GOVERNANCE, THE MEDIA, AND CIVIL SOCIETY

THE PAST, PRESENT AND FUTURE OF CALIFORNIA’S PROGRESSIVE GOVERNANCE REFORMS

An In-Depth Analysis of the Facts, Origins and Trends of Governance, The Media, and Civil Society in California

CALIFORNIA

VISION & STRATEGY FOR THE NEXT CENTURY
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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.

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Stanford Center on Democracy, Development and the Rule of Law
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THE FUTURE OF GOVERNANCE, THE MEDIA, AND CIVIL SOCIETY
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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.

While California’s governance system has solved some hard problems, its governance system suffers from significant challenges in all of 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 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.

Each of these challenges to governance is reviewed below.

**FACTS AND ORIGINS: HARD PROBLEMS**

**HARD PROBLEMS SOLVED IN THE PAST**

California has made important advances on solving hard problems in the past. Here are some examples that had varying degrees of bipartisan support:

**Designing a Higher Education System to Meet the Needs of California: The Master Plan of 1960**

In the 1950s, California’s population grew at about four percent every year for a total compounded increase of almost 50 percent from 1950 to 1960. Many of these new residents were children, the Baby Boomers, who would grow up and want to attend college. California needed a plan for their future. 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 to devise
an innovative master plan for higher education.\textsuperscript{1} 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 created the greatest public higher education system in the world.

The plan’s elements were put into law by a Constitutional Amendment that created the trustees for the California State University system and by the Dorothy Donahue Higher Education Act of 1960 that honored a member of the California Assembly who was a leader in planning for higher education. The plan proposed far-reaching goals such as that one-eighth of California’s graduating seniors would be guaranteed a place at the University of California tuition-free. It assigned specific functions to the three segments of the system, the University of California (e.g., Berkeley, UCLA), the California State University (e.g., Sacramento State, Cal State Los Angeles, Fresno State), and the two-year community colleges. And it created a framework for cooperation among these segments. Although the plan is now dated, it still serves as the basic framework for California’s higher educational system that is universally regarded as the best in the world.\textsuperscript{2}

\textbf{Designing a Plan to Deal with Climate Change, 2006}

California has always been a leader in the regulation of air pollution—particulates, nitrogen oxides, ozone, and sulfur oxides produced by combustion and industrial processes—partly because Los Angeles with its surrounding mountains and onshore winds suffers from extreme concentrations of pollution producing significant health effects for its population. In 1947 Los Angeles County set up the first air pollution control district in the nation.\textsuperscript{3} 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 world-wide temperatures posing threats to California’s coastal areas through a

\begin{itemize}
\item \textsuperscript{3} South Coast Air Quality Management District, “The Southland’s War on Smog: Fifty Years of Progress Toward Clean Air,” https://www.aqmd.gov/home/research/publications/50-years-of-progress
\end{itemize}
rising sea-level, to its forests through increased wildfires, and to its water supply through decreased snowfall in the mountains.\(^4\)

Against the background of California's long-standing concern with the health effects of combustion and the identification of these new climate change threats, electricity prices spiked at ten times their normal value during the California energy crisis of 2000-2001 putting the spotlight on California's energy needs. “Inept regulation and market manipulation by energy suppliers”\(^5\) created the crisis, and in its aftermath, state agencies concluded that one way to avert such predicaments was to decrease energy consumption and dependence on volatile carbon fuel prices.\(^6\) The 2000-2001 energy crisis and the state budgetary problems caused by the 2001-2002 “dot-com” recession also led to the recall of the sitting Democratic Governor, Gary Davis, in 2003, and his replacement by a Republican Governor, Arnold Schwarzenegger, who decided to make environmental issues a priority to appeal to mainstream California voters.

On June 1, 2005, at the United Nations World Environment Day Conference in San Francisco, celebrating the formation of the United Nations 50 years earlier, Governor Schwarzenegger announced an Executive Order with stringent greenhouse gas reduction targets for the state.\(^7\) Democratic members of the California State Assembly had already been working on environmental legislation,\(^8\) and in April 2006, Democratic leaders, Assembly member Fran Pavley and Speaker of the Assembly Fabian Nunez, put forth Assembly Bill (AB) 32 creating a mechanism to implement the Governor’s goals. The competition to put forth meaningful environmental legislation between the Republican Governor and the Democratic legislators overcame possible veto points and ultimately led to a landmark bill that included emissions trading and a strong regulatory mechanism for achieving goals.\(^9\) California has continued to lead the nation with the passage of legislation such as Senate Bill (SB) 32, “The California Global Warming Solutions Act

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\(^4\) The extent of these threats developed slowly as the science progressed from a 1999 study of California that did not quantify the impacts to a 2004 study that did – see Michael Hanemann, 2007, “How California Came to Pass AB 32, the Global Warming Solutions Act of 2006,” UC Berkeley: CUDARE Working Papers, https://escholarship.org/uc/item/1vb0j4d6, page 14.


\(^6\) Ibid., page 12.


\(^9\) Ibid., pages 24-26.
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.10

Finding a Way to Get Budgets Done on Time, 2010

California’s Constitution requires a balanced budget and the legislature is prohibited from sending the Governor an unbalanced one.11 Until late 2010, the state Constitution required a two-thirds vote in each house of the state legislature to pass a budget bill. Partisan strife, initiatives that tie up parts of the budget, and volatile tax revenues12 interacted with this two-thirds requirement so that for many years, California suffered from late budgets that sometimes led to the State Controller issuing IOUs to the state’s creditors.13 A Los Angeles Times review found that “state budgets were an average of 11.5 days late in the 1980s,… 31 days in the 1990s, and… 55 days” in the decade before 2011.14 In the 30-year period from 1980 to 2010, “the Legislature… met its June 15 constitutional deadline for sending a budget to the Governor [only] five times. During that same period, a final budget—passed by the Legislature and approved by the Governor—was in place prior to the July 1 start of the fiscal year on [only] ten occasions, including [only] three times since 2000.”15 Things came to a head in the summer of 2010 when the budget was 115 days late provoking extensive media coverage and public indignation.

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. The Proposition passed by 55 percent to 45 percent.16 Ironically, because it only

10 See Ned Helme, Stacey Davis, Suzanne Reed, Nancy Ginn Helme, Michelle Levinson, and David Wooley, “Advancing Environmental Justice: A New State Regulatory Framework to Abate Community-Level Air Pollution Hotspots and Improve Health Outcomes,” Goldman School of Public Policy, UC Berkeley, Center for Environmental Public Policy. https://gspp.berkeley.edu/assets/uploads/page/CEPP_Advancing_Environmental_Justice.pdf


13 John Myers, June 18, 2016, Remember when California’s Budget was Always Late? Here’s Why Fiscal Gridlock is a Thing of the Past,” The Los Angeles Times. https://www.latimes.com/politics/la-pol-sac-california-budget-gridlock-over-20160618-snap-story.html

14 Ibid.


takes a majority vote to pass a proposition that changes the State Constitution, the two-thirds vote required by the Constitution for passage of the more quotidian annual budget was eliminated. 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 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 implement the ACA through enabling 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 that pushed the program along.17

Early on, the state decided to be “an ‘active purchaser,’ allowing it to selectively contract with insurers, negotiate rates, standardize benefits, and require programs that promote delivery system improvement.”18 The state also worked hard to incorporate immigrants through accommodations for “foreign language needs, limited literary, and documentation challenges.”19 And it marketed its programs to ensure take up by recipients. 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,20 and keeping costs low, especially in those areas with an abundance of insurers and providers.21

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21 Weinberg and Kallerman, op cit, pages 10-16.
DEALING WITH HARD PROBLEMS IN THE FUTURE

California has also been innovative in many other areas as well with ballot propositions, some of which remain controversial. California led the national tax revolt with Proposition 13 in 1978 that reduced property tax growth to protect property owners from skyrocketing housing prices. With the resulting decline in the local property tax, the proposition shifted financing for public schools from local areas to the state. In 2020, Proposition 15 tried to lift the limits on property tax for commercial and industrial properties worth over $3 million by allowing for fair market assessments every three years. It narrowly failed with a 52 percent no vote to 48 percent yes. Passing with a 59 percent vote in 1994, Proposition 187 cut-off state-provided non-emergency public health care, K-12 education, and college education to those who could not prove that they were citizens or legal residents. A federal judge struck down the measure in 1997, but its initial passage is credited with mobilizing Latino voters in the state. California passed Proposition 209 in 1996 which put an end to affirmative action in state universities and colleges, and a recent effort in 2020 to roll it back, Proposition 16, lost with a 57 percent no vote.

