It concludes that:

The evidence for post-reform moderation is stronger in California than in Washington, but some of this stronger effect appears to stem from a contemporaneous policy change—district lines drawn by an independent redistricting commission—while still more might have emerged from a change in term limits that was also adopted at the same time. The results validate some claims made by reformers, but question others, and their magnitude casts some doubt on the potential for institutions to reverse the polarization trend.

There is evidence that redistricting reform has drawn fair and more competitive districts, and there continues to be debate on the impact of term limits, although there is general agreement that they have weakened legislatures relative to the executive.

It is hard to pin-down the impacts of these changes on competitiveness and polarization, but they may explain some of the trends in the polarization of California’s House delegation and State and Assembly members compared to the rest of the U.S. The difficulty finding effects suggests that institutional changes may do little to reverse the trend toward polarization.

CALIFORNIA’S TREND TOWARD DEMOCRATIC PARTY DOMINANCE AND MODERATION

California has increasingly moved to one-party control over the past 30 years, and this might explain some moderation on the part of Democrats, although it depends upon the causes of California’s move to Democratic dominance. In 1994, California was nearly balanced in its partisanship with the election of Republican Governor Pete Wilson with 55 percent of the vote, a Democratic Senate by a margin of just four votes (21 Democrats, 17 Republicans, and two independents), and a Republican Assembly by a slim margin – Republicans won 41 seats and Democrats won 39. Since 1996, the Democrats have always controlled the Senate and Assembly and the Democrats have only lost the Governorship with the recall of Democrat Gary Davis in 2003, and the subsequent election of Republican Arnold Schwarzenegger in 2006. Since the elections of 2016, the Democrats have had veto-proof majorities in both houses of the legislature with over 27 Democrats in the Senate and over 55 Demo-
Recent research argues that moderation can occur for members of congress (MCs) in a state when one-party dominance is the result of some feature of local politics such as race in the south from 1876 to about 1960 or farming in the farm states of the upper Midwest over the same period. But it does not occur when one-party dominance is based upon the same issues that divide the political parties nationally. Given the nationalization of politics in America, it seems more likely that California’s Democratic dominance stems from its alignment with the national party than with its advocating distinctively California issues, so that moderation is due to other causes. More work is needed on this issue to understand to what degree California is distinctive.

**POLARIZATION AND GOVERNMENTAL OUTCOMES**

Political Scientists debate whether polarization is good or bad for democracy. Although there is strong evidence that elite polarization in the political parties has become much greater than the polarization of opinions among Americans and even between party identifiers, it is hard to judge the optimal level of polarization. Rather than exploring the complicated question of how well polariza-
tion represents Americans, we focus here on how polarization affects governance. It might matter in two ways. It might lead to gridlock where legislation simply cannot get passed. Or legislation might get passed but there might be volatile swings in policy as one party supplants the other in power. And things might be even more complicated because the impacts of polarization might depend upon the degree of competitiveness of elections and the amount of alternation in power between the two major parties.

Polarization certainly seems to matter in national politics where there is substantial competition and alternation in power. Political party registration is relatively closely balanced (see Figures 1 and 2) and the distribution of voters across the United State and the Constitutional allocation of two Senators to each state leads to regular alternation in control of the House, Senate, and the Presidency. There is evidence that polarization has affected the ability of Congress to solve problems (e.g., immigration policy), and it has certainly led to substantial swings in public policies such as taxes, abortion, and climate change at the national level as one party supplants the other. What about California?

Using data from 1931 to 2004, political scientist Thad Kousser found that gridlock is not predicted by the amount of polarization alone, but it is strongly predicted by divided government where the Governor is of one party and one or both of the legislative chambers is controlled by the other party. Kousser also came up with one additional finding that is important: gridlock with divided government leads to fewer legislative results when there is more polarization so that polarization can exacerbate deadlock. Kousser’s study, because it focused just on the passage of legislation regardless of its content, did not ask whether the alternation in parties led to policy instability with more instability when there is greater polarization.

Perhaps none of this matters for California because of Democratic Party dominance. The Assembly, Senate, and Governorship have been in one-party’s hands since 2010, and Figure 1 shows that Democrats now have between 40 to 45 percent of party identifiers and Republicans have only 20 to 25 percent. Yet during the last 13 four-year gubernatorial terms, since the first term of Ronald Reagan in 1967, California has had divided government eight out of 13 times. In every case, the division was between a Republican Governor and Democrats who controlled either the Assembly, Senate, or both. Although the prospect of a Republican Assembly or Senate and even a Republican governor currently seems highly unlikely, it is worth noting that Kousser finds that “transitions to divided government occur most often when the legislative and executive branches have been exceptionally productive [because of one party dominance]... Perhaps voters saw California moving too fast in one direction, leading them to use elections to correct this movement... to ‘policy excess.’” In the short run, it seems unlikely that Republicans will stage a comeback, and the party seems to be less and less competitive in California. But over a decade or two, political parties can change dramatically as they seek winning formulas, and it would be
foolish to think that the Republican Party will not eventually find an approach that will win votes, especially if the Democrats are seen to be overreaching in their policies. Indeed, one of the most pernicious effects of polarization might be that the party in power tends to dismiss the party out of power as too extreme and not worth consulting, leading inexorably to overreaching.

LACK OF TRUST IN INSTITUTIONS

When people trust an institution, that institution is heard, respected, and even allowed leeway to make decisions on behalf of those people because they believe that it is acting in their best interests. Trust is essential to governance and to prosperity because we cannot enter into relationships without having some trust in the institutions with which we are dealing.
TRUST IN STATE GOVERNMENT

Figure 3 shows how partisan trust in California state government “to do what is right” has changed over time through the Governorships of Gray Davis, Arnold Schwarzenegger, Jerry Brown, and Gavin Newsom. Note that the question is about trust in state government, not approval of these Governors. The (mostly) top blue line is for Democrats and the (mostly) bottom red line is for Republicans. Responses from independents are represented by the dashed purple line.

Not surprisingly, Figure 3 shows that Democrats are generally more positive about state government when there are Democratic Governors than they are about state government when there is a Republican governor such as Arnold Schwarzenegger, although the moderate Schwarzenegger did not engender that much trust in state government among Republicans either. The most remarkable feature of this picture, however, is the way that partisan trust for state government has diverged in the Brown and Newsom eras. This polarization of trust mimics California’s political polarization, and it suggests the difficulties faced by a Governor of one party in dealings with members of the other party. Even though overall trust in state government is 47 percent in August 2021, only 13 percent of Republicans and 35 percent of independents “just about always” or “most of the time” trusted state government.

We find the same pattern in trust for other institutions in California. Using Gallup data we find that polarization in trust in newspapers has increased since the mid 1970s when about 80 percent of partisans of both parties had at least “some” confidence in newspapers to today with 85 percent of Democrats now having some or more confidence (45 percent have quite a lot or a great deal), but less than 40 percent of Republicans having some or more confidence – meaning that over 60 percent of Republicans have very little or no confidence in newspapers. Needless to say, this bodes ill for the credibility of newspapers in California. It is not the case, however, that Republicans have lost faith in all institutions. They remain strongly confident in religion, the military, and police while Democrats have lost faith in religion and the police. Democrats remain confident in higher education, science, public schools, newspapers, and medicine and Republicans do not. Democrats are somewhat less confident in the military than Republicans, but this is the only institution for which overall confidence has increased since the 1970s. As the COVID years have taught us, trust has become an issue across many fields of endeavor such as science, medicine, and the police that were once commonly trusted. With very few institutions trusted across partisan lines governance becomes difficult.

**TRUST IN LOCAL, STATE, AND NATIONAL GOVERNMENT**

One of the consistent findings in the survey literature is that trust is highest for local government and lowest for the national government with trust for state government in-between. In polls done in November 2020 and April 2021, Deloitte asked about the humanity, transparency, capability and reliability of all three levels of government. Using a composite score based upon these four dimensions they found that national government scored 32 points lower than state government which scored eight points lower than local government. These data suggest that one way to restore faith in government is to move functions down to the local level. Yet as shown in the California 100 report on Federalism and Foreign Policy, many prob-


BIASED PARTICIPATION

Definitions of democracy typically include two major features. There is an open participation and information condition and there is a democratic decision mechanism. The open participation and information condition requires that adults have the chance to participate in all elections, that they have the right to free expression on political matters, that they have the right to form and join autonomous associations such as political parties and interest groups, and that their access to sources of information is not dominated by the government—that there be a free press. The democratic decision mechanism is the constitutional vesting of political decision-making in elected officials who are chosen and peacefully removed based upon a principle such as majority rule in frequent, fair, and free competitive elections with open nomination processes. This section (“Biased Participation”) and the next (“Demise of Local Media and the Paucity of Reliable Information and Structured Debate”) consider the open information and participation condition. The three sections after that consider California’s democratic decision-making in its governmental institutions (“Veto Points in Governing Institutions,” “Direct Democracy in California,” and “Governing and Direct Democracy: Case Study of CEQA.”)

POLITICAL PARTICIPATION

When it comes to assessing the health of California’s democracy, it is vital to understand patterns and trends in voting and other forms of political participation. The Current Population Survey (CPS) Voter Supplement indicates that presidential voting in California is on par with presidential voting in the rest of the United States. During the 1980s and 1990s, voting was slightly higher in the Golden State, while since 2000 it has been slightly lower. A very different story emerges, however, when we examine gubernatorial or midterm elections in California. According to self-reported data on voting in the CPS, a much larger proportion of adult citizens voted in California during the 1980s and 1990s than during the last 20 years when California turnout in midterm elections dropped to the same level as the rest of the United States.
Disparities by Race, Ethnicity, Socioeconomic Status, and Age: Voting disparities in California by race, ethnicity, and socioeconomic status are also a matter of significant concern in a state that has been majority-minority since 2000, and with Latinos accounting for the largest share of the resident population since 2015. As the CPS data indicate (Figure 4), voter turnout is highest among adult citizens who are non-Hispanic white (55 percent) with turnout in gubernatorial/midterm races that is nearly double the rate of voter turnout among Native Americans (30%). Asian American and Latino voters have turnout rates that are also compar-
atively very low, at 34 percent and 35 percent, respectively, followed by Black voters at 42 percent and Pacific Islanders at 47 percent.

There are several reasons why voting participation is lower among communities of color in California than among non-Hispanic whites. Past survey research indicates that Latino and Asian American voters in California are less likely to be mobilized by political parties and campaigns compared to white voters. In addition, Latino and Asian American voters often face language barriers when it comes to voting. California law mandates that language assistance be provided to populations with language needs that exceed 3 percent or more of eligible voters, which is lower than the 5 percent federal threshold. However, the state has not always lived up to the promise of providing language assistance to qualified groups.

**Figure 5** California Voting by Age, Housing Status, and Gender since 2006

<table>
<thead>
<tr>
<th>Category</th>
<th>2006 Turnout Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age-18-34</td>
<td>29%</td>
</tr>
<tr>
<td>34-49</td>
<td>44%</td>
</tr>
<tr>
<td>50-64</td>
<td>56%</td>
</tr>
<tr>
<td>65+</td>
<td>63%</td>
</tr>
<tr>
<td>Homeowner</td>
<td>51%</td>
</tr>
<tr>
<td>Renter</td>
<td>30%</td>
</tr>
<tr>
<td>Male</td>
<td>45%</td>
</tr>
<tr>
<td>Female</td>
<td>47%</td>
</tr>
</tbody>
</table>

**Source:** Authors’ calculations based upon CPS data.
In addition to voting disparities by race, voting in California is also marked by significant disparities in participation by age and socioeconomic status, and much less so by gender (Figure 5). Examining the average voter turnout in the last four gubernatorial elections, we find that younger voters (ages 18 to 34) are less than half as likely to have voted than Californians age 65 and older. Decades of scholarship indicate that young people are much less likely to have a say in the democratic process than older voters.

We also find significant gaps in participation based on homeownership, with homeowners about two-thirds more likely to vote than renters. These gaps point to potentially even larger problems when it comes to local elections and ballot propositions. Past research indicates that gaps in participation by race, age, and homeownership on these topics are even more severe than they are for “top of the ticket” vote choices for President or Governor. These participation gaps have significant implications for public policy, as population groups that are severely under-represented at the ballot box are less likely to be influential on policies and budget allocations that benefit those groups.

Finally, administrative data from the California Secretary of State also indicate significant gaps in participation by geography in California. Northern California tends to have higher levels of voter turnout in midterm elections and presidential elections than Southern California, and the fast-growing, Latino-heavy counties of the Inland Empire and Central Valley tend to have much lower rates of political participation than counties in the Bay Area and coastal Southern California. These disparities have significant implications for closely divided ballot propositions, where comparatively high turnout in the Bay Area can prove decisive in shaping statewide policy. The Bay Area’s high level of voter turnout, when combined with its comparative strengths in campaign fundraising, also likely account for why statewide elected officials are more likely to come from the Bay Area region than from any other region in California, including population-rich Southern California.

**POLITICAL PARTICIPATION BEYOND VOTING**

In addition to what happens on Election Day, it is also important to pay attention to disparities in political participation between elections. When it comes to influence over decision-making, past research suggests that activities such as contacting public officials, making political contributions, and attending public meetings and hearings can play a significant role. Contacting public officials can take on various forms, such as sending emails, making phone calls, and visiting legislative district offices, and allows constituents multiple opportunities to voice their opinions and concerns in between elections. Despite these multiple opportunities to contact public officials, past survey research indicates significant racial gaps and age-related gaps in participation, with elected representatives much more likely to hear from white voters than from
voters of color, from older constituents when compared to younger adults, and from homeowners over renters.

Campaign contributions are another way Californians have influence in the policy making process. Even though California has strong laws to guard against political corruption and to ensure transparency in campaign contributions, political scientists have shown that political contributors are more likely to have access to meet with elected officials than those who do not contribute, and that officials are more likely to represent the preferences of their donors than their general constituents. Past survey research indicates significant disparities in Californians’ campaign contribution activity by race, as white voters are much more likely to make campaign contributions than Black, Latino, and Asian American voters, and by age, as younger voters are much less likely to make campaign contributions than older voters.

Finally, attendance at public meetings and hearings provides constituents with additional opportunities to express their opinions and concerns. In California, the Brown Act and the Bagley-Keene Act ensure that meetings of legislative bodies, public boards and public commissions are open to the general public and that they provide adequate prior notice of meeting agenda items. Constituents also have the opportunity to express their views during public comment periods. Past research indicates that a much lower proportion of Californians report to have engaged in this form of political participation, at about 25 percent, versus voting in gubernatorial elections, which has averaged around 46 percent in recent years. There is also mixed evidence with respect to racial gaps in attendance at public meetings, with generic wording about meetings in the Current Population Survey indicating significant racial gaps in participation, and with more specific wording involving school board meetings and city council meetings indicating lower participation only among Asian American constituents.

**CALIFORNIA’S ROBUST CIVIL SOCIETY**

Political participation is enhanced and supported by a robust civil society of organizations. California has a vibrant civic life and a nonprofit sector that represents one-sixth of the Gross State Product. Many civic and non-government organizations have been created to participate in California’s direct democratic governance, and the sector continues to grow. According to the California Association of Nonprofits, more than half of the state’s nonprofits report that they actively participate in civic life by meeting with public officials or forming coalitions to influence public policy, and California’s citizens reportedly trust the nonprofit sector to a much greater degree than the private for-profit sector. However, civic organizations are not evenly distributed throughout the state and reflect national disparities in terms of the number of organizations and the amount of funding raised by them. Wealthier and metropolitan communities have more civic soci-
ety organizations and more funding for them. This disparity is even worse for communities of color. According to American Community Survey census data from 2012, 28 percent of Californians reside in communities of color, but nonprofits in those communities raised approximately one-half of the revenue per capita relative to other communities and reported less than one-third of the assets per capita relative to other communities.