Statutory efforts have also led to innovations. California’s criminal justice reforms have demonstrated the possibility of substantially reducing prison populations without increasing crime, but it has not decreased prison costs by very much. It has had some success with improving its K-12 system through the Local Control Funding Formula, but there is a long way to go given the underfunding of K-12 compared to other states. Despite the successes of Covered California, the state still faces three big challenges in controlling health care costs, creating a system that deals with the social and structural determinants of health, and making 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,

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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 four examples of 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 combatting 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. It 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.


PARTISAN DIVISION AND POLARIZATION

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. How big are the rifts in California politics and have they affected governance?

POLARIZATION IN THE ELECTORATE

Party registration data provide a starting place for understanding polarization, although at first glance registration data suggest declining polarization. Figure 1 provides party registration data for California since the data were first collected in 1922. Besides the dramatic shift in party registration that occurred around the time of the New Deal when party registration went from over 70 percent Republican and about 25 percent Democratic to majority Democrat and minority Republican, the major feature of this picture is the declining party registration starting around 1978 for the Democrats and around 1990 for the Republicans. 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 minor parties (about 5 percent of the population), most of the rest of the electorate (24 percent) 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.

Comparing California Voters with Voters in the United States

Is this decline typical of America as a whole? Most states do not provide for registration by party, so there are no national statistics on this subject except from surveys. Figure 2, summarizing

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

![Graph showing party registration in California from 1922 to 2020.](https://elections.cdn.sos.ca.gov/sov/2021-recall/sov/04-historical-voter-reg-participation.pdf)

**Source:** Authors’ calculations from California Secretary of State Data, [https://elections.cdn.sos.ca.gov/sov/2021-recall/sov/04-historical-voter-reg-participation.pdf](https://elections.cdn.sos.ca.gov/sov/2021-recall/sov/04-historical-voter-reg-participation.pdf)
the results from a combination of Gallup polls and Pew Research Center Polls for 1939 to 2014, clearly shows a rise in independents from around 20 percent in the 1940s and 1950s to 30 percent to 40 percent for the current period.

**Figure 2** Percent of Americans in Each Major Party: 1939-2014


**SOURCE:** Pew Research Center, [https://www.pewresearch.org/politics/interactives/party-id-trend/](https://www.pewresearch.org/politics/interactives/party-id-trend/)
Gallup survey data show similar national and California trends. Figure 3 plots party identification percentages in the United States since 1977 by five year periods. The survey data for California in Figure 4 look similar to the California registration data in Figure 1. Moreover, California looks like the rest of the country with just about the same percentage of independents, although it has a much higher percentage of Democrats than Republicans.

The percentage of independents does not tell the whole story. In a comprehensive 2004 article using survey and aggregate data on elections, Gary Jacobson argues that:

Thus, 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.

Jacobson found, for example, using American National Election Studies (ANES) data for the three decanal election cycles comprising 1972-1980, 1982-1990, and 1992-2000, that California partisans were more likely (by a 2 to 10 percentage point margin) to vote for Governor and members of the US House and Senate based upon their party identification than those in other states. He also found that they were more likely to be “strong partisans” by a two to eight percentage point margin – that is, to be people who in a follow-up to the standard party identification questions respond that they are “strong Democrats” or “strong Republicans” (depending upon their initial answer), and by two to four percentage points they are less likely to be “true independents”—people who when pushed with a follow-up question about whether they lean one way or another toward a major party stay with their initial declaration of “independent.”

32 The five year intervals are centered on the date at the bottom of the picture (so 1992 covers 1990-1994) except for the last interval 2022 which just has information for 2020 and 2021. The party identification question is “In politics, as of today, do you consider yourself a Republican, a Democrat or an independent?”

Performing similar calculations for the 2000 to 2008 and 2012 to 2020 periods using the ANES data, we find that Californians are still more likely to be strong partisans in both periods, but by smaller percentages, and they are more likely to be true independents by about four percentage points in the first period and slightly less likely by only one percentage point in the second period.
All in all, these data suggest a convergence between Californians and those in the rest of the nation, but with Californians still slightly more partisan.

People in California are 1.63 percentage points more likely to be strong partisans across the three presidential elections of 2000, 2004, and 2008, and only .17 percentage points more likely to be strong partisans across the three presidential elections from 2012 to 2020. If we expand the measure to compare people who simply said they were Democrats or Republicans on the initial question, then the percentages are 3.43 for the first period and 2.60 for the second. Finally, Californians are 4.47 percentage points more likely to be true independents in the first period, but 1.03 percentage points less likely in the second.

**SOURCE:** Authors' calculations from Gallup Data
Are There Really More and More Independent Voters?

At every point in the past, California voters have been just as partisan as, if not more partisan than, voters in the rest of the United States. But what about the trends over time? The growth of independents is clearly visible in Figures 1-4. Is it real? There are two arguments that cast doubt on the reality of growing independence. First, the growth of independents may be more apparent than real because when pushed, those who say they are independents often say that they lean toward the Democrats or Republicans. Moreover, in terms of their voting, they behave like Democrats or Republicans. Second, partisans have become more ideologically extreme over the past 50 years.

Consider the 30 to 40 percent of the population who initially call themselves independents when asked if they are a Democrat or Republican or independent. When asked follow-up questions about whether they think of themselves as closer to the Democratic or Republican Party, typically two-thirds of these people choose a party preference so that “true independents” comprise only about 10 percent of the total population. Figure 5 plots “true independents” in California and the rest of the United States from the mid-1980s to the present using Gallup data instead of ANES data. Consistent with Jacobson’s findings and with our update of his results, Californians were less likely by two to four percentage points to be true independents than other Americans until recently but they still are about one percentage point less likely to be independents. And while the total percentage of true independents has grown in California, it is only about three to five percentage points bigger than in the mid-1980s. Finally, it makes sense to treat those people who choose a party when pushed, called “leaners,” as partisans because they act a great deal like people who initially say they are Democrats or Republicans.

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35 This uses data from 1985 onwards and organizes into five year periods denoted by the year of the midpoint of the period so that the first one is 1987 and it includes surveys from 1985-1989. (There is one survey in 1981 that is dropped because there were no other surveys with this question until 1985.)

More importantly, partisans have become more ideological over the past decades. Figure 6 presents Gallup data for California and the United States 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.

**Figure 6** Partisans in California and Rest of U.S. Have Become More Ideologically Extreme over Time

**SOURCE:** Authors’ calculations from Gallup Data
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.”

J00berson employs a range of data to make this case including widely used scores for the U.S. House of Representative called “DW Nominate” scores that rate the ideology of legislators, based upon their roll-call votes, with negative scores being liberal and positive scores being conservative. We update his analysis to include the last 20 years. We also focus on the last 50 years so we start with the 93rd Congress (1973-74) and end with results for the current 117th Congress (2021-22).

Figure 7 on the next page shows how the average ideology of the Republican and Democratic Party delegations in the House of Representatives has evolved since the 93rd Congress (1973-75) to the current 117th Congress for all House members and for four state delegations to the House. The California Republicans are represented by the thickest red line at the top and the California Democrats are represented by the thickest blue line at the bottom. The California Republicans have gotten much more conservative over this period (from .30 to .50 with a dip at the very end of the period to .41). The California Democrats have become somewhat less liberal from -.47 to -.40. Today the two delegations are approximately equally far from the center. We comment down below on the recent data for California, especially the incomplete data for the 177th Congress that show a downturn for Republicans and an upturn for Democrats that closes the gap a bit.

The pink continuous line and the light blue continuous line show what has happened in the entire Congress for Republicans (pink) and Democrats (light blue). Both parties start at about the same distance from the center (.30 units) 50 years ago and move continuously outwards with the Republicans moving about twice as far (from .27 to .50) as the Democrats (from -.32 to -.40). The dotted, short-dashed, and long-dashed lines are for the Texas, Florida, and New York

37 Jacobson, op cit., page 128.
Figure 7  Polarization of Elites in National Politics and California Politics from 1973 to the Present

NOTE: Thick lines are California Republicans (top) and Democrats (bottom); Thin lines are All Republicans in the U.S. (top) and All Democrats (bottom)

SOURCE: Authors’ calculations from D-W Nominate Scores at https://voteview.com/data
delegations respectively. 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.

Jacobson did not have at hand a dataset created around 2011 that used the scoring techniques of “DW-Nominate” to rate the ideological characteristics of both houses of all fifty state legislatures since the early 1990s. Using these data we can take the difference in average scores between Republicans and Democrats in each chamber and plot them over time for all 50 states. The results in Figure 8 are striking. In each picture, California is the red line at the very top meaning that the partisan division within its Assembly and Senate is the greatest of any state. In addition, in each case the line rises over time until some possible leveling off or declines at the end. (Also, for the State Senate in the panel on the right, Arizona crosses over California in 2016. Arizona’s House of Representatives is also the second most extreme chamber in the panel on the left.)

39 Boris Shor and Nolan McCarty, 2011, “The Ideological Mapping of American Legislatures, American Political Science Review, 105:3, 530-551. Shor and McCarty also used an ongoing survey of state legislators to refine their roll-call scoring method. Note that Nebraska has a unicameral legislature that is included as part of the “Senate” or upper house data.

Figure 8 Extremity of California Assembly and Senate Compared to Other State Legislatures

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. We will begin with the three policy innovations, term limits, redistricting, and the top two primary.

Term Limits

California has gone back and forth on term-limits. In 1990, California Proposition 140 limited terms to statewide offices to two terms, to state senators to two terms (eight years), and state representatives to three terms (six years). 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.

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 over time a reputation in a district for probity, decency, and thoughtfulness and make compromises without endangering their electoral prospects. With term

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42 It is not clear how this worked out with respect to the relationship between voting behavior and the preferences of constituents – the question of representation. Two carefully done papers come to opposite conclusions. The first (based upon a survey of legislators) finds a “Burkean” shift in which legislators pay less attention to their constituents and concern themselves with broader state-wide concerns. The second (based upon roll-call data) finds no evidence for this: John M. Carey, Richard Niemi, Lynda W. Powell, and Gary F. Moncrief. 2006, “The Effects of Term Limits on State Legislatures: A New Survey of the 50 States,” *Legislative Studies* and Gerald C. Wright, 2007, “Do Term Limits Affect Legislative Roll Call Voting? Representation, Polarization, and Participation,” *State Politics & Policy Quarterly*, 7:3, 256-280.


limits, time was short so that there was little possibility or incentive for taking this route.\textsuperscript{45} Two of the leading students of term limits wrote in 2004 that:

\begin{quote}
Few of the most fervent hopes of Proposition 140’s backers—or the worst fears of its opponents—have materialized. Even so, term limits have dramatically changed California’s Legislature. Many veteran legislators and staff members regret what has happened to the institution, and the major figure behind Proposition 140 recently voiced his discontent with the results.\textsuperscript{46}
\end{quote}

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.\textsuperscript{47}

**Redistricting**

Proposition 11, “The Voters First Act” created a California Citizen’s 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. Typically this led to the creation of districts without much party competition.

**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

\textsuperscript{45} Carey et al, op cit., argue that term limits freed legislators from concerns about their constituents but they also found


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.\textsuperscript{49}

\textbf{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 compares two states that adopted the innovation, Washington and California. It concludes that:

\begin{quote}
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.\textsuperscript{50}
\end{quote}

Another analysis argues that:

\begin{quote}
The author concludes the top-two primary was a successful reform. It introduced greater competition in elections, resulted in greater interest in elections, provided the opportunity for no-party preference and other voters to have a say, and
\end{quote}

\textsuperscript{48} Until 1998, California did not allow independents to vote in party primaries to vote. For 1998 and 2000 anyone could vote in one (but only one) primary regardless of party registration status. From 2000 until 2010, California’s political parties also allowed independents to choose the primary in which they would vote, but independents were typically much less likely to vote at all. In the Top Two Primary all voters can vote.


led to general election winners who would have previously not advanced past the old partisan primary system.\textsuperscript{51}

There is evidence that redistricting reform has drawn fair and more competitive districts,\textsuperscript{52} 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 noted in Figures 7 and 8. The difficulty of 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 thirty 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. The margin was so slim that for a while the Democrats retained control of the Assembly because one Republican became an independent and voted with the Democrats. That Republican was recalled in short order and the Republicans gained control of the Assembly. 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 Democrats in the Assembly. The current numbers are 30 in the Senate and 60 in the Assembly.\textsuperscript{53}

\textsuperscript{51} USC Schwarzenegger Institute, February 22, 2019, “California’s Top-two Primary: A Successful Reform.” The author is Charles T. Munger, op cit. \url{http://schwarzenegger.usc.edu/institute-in-action/article/californias-top-two-primary-a-successful-reform}


\textsuperscript{53} See data in Ballotpedia, \url{https://ballotpedia.org/California-State-Senate} and \url{https://ballotpedia.org/California_State-Assembly}
Recent research argues that moderation occurs for members of congress (MCs) in a state. “When electoral homogeneity on a local or cultural dimension engenders one-partyism but the state contains groups with preferences of both national parties, one-party MCs are pressured to represent diverse interests typically represented by two parties in more competitive states.” But the same study finds that “when states are one-party because they align with the national party’s platform, they tend to be more extreme.” So moderation depends upon whether California’s one-partyism is due to some local factors (as it was in the one-party South from 1876 to 1960 or in the farm states of the upper Midwest over the same period) or to its electorate’s alignment with the national Democratic Party. 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 in Figure 7 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. It might be good if it better represented distinctive approaches to problems in the population but bad if it over-emphasized divisions. 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 which might produce legislatures with a distorted view of where the median American or Californian stands on issues. But it is hard to judge the optimal level of polarization.

Rather than exploring the complicated question of how well polarization 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 Figure 2 and 3) and the distribution of voters across the United States 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 this has affected the ability of Congress to solve problem (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?

**Polarization and Legislative Effectiveness in California**

Polarization might make for more homogeneous parties that can more easily come to internal consensus about their positions and pursue those positions in bargaining that leads to results. Or it might make for differences that are so far apart that it is hard to bridge them. Thad Kousser explored these possibilities in a paper that uses a measure of “Partisan Gridlock” that is the percentage of major agenda items as measured by newspaper editorials that do not result in the passage of legislation. Using data on California from 1931 to 2004, Kousser finds 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’s findings match the results of a study of ten states (not including California) by the National Conference of State Legislatures that found increasing polarization in state legislatures because of “leaders who take ideological, uncompromising positions, the 24-hour news cycle and social media that impede deliberation and the open exchange of ideas, and a decline in cross-party friendships, socializing and collaboration.”

Regardless of polarization, getting things done was easier in unified states because the majority does not need minority party votes.

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58 For example, if 15 agenda items are identified through newspaper editorials, and five of them result in bills being passed, then the gridlock percentage if \((15-5)/15 = 10/15 = 67\%\).