**WHAT CAN BE DONE TO IMPROVE PARTICIPATION?**

People fail to participate in politics for three reasons. First, they may not have the interest or knowledge necessary to get involved. Second, they may not have the resources, especially money or time, but also civic skills, to do so. Third, they might not have been asked or even informed about what they might do.

*Increasing Interest and Knowledge:* It is hard to know much about politics if information is not made available in the language one knows best. That is one reason why ethnic media are so important for California. It is also a reason why prospective voters need to have assistance in their first language. California law mandates that language assistance be provided to populations with language needs that exceed 3 percent or more of eligible voters, which is lower than the 5 percent federal threshold. However, the state has not always lived up to the promise of providing language assistance to qualified groups.

Most of the learning about politics and government occurs in the home, in school, through the media, and more and more through social media. Learning in the home depends upon one’s parents and their interest in politics which depends in turn on their schooling and attention to the media. Later in this report we discuss declines in local media and the rise of disinformation on the internet that diminish civic understanding, especially for those voters—often older ones—who are less savvy about the internet. That leaves the school as a pivotal institution for civic education.

It is widely agreed that civics programs in American schools need to be changed. In the most recent (2018) assessment of civics proficiency by the National Assessment of Educational Progress, only 24 percent of eighth graders rated as “proficient” in civics compared to about one-third of eighth graders in reading, mathematics, and science. In a 2016 survey of Americans, only a quarter could name all three branches of government and nearly a third could not name a single branch. Trust in institutions and government is declining as noted earlier.

In a 2018 assessment, the Center for American Progress found that “state civics curricula are heavy on knowledge but light on building skills for civic engagement.” Civics curricula tend to emphasize the structure of government and knowledge about the Constitution, but they neglect the skills that are essential to politics—understanding political issues, engaging in dialog with others, and making compromises and working with others. It is
these skills that increase people’s feelings of competence and their trust in political institutions because they begin to understand how those institutions operate. It is unfortunate, therefore, that one of the major recent thrusts in civic education has been to require high school students to pass the U.S. Citizenship exam before graduation. As critics have noted, this test does little to increase competence in political action and engagement. Instead, there should be more emphasis on active learning such as community service, games that allow students to participate in simulations of budget making or political bargaining, debating and speaking, writing letters to public officials, and involvement in local issues that students care about (e.g., gang violence, youth employment, or environmental issues).

**Addressing Resource Deficiencies:** In addition to requiring knowledge, voting and most other political activities require time and effort. Contributing to political candidates requires money. Getting involved in politics also requires resources called “civic skills” such as being able to write a letter, run a meeting, or make a speech.

Historically, civic skills have not only been learned at home, in school, and in the workplace, but also in religious institutions, unions, and non-political groups such as clubs and sports teams. These last three types of organizations are especially important places for members of low-income groups to learn civic skills, but involvement in all three of them has declined significantly in the past 50 years,
thus increasing resource deficits for those in low income and marginalized groups.

Time is also scarce for most low-income workers who cannot afford to take off time from work to vote, much less to engage in political activities, but money is even scarcer. As politics has moved increasingly toward expenditures of large sums of money for campaigns, lower income people are especially disadvantaged. There are two ways to reduce resource deficits of time or money, either eliminate the necessity for the resource or increase its availability. Attempts to regulate the amount of money in politics have taken the first route with very little success, and recent Supreme Court rulings such as *Citizens United* have recognized campaign contributions as a form of free speech that can only be regulated when there is substantial justification. That leaves us with the approach of increasing the availability of money such as “The Democracy Voucher Program” in Seattle that provides all eligible residents with vouchers that they can use to contribute to political campaigns.

Similar strategies are available to those who are trying to increase voting. Those who advocate same day registration for voting or all mail voting are trying to reduce the amount of time and trouble required for voting. Those who advocate for early voting or an election holiday are trying to make more time available to voters so they can vote.

There are currently profound partisan differences in support for making political participation, especially voting, easier. The most visible objections come from claims that fraud will occur without strict identification requirements and without in-person voting at a precinct. Despite the fact that there is little evidence of anything more than a minuscule amount of fraud in either mail or in-person voting, there are 35 states with voter ID laws, although only seven states have a strict requirement where a photo ID is required and a provisional ballot cannot be counted unless the voter takes action after the election to prove the validity of the vote.

*Informing People of Opportunities and Asking People to Participate:* In the last 15 years, a growing body of research suggests that low income and marginalized communities can be mobilized if a “relational” approach is used in which organizers use local people to make contacts, employ the first language of the prospective voter, and most importantly listen to voters and help them to form a sense of civic identity and efficacy. In its most expansive form, this “Integrated Voter Engagement” method keeps in touch with them beyond elections and connects them to community organizations.

Efforts in this realm are primarily the responsibility of nonprofit organizations and not government. The profusion of organization developed over the past twenty years, indicates the vitality of civil society in California. A recent report from USC notes that “In the Golden State, the Million Voters Project (MVP) is harnessing the power of seven statewide and regional community networks and its 93 affiliates to deploy members and leaders across 26 counties to turn out one million new and infrequent voters—a scale at which they can not only tip elections or defeat harmful initiatives but also put forth bold proposals.”
DEMISE OF LOCAL MEDIA AND PAUCITY OF RELIABLE INFORMATION

THE RISE OF THE INTERNET AND WHERE PEOPLE GET NEWS

The rise of the internet has led to two “wicked problems.” The first is that the media that distribute the news, do not create it.

According to the Pew Research Center, more than eight in 10 U.S. adults (86 percent) get their news from digital devices “often” or “sometimes” and 68 percent get their news from television at least sometimes. Pew reports that Americans turn to radio and print publications for news far less frequently, with half saying they turn to radio at least sometimes (16 percent do so often) and about a third (32 percent) saying the same of print (10 percent get news from print publications often). Despite this dominance of digital and television sources for news, it turns out that most news stories originate with local news outlets that were traditionally newspapers. Yet newspapers are dying because of competition for advertising from the internet.

The second is that while the inventors of the internet hoped that it would empower people and broaden democracy, it has also allowed extreme political factions, the nemesis of the founders, to form in a way that they never envisioned as we have seen in recent events such as January 6th, 2021. In Federalist 10, Madison noted that in a large republic factions would have a harder time forming for “it will be more difficult for all who feel it [a common motive to invade the rights of other citizens] to discover their own strength, and to act in unison with each other.” The internet changed that and people with extreme views can find one another by simply typing in phrases on Google. How can we continue to support free speech on the internet without undermining democracy?

California probably has disproportionate influence on what will happen with the governance of the internet, and the California 100 report on Federalism and Foreign Policy discusses this in the context of California’s relationship with China. Here we focus on a closely related issue – the future of local news as a producer of news and a bulwark of democracy.
LOCAL NEWS IS DYING NATIONALLY AND IN CALIFORNIA

Historically, newspapers have been the major source of local news and opinion. Pulitzer prize-winning journalist Alex Jones estimates that “85 percent of professionally reported accountability news comes from newspapers.” Dailies such as the Long Beach County Register, Oakland Tribune, and Contra Costa Times produced news about their regions, cities, towns, and neighborhoods. Although they typically charged for subscriptions, the bulk of their revenues came from display and classified advertising. Weeklies and non-dailies focused on smaller areas such as rural counties or urban neighborhoods and often distributed their papers for free, relying upon advertising to pay the bills. These papers helped to define their communities, provide them with ongoing, reliable news about what was happening in them, and keep public officials accountable through constant scrutiny.

Yet all of the newspapers listed above have either closed or been merged with other papers since 2004. While there were almost 9,000 weeklies and dailies in 2004 in America, at the end of 2019 there were only 6,700, and in the last few years COVID has closed many others. Additionally as newspapers have been taken over by private equity and hedge funds, the focus on profit has meant that many are now “ghost” newspapers lacking content from local areas.

The digital news transition and concentration of advertising online have completely reshaped the newspaper industry. Advertising revenues have moved from newspapers to the web, but Facebook, Google, and other social media giants do not produce news – they simply aggregate and deliver it. The newspaper industry that produces the news has significantly decreased in its size, and the effects have been pronounced for local newspapers as the industry has consolidated around fewer large newspapers and more nationally oriented political coverage.
The UNC Hussman School has collected data on California local news decline in terms of the number of newspapers and news websites in operation. Noteworthy statistics include:

- Only 43 unique California cities have local news sites, of the 482 cities in California.
- While news websites are increasing, they are doing so at a slower rate than local newspapers are declining, and they are serving fewer California counties.
- Between 2004 and 2020, the count of newspapers in California declined from 481 newspapers in operation in 2004 to just 366 in 2019. Daily newspapers declined by almost one-third from 97 to 68.
- Every California county had a newspaper in 2014 and 2016, but two counties had zero in 2020, and 13 counties had only one.

The impact of declines in local newspapers have been especially acute in areas with low income or people of color. Those areas without a newspaper are poorer and less likely to have residents with a college degree. Research at Duke University looked at 16,000 news stories from 100 randomly selected communities and found that communities with fewer universities and with larger Latino populations had less robust journalism. And ethnic media have been hard hit as they share the same business model as the news media generally, but their circumstances are even more complicated. For example, “younger Latinos are not only moving away from traditional media like print and TV to other platforms, they are also moving from Spanish—the language of their parents and grandparents—to a bilingual lifestyle in which they pick and choose what language to live in.”

**WHY DOES IT MATTER?**

Many social science studies have shown that newspapers have exactly the impacts that we might expect. Newspapers help to define the public agenda, ensure informed deliberation, and improve decision-making. Non-voters often say that they don’t know enough to vote so they abstain. Newspapers provide them with information about a community’s problems so that they have the knowledge that enables them to vote. In a study of Los Angeles, researchers found that in areas without local news, voters were less likely to turn out.

Good journalism provides facts, and it presents different points of view to ensure that deliberation is informed and thoughtful. It often encourages candidates to run for office through its reporting on the incumbent. Better staffing at eleven local newspapers in Los Angeles over 20 years is associated with more voter engagement in local elections, a lower likelihood that incumbent mayors run unopposed, and more competitive mayoral races in terms of the number of candidates and margin of victory. Newspapers shine a light on public decisions so that decision-makers know that they are held accountable. Members of Congress who are less covered by the local press work less for their constituencies and they get less federal funding. Cities with newspaper closures pay significantly higher financing costs (5 to 11 ba-
sis points) due to rising municipal wages and deficits. Finally, newspapers provide a sense of cohesion and community by covering local parades, sports, businesses, clubs, and other activities. The closure of local newspapers is associated with an increase in the incumbency advantage in local elections and with more ideologically extreme elected representatives. Newspaper closures have also been associated with an increase in straight ticket voting, a metric for political polarization, as local news is replaced by national news coverage. And it simply makes sense to think that trusted local news sources will help to combat misinformation and extremism.

California’s current number of journalists is about 3,100 people, about half what it was in 2008. Yet there are 482 cities in California, about 1,000 school boards, 3,400 independent special districts, and 20,000 elected officials. It is difficult to believe that even 3,100 journalists (even if they were all focused on politics) could do a proper job of reporting on this many governments and elected politicians, not to mention the entirety of state and local government in California with 2.5 million employees. More than halving the number of journalists since 2008 has made the task even more difficult.

**WHAT IS TO BE DONE?**

The financial model that sustained newspapers for more than a century – low subscription rates to draw in readers whose attention could then be “sold” to advertisers to create high revenues – is no longer viable for most news markets. Advertising revenues have migrated to the web, and they will not return to newspapers. Furthermore, the delivery mechanisms of newsprint and distribution to the customer directly through personal
delivery or indirectly by stacks of newspapers at local businesses only work in specialized circumstances. Digital delivery is probably a better option in most instances – it saves on newsprint and on delivery costs. But inexpensive methods of delivery do not solve the basic problem faced by newspapers: how will they cover the costs of producing news? One solution is to cut costs by developing newspapers that are less oriented toward profits. Another solution is to increase revenues through public subsidies. Below, we introduce approaches that may reduce costs.

Independent Profit-Making Newspapers:
One solution is nurturing the existing 2,400 independent profit-making community based newspapers owners that remain in the United States—the number was about 3,600 in 2004. Many of these are family-owned and operated and some are public benefit corporations or cooperatives. They typically have a commitment to serving the community, and they do not need to meet the returns required by the stockholder owned or private equity firms which have been gobbling up newspapers. However, they still have to raise revenues, and their circumstances are precarious because of the difficulty of finding a money-making model for journalism.

The Nonprofit Model: The nonprofit model provides tax advantages because donors can deduct their contributions as charitable deductions and non-profits do not have to pay business taxes. They also are eligible for various forms of charitable grants and corporate sponsorships that would not be available to profit-making concerns. Despite these advantages, nonprofits still require some way to get
revenues – either as charitable contributions or through some other method, but charitable foundations have been slow in providing funds for the news media. They also are limited in how far they can go in journalism about politics. For-profit newspapers regularly endorse candidates and take political positions. Unlike their for-profit counterparts, nonprofit news organizations are strictly prohibited from endorsing candidates, and they must be careful about engaging in activities that might be considered electioneering. They can support specific bills and publish opinion pieces about specific legislation, but they must do so circumspectly and without becoming primarily a lobbying organization. These restrictions may limit the degree to which nonprofits can provide the kind of partisan debate that accounts for some of the success of newspapers in encouraging political participation, increasing political competition among candidates, and having an impact on governmental decisions. The fundamental question is how far the sector can go with its heavy reliance on foundations and individual donors.

The Public Model: The Public Broadcasting Service (PBS) and National Public Radio (NPR) are the leading examples of a public model. Neither is very old (PBS started in 1969, NPR in 1970), but they have developed different profiles with respect to news. Commercial television stations dominate the news field even though PBS has a high-profile and long-lasting show, The News Hour. NPR dominates radio news. Both receive public funding, but rely upon individual giving for 40 percent of their revenues for PBS and 60 percent for NPR. NPR provides the most likely model for the expansion of local news, but it would have to expand significantly from its current workforce of 3,000 journalists to do so. As with all of these models, the question is, where would the funds come from?

Digital Newsrooms: One route that reduces the costs of distributing news is digital, web-based, news sites. They are currently a small component of the total mix (about 10 percent), and they are still struggling to find a financial model to cover the costs of production of news. Some of them rely upon older, retired people or upon students – but this model only works where there is a supply of people with the requisite training to be journalists. University towns are an obvious location, but the result is that this approach mainly serves affluent and well-educated constituencies.

Ethnic Media: At the same time as independent ownership has plummeted among community newspapers as a whole, the growth of ethnic communities has supported the growth of ethnic media, although they still face economic problems. California has 142 of the 950 ethnic news outlets in the UNC Hussman’s database and most of these are newspapers. These ethnic newspapers face problems like all other newspapers, but they still obtain substantial advertising from their local communities because they are often the best way for local businesses to reach their customers. A recent report on community and ethnic media in California from UC Riverside found even more outlets, 300, than the UNC database that served at least 38 different ethnic, racial, and cultural communities in the
state. Most of the outlets were small (fewer than five full-time employees) and about a quarter of the outlets were losing money before COVID hit. Many feared that they would have to shut down with the continued revenues losses from the pandemic. However, the outlets serve an essential function with two-thirds local content and deep ties with their communities. The report suggested that philanthropy and directing governmental advertising their way would be helpful.