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.\textsuperscript{60} 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.

**One Party Dominance in California and Polarization**

Perhaps none of this matters for California because of Democratic Party dominance. Figures 1 and 4 show that Democrats now have between 40 to 45 percent of party identifiers and Republicans have only 20 to 25 percent and the Assembly, Senate, and Governorship have been in one-party’s hands since 2010. 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.\textsuperscript{61} 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… Perhaps voters saw California moving too fast in one direction, leading them to use elections to correct this movement… to ‘policy excess.’”\textsuperscript{62}

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.


\textsuperscript{61} We count Gray Davis’s second four year term as “divided” because he lost to a Republican in the 2003 recall election. The periods of divided government were under Ronald Reagan (2), George Deukmejian (2), Pete Wilson (2), and Arnold Schwarzenegger (2).

\textsuperscript{62} Kousser, op cit., page 18.
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.63

**Figure 9** Trust in State Government by Gubernatorial Administration

**SOURCE:** Authors’ calculations from Deja Thomas, 2021, “Do Californians Trust Government to do What is Right,” Public Policy Institute of California.
TRUST IN STATE GOVERNMENT

Figure 9 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.\(^4\) 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.

Overall trust in state government was 47 percent on the last reported poll for August 20-29, 2021 just before Newsom’s recall election (represented by the second vertical dashed line) of September 14\(^{th}\) that he won overwhelmingly with a 61.9 percent to 38.1 percent vote. This trust figure for state government is higher than the level ever attained for state government during the terms of all three preceding governors. Not surprisingly, Figure 9 shows that Democrats are generally more positive about Democratic Governors than the Republican Arnold Schwarzenegger, although the moderate Schwarzenegger did not engender that much trust among Republicans either. Even though this question is about state government and not approval of the Governor, the October 2003 election that recalled Gray Davis (the first vertical dashed line) was nevertheless preceded by a free-fall in responses to it by all partisan groups indicating how leadership is entwined with trust in institutions.

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.

\(^{64}\) Deja Thomas, 2021, “Do Californians Trust Government to do What is Right,” Public Policy Institute of California, https://www.ppic.org/blog/do-californians-trust-government-to-do-what-is-right/. The question is: “How much of the time do you think you can trust the state government in Sacramento to do what is right—just about always, most of the time, or only some of the time?” The graph plots the total of “just about always” and “most of the time.”
NEWSPAPERS PROVIDE INFORMATION AND OPINION FOR THE RESIDENTS OF A STATE THAT HELP TO INFORM AND STRUCTURE POLITICAL DEBATE. PUBLIC TRUST IN THEM IS ESSENTIAL FOR THEIR SUCCESS. THE GALLUP DATA THAT WE USED EARLIER HAVE A QUESTION ABOUT CONFIDENCE IN VARIOUS INSTITUTIONS SINCE 1974. “NOW I AM GOING TO READ YOU A LIST OF INSTITUTIONS IN AMERICAN SOCIETY. PLEASE TELL ME HOW MUCH CONFIDENCE...
you, yourself, have in each one—a great deal, quite a lot, some or very little?” Figure 10 shows that polarization in confidence in newspapers in California since the mid-1970s 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.

**Figure 11**  
Polarizing and Declining Confidence in Religion in California since the 1970s

- **Democrats**
- **Independents**
- **Republicans**

**PARTISAN ID**

- Democrats
- Independents
- Republicans

**SOURCE:** Authors’ calculations from Gallup Data.
It is not the case, however, that Republicans have lost faith in all institutions. They remain strongly confident in religion, the military, and police. Figure 11 shows the results for religion where we consider people having quite a lot or a great deal of confidence in it. Although there has been some decline in Republican confidence, it has leveled off and the greatest declines are among Democrats and Independents.

Looking at data across a number of institutions, we find that Democrats remain confident in higher education, science, public schools, newspapers, and medicine and Republicans do not, while Republicans are confident in religion, the military, and the police. Democrats are less confident in the military than Republicans, and this is the only institution for which overall confidence has increased since the 1970s. The implications for governance are that there are very few commonly accepted institutions across partisan lines and non-political institutions are no longer non-political.65 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 so that governance is harder than it once was.

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. They also found that state government agencies scored twenty points higher than state government in the composite trust score, but there was also substantial variation in trust in agencies with unemployment insurance, police, and motor vehicle departments trusted least. Finally, “respondents rate state and local agencies high on trust if they think that state governments’ digital services are easy to use, that governments’ web-based services help them accomplish what they need, and that the state government safeguards their data well.”66

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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 problems increasingly require regional, state-wide, national, or even international solutions. One approach to this dilemma is to implement programs at a local level while creating decision-making bodies that span governmental jurisdictions and that seek input from local governments.

### BIASED PARTICIPATION

#### PARTICIPATION AND INFORMATION IN DEMOCRATIC POLITICS

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 is the participation of all adults in these elections, their right to free expression on political matters, their right to form and join autonomous associations such as political parties and interest groups, and their access to sources of information not dominated by the government—a free press. The democratic decision mechanism is the constitutional vesting of political decision 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

Through their participation in politics, people make their needs and concerns known to politicians. Amartya Sen has argued that democracies with a free press are less likely to have widespread hunger and famines because information quickly spreads about such calamities and

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citizens demand action, while authoritarian governments can suppress the information. More prosaically and routinely, democratic politicians take into account their constituents’ needs and they try to respond to them, although they also try to manipulate them. Because of this manipulation, a free press is needed to report on events as factually as possible and to structure debates about political performance. Biases in political participation or the lack of a free press can reduce governmental responsiveness to its citizens because only certain populations get to speak and only a narrow range of facts and concerns are presented.

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. Of particular concern is the extent to which political participation in California is marked by disparities, particularly by race, class, age, and geography. Participation disparities by race and ethnicity are of special 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. So, too, are disparities in participation by socioeconomic status, with a persistent chasm in participation between homeowners and renters and residents with high and low incomes. Age-related disparities in voting are also an important concern, with decades of scholarship indicating that young people are much less likely to have a say in the democratic process than older voters. Finally, participation disparities by geography also matter for statewide elections in California, as high-population regions with comparatively lower participation (such as Los Angeles County, Inland Empire, San Joaquin Valley) are less likely to be influential in statewide elections and policy decisions.

Trends and Patterns in Voting

We use several sources to examine trends and patterns in voting in California. The most reliable records for voter registration and turnout in the state are the tallies published by the California Secretary of State, which has the responsibility of overseeing the administration of elections in California, working in concert with county elections offices. These records of participation, however, do not contain any information about voter characteristics such as race, nativity, class, and gender. Nor do they contain information about the number of eligible voters in a jurisdiction, which is essential to understanding rates of voter registration and participation among adult citizens. In order to gain insights into demographic disparities in voter registration and

voter participation, we need to rely on survey data such as the Current Population Survey (CPS) Voter Supplement that have self-reported information on voting.

How does voting in California compare to voting in the rest of the country? As the CPS data indicate, presidential voting in California is on par with presidential voting in the rest of the United States (Figure 12-left panel). 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 (Figure 12-right panel). 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.

**Figure 12** Voting in Presidential and Midterm Elections in California since 1980

**Voting in Presidential elections**
- California
- United States

**Voting in Midterm elections**
- California
- United States

**SOURCE:** Authors’ calculations.
Voting disparities in California by race, ethnicity, and socioeconomic status are also a matter of significant concern. As the CPS data indicate (Figure 13), voter turnout is highest among adult citizens who are non-Hispanic white (55%), with turnout in gubernatorial/midterm races that are nearly double the rate of voter turnout among Native Americans (30%). Asian American and Latino voters have turnout rates that are also comparatively very low, at 34 and 35 percent, respectively, followed by Black voters at 42 percent and Pacific Islanders at 47 percent.

**Figure 13** California Midterm Election Voting since 2006 by Race and Ethnicity

<table>
<thead>
<tr>
<th>Race or Ethnicity</th>
<th>Average Midterm Election Voting Turnout Percentage Since 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>55%</td>
</tr>
<tr>
<td>Other Race</td>
<td>48%</td>
</tr>
<tr>
<td>Pacific Islander</td>
<td>47%</td>
</tr>
<tr>
<td>OVERALL</td>
<td>46%</td>
</tr>
<tr>
<td>Black</td>
<td>42%</td>
</tr>
<tr>
<td>Latino</td>
<td>35%</td>
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<tr>
<td>Asian</td>
<td>34%</td>
</tr>
<tr>
<td>Native American</td>
<td>30%</td>
</tr>
</tbody>
</table>

**Source:** Authors’ calculations based upon CPS data.
California Voting in Midterm Elections by Age, Housing Status, and Gender since 2006

Average Midterm Election Voting Turnout Percentage Since 2006

SOURCE: Authors’ calculations based upon CPS data.
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 when compared to white voters. In addition, Latino and Asian American voters often face language barriers when it comes to voting.

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 14). When we examine the average voter turnout in the last 4 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. 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. In general, 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 very significant role.\textsuperscript{74} 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,\textsuperscript{75} 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 for Californians to 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, prior research in political science has shown that political contributors are more likely to have access to meet with elected officials than those who do not contribute,\textsuperscript{76} and that officials are more likely to represent the preferences of their donors than their general constituents.\textsuperscript{77} 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.\textsuperscript{78}

Finally, attendance at public meetings and hearings provides constituents 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.


\textsuperscript{76} Joshua L. Kalla and David E. Broockman, 2016, “Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment,” \textit{American Journal of Political Science}, 60: 3, 545-558.


\textsuperscript{78} Op cit., Dobard 2017.
During public meetings and hearings, 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 (Figure 13). There is also mixed evidence with respect to racial gaps in attendance at public meetings, with generic wording 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. Approximately 6 percent of California nonprofits reportedly have an environmental mission according to IRS data, and another 12 percent report a “Mutual, Public and Societal Benefit” purpose. 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 all have more civic society 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.

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81 Op cit., Dobard et al., 2017.
What is to 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. Improving participation requires increasing people's interest and knowledge, increasing their resources available or decreasing the resources needed for participation, and making sure that they are asked or otherwise mobilized to participate. We shall consider each in turn.

Increasing Interest and Knowledge

It makes little sense to participate in politics if you don't understand the issues and if you do not know how your participation might matter. It makes even less sense if you think that elections are fraudulent, that all leaders are corrupt, and that the system is inexorably untrustworthy and tilted against you. There is substantial evidence that knowledge and trust make it more likely for people to participate so methods must be found to increase both.

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.\(^85\) 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.\(^86\) Trust in institutions and government is declining, as noted earlier.

In a 2018 assessment, the Center for American Progress found that only nine states require one year of U.S. government or civics, although 31 states (including California) require half a year – 10 states have no requirement. Most importantly, the report found that “state civics curricula are heavy on knowledge but light on building skills for civic engagement.”\(^87\) 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.\(^88\) 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).\(^89\)

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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.

92 Ibid., pages 244-250.
94 For recent discussions of reforms see Schlozman, Brady, and Verba, 2018, op cit., Chapter 12 and Commission on the Practice of Democratic Citizenship, 2020, Our Common Purpose: Reinventing Democracy for the 21st Century, American Academy of Arts and Sciences, Recommendations 1.5-1.7 and 2.1-2.7.
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. In their 2018 book, Schlozman, Brady, and Verba conclude that “there is a trade-off between political feasibility and consequences for inequality of political voice: the changes that would have the greatest impact are the least likely to happen.”

**Informing People of Opportunities and Asking People to Participate**

With limited resources, political campaigns make the hard-boiled calculation to concentrate on those groups for whom “get-out-the-vote” (GOTV) campaigns are most likely to shift them from non-voters to voters. This approach typically ignores people in those communities with low turn-out rates because it is presumed that they will be hard to mobilize since they have not voted in the past. In the last 15 years, a growing body of research suggests that these 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 approach attempts to create and enter into political discussion networks that encourage and support civic engagement. People are asked to participate in politics in the context of their needs, concerns, and communities, and this “Integrated Voter Engagement” method keeps in touch with them beyond elections and connects them to community organizations.

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97 Schlozman, Brady, and Verba, 2018, op cit., page 254.


Efforts in this realm are primarily the responsibility of nonprofit organizations and not government. The profusion of organization developed over the past 20 years, indicates the vitality of civil society in California. “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.”

One thing that government might do to “ask” members of the public to vote is to require voting in elections, as is done in Australia and some other countries, with a citation and a fine for non-compliance. Our Common Purpose, the recent report from the American Academy of Arts and Sciences, makes this recommendation which seems to knock up against basic American desires for autonomy and freedom of action, but it is intriguing to see it on the agenda.

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. “Americans turn to radio and print publications for news far less frequently, with half saying they turn to radio at least sometimes (16% do so often) and about a third (32%) saying the same of print (10% get news from print

101 Ibid., page 5.
102 Commission on the Practice of Democratic Citizenship, 2020, op cit., page 38, recommendation 2.5.
publication 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 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?

So one of the big problems facing California, the United States, and the entire world, is the future of the internet. Will it support the development of useful sources of valid information and will it support or undermine 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. In a deep and profound way, the California-China relationship involves the clash of two separate systems that are now organizing the world and two distinct ways to think about the world and those systems.

The two systems are the traditional nation-state system of separate nations with prerogatives and perquisites and the Internet which organizes the world in networks of people, enterprises, and things. The two ways to think about the world are, on the one hand, the West’s long-standing commitment to liberalism, free trade, free speech, democracy, and globalization and, on the other hand, China’s traditional concerns for order and hierarchy hardened by communism’s distrust of democracy, faith in the dictatorship of the proletariat, and belief in the leading role of the Communist Party. China became connected to the Internet in 1994, and it soon created “The Great Firewall” that censored any material that suggested taking steps against the government. With the ascendance of President Xi Jinping in 2012, China developed a new model for...

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In 2014 at the World Internet Conference in Wuzhen, China circulated a declaration that called for respecting a country's rights to the development, use, and governance of the Internet. In the past eight years, China has vigorously enforced censorship on the web, and used it to monitor the actions of its citizens. China's approach to the internet suppresses free speech and undermines democracy. It is at odds with what the internet's founders envisioned and what the United States has supported in the past.

Yet with the rise of disinformation on the web and the demise of local institutions such as newspapers, calls for internet regulation have gained a foothold in the United States as well, and one of the great challenges of the next decade will be developing better ways to govern the internet while both respecting and limiting state power so that the internet can be as free as possible. California will undoubtedly be at the center of these efforts that will constitute an important element of public diplomacy. California 100's “Federalism and Foreign Policy” report explores this in greater detail. Here we will 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 *New Orleans Times Picayune, Rocky Mountain News, Seattle Post-Intelligencer, 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

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107 In 2021 Freedom House rated the internet in China as “Not Free” and “profoundly oppressive.” It “confirmed the country's status as the world's worst abuser of internet freedom for the seventh consecutive year.”  [https://freedomhouse.org/country/china/freedom-net/2021](https://freedomhouse.org/country/china/freedom-net/2021)

108 Alex Jones, 2009, *Losing the News: The Future of News that Feeds Democracy,* New York: Oxford University Press, page 4. He goes on to say: “While people may think they get this news from television or the Web, when it comes to this kind of news, it is almost always newspapers that have done the reporting.”
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—think of Times Square or Herald Square in New York City—provided 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 daily papers in 2004, at the end of 2019 there were only 6,700, and in the last few years, the COVID-19 pandemic has closed many others.\(^\text{109}\) 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.\(^\text{110}\)

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.