SOLVING THE FUNDING PROBLEM

A recent American Academy of Arts and Sciences report by the Commission on the Practice of Democratic Citizenship, Our Common Purpose, suggested that state or federal legislation should be passed that would create “a tax on digital advertising that could be deployed in a public media fund that would support experimental approaches to public social media platforms as well as local and regional investigative journalism.” The idea is straightforward: the revenues that used to flow to newspapers from advertising are now going to social media. To revitalize local and state news coverage, we should find a way to divert some of those revenues back to the production of news and not just to those who distribute it.

There are many other related ideas. New York City set aside a portion of its advertising budget for local media. News aggregators could be mandated to negotiate a licensing fee to be given to those whose content they are distributing. Tax credits could be provided for subscribers, for advertisers, or for the payroll costs of newspapers. The state or federal government could create a fund to be disbursed to local news outlets. The Colorado Media Project proposed extending the state’s 2.9 percent sales tax on digital media advertising in that state, thus generating up to an additional $70 million per year to be used to help local media. Projecting to the entire nation that would be $3.7 billion per year.

But is this enough? According to one source, annual advertising revenues for newspapers dropped from $49 billion in 2005 to $25 billion in 2012 and to $14 billion in 2018 – a drop of $35 billion. The sales tax on digital media advertising proposed by the Colorado Media Project covers only about one-tenth of the need. Clearly, the public policy challenge is immense, and despite the dangers of public funding through taxation, it is hard to think of any other mechanism that could raise the funds needed to really restore local news coverage.
VETO POINTS IN GOVERNING INSTITUTIONS

GOVERNING INSTITUTIONS IN CALIFORNIA

Governing institutions comprise organizations and rules that make decisions in a society. For California, in addition to the familiar institutions of “Representative Democracy” of the executive, legislative, and judicial branches that parallel the structures of representative government in Washington, DC, there are two other systems that matter, Federalism and Direct Democracy:

Representative Democracy – In this system, citizens elect representatives who make governing decisions through a legislative process of deliberating on and passing bills, an executive process of approving or vetoing these bills and administering those that pass, and a judicial process of reviewing and interpreting the actions of the legislature and executive. California’s state government and some larger California cities have this familiar structure. Counties and Districts have similar structures. All are various forms of representative democracy.

Federalism – This intergovernmental system is comprised of local governments in California and of California within the U.S. federal system. Governance involves negotiating across and among levels, dealing with intergovernmental transfers of funds that provide inducements for undertaking programs, and managing the regulation of lower levels of government by higher ones.

Direct Democracy – California’s Progressive Era innovations such as the recall and initiative (1911) provided instruments for popular democracy that can “go-around” representative institutions through the direct initiative of the citizenry and their involvement in votes about specific issues.

These institutions involve complex rules that determine how much a decision process is constrained and how much it conforms to a majoritarian one.
WHAT CONSTITUTES GOOD GOVERNANCE?

Governing institutions and rules have been established with the intent, although not always the result, of producing good governance in which services, reflecting the will of the broadest number of citizens under the state’s jurisdiction, are delivered effectively by state agencies in conformity with those citizens’ basic rights. There are two important questions about good governance:

*What constitutes the will of the people?* There is a school of thought that the only safe and fair voting procedure is unanimity regarding each and every decision because it guarantees that no one’s rights will be trampled and that any decision will be “Pareto Superior” – a situation in which no one is worse off and some are better off because otherwise there would not be unanimous agreement. The trouble with unanimity is that it involves enormous decision costs as each and every person is informed about each and every plan of action, takes the time and trouble to carefully identify their interests, and then bargains with every other person to get their desired result. Even those partial to unanimity agree that it is unworkable for most decisions.

As a result, liberal democracies have typically opted for a compromise that involves periodic free and fair multiparty elections with majority rule to elect representatives to consider
government actions, but with limitations on actions through a rule of law that prevents majority opinion from violating the basic rights of individual citizens. This approach does three things. First, it “bundles” concerns about individual issues into a consideration of voting for a representative with whom a voter might agree on some issues but not others. Second, it ensconces majority rule as the standard for choosing this representative and ultimately for making decisions about individual issues in the legislature. Third, it relies upon Constitutional and judicial guarantees of rights (e.g., The Bill of Rights) to protect individuals.

What limitations should there be on majority rule? While some limitations to majority rule through the rule of law have been broadly accepted over time, there are others that continue to be contested. The basic tradeoff is governmental decisiveness and efficiency versus fairness and representation: trading off the effective delivery of services versus the fairness of procedures used to determine the purposes that government action is designed to serve. The procedures used to protect the fairness of representation, both electoral and judicial, often come at the expense of the effectiveness and efficiency of service delivery. At one extreme, an authoritarian country like China can build infrastructure quickly and cheaply, but at the expense of the rights of property owners, workers, ethnic minorities, as well as social goods like safety and the environment. At the other extreme, American protection of those very rights increases the cost and time to delivery of projects, and indeed eventually leads to what has been labeled “votocracy,” where no decision to proceed can be made.

DEFINING AND MODIFYING “THE WILL OF THE PEOPLE”

How has California dealt with these fundamental tradeoffs? How has it used rights, the federal system, rules, and popular democracy to govern?

CREATION AND PROTECTION OF RIGHTS

California’s Constitution enumerates a broader set of rights than the U.S. Constitution. These include “rights to access of information covering the conduct of the people’s business,” victim’s rights in criminal cases, limitations on the use of eminent domain, and “noncitizens have the same property rights as citizens” [in original 1879 Constitution in restricted form]. The right to privacy has been used by the courts to support the right of abortion, and the rights to access information is the basis for the California Public Records Act. Other amendments to the California Constitution such as Proposition 13 that limited property taxes in 1978, also have had far-reaching effects amounting to protecting people’s rights.

Creating rights, protected by a Constitution that is difficult to amend because it requires supermajority processes in several venues, is one way to allow majority rule and decisiveness while avoiding the persecution of political minorities. Unlike the U.S. Constitution, which has supermajority thresholds for proposing amendments and for ratifying them, California’s Constitution is relatively easy to amend. An amendment can be placed on
the ballot by signatures equal to 8 percent of the votes cast in the last gubernatorial election—among the lowest threshold of any U.S. State. In addition, ratification requires only a majority vote among the electorate, compared to a three-quarters threshold among state legislatures or state conventions for the U.S. Constitution. Not surprisingly, the California Constitution has been amended over 500 times since 1879 compared to the 27 amendments of the U.S. Constitution since 1789—for a rate of about 36 amendments per decade in California compared to just over one per decade for the U.S.

THE FEDERAL SYSTEM

The federal system affects governance through the assignment of functions to federal, state and local governments. Making the right assignment can ensure that the scope of the problem, the available taxing power, and the need for representation about it are aligned. With the proliferation of special districts, California has not always made the best choices for effective governance. Representativeness can be ostensibly increased for some when decisions on an issue (e.g., education, policing, or water) are assigned to local cities or special districts that are “closer to the people,” but some people may also be left out if these decisions involve externalities beyond the borders of the government to which it is assigned (e.g., environmental issues, equity in educational funding) and the proliferation of these government actors makes it harder for people to know what they are doing. The result can be inadequate responses to pressing issues. The California 100 report on Federalism and Foreign Policy considers these issues in detail, and it shows how the proliferation of special districts, the limited areas covered by cities, and the restrictions on taxing power due to Proposition 13 have made it difficult to solve problems (e.g., water policy) that cover broad areas or that require redistribution of resources (e.g., K-12 education).

RULES REQUIRING SUPERMAJORITIES OR RESTRICTING OR REQUIRING POLICY CHOICES

Governance can also be affected by the rules that are chosen. California has often gone in the direction of requiring supermajorities for government actions and increasing participation in decisions so that many voices are heard, but the result is often paralyzing contention and ultimate stalemates. California has required supermajorities for decision-making in legislative bodies to ensure agreement on a broad array of bundles of positions.

Restrictions have also been placed on the taxing or spending power by prohibiting or requiring certain actions. In 1978, through the initiative process, Proposition 13 restricted the rate at which property tax assessments could increase and the overall rate of property tax—thus limiting revenues from property taxes. It also required a two-thirds majority in both the Assembly and Senate to increase tax rates (including income taxes) and a two-thirds majority in local elections for local governments to increase special tax rates. Approval of the annual budget with a majority vote instead of a two-thirds vote is perhaps the only area where California reversed course, leading to an era
of “on-time” budgets. While it is not clear that Proposition 13 truly limited total state and local revenues, it is clear that it locked in suboptimal economic decisions such as businesses leasing property to avoid property turnover that would trigger reassessments of property and individual homeowners staying in their homes for the same reason.

DIRECT DEMOCRACY

California has also been a leader in moving away from representative democracy toward direct democracy in which issues are broken up into discrete pieces and considered one by one through processes such as popular initiatives or review processes that involve the public. This shift has been driven by the view that citizen participation will increase the representativeness of decision-making and allow ordinary citizens to bypass elected or appointed officials who had been corrupted or captured by moneyed interests. California has moved further towards direct democracy than most other American states, with changes to the state constitution that have permitted use of ballot initiatives, mandatory and optional referenda, recall elections, and later on laws like the California Environmental Quality Act (CEQA), which has been broadly interpreted to require a high level of citizen participation and input.

DIRECT DEMOCRACY IN CALIFORNIA

WHAT’S THE PROBLEM?

Direct democracy has certainly multiplied the potential veto points in California, where a well-organized special interest can organize a recall, an initiative, or a CEQA lawsuit to try to replace an office-holder, change the law with respect to some issue, or stop a project. But special interests come in all shapes and sizes, and they sometimes represent legitimate outrage about the corrupt practices of an elected official, concern about ever-escalating property taxes that threaten people’s ownership of a home, or opposition to a project that will destroy a beautiful wetlands that protects the coast and spawns sea-life. Indeed, another way to think about these mechanisms is that they multiply the potential agenda setting points in democracy, thus allowing more perspectives to be heard. The fundamental questions to be asked about these mechanisms are whether they constructively broaden the agenda considered by a representative government, improve the deliberative process, and lead to better outcomes without imposing deci-
sion-costs that outweigh their benefits. The initiative, recall, and CEQA vary in the degree to which they do these things.

The recall, which was little used at the local level in the 1990s is now widely used and without local media to shed light on the issue involved, it can be abused. The initiative process has grown even more with an entire industry involved in getting initiatives on the ballot, and it sometimes appears to be a tool of partisan wrangling more than innovative ideas for public policy. There is also evidence that it has some pernicious effects such as leading to poorly drafted legislation that is hard to repeal, especially if the initiative is a constitutional amendment. In addition, until recently the California ballot was growing in size and scope so much that it seemed unlikely that most citizens could carefully consider all the propositions in it. And the scope of CEQA has been greatly expanded through court decisions so that it can sometimes veto actions without consideration of the impacts.

Institutions like recalls, referenda, initiatives, and CEQA assume that ordinary citizens have the time, energy, expertise, and motivation to actively take part in policy decision-making. The fact of the matter is that most citizens do not; the result is that public discussion is dominated by much narrower interest groups, especially when local media are not around to structure the discussion, that have a direct stake in the outcome of a given policy. Given the size of California, resources also become a major issue; it is hard to launch an initiative or recall without the money to hire a professional organization to gather signatures across the whole state. With major requirements for new infrastructure in the coming decades, driven by climate change and increasing demands for affordable housing, the state must consider new ways to balance procedural fairness and participation in decision-making with the need to actually make decisions and to find ways of funding them.

USE OF RECALLS

Use of recalls in California has increased dramatically since 2008, leading state and local officials to divert time and effort into contesting elections rather than governing (see Figure 6). While at least 32 U.S. states have recall provisions, 19 for the state level and 30 for the local level, California’s provisions are unique in combining features that make recalls especially easy to launch and to result in non-majority outcomes.
**Easy to Launch:** Eight states have relatively narrow definitions of what can justify a recall such as malfeasance, corruption, misconduct, or incompetence, but in California any reason is acceptable and not reviewable so that recalls can be launched regardless of reasons. The first step involves filing a “Notice of Intention to Circulate a Recall Petition” that requires paying for a notice in a general circulation newspaper and gathering a very small number of signatures – 7,000 for Gubernatorial recalls but much fewer than that for local offices (20 for county officials in Los Angeles County) and sometimes as few as 10. These
“Notices of Intention” can be used to create an aura of corruption and scandal, even when there is no evidence for that. The next step is getting a recall on the ballot, and at 12 percent, the state’s threshold for the number of signatures that must be gathered for a state office is lower than that of any other state and the unusually long period for getting signatures facilitates signature gathering. In California, for most local offices, the threshold is 10 percent of registered voters for any jurisdiction with more than 100,000 people registered and it increases in steps of 5 percent to 30 percent if the size of the registrant pool is less than 1,000.

**Non-Majority Outcomes:** In many states a successful recall for a state official leads to a declaration that the office is vacant and it is filled in a subsequent special election or by appointment. In two states, California and Colorado, there are two ballots. In California for both state and local offices (unless the local charter has a different procedure), one ballot asks whether the incumbent should be recalled and the second ballot—that cannot list the name of the incumbent—lists all those running to be the incumbent’s replacement if the recall is successful. This process can lead to a situation where a majority of voters endorse a recall of the incumbent, but the replacement candidate receives only a small plurality of the vote. In the last gubernatorial recall election in September 2021, the “winning” candidate on the second ballot only received 27.8 percent of all those that voted on the first ballot since many people did not mark the second ballot. Because the incumbent Governor won 61.9 percent of the vote on the first ballot, the results of the second were moot, but if the recall had succeeded, only a small fraction of the state’s voters would have chosen the replacement.

**Lessons of Two Gubernatorial Recalls:** The September 14, 2021 recall of Gavin Newsom exhibits the problems with the current system, and the November 2003 election exhibits some of the virtues. In 2003, discontent with Governor Gray Davis because of severe budget problems and out-of-control electricity costs due to botched deregulation led to a recall in which 55.4 percent voted in favor of recalling the governor, and 48.6 percent of those voting on the second ballot voted for Arnold Schwarzenegger. Moreover, most people (92 percent) who voted on the first ballot also voted on the second so that Schwarzenegger was not far from having the support of a majority of the voters. Arguably Davis had hit an impasse where he would have trouble solving problems, and the recall provided a new start for the state based upon a second ballot that provided substantial support for his successor who went on to some significant achievements.

In 2021, a small group of people called “Rescue California” in the Republican Party launched an effort to get signatures to recall Gavin Newsom. Their complaints were more about partisan differences than a strong case for non-performance given that Newsom had a much higher level of popular approval than Gray Davis and that the state was much more Democratic in 2021 than it was in 2003. In one 12-page memo they outlined strategies such as contacting “every Republican voter in
the state... to ‘harvest’ ballots, creating a GOP turnout wave.” The recall was held at a cost of about $200 million according to the Secretary of State. It involved months of media coverage and almost 13 million people going to the polls. In the end, Newsom received exactly the same percentage of the total vote as he had in his November 2018 election to the Governorship, and he actually received more votes than in 2018 since more people participated in the recall election. If, however, the recall had been successful, the new Governor would have been elected by a small fraction of the voters who had voted on the second ballot. In the end, the gubernatorial recall seemed like a long detour that did nothing to improve governance.

California’s provision for state-level or local recalls has increasingly become a regular part of the state’s governance, rather than an emergency or punitive measure for the state’s elected leaders. If the original intent was for the existence of the recall to prevent the necessity of its use, it has either failed to prevent its necessity or failed to prevent its use.