As about a quarter for American newspapers disappeared between 2004 and 2019, more than half of all journalists lost their jobs over the same time period from 71,000 to 31,000.\(^\text{111}\) From fall 2018 to 2020, 300 newspapers closed, 6,000 journalists were no longer employed, and print newspaper circulation diminished by 5 million. In the last three years, the COVID-19 pandemic led to the closure of many additional newspapers.\(^\text{112}\)

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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, UNC Hussman School’s 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 Hispanic 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 Latinxs 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."

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114 Ibid.

115 Abernathy, op cit., 2020, page 19: News Deserts have an 18 percent poverty rate, an average income of $45K, and 19 percent with college degrees. Areas with newspapers have a 12 percent poverty rate, an average income of $62K, and 33 percent with college degrees.


117 Craig Newmark School of Journalism, June 2019, The State of the Latino News Media, City University of New York, https://thelatinomediareport.journalism.cuny.edu/ “The formats employed by Latino news outlets are largely the same as those of legacy media, with TV, print publications and radio making up nearly 80 percent of the industry. The business model is overwhelmingly advertising-based, and — as is the case for the news media business generally — it is a model in crisis, for the most part struggling to adapt to digital formats and new distribution platforms.”
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. 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. And newspapers shine a light on public decisions so that decision-makers know that they are accountable. Finally, newspapers provide a sense of cohesion and community by covering local parades, sports, businesses, clubs, and other activities.

Participation in Politics

The research on participation is striking. In 2010, Danny Hayes and Jennifer Lawless analyzed the content of media coverage in every U.S. House of Representatives midterm election. They found that less news leads to less participation because citizens are “less able to evaluate their member of Congress, less likely to express opinions about the House candidates in their districts, and less likely to vote.” And these effects are true regardless of the overall political awareness of citizens.

In a study of Los Angeles, researchers found that in areas without local news, voters were less likely to turn out. Similar results were found in Denver and Seattle when major newspapers closed. In a carefully done study using data from 1869 to 2004, researchers found that the existence of a newspaper increased turnout by 0.3 percentage points in both Presidential and Congressional elections. The presidential effect went away with the advent of radio in the 1920s.

118 This listing of the literature led us to many of the references below: Josh Stearns, June 26, 2018, “How We Know that Journalism is Good for Democracy,” https://medium.com/office-of-citizen/how-we-know-journalism-is-good-for-democracy-9125e5c995fb. The papers with the strongest “design” so that they are mostly likely to give true causal results are Hayes and Lawless, Gentzkow et al., Snyder and Stromberg, and Gao et al.


and television in the 1950s, but the Congressional effect remained, suggesting the special importance of newspapers for local contests.\textsuperscript{122}

**Competition in Politics**

In Cincinnati, the year after the closure of the *Cincinnati Post*, “fewer candidates ran for municipal office in the Kentucky suburbs most reliant on the Post, incumbents became more likely to win reelection, and voter turnout and campaign spending fell.”\textsuperscript{123} Better staffing at 11 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.\textsuperscript{124}

**Decision-Making and Public Policy**

In a paper that looks at the congruence of media markets and Congressional districts over time, researchers find that members of Congress “who are less covered by the local press work less for their constituencies” and “federal spending is lower in these districts”.\textsuperscript{125} In a paper that looks at the costs of municipal bonds in cities with and without newspaper closures, the authors find that there are significantly higher financing costs (5 to 11 basis points) in those cities with newspaper closures and these increases are related to rising municipal wages and deficits and to costly practices related to financing.\textsuperscript{126} In a recent book, James Hamilton estimates the dollar value of investigative journalism. Although his assumptions are sometimes questionable, the overall result is convincing.\textsuperscript{127}


Polarization and Sense of Community

The research on political polarization is much less developed, but the closure of local newspapers is associated with an increase in the incumbency advantage in local elections and with more ideologically extreme elected representatives.\textsuperscript{128} Newspaper closures have also been associated with a decrease in split ticket voting, a metric for political polarization, as local news is replaced by national news coverage.\textsuperscript{129} It simply makes sense to think that trusted local news sources will help to combat misinformation and extremism.

Some excellent social science research has demonstrated the negative effects of newspaper declines on participation, competition, and decision-making governance, and there is some evidence that closures exacerbate polarization as well. A back of the envelope calculation of the number of journalists per government “beat” in California suggests why these results for politics should not be surprising. According to the Pew Research Center, newsroom employment at U.S. newspapers has dropped more than half from 71,000 in 2008 to 31,000 in 2020. California’s current number of journalists is about ten percent of the 2020 figure, or 3,100. Yet there are 482 cities in California, about 1,000 school boards, 3,400 independent special districts, and 20,000 elected officials.\textsuperscript{130} It is difficult to believe that even 7,100 journalists in 2008 (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 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

\textsuperscript{128} EM. Simpson. 2019. “Nation without Place: Does Local News Decline Cause Democratic Dysfunction in the Contemporary United States?” Retrieved August 12, 2021, from https://ora.ox.ac.uk/objects/uuid:5e43b083-0dca-4348-afdb-70b5041db04a


\textsuperscript{130} The data on governments from the U.S. Census of Governments. The estimate of local officials is based upon calculating the number of elected officials in these governments given California’s laws on the number of elected members of school boards, special district boards, county boards, and city councils. This web site comes to a similar number: https://poliengine.com/blog/how-many-politicians-are-there-in-the-us
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 the production of news?

One interesting starting point to figure out what must be done is to conduct an “Information Ecosystem Assessment” such as the one done for California’s Inland Empire. From April 2020 to May 2021, members of the Listening Point Collective interviewed 50 people in-depth and surveyed 300 more to find out “how the residents of the region obtain the local news they need to participate in their communities and the challenges they face in getting information on essential topics such as education, public health, public safety, race, jobs, environment, government, and more.” When asked to name one or more news sources, the survey found that about half of the respondents mentioned a Los Angeles television station (ABC7) with an Inland Empire reporter, but 42 percent mentioned the Riverside Press Enterprise, 39 percent the Los Angeles Times, and 38 percent the San Bernardino Sun. No other source got more than 22 percent. The importance of newspapers is obvious. Yet when asked to indicate how much they would be willing to spend per month for community news, 49 percent said nothing and 34 percent said $5 per month. Only 11 percent went to $10 per month. At the moment, the San Francisco Chronicle online edition costs $5.99 per month.

**For-Profit Independent Newspapers and Media**

Many different approaches are being tried to replace local news media. One is nurturing the existing 2,400 independent profit-making community based newspapers owners that remain—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 has 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. Some of them have been trying to broaden their services – such as offering web designs for local businesses – in order to survive.

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132 This section relies heavily on Abernathy, op cit., 2020, pages 40-53.
The Non-Profit Model

The non-profit model provides tax advantages because donors can deduct their contributions as charitable deductions and the non-profit does 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.133

The most dramatic example of a turn to being a non-profit was the recent conversion of the Salt Lake City Tribune to non-profit status in 2019. Although there was concern that there would be restrictions on some forms of “non-educational” coverage (e.g., sports or restaurants) since non-profits are not supposed to compete with profit-making enterprise, the IRS made no objections.135 The Institute for Nonprofit News (INN) tracks this area, and it has a membership of over 300 nonprofit newsrooms. In its report for 2021, the INN provides statistics on what is happening to nonprofits. About 20 new outlets have been launched each year for the past four years, bucking the trend of declining news media. Over 70 percent have three or more revenue streams. About 47 percent of funding was from foundations, 36 percent from individual giving, and earned revenues only 14 percent. About 2,000 journalists are employed in the sector. About one-third focus on investigative reporting, one-third analysis and explanatory, and one third news and events. Forty-five percent do local or regional coverage, 24 percent state, and 31 percent national or international.136

Clearly the sector is prospering, but it constitutes only a small percentage of the total journalists (perhaps several percentage points), and only a small fraction of total outlets (several percentage points). And there are bumps in the road. In 2020, a year after it became a nonprofit, the Salt Lake City Tribune stopped printing a daily edition and went to printing only one edition a week delivered by mail. Yet California based efforts such as Mother Jones, CalMatters, Voice of San Diego, and the Center for Investigative Reporting (Reveal) seem to be prospering.137 The

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fundamental question is how far the sector can go with its heavy reliance on foundations and individual donors.\textsuperscript{138}

Another important question is 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 limited in the amount of their lobbying activities and prohibited from intervening in political campaigns. Nonprofits 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.\textsuperscript{139}

**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 NewsHour*. 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%), 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

\textsuperscript{138} Associated Press, October 27, 2020, “Salt Lake Tribune to Stop Printing Daily Newspaper, ending a 149-Year Run.”