EVALUATION OF RECALLS

In February 2022, the Little Hoover Commission released a report on recalls of state officials and concluded that:

We find that the current procedure for recalling and replacing office-holders is fundamentally flawed. It sows the seeds of undemocratic outcomes, allowing a replacement candidate to succeed to office while receiving fewer votes than a recalled incumbent. We are also concerned that the recall is subject to abuse. In particular, it potentially provides a mechanism to exploit turnout differentials between regular and off-cycle elections and a means to contest the will of majorities as expressed in regular elections. Last, the threshold for use of the recall varies based on past voter turnout, a needlessly unstable standard.

To remedy the first two problems, the report recommends replacing the two-part ballot with a “snap election” in which the incumbent and all other candidates would be on the ballot with the winner being the candidate who gets the highest number of votes. To remedy the last one, the report recommends changing the signature requirement to 10 percent of registered voters because it would generally be a higher standard than the 12 percent of voters in the last election.

The Little Hoover Commission report recognizes the worst aspect of California’s present system, the possibility of a perverse outcome where the recall elects someone who received fewer votes than the incumbent thereby thwarting the will of the majority. It also recognizes the importance of recalls providing a tool for voters to set the agenda when an incumbent has over-reached, been negligent, or been corrupt. But it can be argued that incumbents face other methods of discipline for these kinds of behavior such as impeachment by the lower house of the state legislature, although some people worry that a state legislature would be reticent to do this if the Governor was of the same party as the majority in the lower house.
More importantly, regularly scheduled elections provide another way to set the agenda, and they do so in a way that allows officials some time to get results on their promises. Recalls early in an official’s term do not really allow for much time to assess the official’s performance, and recalls late in the term may add an unnecessary election since one is imminent. Thus, it makes sense to think about, as there are in most states for statewide offices, restrictions on the period when recalls can be initiated or scheduled, say only after the first six months to one year in office and not during the last six months or year in office. As for deliberation, recalls provide no more public deliberation than an ordinary election and perhaps less given the difficulty of getting people’s attention during an off-cycle election, and the decision-costs can be substantial in terms of administering the election and time required of the voters and the media.

Arguably, the barriers to recalls should be higher than they are now or than the somewhat higher signature requirement proposed by the Little Hoover Commission. Since the recall process was established, California has had half the gubernatorial recall elections run by all the states since the creation of the recall—with both of California’s recalls occurring since 2003. Only two other gubernatorial recall elections have occurred throughout the United States, one in North Dakota in 1921 (the governor was successfully recalled) and the other in Wisconsin in 2012 (Scott Walker survived the recall). Of the 39 total elections for the recall of state legislators in the 19 states with recalls, Wisconsin has had 17 (five successful) and California has had nine (five successful) such elections and no other state has had more than four. The low threshold for getting a recall election on the ballot and the lack of restrictions as to times when it can be done seems to have led California to many more recalls than other states. And low-threshold recalls may be especially problematic for local governments where there is little media presence to provide information about the recall.

**USE OF INITIATIVES**

California is one of a quarter of the American states that allow for expansive forms of direct democracy by which citizens can initiate constitutional changes and legislative statutes through signature gathering, the placing of an issue on the ballot, and approval with a simple majority vote. This process is called the initiative. Twenty-four American states do not allow state-level initiatives of any sort, presumably because it is assumed that the normal methods of representative democracy provide enough leeway for voters to shape the agenda, deliberate on policies, and be involved in politics. Two states, Maryland and New Mexico, allow a limited form of initiative in which voters can collect signatures and put on the ballot a “veto referendum” in which a law passed by legislature can be vetoed with a majority vote. Six states (Alaska, Idaho, Maine, Utah, Washington, and Wyoming) allow voters to also launch initiatives to put new legislation (statutes) in place with a majority vote. Because these initiatives can only make statutory changes, the legislature, albeit sometimes at substantial political peril and sometimes
only after a period of time, can eventually go back and make changes in the statutes. Consequently, in these 32 states, the state legislature retains most of the ultimate power with respect to statutes.

*California is among the most expansive users of direct democracy among the remaining 18 states.* Only 18 states—of which California is one—allow voters to initiate constitutional amendments that cannot be subsequently changed directly by legislative action. Fifteen of these states—of which California is one—allow voters to initiate the veto referendum, the legislative initiative, and the constitutional initiative. Three (Florida, Illinois, and Mississippi) of the 18 only allow the constitutional initiative. Two (Massachusetts and Mississippi) of these 18 states have an indirect process for the constitutional initiative in which any proposal can first be considered by the legislature. Three others place more stringent conditions on passage of constitutional initiatives than the other two forms of initiatives—a 55 percent vote in Colorado, 60 percent vote in Florida, and two successive majority votes in Nevada.

Thus California is one of only 13 states that allows a simple majority to amend the constitution without any automatic chance for the legislature to consider the measure. Twelve of these 13 have all three forms of initiatives and one, Illinois, has only a constitutional initiative. Thus California is among a group of about a quarter of the states that allow for expansive direct democracy. These direct democracy mechanisms are equally present at the level of local government in California although they are most widely used in the Bay Area and South Coast regions of the state.

**Signature Requirements for Initiatives:** The initiative process begins with people gathering signatures on petitions. Signature requirements for starting an initiative vary across the three initiative types with percentages increasing (or at least staying the same) within a state as we move from a veto referendum, to a statutory initiative, to a constitutional initiative. This progression reflects the fact that initiating a constitutional amendment involves much greater agenda setting power than initiating a statute which in turns involves more agenda power than simply responding to a legislative action with a referendum veto. As a result, those actions with greater agenda power sensibly require more signatures.

Of the 17 other states with constitutional initiatives, only three states (Colorado, Massachusetts, and Missouri) clearly have lower thresholds for signature gathering than California’s 8 percent of voters in the last gubernatorial election. Only two other states (Illinois and Oregon) have the same requirement. All in all, California is at the low-end of signature requirements, especially for the crucial constitutional initiative process, and unlike 16 of the 26 states with one or another form of initiatives, California has no distributional requirement that ensures that all parts of the state are represented.

**Complexity Without Much Deliberation:** Initiatives put highly complex policies before voters in a simplified up-or-down manner. Unlike a legislative setting where there are opportunities to hold hearings that bring in experts and to amend or modify a proposition to make it more palatable or fiscally sustainable, voters are confronted with the initiative that has
been proposed. Unlike legislators who have to worry about trade-offs or contradictions, voters do not have to worry about tradeoffs and contradictions between the present initiative and other laws, and can therefore vote for tax cuts (Proposition 13) or spending increases (Proposition 98 on school funding) without having to worry about their overall effect on the state’s budget.

In California’s 2016 election, 17 statewide initiatives appeared on California’s November ballot. The voter information guide sent to voters was 224 pages long. No wonder a 2008 Public Policy Institute of California poll found that 59 percent of Californians said that they “somewhat” or “strongly agreed” that there are “too many propositions on the state ballot”, and 78 percent said they somewhat or strongly agreed that “The ballot wording for citizens’ initiative is often too complicated and confusing for voters to understand what happens if the initiative passes.” In the 2008 PPIC poll, 36 percent of Californians thought that the initiative process required major changes and 28 percent minor changes.

**Growing Use of Initiatives and Growing Spending on Them:** Like the recall, the use of the initiative is increasing in California over time (see Figure 7). The number of initiatives “titled” each year so that “signature gathering can begin” went from an average of about four per year at the inception of the initiative process until the 1960s to an average of 44 per year in each of the last three decades. This dramatic ten-fold increase is important because this phase typically attracts media attention and it certainly involves the public as they are approached and asked to sign petitions.
At the same time, the number “failing” to qualify with enough signatures or “withdrawn” by their sponsors has increased dramatically from 30-50 percent in the first six decades to 80-90 percent in the last five decades. The net result has been that while the average number qualifying per year has gone up from the past—from about three per year in the early period, to closer to six, it is not as dramatic an increase as the number titled.

The amount of spending on initiatives has also been growing, as shown in Table 1. In 2020, for just one proposition, Proposition
22 dealing with a complicated set of issues regarding the labor law status of app-based drivers, the companies supporting it such as Uber and Lyft spent over $205 million and its opponents spent almost $19 million. The proposition passed decisively, but former Secretary of Labor Robert Reich complained that it amounted to big corporations paying “hundreds of millions to strip workers of the rights and protections they need.” Whether or not Reich is correct about the policy implications, it is hard to resist the conclusion that these companies spent their way to success. Initiatives and veto-referendums funded by rich individuals often promote particularistic rules or block unwanted projects meant to serve broad public interest.

### Table 1  Number of Propositions and Contributions by Year for 2016-2020

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Propositions</th>
<th>Total Contributions</th>
<th>Average per Proposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>18</td>
<td>$497,026,060</td>
<td>$27,612,559</td>
</tr>
<tr>
<td>2018</td>
<td>16</td>
<td>$368,313,672</td>
<td>$23,082,105</td>
</tr>
<tr>
<td>2020</td>
<td>13</td>
<td>$763,487,167</td>
<td>$58,729,782</td>
</tr>
<tr>
<td>Averages</td>
<td>16</td>
<td>$543,275,633</td>
<td>$36,474,815</td>
</tr>
</tbody>
</table>

**SOURCE:** Ballotpedia.

**Reforming the Initiative Process:** In January 2002, the Speaker of the State Assembly, Robert M. Hertzberg, released a report recommending changes to the initiative process. The major recommendation was for an indirect-initiative “which would provide for legislative review, amendment, and possible enactment prior to consideration by the voters.” After an initiative had gained steam through signature gathering, there would be a mandatory process of consultation with the legislature to allow the state’s representatives to find a way to satisfy those proposing the initiative. The report also recommended increasing the amount of information, especially about financial contributions, available to the public about the sponsorship of initiatives and increasing public awareness about the possi-
bility that the initiative might not pass constitutional muster.

In 2011, a bill was passed requiring initiatives to appear on general election ballots (thus eliminating their appearance on primary or special election ballots). The goal was to ensure that initiative sponsors would not try to find low turnout elections (such as primaries) that might increase their chances of passing their initiative because they could spend less to achieve a victory or because the electorate was biased toward their cause.

In 2014, Governor Brown signed a bill that went part way to the kind of reform recommended in the 2002 Speaker’s report. The bill provided that at the start of the initiative process, initiatives could be amended by their proponents based on public input. Also, once 25 per cent of the needed signatures had been collected, state legislative committees would hold public hearings on it, and they could work with its proponents to see if a legislative solution could be found. “However, the Legislature cannot amend the proposed initiative measure or prevent it from appearing on the ballot.” The Massachusetts procedure for an indirect constitutional initiative requires approval by one-quarter of the legislature in joint session before the proposition is placed on the ballot. For indirect statutory initiatives, if the legislature does not approve the measure, it appears on the ballot, but the state legislature can put an alternative proposal on the ballot. Consequently, California’s approach is a very weak one, and it falls short of what some other states do and what was proposed by some proponents of reform. The 2014 reform also required that the state post the top ten donors for and against the initiative providing for more transparency about who was promoting an initiative.

**EVALUATION OF CALIFORNIA’S INITIATIVE PROCESS**

California historically has more statewide initiatives than any other state, and spends more on ballot initiative campaigns than any other state. California may use the initiative more than other states simply because the majority of the other states that allow initiatives are much smaller in population. Of the top ten states with populations over 10 million people, only California, Ohio, and Michigan allow for all three forms of initiatives. Texas, New York, Pennsylvania, Georgia, and North Carolina do not allow any forms of initiatives. Florida and Illinois only allow constitutional initiatives and Florida requires at least a 60 percent supermajority for passage and has a somewhat higher signature threshold (8 percent of presidential vote).

But California’s size is not the whole story. California also has lower thresholds for initiatives than almost any other state:

- **California’s Has a Low Threshold of a Simple Majority to Amend the Constitution:** Fourteen of the other 18 states that allow for initiatives that change the state’s constitution only require 50 percent of those voting, but four add some additional requirements for a supermajority (Colora-
do, Florida), successive majorities (Nevada), or at least 40 percent of the total voters who went to the polls as well as a majority of those votes cast on the proposition (Mississippi). It is easy to amend California’s constitution.

- **California’s Signature Threshold is Low:** California’s signature thresholds of 5 percent for initiated state statutes and 8 percent for initiated constitutional amendments is low compared to the other state initiative provisions. The median for initiated state statutes is six percent and just under half have a threshold of 8 percent. The median for initiated constitutional amendments is 10 percent. The low threshold in California is exacerbated because it is based on turnout in the previous gubernatorial election, and California gubernatorial elections are held at midterm federal elections and thus generally have relatively low voter turnout.

The ballot initiative was intended in part to bypass institutions like political parties and enable citizens to make law directly, but California’s increased use of initiatives in recent decades is partially driven by partisan politics. Political parties use the initiative system to promote measures in election years that will increase turnout for their candidates. They also use initiatives to promote wedge issues that divide the opposing party. There is further evidence that these tactics work, and that turnout is impacted by the inclusion of contentious ballot initiatives in election years. The use of ballot initiatives has not also not bypassed California’s judiciary. Approximately two-thirds of California’s initiatives are challenged in state or federal court – a relatively high rate compared to other states. Studies have also found that more than half of all initiatives which are challenged in court are invalidated in part or in full.

The original Progressive Era justification of the ballot initiative was to give citizens a way to bypass the legislature to pass laws, because legislators were captured by narrow, wealthy interest groups. However, the initiative process has not disempowered narrow interest groups, and there are indications that well-funded interest groups are even more successful at using the initiative process than grassroots campaigns. Money is even more determinative of ballot access (signature gathering) than it is of electoral outcomes in direct democracy initiatives. Not only can well-funded interest groups successfully leverage California’s signature gathering industry to gain ballot access, but increasingly those initiatives with a funded professional signature campaign are the vast majority of the initiatives that do make the ballot.

The ballot initiative process has the potential to (and was intended to) empower citizen lawmaking through direct democracy, to disintermediate monied interest groups or corrupt legislators, and provide an alternative path for popular legislation that is unsupported or opposed by well-connected interest groups in the legislature. However, without an appropriate design, the initiative process can achieve its aim of constraining the legislature while at the same time failing to achieve the objective of direct democratic empowerment.
Lengthy ballots with dozens of misleadingly worded initiatives can confuse voters and actually decrease participation. Well-monied interest groups can still gain ballot access for initiatives without public support. Finally, the initiative process may enable interest groups to place complex public policy questions with both short and long-term implications for the public directly to voters, without the careful consideration that is intended to result from representative democracy.

GOVERNING AND DIRECT DEMOCRACY: CASE STUDY OF CEQA

GOVERNANCE SHORTCOMINGS THROUGH THE LENS OF CEQA

Like many other federal and state laws passed at the time, the California Environmental Quality Act (CEQA) provides for substantial public input to the formulation of infrastructure projects in California, and requires extensive technical evaluations of their environmental impact. CEQA greatly expands the deliberation required to get a project completed. More importantly, however, it creates a framework for the private enforcement of the state’s environmental laws, by providing standing and relatively easy access to the court system for litigants who believe they have been injured by a given project. It is therefore the basis for the explosion of litigation that occurred after its passage. It allows individuals to become agenda setters even if they represent a small and narrow interest.

While CEQA was passed as an environmental law, the state of California soon recognized a second purpose of the law as a governance procedure. The California Supreme Court asserted that CEQA “protects not only the environment but also informed self-government.” In fact, California courts have consistently ruled that CEQA has a “dual purpose” in affording both environmental protection and “informed self-government.” Its scope has expanded to cover virtually all the public and private projects undertaken in the state, and the law has become, in a way, the California equivalent of the federal Administrative Procedure Act (APA). Like the APA, it touches on all aspects of governance in the state, and was designed to maximize democratic input and participation.

In addition to defining the role of citizens in a project’s decisions, CEQA has also been used as an accountability mechanism for elected officials. In the People v. County of Kern, for instance, the court noted that CEQA was necessary in part so the public could be informed of
an official’s values “thus allowing for appropriate action come election day should a majority of the voters disagree.”

Thus, not only did CEQA’s scope of application and requirements evolve significantly through California case law, but even the purpose of the law changed from one of environmental protection to one of democratic participatory governance. The scope also changed as more and more kinds of projects became subject to CEQA and the requirements for mitigation expanded. While CEQA may seem like an odd choice as a central mechanism of California governance, we find it to be a pervasive component, very much in line with California’s earlier Progressive Era reforms.

THE CEQA STATUTE AND THE CEQA PROCESS

As statute, CEQA was passed with several key purposes:

- Inform governmental decision-makers of potentially adverse environmental impacts of physical projects carried out, funded, or approved by them before any environmental damage occurs.
- Identify and implement feasible alternatives or measures that would mitigate a project’s projected adverse environmental impacts.
- Promote public participation in the environmental review process so that every citizen can contribute.

The CEQA process involves three broad steps to be undertaken by a public agency with the responsibility to approve a project, which is referred to as the Lead Agency.

**Determining if the Public Action is a “Project”:** The first step in the CEQA process is for the Lead Agency to determine whether the proposed public action is a “project” and, therefore, whether CEQA applies to its implementation. Under CEQA’s definition, a project causes a direct or reasonably foreseeable indirect physical change in the environment. Further, to be considered a project, it must also be undertaken by a public agency or with public funding. For private sector projects that involve discretionary decisions from a public agency, a public agency may have to issue a major permit or other entitlement. Thus, CEQA applies to most private sector development projects as well as publicly funded projects.

**Determining if the Project Significantly Affects the Environment:** The next step in the CEQA process is an initial study to determine whether the project has a potentially significant effect on the environment, and to identify those significant effects. To determine whether an environmental impact is a “significant” impact, the Lead Agency must apply a “substantial evidence” test, which weighs the information and reasonable inferences available and determines whether a “fair argument” could be made that the impact is significant. Each of the terms used to define CEQA’s statutory terms are likewise often the subject of litigation and have been defined through court precedent.
Completing and Certifying the Project's Environmental Documentation: The final step of the CEQA process involves the completion and certification of the project’s environmental documentation. If the Lead Agency determines that the environmental impacts will not be significant, a Negative Declaration (ND) is completed. If there will be significant impacts but the project will incorporate adequate mitigation measures to avoid them or substantially lessen them, a Mitigated Negative Declaration (MND) is completed.

If the Lead Agency determines that the project will entail unmitigated significant environmental impacts, an Environmental Impact Report (EIR) must be completed. An EIR is a much more significant undertaking than an ND or MND and involves a detailed analysis of the project’s impacts and potential alternatives to the project. The preparation of an EIR can be a time-consuming process, with the potential for years of work and more than 10,000 pages of technical analysis. The EIR will also include a discussion of mitigation measures for key impacts. Where a significant environmental impact is not adequately mitigated, the Lead Agency may still approve the project by including a Statement of Overriding Consideration, which includes the economic or social benefits of the project as a justification for the environmental impacts.

Opportunities for Public Review and Comment: CEQA also includes opportunities for public review and comment on environmental documentation, and these vary between the reports. NDs and MNDs include a minimum 20-day comment period after their publica-

ceqa's scope and reach

CEQA is perhaps the most consequential governance law passed in California because it has created an alternative governing mechanism with extensive public participation, broad scope, real powers to affect outcomes, and extensive impacts throughout California’s governing institutions:

CEQA Enables Extensive Public Participation: The CEQA process not only affects all Californians but also potentially involves all Californians. CEQA’s procedural elements involve or are open to every entity or citizen of the state. All three branches of the state government shape the CEQA process. Any local, regional or state public entity is subject to it, and any individual, nonprofit or other public or pri-
vate stakeholder may contribute during the process or challenge it in court. As a process, CEQA attempts to bring together every public and private stakeholder in the state to govern the state’s actions.

The openness of the CEQA process to participation goes beyond all other governance mechanisms in the state, even voting. Individuals or groups that are not California citizens may participate in the process or intervene through litigation. Additionally, citizens or groups may intervene through litigation anonymously to avoid reprisals or for any reason. Even conflicts of interest are not a limitation on CEQA participation, and industry groups, corporate competitors, labor groups and other conflicted parties regularly participate. Not only is the CEQA process open, but its “action-forcing” mitigation requirements create an extremely strong incentive for parties that believe they will be environmentally impacted by a project to participate, as they can demand mitigations from lead agencies through the CEQA process.

**CEQA Applies to All Major Projects in California:** CEQA does, in fact, govern an extensive component of all public or private actions in the state. Specifically, it applies to every non-ministerial public decision that is not exempted by statute. Because public agencies must take discretionary action regarding private projects, CEQA has expanded beyond the realm of public projects for which it was designed. Upon its creation, CEQA did not originally envision private projects within its scope. However, a California Supreme Court decision expanded CEQA’s reach only a few years after it was passed. In 1972 the Supreme Court’s *Friends of Mammoth* decision by the California Supreme Court determined that CEQA applied not only to public “actions” in the form of public works, but also discretionary “actions” to permit or entitle other development projects. The ruling effectively expanded the scope of CEQA applications to private sector development projects as well. Other rulings would continue to expand the areas of California governance to which CEQA applies to cases where a “fair argument” could be made that a project might have a substantial impact or to where an action (e.g., forming a school district), although it had no immediate environmental impacts, might lead to actions that would (e.g., building a school). This trend of Supreme Court and appellate litigation expanding and contracting the scope of CEQA’s application continues to this day. CEQA’s “common sense” exemption, which applies to government actions in which there is obviously no environmental impact, remains a regular subject of litigation. It is no surprise that local governments and lead agencies respond conservatively to the unknown. Not only has CEQA case law expanded its application, but the uncertainty of judicial outcomes expands it further.

**CEQA has Teeth through the Requirements for Mitigation:** CEQA’s requirements for mitigation mean that it can force those contemplating projects to expend time and resources to mitigate adverse impacts. Many of these mitigations are straightforward. In the case of compensation, this could come in the form of direct compensation on site or off-site compensation. For a project that impacts wet-
lands, for instance, a mitigation could include the development of wetland elsewhere or the project funding the development of wetland elsewhere. Funding could also be a mitigation of traffic impacts, or impacts on schools etc. Traffic impact fees on housing developments, for instance, are often included as a mitigation of traffic environmental impacts.

Whether completing an EIR or an MND, CEQA incentivizes lead agencies to identify mitigations that they will undertake to reduce or offset environmental impacts. When a Lead Agency is completing its procedures under CEQA, stakeholders have a very strong incentive to participate in the process to negotiate for mitigations on behalf of their organization. For example, new and expanded housing developments have a range of environmental impacts on their immediate environment, including on transportation and other public infrastructure. Therefore, the CEQA process for these projects often attracts a wide range of stakeholders seeking mitigation measures. These stakeholders are not just environmental groups, but may also include neighboring governments, school districts, transit agencies, and a wide range of other stakeholders that believe the project in question will have environmental impacts on them.

**CEQA Extends throughout California’s Governing Institutions:** The sheer numbers of CEQA procedures warrant its inclusion as a key component of California governance. California state and local agencies complete thousands of CEQA filings per year, and dozens of CEQA actions are litigated every year in California courts. Indirectly, those CEQA actions impact almost every major priority, issue, or problem in the state, from climate change to economic development to housing to transportation to inequality. Between the start of 2010 and the end of 2020, California lead agencies filed nearly 118,000 administration CEQA actions on CEQANet. Of these filings, 27,481 were a Notice of Decision (NOD), which announces that the lead agency had completed a CEQA process for an action. Roughly half of all of the CEQA filings during this period (59,543) were a Notice of Exemption (NOE), which an agency files when it plans to take an action covered by a CEQA exemption from CEQA. These are a relatively small burden administratively, but CEQA exemptions are either expressly by statute or are for actions that will have negligible environmental impacts. During the same period, more than 4,000 Environmental Impact Reports (EIRs) were filed for public comment on CEQANet. The EIR is CEQA’s most substantial environmental study. It is not uncommon for EIRs to number in the thousands of pages.

To put the amount of documentation in perspective, a useful comparison of CEQA’s administrative volume would be to federal environmental documentation under the National Environmental Protection Act (NEPA). In 2018 the Council on Environmental Quality (CEQ) for the U.S. federal government collected data on Environmental Impact Statements (EISs) filed in accordance with NEPA. During a similar period (January 2010 through June 2018), the CEQ found just 1,269 EISs that were completed for federal actions. This suggests that California is completing several times the number of EIRs under CEQA than the entire US federal government is completing EISs under NEPA.
CEQA has Evolved Increasingly Toward “The Fullest Possible Protection Standard”: CEQA has evolved through case law described above that has generally expanded its scope and impact. "Friends of Mammoth" decided that CEQA also applied to private projects that required discretionary permits from state or local governments and it put forth a standard of the “fullest possible protection to the environment." "No Oil" (1975) put forth the “fair argument” standard for a significant impact that created an extremely low hurdle for environmental impacts to be “significant” in litigation. "Wildlife Alive v. Chickering" (1976) decided that any exemption by the legislature had to be “narrowly construed.” "Laurel Heights I" determined that CEQA studies must also examine the environmental impacts of possible expansions or future actions that are “reasonably foreseeable” as a result of the present action. "Communities for a Better Environment" ruled that even when effects complied with an existing regulatory standard they might still be significant. "City of Marina" (2006) determined that the mitigation requirements under CEQA may apply to impacts that occur off-site, rather than at the specific location of the project. In "Muzzy Ranch" (2007) the California Supreme Court ruled that land use restrictions may need to analyze “displaced development” or hypothetical projects that could occur elsewhere from the land use restriction. Of note in CEQA’s case law evolution is the difficulty in reversing case precedent given CEQA’s broad statutory language, and the degree to which case law under CEQA has been almost completely unidirectional in furtherance of the “fullest possible protection” standard established in "Friends of Mammoth."

EVALUATING CEQA’S SCOPE AND IMPACT

The preceding establishes that CEQA is a far-reaching governance mechanism that involves extensive public participation, a broad definition of projects, real actions through its mitigation requirements, and extensive impacts on California’s administration of public and private projects. Now we turn to an evaluation of its scope and impact.

Comparisons with Other State Environmental Protection Laws: CEQA is not unique in terms of its procedural requirements. Other states have environmental protection laws with similar technical procedures. These laws are colloquially referred to as “mini-NEPAs” because they are generally patterned after NEPA, which requires a similar environmental analysis of actions by the federal government. Studies of these laws have concluded that California is joined by Minnesota, Massachusetts, New York and Washington as the most “restrictive states” in terms of their state environmental laws. CEQA is not necessarily more cumbersome than other state environmental laws in its explicit procedural requirements, but no state law goes as far as wide in its scope of application, especially into private sector development projects, as CEQA does in California. CEQA is also unique in that it has an “action-forcing” mitigation requirement. The mitigation requirements of CEQA, when combined with CEQA’s very open standing requirements for litigants and interveners, make the CEQA process uniquely open to third-party intervention relative to most, but not necessarily all, similar state environmental laws.
The CEQA Process and Conflict Adjudication: When stakeholders disagree that the Lead Agency has met the procedural requirements of CEQA, conflicts are often adjudicated through litigation. CEQA litigation injects a considerable amount of uncertainty into the development process, and in many cases CEQA litigation is settled. For private projects in particular, the presence of outstanding CEQA litigation often prevents project sponsors from obtaining financing for the project, because an injunction during development would be economically disastrous. Relaxed standing requirements also increase the number of stakeholders that can intervene in a project through litigation, as case precedent under CEQA gives wide latitude for stakeholders to sue a permit on behalf of the environment.

Several studies have examined the rate of CEQA litigation and reported a fairly low frequency. One study used survey data from planning agencies across the state to estimate that only one in 354 CEQA actions becomes the subject of litigation. Another study completed by the California Department of Justice used actual litigation and CEQA findings from the City and County of San Francisco over an 18-month period between 2010 and 2011 to reach a similar conclusion, that 99.7 percent of CEQA actions were not the subject of litigation.

These studies may underestimate the impact of litigation, however, because they include Categorical Exemptions (CEs) in the denominator of the rate of litigation, and CEs constitute the vast majority of CEQA actions. The EIRs used for larger, more environmentally impactful projects appear to be the subject of litigation at a higher rate. The California AG study, for instance, included 22 EIRs and 5,172 CEs as projects. The study identified 18 CEQA actions that were the subject of litigation, but 7 of those actions included EIRs. This indicates a much higher rate of litigation for projects that may have a significant environmental impact. Conclusive data on the impacts of CEQA litigation and its impacts on California development is limited, but it appears that CEQA generates more litigation than comparable state environmental laws and that this litigation is increasingly directed towards housing and public works irrespective of whether projects are “infill” development or greenfield projects.

CEQA as a Democratic Governing Method

The CEQA process is arguably the most-direct form of democratic governance that is administratively possible to design. Here we evaluate CEQA as a form of agenda-setting, deliberation, and decision-making.

CEQA as an Agenda Setting Process: Representative democracy uses elections and legislative bargaining to set agendas that cover all areas of public policy. CEQA sets an agenda “project by project” in isolation from broader public policy concerns and with the possibility that a single lawsuit can up-end the project. Several elements of CEQA combine to make the process uniquely prone to intervention or obstruction:
• **Expansive Standing:** Litigation under CEQA is subject to expansive standing requirements that allow virtually all members of the public in the state to sue under it. Courts are generally deferential to CEQA lawsuits on the issue of standing for members of the public or groups that litigate CEQA violations and environmental harms, even when plaintiffs are clearly conflicted or anonymous.

• **Successful Lawsuits Breed more Lawsuits:** Second, plaintiffs under CEQA continue to win a very high proportion of cases under the law (roughly half) relative to federal or other state environmental laws. This gives opponents to the proposed action a higher “payoff” potential, or a greater chance to significantly delay or block the action.

• **Even Unsuccessful Lawsuits Can Stop or Hinder Projects:** Third, the uncertainty and delays associated with litigation create significant costs for the lead agency or sponsor of the action irrespective of whether the litigation is actually successful on the merits. This is especially the case for privately financed development projects, which will have difficulty raising financing with the uncertainty of pending CEQA litigation, but it can impact the financial viability of public works as well. While these impacts are not necessarily unique to CEQA relative to state or national environmental laws, they are especially impactful in California because CEQA is applied to private development projects and because of the relatively high rate of success for plaintiffs in CEQA suits.

• **Mitigation Requirements Provide Concessions to Litigants:** CEQA’s “action-forcing” requirements to include mitigations give parties a very strong incentive to obstruct CEQA actions through litigation or threaten to. The leverage garnered from CEQA obstruction gives lead agencies or project sponsors a very strong incentive to make significant concessions, through CEQA mitigations and otherwise to the groups opposing their action.

Because CEQA considers individual projects and not broad public policies, it is often easy for members of the public to criticize projects for not solving public policy problems that they were not designed to solve and to require mitigations for those problems despite the fact that the projects are not good vehicles for doing so. This “morselization” of public policy reduces opportunities for making tradeoffs, increases the chance that some person or group will find the project unacceptable, and leads to the rejection of projects that would otherwise be seen as worthwhile by a majority of voters.