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people\textsuperscript{140} 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. Of the 950 ethnic news outlets in the University of North Carolina’s database of which the most, 142, are in California, 500 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 these businesses to reach their customers.

In California, a recent report on community and ethnic media in California described the heterogeneity and dynamism of this sector. It found even more outlets than the UNC database:

- “Roughly 300 ethnic media outlets, representing an incomplete count of the highly fluid sector, publish and broadcast in California, serving at least 38 different ethnic, racial, and cultural communities.

- The state’s ethnic media report in at least 36 languages other than English, which are spoken in more than 15 million households. Because many households are linguistically isolated, in-language media outlets are an indispensable source of information.

- The ethnic media sector’s history is long: 22 percent of the outlets surveyed are more than 40 years old. Newer players are also constantly emerging, with 19 percent founded in the last 10 years and 5 percent in the last five years.”\textsuperscript{141}

The report found that most of the outlets were small (two-thirds with fewer than five full-time employees) and about a quarter of the outlets were losing money before COVID-19. Many feared that they would have to shut down with the continued revenues losses from the pandemic. But 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.

\textsuperscript{140} AARP, 2022, “Older Adults are Stepping up to Help Cover Local News,” https://www.aarp.org/work/careers/older-adults-journalism-careers/

A recent report on Latino journalism of all forms in the United States found that 80 percent used legacy forms (print, TV, and radio), communicated mainly in Spanish, employed mostly Latino journalists, and covered local community news in-depth. The audience is mainly immigrant Latino, and the outlet is usually considered indispensable to the community. California had the largest number of outlets, and these were primarily newspapers and television stations. But there were also websites and other digital forms. The report noted that “Worries about sustainability and lack of resources are the main concerns of Latino news media professionals, and these are closely linked to demographic changes: The immigrant population that most outlets target is declining, and the large majority of U.S. Latinxs, who are U.S.-born millennials and younger, increasingly prefer to get their news from the internet and English-language news sources.”142 The report concluded with some interesting examples of innovation and with a call for more Latino ownership in the sector.

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.”143 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

142 Craig Newmark School of Journalism, June 2019, op cit.
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.

The government of New Jersey has created the Civic Information Consortium which is a public charity based upon a collaboration among five of the state’s public higher education institutions. The state has made an initial investment in the fund, and there are hopes that it will attract philanthropy as well. Its mission is to meet the information needs of people in New Jersey, especially those in low-income communities, underserved areas, and communities of color. To be eligible for a grant, applicants must create a collaboration between one or more of the higher education partners and one or more off-campus partners such as a community organization, library, media outlet, or some entity in the technology sector. The applicant must make the case for public benefits from the collaboration.

One of the biggest worries about this and other proposals for public funding is that the government might interfere with the rights of free expression. The New Jersey Consortium has tried to create an arms-length relationship by creating a board consisting of two gubernatorial appointees, four legislative appointees, five appointees from the higher education institutions, and appointees representing community groups, the media, and the technology sector. No doubt this will help insulate the Consortium from direct influence, but to the extent that the Consortium ultimately depends upon state funds, a disgruntled state government will have a weapon, reductions in those funds, to wield against the Consortium when it does something that it does not like.

Another worry is the size of the funding provided by such institutions. 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 total drop of $35 billion over 13 years. The New Jersey Consortium is certainly doing laudable work, but its initial set of grants amount to $1.35 million, which would be about $50 million if extrapolated to the whole United States. That is about one thousandth of the actual need. The sales tax on digital media advertising proposed by the Colorado Media Project gets closer to the mark but it is still only about one-tenth of the need. Clearly, the


146 Abernathy, 2020, op cit., page 83.
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.¹⁴⁷

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.¹⁴⁸ California’s state government and some larger California cities have this familiar structure.¹⁴⁹ Counties have a representative Board of Supervisors with both

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¹⁴⁷ This *Los Angeles Times Editorial*, May 24, 2020, “Editorial: Local Newspapers are Dying: Here’s How We Can Save Them,” more or less admits that when it says, after listing a bunch of stop-gap measures, that “In the longer term, lawmakers and regulators are going to have to grapple with the damage Google and Facebook have inflicted on the publishers whose content they have leveraged to attract advertisers.” And they go on to say: “Finally, although outright government funding for the news sets off alarm bells, we are encouraged by state-level initiatives — the [New Jersey Civic Information Consortium](https://www.njcivicinfo.org), the [Colorado Media Project](https://coloradomedia.org) and [Your Voice Ohio](https://www.yourvoiceohio.org) — that treat accountability and watchdog journalism as a public good and provide financial and organizational support for independent, factual, nonpartisan, solutions-oriented reporting.”

¹⁴⁸ There are also important back-and-forth activities such as oversight of the Executive’s activities by Congress, Executive nominations of judges and political appointments in the Executive branch, Congressional advice and consent on them, Congress overriding the Executive’s vetoes, proposing of legislation by the Executive, and Congress setting the framework for the structure of the judiciary.

¹⁴⁹ Mayor-Council cities with Mayors elected at large have this structure. Strong Mayor cities, where the mayor has broad powers, include Los Angeles, San Diego, San Francisco, Oakland, and Fresno where the mayor has broad powers. Some cities have weak mayors where the mayor has limited powers. Over 90 percent of California cities are Council-Manager cities with a City Manager who undertakes the executive functions under the supervision of the Council.
legislative and executive powers, and Districts typically have a representative Board of Directors with similar powers. All are various forms of representative democracy.

- **Federalism** – This intergovernmental system is comprised of local governments in California and of California within the US 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. The referendum (1911) is a hybrid mechanism in which the legislature refers an issue to the public for a vote.

These institutions involve complex rules that determine how much a decision process is constrained and how much it conforms to a majoritarian one:

- **Rules** – Throughout the institutions of Representative Democracy, the Federal System, and Popular Democracy, rules regulate governmental actions:
  
  - Rules about who can participate and how they can participate in decision-making through elections, legislation, or administration of laws;
  
  - Rules about how recalls, initiatives and referendums are sent to the people and what is required for their passage;
  
  - Rules about control over intergovernmental transfers of money – how revenues are raised and how they are disbursed;
  
  - Rules about votes for budgets and about the need for balanced, on-time, and restricted or required budgets; and
  
  - Rules regarding taxing and spending.
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.150

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. The limitations of this approach are starkly apparent in the fact that before the Civil War, democratic majorities could vote to allow slave-owning, and after the Civil War they could restrict the rights of some people on the basis of race through Jim Crow laws. America is still struggling with these questions even after the ostensible enfranchisement of African Americans with the ratification of the 15th Amendment in 1870 and the 1965 Voting Rights Act, but rights have generally helped to protect Americans even though it has sometimes taken centuries to work them out.

**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. Any major infrastructure project, for example, seeks to serve public interest by providing a public good; none can be built, however, without injury to the interests of some individuals. How far those minority rights need to be protected has been continuously contested over time, and supermajority rules or procedures for some decisions have been enacted in California over time for the passage of budgets in the legislature, for increasing taxes, and for capital projects.