**CEQA as a Form of Deliberation:** Representative democracy relies upon deliberation through elections, public forums with legislators, committee hearings, legislative debate, and media coverage of those activities. It assumes that through these processes legislators gain expertise in various areas of public policy. Direct democracy, as Bruce Cain has argued, assumes that ordinary members of the public have the time, interest, and knowledge to involve themselves in public decision-making in the same way. Yet CEQA addresses a subject that is especially complex. Environmental
analysis and the forecasting of environmental and social impacts are some of the most complex technical studies that public agencies undertake. EIR’s completed under CEQA often number in the many thousands of pages. Environmental engineering and urban planning are highly specialized fields. Even as environmental science and forecasting has improved over the preceding decades, the number and complexity of factors that are incorporated into CEQA has only increased to include social impacts, climate change impacts, or cumulative impacts that are even more difficult to quantify accurately. Members of the public are best equipped to indicate their needs and concerns, and they should be consulted to make sure that their interests are not given short shrift, but the complexity of many CEQA projects requires expertise as well. Unfortunately, the CEQA process does not produce a very good combination of expertise and public involvement.

For one thing, those taking advantage of opportunities for participation tend not to be ordinary citizens, but organized interest groups with a direct stake in the outcome of a project. The interaction of these groups, which often tend to be highly polarized, does not necessarily reflect a broader democratic consensus. And yet the technical complexity of CEQA is only redoubled by the political and legal realities of the CEQA process. Lead agencies must negotiate compromise through mitigations for many overlapping third-parties and interest groups. Whether a lead agency’s documentation is “CEQA compliant” is a matter of legal interpretation, and CEQA’s requirements evolve year-by-year with court precedent and state guidance. Lead agency’s Office of Counsel determine the requirements of projects under CEQA as often as their planning or engineering departments. The CEQA process is a lot for even the most civic-minded constituent to take in.

CEQA thus layers an extremely democratic governance process on an extremely complex public decision. This increases, even invites, the importance of intermediaries in the CEQA process. The involvement of news media is particularly critical given their role in informing the general public. Civil society organizations, whether they are environmental organizations, resident groups, or industry groups, are important representatives of their members in the CEQA. These civil society groups are necessary and often do play a major role in actions under CEQA.

**CEQA as a Decision-Making Process:** CEQA creates an almost irresistible obstruction opportunity whenever the process is applied to a private or public development project. Lead agencies and other project proponents must account for this when they go through the CEQA process, and this also constrains their solutions in addressing other public needs. Solutions for many of the crises currently facing California are limited because of the CEQA process. Our evaluation is that the costs of CEQA as a decision-making process as it is now constituted often exceed the benefits, but whether or not that is so, California policymakers must design their solutions to the state’s challenges by either avoiding the CEQA process or by accounting for the costs of potential obstruction through the CEQA process. Alternatively, CEQA could be changed to retain input from the public while reducing its costs.
**Can CEQA Change?** Today CEQA has almost quasi-constitutional elements, in that it is difficult to change or reform and in that it supersedes many other processes of California’s governance. CEQA can evolve significantly through changes from every branch of California’s government, but absent a wholesale reform by the Legislature, the judiciary has an established record of overruling the other branches. California’s court system has played the greatest role in CEQA’s evolution through case precedent, as appellate and supreme court cases regularly interpret and reinterpret the law’s provisions and requirements.

**FINAL ASSESSMENT OF DIRECT DEMOCRACY METHODS IN CALIFORNIA**

CEQA has evolved to become a major governance law as explicitly interpreted by the California Supreme Court, and the state’s legislature and Governor’s office have also recognized CEQA’s central importance as a governance law. It is an exemplar of California’s Progressive Era belief in direct democracy. Table 2 compares the mechanism of representative democracy with the three mechanisms of direct democracy discussed in this report. Representative democracy is designed to consider bundles of public policies in the shape of candidates’ policy programs and in the form of legislative bargaining around bills. It is designed to have the entire electorate set the agenda in elections, to bring knowledge and information to bear through deliberative processes in legislatures that involve hearings, advice from governmental agencies, and public debate, and to require majority votes for election of representatives and passage of legislation.

The three direct democracy mechanisms used in California consider small slices of public policy activity – the performance of individual elected officials, single ballot propositions, and specific projects, and they allow agenda-setting by individuals or groups with low-thresholds for involvement. For recalls and initiatives, the signature gathering thresholds are very low compared to other states. For CEQA every member of the public has standing to intervene in a project. For recalls and initiatives, especially for the design of initiatives, there is very little room for making changes based upon expert opinion, even after the reforms of 2014 that at least mandated legislative hearings for initiatives after 25 percent of the required signatures are gathered. CEQA provides a great deal more information than these two other processes through the Environmental Impact Review procedure, but it is not clear that the information is digestible for most members of the public.

Unlike representative democracy which typically uses majority rule elections, majority rule legislative procedures, and supermajorities for changing the constitution, the three direct democracy methods have low thresholds for decision-making. While the 50 percent threshold for recalls aligns with majority rule, the use
### Table 2
Comparing Representative Democracy with Three Mechanisms of Direct Democracy

<table>
<thead>
<tr>
<th>TYPE OF MECHANISM</th>
<th>What is Considered by Members of the Public?</th>
<th>Agenda Setting Group and Breadth of Their Representation</th>
<th>Vehicle for Enacting Change?</th>
<th>Deliberation</th>
<th>Role of Expertise?</th>
<th>Decision-Making</th>
<th>Opportunity to Bargain &amp; Make Tradeoffs?</th>
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<tbody>
<tr>
<td><strong>Representative Democracy</strong></td>
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<tr>
<td>Regular Elections; Regular sessions of legislature</td>
<td>Broad Concerns: Candidates and their political and policy programs</td>
<td>Entire public: Primaries and elections with campaigns where records of candidates considered</td>
<td>Bills proposed in legislature or by the executive</td>
<td>Substantial: Hearings, Lobbying, Public Comment, Legislative debate</td>
<td>Substantial including expertise of elected officials</td>
<td>Majority rule for election; Majority rule for bill passage</td>
<td>Substantial: Chances for tradeoffs and bargaining in passing bills and trading votes</td>
</tr>
<tr>
<td><strong>Direct Democracy</strong></td>
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<tr>
<td>Recalls</td>
<td>Narrow Concerns: Records of Individual Elected Officials</td>
<td>Individual/Small Groups Can Set Agenda: Only 12% signatures – effectively lowest of all states</td>
<td>Recall Petition</td>
<td>Minimal: Just public debate during campaign often with smaller audience than general election</td>
<td>Minimal</td>
<td>Majority for recall; Possibility that only a minority vote chooses replacement</td>
<td>Minimal: Just indirect tradeoffs between incumbent and new candidates given two ballots</td>
</tr>
<tr>
<td>Initiatives</td>
<td>Narrow Concerns: Constitutional Amendment Statutory Legislation, Veto-Referendum</td>
<td>Individual/Small Groups Can Set Agenda: 8% – among lowest 5% – below median 5% – at median</td>
<td>Initiative Proposition</td>
<td>Minimal: Just public debate during campaign; Little input of expertise and little chance to change wording</td>
<td>Minimal</td>
<td>Majority rule in all cases</td>
<td>Minimal: No bargaining or tradeoffs considered</td>
</tr>
<tr>
<td>CEQA</td>
<td>Narrow Concerns: Individual Projects</td>
<td>Individual/Small Groups Can Set Agenda: Everyone has standing; Focus just on proposed project; Lawsuits can set agenda</td>
<td>Environmental Impact Report (EIR)</td>
<td>Substantial: Public comment; Possibly court cases</td>
<td>Substantial: EIR’s based upon technical input</td>
<td>Negotiated agreements project by project; Judicial decisions</td>
<td>Minimal to Some: Focus is project by project and bargaining is within confines of project</td>
</tr>
</tbody>
</table>

**SOURCE:** Authors
of a second ballot without the name of the incumbent makes tradeoffs complicated and it opens up the possibility of a replacement elected with a minority of the vote. The 50 percent threshold for initiative Constitutional Amendments makes it very easy to change the constitution while preventing the legislature from changing an ill-conceived proposition. CEQA provides the lowest threshold as lawsuits can be brought by almost anybody that slow-up and eventually kill a project and judicial decisions can completely side-step majority opinion. When designing public policy, every elected leader, citizen, and stakeholder in the state must account for the fact that any other stakeholder in the state can use CEQA to obstruct any physical change or environmentally impactful action that they take. CEQA is thus a ubiquitous part of California governance even when the CEQA process is not being undertaken at all.

All three of the direct democracy methods make it hard to undertake deliberations that consider trade-offs and alternatives, thus encouraging vetocratic perspectives. The two-ballot format of the recall explicitly prohibits a direct comparison of the incumbent with those running as a replacement. The initiative requires an up-or-down vote on a single policy issue with consideration of alternatives. Although CEQA considers mitigations, it does so in the context of a single project.

California must consider how far it wants to go with direct democracy. It has gone farther than any other state, and in the process it has certainly hamstrung representative government. For some, this might be the goal, but the question is whether the majority of Californians actually support methods that make so many veto points available to so many people on so many discrete projects where tradeoffs cannot be made between what is being proposed and the alternatives.

**PERSONNEL AND GOVERNMENT AGENCIES**

Running government requires responsiveness to political priorities, technical knowledge about complex areas, and honest and honorable employees. The patronage and spoils systems created by Andrew Jackson at the federal level in 1829 and by political machines at the local level throughout the late 19th century emphasized political responsiveness above all else, even if it meant corruption and inefficiency. With the growth of government, the tension between political responsiveness on the one hand and a “neutral” technically competent and honest civil service grew.
CALIFORNIA’S CIVIL SERVICE

In 1913, the Progressive Era governorship of Hiram Johnson created the California civil service and the state Civil Service Commission. In 1932, state employees formed the California State Employees Association (CSEA) that initially lobbied successfully for a state pension system for government employees and then turned to passing a 1934 initiative for a constitutional amendment that created the State Personnel Board (SPB) to guarantee the merit principle in state hiring. The CSEA also worked to get approval for collective bargaining for state employees, and they succeeded in 1977 with the Dills Act. In 1981, the Department of Personnel Administration (DPA) was created to oversee personnel and to engage in collective bargaining. In effect, the state then had two parallel and overlapping systems for personnel administration: the State Personnel Board overseeing the civil service and the Department of Personnel Administration overseeing collective bargaining and many aspects of hiring. With collective bargaining, union concerns with job rights and salaries added still more complexity to the system.

A 1995 Little Hoover Commission report provocatively titled “Too Many Agencies, Too Many Rules: Reforming California’s Civil Service” recommended abolition of the State Personnel Board, decentralization of personnel functions to give managers more control and to increase responsiveness, performance pay, and contracting out to private firms. Despite Republican Governor Pete Wilson’s attempts to implement these recommendations, his poor relations with the public service unions and a divided legislature stifled reform. Part of the problem was that while one model of reform that would “modernize civil service” was quietly underway at the end of the last century in states such as New York, another model that would “dismantle civil service” was gaining ground in Florida, Georgia, and South Carolina. California’s unions would not countenance that, and they feared that any attempt at modernization would lead to dismantling. Yet, something had to be done to improve California’s system.

In 2008, Governing magazine printed an article rating the states in their management of people, California placed among the lowest nine states with a C- and with only two states below it with grades of D. By 2010, California was left with a personnel system that was uncoordinated, inefficient, and behind the times with respect to classification of positions, recruitment and selection of people, workforce planning, and performance management. The situation was especially acute since the state workforce was aging and many were likely to retire in the next ten to twenty years. In 2003, 31 percent of the state workforce was 50 or over, in 2010, 37 percent. Of the leaders and managers, over half were 50 years or older in 2010. Given the strife between Republican Governors and the public service unions, it seemed unlikely that there could be reform.

1 In 2020, 36.5 percent of all employees are 50 years or older and 46 percent of the leaders and managers.
Governor Jerry Brown returned to the issue in 2011 with a reorganization plan that proposed creating the California Department of Human Resources (CalHR) that would include both the Department of Personnel Administration and the State Personnel Board. As a Little Hoover Commission report put it: “Though the plan does not fully consolidate the state’s personnel system or reform civil service, any effort that improves the current approach deserves support.” The Commission also noted that the antiquated merit system governed by SPB still needed reform, but it hoped that this first step would move California closer to that. Based upon that plan, CalHR was created on July 1, 2012.

Governor Brown followed up in 2012 with another reorganization plan that reorganized the entire state government. One of the changes was the creation of the Government Operations Agency that would include personnel functions and pensions (CalHR, California Public Employees Retirement System, and California Teachers’ Retirement System), tax collection (Franchise Tax Board), and general government operations (Department of General Services, Department of Technology, and Office of Administrative Law). By all accounts, the first head of the Government Operations Agency in 2013, Secretary Marybel Batjer, was very effective. She launched a “Civil Service Improvement” initiative that overhauled the classification system, made regulatory changes at SPB, improved performance evaluation for managers, consolidated and simplified personnel policies, created a new jobs website, developed organizational performance dashboards, and improved training.

**WHAT STILL HAS TO BE DONE**

While California has made progress in civil service reform, and the success of Covered California, staffed by state civil servants, demonstrates what can be accomplished, there is still much more to be done. In many of the 58 counties, 482 cities, 1,000 school districts, and thousands of special districts, personnel policies need upgrading and improvement. Although the various governmental associations—the California State Association of Counties, the League of California Cities, the California School Boards Association, and the California Special Districts Association—all provide education and advice to their members, much more could be done to provide help to local governments, especially those that are small and under-resourced.

California still needs to do better with its information technology. A 2008 report rated its information systems as C+ behind 28 other states including Michigan, Missouri, Utah, Virginia, and Washington that were rated as A. It is a cliché, but as the home of Silicon Valley, it is embarrassing to see California in the bottom half of states in this area. And unfortunately, problems persist. During COVID, the state’s Employment Development Department became overwhelmed with claims, failed to pay those with legitimate needs in a timely manner, and may have paid as much as $31 billion in fraudulent claims. And many information projects have failed to meet their deadlines, experienced very large cost overruns, and been underperforming. Part of the problem is that it is hard for government, even
the Pentagon, to get highly skilled tech people, but another difficulty is that governments are not making the commitments to data science and related areas that would make government employment interesting and exciting.

California faces many of the same challenges as the federal government. It needs to improve its recruitment and retention of workers, especially highly talented university graduates. It has to find a way to enable public workers by not hamstringing them with excessive rules and regulations, and it must improve its managers and management systems by providing more flexibility and better training. It also has to make sure that public service at all levels reflects the diversity in California.

Ideally there needs to be an emphasis on agile government – approaches that emphasize the mission of government, that provide room for experimentation and innovation, that focus on evidence-informed solutions, that emphasize on customer-service, and that measure performance. There needs to be collaboration between universities and government to train technologists and efforts to create boundary organizations that bring together people from universities, nonprofit research institutions, the private sector, and government agencies to formulate policy and to design better programs. There also need to be efforts to continue to rethink and rework the relationships among public sector unions, civil service systems, and government programs.

TRENDS: THE FUTURE OF CALIFORNIA’S GOVERNANCE

ECONOMIC GROWTH ONCE DISGUISED GOVERNANCE PROBLEMS, BUT NO LONGER

In many ways, one of California’s greatest strengths – its booming economy – has enabled the state to avoid more comprehensive reforms with respect to governance. Not only has California’s economy boomed and papered over governance problems, but it has increasingly transitioned to rely on sectors (technology, venture capital, even Hollywood) that are high-productivity, low capital expenditure industries. California’s technology industry is an obvious example, but even the tech sector has become less capital intensive since the dot com boom. High growth in these select industries enabled California to
engage in governance without significant, immediate economic repercussions because they did not require significant changes to the physical world that would have required governance decisions through CEQA, inter-governmental agreements, and other areas where California’s governance is weak. The secondary effects of this growth, however, such as clogged freeways and a housing crisis, not to mention overall concerns with quality of life among a high-tech workforce, have now become apparent. California needs to solve a multitude of problems in order to continue to prosper.

HARD PROBLEMS WILL PROBABLY GET HARDER

California has developed solutions to many hard problems in the past, but as other California 100 reports document, there is every reason to believe that California faces some especially hard problems in the future such as climate change, immigration, water resources, housing, poverty, homelessness, education, transportation, and other areas. There is no reason to believe that California’s governing challenges will get easier.

PARTISAN DIVISION AND POLARIZATION WILL PERSIST AND PERHAPS GET WORSE

California is following the national trend of becoming more and more polarized, and there are reasons to believe that polarization will make governance harder. Growing ideological polarization of public opinion and elite opinion in California manifests itself in significant differences across the two major parties that makes agreement on solutions hard to reach. There is no obvious solution regarding political polarization, and it seems likely that it will persist into the future. California must find ways to work around it if it persists.

LACK OF TRUST IN INSTITUTIONS WILL PERSIST AND PERHAPS WORSEN

Trust in most institutions, including government, has been declining in America and in California, making it difficult to make decisions that are viewed as legitimate and trustworthy. Part of the problem is that trust follows when institutions are trustworthy, so that efforts must be made to ensure that they are, and they have not always met that standard. But another part of the problem is the politicization of even non-political institutions.
that by many indicators are performing well so that they are tinged with ideological conflict that affects people’s willingness to trust them. The most recent example of this in America has been those institutions that administer elections. Although Americans are worried about partisan polarization and declining trust, it seems likely that they will persist.

**BIASED PARTICIPATION MIGHT DECLINE**

Some groups are left out of the conversation because they face barriers to participation or because participation requires resources such as money, contacts, or time that they do not have. To some extent this is a reflection of deeper problems in California and the United States regarding the polarization of income and structural inequalities based upon race, ethnicity, or gender so solutions require attention to those problems. But some solutions such as getting money out of politics, ensuring universal registration, developing meaningful civics programs in schools, and making it easy to vote can proceed without first solving the deeper problems. As a result, it seems very possible that participation will become more equal in California, even if the deep structural problems are not solved which would provide a better and more long-lasting solution.

**LOCAL MEDIA MIGHT BE SAVED**

The demise of local media and the cacophony on the internet and social media mean that information is unreliable and debate is chaotic. Reforming the internet is probably a Herculean task, and it is not clear how the governance of the internet will evolve, although it seems likely that more governance will be put in place—partly to defend against those countries such as China who would completely merge it into their authoritarian regimes and partly to ensure that there is some regulation of speech and conduct to make it harder to spread disinformation and lies. Although California will play a role in the future of the internet given the location of social media companies, the United States and countries around the world will be the big players.

It seems very likely that ways will be found to support local media. Many forces align to make this likely. People recognize that the media perform an essential function and that the benefits of subsidy far outweigh the costs. Despite partisan criticisms of the media, both political parties can muster support for local media. Critics of social media companies are gaining ground and the public believes that something should be done to rein them in so that a tax on advertising to support local media is probably feasible.
THE FUTURE OF VETO POINTS IN GOVERNING INSTITUTIONS IS UNCLEAR

Californians are strongly attached to their methods of direct democracy such as the recall and initiative as they see them as ways to overcome entrenched sources of power. Recent efforts to ensure public review of projects, such as CEQA, have added additional points where objections can be voiced about projects requiring governmental approval. In a society facing hard problems, partisan division and polarization, a lack of trust, and the decline of the media, we have shown that these democratic safeguards are often used in ways that stifle good decision-making. It is not clear whether or not California will move away from vetocracy back toward representative government with majority rule, and we think of this as a critical uncertainty for the future.

IMPROVED AGENCY PERSONNEL AND CAPACITY TO SOLVE PROBLEMS

Governor Jerry Brown began an effort to improve California's personnel systems and capacity to solve problems, and it seems likely that efforts will continue in this area given the creation of the Government Operations Agency and embryonic efforts on the part of others in the state to improve government personnel. The biggest question is whether they proceed fast enough and on a big enough scale to have an impact.
TWO CRITICAL UNCERTAINTIES ABOUT THE FUTURE OF GOVERNANCE IN CALIFORNIA

Representative Democracy versus Direct Democracy: Will California move toward more delegated representative democracy or toward more direct democracy?

Increases in Civic Capacity versus Decreases in Civic Capacity: Against the backdrop of hard problems, political polarization, and declining trust in government, will California work to increase civic capacity by saving local media and encouraging political participation or will it allow civic capacity to decrease?

These two critical uncertainties will shape the governance of California. The first one has to do with ideologically decisive questions such as the size and scope of government, the number of veto points needed to prevent government excess, and the use of majority rule. The second one is about creating civic capacity for thoughtful, informed, political participation. One would expect more agreement on the second dimension, although even there people can disagree based upon ideological considerations such as whether there should be more political participation and whether local news media should be supported by government subsidies. California, however, needs to address these uncertainties to shape its future.
THE FUTURE OF GOVERNANCE, MEDIA, AND CIVIC SOCIETY

FOUR ALTERNATIVE SCENARIOS
Foresight practitioners use scenarios to help make future possibilities more vivid and tangible, immersing the reader in the particular details of a future world so that they can mentally situate themselves in what it would feel like to live there. Without scenarios, the signals, trends, and other research that underlie strategic foresight work can feel distant and abstract. Scenarios can be used to center a group conversation in a positive and concrete picture of a future state so that stakeholders can pursue a shared vision for how to respond to that possibility, or mobilize action to avoid an undesirable outcome.

As a result of distrust in political leaders and government, California has moved away from delegating authority to representative government more than any other state, relying instead on direct democratic methods such as recalls, initiatives, and the California Environmental Quality Act (CEQA), all of which increasingly give small public groups agenda power. Also, this has “morselized” public policy so that decisions are made based on individual propositions or projects without considering tradeoffs or alternative approaches across different areas. The first critical uncertainty for California is whether it wants to increase popular authority or pull back from it and return to representative democracy. Similar to the rest of the nation, California has experienced polarization, loss of local media, waning political participation, and a decline in public trust of government and other institutions. The second critical uncertainty is whether California will make efforts to build civic capacity to promote trust and information, or if it will continue with current trends.
After a series of crises including rampant homelessness, water shortages, earthquakes, wildfires, and floods that required invoking emergency powers, California’s citizens delegate more authority to elected officials. Direct democracy is regarded as a relic of the Progressive Era, a corruptible process subject to the capture of special interests. Californians support reforms for more independent, technocratic governance and decision making at the state and local levels. Silicon Valley works to make the California civil service more skilled at every level, but as local media sources dwindle and as Californians increasingly rely on the state for services and information, hints of an authoritarian government spread.

As California’s state administration grows, new regulatory agencies are established to combat climate change, expand charter and private school options, and supervise the state’s healthcare system. Along with this development, the governor’s power extends, and the new agencies are run by political appointees under their direct control. A united legislature reforms CEQA to limit its scope and impact, and raises the signature thresholds for recalls and elections. Although things get done, some groups argue that California has become a technocracy uninformed by and unresponsive to popular concerns.

**HISTORICAL PRECEDENTS**

- **1967:** Mulford-Carrell Air Resources Act creates the California Air Resources Board, merging the Bureau of Air Sanitation and the California Motor Vehicle Pollution Control board.
- **1994:** California Infrastructure and Economic Development Bank created to finance public infrastructure and private development projects.
- **1998:** AB 1980 establishes the California Independent System Operator (CAISO) to manage California’s electricity grid.
- **2013:** Governor Brown declares a State of Emergency due to drought, and overrides CEQA.

**FUTURE DRIVERS**

- **Distrust and Anger:** Increased frustration from Californians with interest group politics in state’s recall, referendum, and proposition processes.
- **Polarization:** Continued marginalization of the state’s Republican party will entice the state’s Democratic coalition to continue growth of the administrative state.
- **Alternative Opportunities for Representation:** Increased support for regional or community representation drives the creation of independent commissions, community groups, or Metropolitan Plan.

**SIGNALS**

- **Declining strength of American democracy**
  - **WHAT:** America has experienced growing authoritarian populism throughout the United States over the past decade.
  - **SO WHAT:** California may experience similarly authoritarian trends.
  - [Vox.com](https://www.vox.com)

- **Reduced number of local media sources**
  - **WHAT:** Only 43 unique California cities of the 482 cities in California have local news sites.
  - **SO WHAT:** Inadequate local news has been linked to more corruption, less competitive elections, weaker municipal finances, and a prevalence of party-line politicians who don’t bring benefits back to their districts.
  - [Fivethirtyeight.com](https://fivethirtyeight.com)
GOVERNMENT RETHOUGHT

Governance reforms bring a wave of state action and development

Following a succession of crises, a “New Public Compact” streamlines government decision-making processes. New election financing laws ensure public involvement while reducing veto points. The government funds nonprofit organizations to mobilize the entire community, strengthens the local media, and holds well-attended deliberative polls to engage the public. Reforms lead to a boom in public works and private property development. Through the referendum process, Californians rethink Proposition 13 and develop a new system for property taxes and graduated income taxes.

Silicon Valley and public schools across California work to improve the technical competence of the civil service and to develop exciting online tools to engage the public. California undergoes a set of reforms and overhauls similar to the New Deal, and local communities build out their information infrastructures, including local media, to connect residents with local resources and services. Californians become increasingly informed about the democratic process as more reform options become available, and their engagement increases through political activism.

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HISTORICAL PRECEDENTS

1895: California branch of the Direct Legislation League founded.

1933: California State Legislature passes the Central Valley Act to reform and implement the State Water Plan.

1958: Governor Pat Brown creates the University of California system to make an affordable university education for the state’s growing population.

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FUTURE DRIVERS

Reform Activism: Emergence of an organized movement for returning authority to elected representatives for actions that do not violate individual rights.

Distrust and Anger: Growing public frustration with the inability of state or local governments to take action in response to obvious public problems.

Polarization: Growing perception of Progressive Era governance mechanisms as prone to interest group capture.

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SIGNALS

State sponsors projects to solve housing crisis

WHAT: Utah sponsored a competition to generate ideas to solve the housing crisis.

SO WHAT: State-sponsored efforts to engage diverse stakeholders in California would require broad changes to development challenges for building new housing.

Voters want changes to recall process


SO WHAT: California may soon see higher barriers to recalling statewide representatives.

Federal plan seeks security while protecting civil liberties

WHAT: In 2022, the Biden Administration introduced the Domestic Counter-Unmanned Aircraft Systems National Action Plan in response drone strike threats.

SO WHAT: Government seeks solutions to address threats while protecting privacy and civil liberties of the American people.
SCENARIOS

CALIFORNIA VETOCRACY

Supporting status quo with limited information yet increased direct participation

In California’s crisis-ridden landscape, voters are frantic to “fix government,” making progressive era direct democracy increasingly popular. As veto points increase in state decision-making, so does the difficulty in making significant decisions and developments. Due to the loss of newspapers and media outlets, the public knows little about government. Small groups of “reformers” become powerful as they use direct democracy to propose one partially thought-out initiative after another. NIMBYism and narrow interests are fueled by CEQA, which applies to every government and private action. Recalls of elected officials increase significantly throughout the state. Each governor faces recall attempts. At all levels, the civil service is weak, poorly paid, untrained, and overwhelmed by the chaos it faces. Trust in government spirals downward.

The California State Supreme Court finally rules against SB 9, which restricted local control over housing developments, and settles the matter for the time being. In response to crisis situations, decisive action is episodic, with one movement after another that leads to new initiatives or recalls, but to no real results. Despite greater local control and increased direct citizen participation, access to information continues to rely on online, national news sources. In the absence of local and community information, misinformation flourishes about the effectiveness and impact of veto points.

HISTORICAL PRECEDENTS

1960: San Francisco Freeway Revolts. The protests successfully stopped the Embarcadero Freeway project and the Panhandle-Golden Gate Park freeway,

2010: Taxpayers Right to Vote Act. Proposition 16 would have required two-thirds of the electorate

2018: The California Two-Thirds Vote for State and Local Revenue Increases ballot initiative received enough signatures to qualify for the state ballot.

FUTURE DRIVERS

Access and Information:
A series of local zoning scandals creates new formal requirements for open meetings to be held on the internet.

Activism:
Coalition forms of interest groups that benefit in the short term from the ability to block or delay public action.

Polarization:
Partisanship/polarization inhibits major compromise on governance reforms.

SIGNALS

CEQA supporters triumph against school being built on toxic wasteland

WHAT: In 2022, a California judge ruled to prevent a charter school organization from building a new school on land previously used to manufacture metals after it bypassed a key CEQA step.

SO WHAT: Many CEQA supporters see the protection and maintenance of CEQA as the primary tool to protecting Californians and the land from environmental misappropriation.

Recall of Governor Newsom following COVID-19 restrictions

WHAT: A minority interest group triggered a failed recall election for the governor during 2021, following Governor Newsom’s COVID-19 shelter-in-place emergency orders.

SO WHAT: Increased direct citizen participation in governance through recall elections may continue to impact elected officials and their focus during their terms.
BURBCLAVER CALIFORNIA

Local governments demand control for governance over statewide leadership

There is a local demand for action in response to California’s environmental, housing, and other crises, in concert with a strengthening of citizen participation. The “burbclave movement” arises as local communities start demanding greater local control and authority to cope with statewide problems like affordable housing, access to healthcare, and strong education. Through reform of Proposition 13, local governments gain more control over public actions and state finances.

As local control becomes more prevalent throughout the state, local and community media outlets emphasize the immediate benefits of locally-driven solutions. Some communities have solved the housing crisis, water crisis, and other crises, but the solutions are limited to those communities. Additionally, some communities become exasperated when their residents feel they have to participate so much, and residents become burned out due to constant information. Local decisions are usually determined by those with the loudest voices. Some communities flourish, but others struggle to solve issues, particularly poorer communities with limited resources. Consequently, their public infrastructure, safety, and educational systems suffer. Some people can solve this problem with gated communities, private schools, private roads, and private policing, but others who lack resources suffer from bad roads, inadequate housing, and poor schools.

HISTORICAL PRECEDENTS

2013: California enacts the Local Control Funding Formula program for the state’s education system.

2018: Though defeated, Proposition 10 would have given local California governments the ability to enact rent control programs on any type of rental housing.

2020: California considered, but rejected, Proposition 15, which would have repealed Proposition 13’s limitations on property taxes for commercial property.

FUTURE DRIVERS

Activism: Grassroots reactionary movements in response to actions seen as encroaching on local control from Sacramento. Current responses to California SB 9 and 10, which limit local control over zoning regulations, may lead to local control movement.

Distrust and Anger: Increasing citizen frustration with statewide approaches and regulations to address California’s primary challenges, which differ from region to region.

SIGNALS

Despite new legislation to protect affordable housing, local jurisdictions fail to enforce violations

WHAT: A new 2021 housing law meant to allow duplexes and split lots on land previously marked as single-family only, has been met with stiff resistance by cities across the state that have passed ordinances effectively — but not directly — blocking the law in their areas.

SO WHAT: Although the state passes new laws with goals of sweeping changes, if local jurisdictions are allowed to implement their own enforcement, disparities may persist in the implementation and effectiveness of laws. pleasantonweekly.com
Choices among governmental policies depend partly upon which future scenarios seem most attractive to us, but they also depend upon our perspectives on the proper role of government, on the resources available to government, and on the likelihood that government will succeed in its endeavors. Doing nothing is sometimes the best policy option, but doing nothing often uncritically accepts the current mix of policies and the future they entail without considering the alternatives. Over the past seventy-five years in California, that meant accepting discriminatory racial housing covenants, restrictive zoning laws, few restrictions on air or water pollution, “separate but equal” schooling, the dismantling of transit systems, and many more things that are now thought to have been wrong or misguided. We have also seen aggressive policy measures in California that have had unintended consequences, from the impacts of Proposition 13 on local government budgets to the way the California Environmental Quality Act has affected housing supply and manufacturing.

Because we are thinking about the future and we do not want to be hemmed in by the status quo or a lack of imagination, we put forth an array of alternative policies, and we tie them to different scenarios. Readers can decide which ones (or combinations of them) they prefer. Our discussion of the policy tradeoffs below will favor scenarios that view California’s governance as one supported by an informed citizenry through strong local and ethnic media sources, and look critically at approaches that do not. Readers should consider which scenario best captures the California they want to live in, and evaluate which policy recommendations they believe will get us there.
As the number of recalls exploded, California’s recall provisions became the subject of considerable scrutiny. The attempted recall of Governor Gavin Newsom in 2021 raised the possibility of a governor being replaced by another candidate with a significantly lower-level popular support. The intent of the recall provisions was to allow citizens to remove an elected official immediately in an extreme circumstance rather than waiting until the next election. They had instead been used promiscuously as a means of registering dissatisfaction, blocking opponents, and permitting candidates who could never win statewide office to claim the governorship. Battling recalls distracted elected leaders from governing; fears of triggering a recall induced a short-term mindset in which officials were careful not to alienate interest groups.

In this scenario, California decides to make it more difficult to trigger a recall election by increasing the signature threshold of the petition from 12 percent to the 20 percent that is required for state Senators and members of the Assembly. Some even proposed eliminating recalls entirely. Additionally, the Constitution only prohibited a new recall for six months after a current officeholder wins a recall election. Through amendments to the state constitution, California decides to lengthen this time period to disincentivize serial recall
petitions, and recall filings are limited to six months after an officeholder takes office and only during the remainder of the first half of the term for a statewide office to limit the potential for multiple elections over a short period.

The possibility of an official being replaced by a less popular alternative is addressed by a constitutional amendment for a snap election using ranked-choice voting in which the incumbent can run, although some proposed that the replacement should be the Lieutenant Governor or another statewide official. This approach was rejected because Lieutenant Governors do not run on the same ticket as Governors and can be of a different party so that the change might actually incentivize more recalls. Given the large number of candidates who typically run for office, the vote uses ranked-choice voting to prevent a candidate with a small plurality from being elected.

### Require Budget Neutrality for Initiatives

Successful changes to California’s second major populist Progressive Era reform, the ballot initiative, require that initiatives demonstrate budgetary neutrality (as defined by the Legislative Analyst’s Office) so that there would be no surprise budgetary implications.

In addition, changes are made so that ballot initiatives cannot mandate a supermajority vote in the legislature for some policy areas (e.g., taxes) unless the initiative itself passes by a three-quarters vote. This eliminates the possibility, that occurred in the past, of an initiative passing with only a simple majority but requiring a supermajority legislative vote for some policy area.

### Changes to the Personnel System

Working with Silicon Valley, California state government develops the leading program in the world (exceeding the well-known programs in Singapore) for civil servants that produce technically competent government employees who are well-equipped to provide technocratic solutions to problems.
Due to growing concerns over the costs, abusive litigation practices, the abuse of CEQA litigation for narrowly exclusionary or clearly economic purposes, the uncertainty of CEQA litigation outcomes, and other issues associated with the use of public interest lawsuits to enforce CEQA, the enforcement of CEQA and adjudication of CEQA conflicts is transferred to an administrative agency rather than working through the courts.

The new “CEQA adjudication agency” is staffed with the relevant expertise that hears and adjudicates conflicts over a CEQA decision, or in some cases pre-reviews and certifies CEQA decisions. CEQA adjudication decisions are only reviewable at the appellate level by the courts, with the necessary language to secure a high degree of deference to the agency’s adjudication decisions. This approach is similar to the function of the Agricultural Labor Relations Board (ALRB) in adjudicating unfair labor practices in that its decisions effectively circumvent the trial court.

The justifications for agency adjudication of CEQA disputes included the ability of an agency to develop internal expertise for its own analysis or verification of environmental data and to use experts to make adjudication decisions, rather than generalist judges deciding on exclusively procedural matters. Other justifications included the extremely high transaction costs of adjudication through litigation, the uncertainty inherent in the current litigation process due to the broad room that judges have to interpret current case precedent, and CEQA’s statutory language, as well as the other challenges of conflict adjudication and adversarial legalism.

One major concern with this change was that a critical fault of agency adjudication is the possible concentration of power to adjudicate disputes, even if they are reviewable by appellate courts. This concentration of power may be acceptable for institutions with a very narrow mandate such as the ALRB, but might be unacceptable for CEQA given the breadth of CEQA’s application across almost every public and private development action in the state.
Proponents of the change noted that there is precedent, however, for an administrative agency to screen or review legal claims under broader adversarial legalism governance in federal civil rights law. The Equal Employment Opportunity Commission (EEOC) has a critical function in enforcing and reviewing legal claims of discrimination under Title VII of the Civil Rights Act of 1964. Plaintiffs under Title VII must submit claims to the EEOC rather than filing litigation directly. The EEOC then processes and investigates claims of discrimination. When the EEOC determines that a claim of discrimination is warranted, it provides plaintiffs with a “Right to Sue” document that allows them to file litigation under Title VII. In the intervening period the EEOC also plays important investigatory and mediation roles that encourage settlement, reduce incentives to file frivolous litigation, and prevent frivolous claims from reaching the courts.

While novel among U.S. states, California decided to implement this model under CEQA to reduce some of the costs of adversarial legalism, promote standardization, minimize the burden on state courts, and reduce incentives for frivolous CEQA litigation. This solution yields the benefits of implementing technical, administrative adjudication for CEQA conflicts, while avoiding the pitfall of over-concentrating power in a single administrative institution. It also allows individuals and groups to retain their current rights to make claims to enforce CEQA.

CALIFORNIA VETO CRACY

**People Want Direct Democracy and California's Civic Capacity Decreases**

Progressive era direct democracy remains popular with voters and expands even further beyond initiatives and recalls as California's crises make the public frantic to “fix government.” Veto points in state decision-making increase, making large decisions and developments even more difficult. With the loss of newspapers and media outlets, the public knows very little about government, but small groups of “reformers” become powerful as they use direct democracy to propose one partially thought out initiative after another.
With a low level of civic capacity and the profusion of direct democracy, multiple stakeholders can block collective action in this scenario. As a result, California Governors frequently use emergency executive powers to get around these vetoes. Emergency powers were used by Gov. Jerry Brown in 2014, when he declared a drought emergency and suspended CEQA litigation. California’s Emergency Services Act (ESA) establishes statewide emergency standards and allows the governor to proclaim a “state of war emergency,” a “state of emergency,” or a “local emergency” and suspend any regulatory statutes, statutes for state business procedures, and any state agency edicts. The governor can also commandeers private property or personnel (except for news services, and make expenditures from any available fund. Examples of this approach have happened repeatedly in Latin America, where fragmented legislatures are unable to pass legislation and delegate emergency powers to presidents in order to get things done. In the face of an accelerating pace of genuine emergency conditions (fires, floods, drought, etc.), governors use the ESA routinely and displace the legislature’s statutory powers. Under the ESA, a concurrent resolution by the legislature can force the governor to end an emergency, but the deadlocked legislature permits routine use of emergency powers, or when it sometimes passes a concurrent resolution, the governor simply ignores it and triggers a constitutional crisis.

There are calls for reforming the ESA by adding conditions both for the declaration of an emergency, or for limiting the executive powers thereby delegated. However, such limits would not get at the underlying condition that triggered the use of emergency powers, which is vetocracy. A real reform of this system therefore needs to weaken the ability of local stakeholders, like towns and municipalities, to block legislative initiatives that address regional or statewide concerns, but there is no prospect that this will happen.
Without much civic capacity in the form of political participation or local media, reformers argue for more and more direct democracy.Recalls, initiatives, and citizens’ lawsuits proliferate. Laws and initiatives make it easier and easier to object to laws or projects. California’s citizens are highly mobilized, but the mobilization amounts to constant demonstrations, recriminations against elected officials, deep distrust of government, and the creation of waves of citizen movements.

**Increasing Use of Direct Democracy**

**GOVERNMENT RETHOUGHT**

*People Want Representative Democracy and California's Civic Capacity Increases*

In a “New Public Compact,” government decision-making processes are streamlined and veto points reduced at all levels, while assurances of public involvement come through new election financing laws, extensive outreach to mobilize all communities through funding for nonprofit organizations, strengthening of local media, and public participation in decision-making through regular, highly publicized and attended deliberative polls. Broad sweeping reforms lead to a development boom to meet pent up demand in public works and private property development.

**Broadening Meaningful Participation**

California strengthens representative democracy but it does so by increasing civic capacity and providing direct ways that people in California can participate in government. A new public finance law provides monetary vouchers to registered voters that they can use for the candidates of their choice.
Civics programs are strengthened in high schools with an emphasis on real-world simulations and experience so that people learn about how legislation gets made. Same day registration, early voting, and other methods are used to ensure participation on election day, and election day is made a holiday with forums and festivities. Deliberative polls are widely used over the internet to consider important policy issues. A form of "state citizenship" is developed that is more broadly available than U.S. citizenship, and it provides a uniquely California concept of what it means to be part of America.

**Improving the Civil Service**

Working with Silicon Valley and a broad range of civic organizations, new training programs are developed for the civil service that improve their technical competence and their communications skills. California becomes a leader in “techno-outreach”: methods are developed for matching technical expertise with local organizations to bolster civic capacity.

**Strengthening Local Media and Generating Greater Support for Local News Media**

California employs a wide range of policies to strengthen local media including:

- Public advertising and notices set-asides
- Government mandates for license fees from online news aggregators
- Direct subsidies and grants
- Community information districts

“Public notice set-asides” reserve space for a certain percentage of public notices or advertisements to be placed with local news organizations. The policy functions like small business or minority-owned business public procurement set-asides. The other three policies provide a direct funding source for local news organizations, and California experiments with all of them, looking for the most successful policy. They differ primarily in their funding sources and
in the state’s discretion in allocating funding or selecting recipients. License fee mandates transfer funding from aggregators like Facebook or Google to local news. License mandates in Europe and Australia generated some conflict and even the cessation of news operations by aggregators in some countries. Community information districts allow localities to establish districts with a local tax that would be allocated to local news organizations, limiting state discretion and funding. Although there are dangers of too much state involvement and concerns about freedom of the press, California develops arms length approaches that take money from a tax on internet advertising and provides support for local news media.

Reforms of the Initiative and Recall

In this scenario, California undertakes policies similar to those reported in “California Technocracy” with respect to the recalls and initiatives.

Reforms of CEQA

The CEQA process is improved by a number of reforms:

CEQA is Restricted to Truly “Public” Projects: California decides CEQA should no longer apply to “private” projects. When it was passed, it was not anticipated that CEQA would apply to most private sector development, but the Friends of Mammoth decision broadened CEQA and the result was accepted by the legislature at the time. California decides to limit CEQA to public projects to limit incentives for conflicts of interest that lead to CEQA litigation abuse and to limit regulation of private property development to zoning laws, rather than through litigation that is often costly and slow. This would give private property owners or developers clear rules, no matter how restrictive, and reduce the uncertainty inherent in CEQA litigation.
**Elected Representatives are Allowed to Adjudicate CEQA Conflicts:** All other CEQA requirements and procedures remain unchanged under this policy, but elected representatives adjudicate CEQA conflicts. Under this reform, when a lead agency begins the CEQA process under this policy, it designates a lead representative or office for the CEQA permit. This can be a single elected executive or a governing body like a city council for a local project. A county-level official or governing body can be selected for a project with regional impacts. Projects with statewide impacts use the Governor as their lead representative. If there is a conflict regarding a CEQA decision once the process is complete, stakeholders no longer have recourse to the courts. Instead, an objection to the CEQA permit is filed. The lead agency and opposition have an opportunity to present relevant analysis to the lead representative, who then adjudicates the conflict.

**Standing Limitations for CEQA Litigation to Reduce Abuses:** California decides to strengthen the standing requirements for CEQA litigation and to get rid of anonymous suits. CEQA, unlike federal environmental law, allowed citizens to bring lawsuits as an anonymous nonprofit group (i.e., “Citizens to Preserve the Neighborhood”) without disclosing the individuals bringing suit. This change reduces incentives for frivolous CEQA litigation, litigation filed for non-environmental purposes (i.e. labor unions or business competitors seeking to increase their bargaining leverage), or “bounty hunter” CEQA litigation in pursuit of a financial settlement.

** Developing Increased Transparency Measures for California’s Judiciary**

To promote a more informed public, a centralized, transparent system to disseminate information regarding judicial deliberation is created. To alleviate any privacy concerns relating to tort law, statewide digital access transparency is limited to clear public interest lawsuits (such as CEQA suits or other litigation to which a public entity is a party) by categorization. While some services existed in the past to aggregate judicial information, these were oriented towards the
legal industry rather than the general public. Because of this, those services focus on case precedent rather than the outcomes of proceedings that will impact public projects. This system helps to empower local media organizations to report on litigation that is relevant to members of their community.

**BURBCLAVE CALIFORNIA**

*People Want Direct Democracy and California's Civic Capacity Increases*

In this scenario, California increases civic capacity, but it does not rein in direct democracy. As a result, most of the changes that occur are at the local level, and they only occur in some local areas.

**Broadening Meaningful Participation for Some at the Local Level**

Some communities, typically in more affluent or highly educated areas, increase civic capacity and provide direct ways that people in California can participate in government. But these methods are limited. A new public finance law provides monetary vouchers to registered voters in some cities, but others cannot afford such a law and do not implement it. Civics programs are strengthened in affluent high schools with an emphasis on real-world simulations and experience so that people learn about how legislation gets made. Those same areas provide early voting and other methods to ensure participation on election day, and they use deliberative polls over the internet to discuss public problems. Communities without resources do not undertake these changes.
Strengthening Local Media and Generating Greater Support for Some Local News Media

Some local media are strengthened in the ways described earlier, but there is no statewide tax on advertising and only well-off communities can afford to subsidize local news media.

Reaching The Tiebout Ideal

Charles Tiebout was an economist who championed the idea of variety in the public services provided by governments because different packages of public goods would appeal to different people. Because of the increase in civic capacity in some areas, Burbclave California demonstrates tremendous creativity and innovation in some areas, and it provides those with enough resources with many options for choosing a community that fits their needs. The result is the “Tiebout Ideal” for some in which communities provide packages of services that best match people’s needs. Some communities are gated, large-lot, golf-course oriented, and highly secure neighborhoods; others are dense, focused on arts or education, and intensely populated by civic groups and political movements; still others are retirement communities with access to public transport, community centers, and health facilities. Burbclave California is innovative and interesting, but not for everyone.