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.\(^{151}\) The procedures used to protect the fairness of representation, both electoral and judicial, often times 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 protections of those very rights increases the cost and time to delivery of projects, and indeed eventually leads to what has been labeled “vetocracy,”\(^{152}\) 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?

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151 Larry Diamond, 1990, “Three Paradoxes of Democracy,” *Journal of Democracy*, 1:3, 48-60. Diamond describes the tradeoff as his second paradox of “governability” versus “representation.” His first paradox, the tension between “conflict and consensus” is discussed in our section of “Partisan Division and Polarization” and his third paradox on the tension between “consent” and “effectiveness” is discussed in the sections on “Lack of Trust in Institutions” and “Biased Participation and Paucity of Reliable Information and Structured Debate.” Also see MatthewMcCubbins and Gary Cox, “The Institutional Determinants of Economic Policy Outcomes,” in Stephan Haggard and MatthewMcCubbins (editors), 2001, *Presidents and Parliaments*, Cambridge: Cambridge University Press. They make a distinction between “decisiveness” and “resoluteness” with the idea that “resoluteness” is increased when all parties are represented in a decision so that it is unlikely to be overturned.

Creation and Protection of Rights

Creating rights, protected by a Constitution that is difficult to amend because it requires super-majority processes in several venues, is one way to allow majority rule and decisiveness while avoiding the persecution of political minorities. The creation of “rights” hives off certain issue areas (e.g., speech, voting, criminal justice, religion, slavery, gun ownership, states’ powers, etc.) and subjects them to special rules and prohibitions or protections. Although the story is not one of constant progress, voting rights in America have expanded slowly and fitfully from the early requirements of owning property and being male and white, through requiring payment of poll taxes or proof of literacy, and other restrictions to a greatly expanded electorate which has generally made “majority rule” votes more majoritarian and representative of all Americans.

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.

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 [added by Proposition 59, 2004],” victim’s rights in criminal cases [Proposition 8, 1982; amended by Proposition 9, 2008], limitations on the use of eminent domain [in original 1879 Constitution], and “noncitizens have the same property rights as citizens” [in original 1879 Constitution in

153 For example, the U.S. Constitution requires that amendments be proposed by a two-thirds vote of both Houses of Congress or by a request of two-thirds of the states in a convention called for that purpose. The amendment must then be ratified by three-fourths of the State legislatures or by three-fourths of conventions called in each State for ratification.


155 Amendments can also be proposed, as with the U.S. Constitution, by a two-thirds vote of both Houses of the Legislature.
The right to privacy [added by Proposition 11, 1972] 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, have also had far-reaching effects amounting to protecting people's rights.

Instead of pursuing a discussion of rights explicitly, we shall focus on the role that the referendum and especially the initiative with its low threshold have had in affecting public policy in California. Constitutional amendments regarding rights have sometimes been the results of referendums originating in the legislature that are referred to the people for a vote (e.g., Proposition 11, 1972 on privacy), sometimes the result of initiatives that arise from popular movements (Proposition 8, 1982 on Victims' Rights), and sometimes the result of a combined initiative and referendum process (Proposition 9 on Victim's Rights). In all of these cases, only a simple majority is needed to pass the proposition.

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 governments 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

156 The original version referred to "Foreigners of the white race or of African Descent, eligible to become Citizens of the United States under the naturalization laws thereof" but did not include other groups such as Asians. The wording in the text was inserted by Proposition 7 in 1974. California has a sorry history of restricting Asian land ownership. See “Alien Land Laws in California (1913 and 1920),” https://immigrationhistory.org/item/alien-land-laws-in-california-1913-1920/


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 Super-Majorities 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. Although California has not required super-majorities to elect representatives to a legislature so that more citizens can agree to the “bundle” of positions that each representative holds, it has required supermajorities for decision-making in legislative bodies to ensure agreement on a broader 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-third 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.

Through the combined initiative and referral process, Proposition 98 passed in 1988. It requires that roughly 40 percent of every new general fund tax dollar go to K-12 education and Community Colleges. 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. The California 100 Report on Fiscal Policy deals with taxing and spending limitations and their impact on the fiscal health of California.  

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.

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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 approach is increasingly being used by many liberal democracies as they have moved from a minimal Schumpeterian understanding of democracy, in which elected elites as representatives of the people claim substantial authority to make decisions, to forms of direct democracy that seek to maximize citizen participation on every decision to the greatest extent possible. 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. The next section examines these approaches to direct democracy in greater detail, and the subsequent section looks at CEQA specifically.
DIRECT DEMOCRACY
IN CALIFORNIA

If we can give to the people the means by which they may accomplish such other reforms as they desire...an admonitory and precautionary measure which will ever be present before weak officials, and the existence of which will prevent the necessity for its use, then all that lies in our power will have been done in the direction of safeguarding the future and for the perpetuation of the theory upon which we ourselves shall conduct this government.

– Governor Hiram Johnson, Inaugural Address, 1911

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 decision-costs that outweigh their benefits. The initiative, recall, and CEQA vary in the degree to which they do these things.

In the 1990s, many people argued that despite some abuse, all-in-all the recall, the initiative, and CEQA were being used in legitimate ways to improve public policy or to curtail abuses of power. The recall was only being used infrequently, and CEQA was still a relative newcomer. The growth in the use of the initiative since the 1970s had drawn the attention of scholars, but a very careful study of the process in California published in 1998 found that while spending had risen exponentially, “economic interests are severely constrained in their ability to pass new initiatives”
and “the measures they support pass at a low rate. And, in the end, the set of measures that ultimately passes reflects the support of citizen groups.”

We show below that much has changed since the 1990s. The recall, which was little used at the local level 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. For example, a CEQA suit brought by a Berkeley citizens’ group led to a court decision in early 2022 where the University of California at Berkeley was told that, despite having been instructed by the legislature to increase its enrollments, it had to cut back on its new enrollments by 3,000 students because it had not adequately planned for student enrollment as a separate project under CEQA. The court decision sparked outrage throughout the state, and the state legislature quickly passed a law limiting CEQA’s jurisdiction to define projects so narrowly. One (liberal) state senator said “It was never the intent of the Legislature for students to be viewed as environmental pollutants.”

Bruce Cain has argued that while the democratic impulse underlying California’s direct democracy institutions is understandable, they embed incorrect behavioral assumptions that have led to unanticipated consequences. 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


164 Bruce Cain, 2015, Democracy More or Less: America’s Political Reform Quandary, New York: Cambridge University Press.
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 16). 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

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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. Seven states have simultaneous elections for the replacement for the state office. In five of these, there is just one ballot where the name of the incumbent may be on the ballot. In two states, California and Colorado, there are two ballots. In California for both state and local offices, 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 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, 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

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168 Montana’s requirement is 10 percent of eligible voters while California’s is 15 percent of the vote in the last gubernatorial election. In practice, California’s threshold is lower than Montana’s since there are typically many more eligible voters than those voting. For members of the Assembly, Senate, Board of Equalization, and Judges of the Court of Appeal, the figure is 20 percent of the vote in the last election.

169 In California, cities with local charter can set the terms of the recall that may differ from those set by the state.
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 (see Figure 15). If Governor Johnson’s 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.

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**Figure 15**

Number of Elected Officials Subject to State or Local California Recall Signature Gathering Efforts

**SOURCE:** Authors’ calculations based upon data from Ballotpedia and California Secretary of State.
California’s 2021 Recalls

*Ballotpedia* lists all recall petition signature gathering efforts in California in 2021. Sixty-six efforts are listed for 2021, targeting a total of 127 elected officials at the state or local level. Recall petitions can, and often do, mention several officials such as several members of a school board or the entire school board (15 cases in 2021), city council members and/or mayors (eight cases), or Boards of Supervisors (three cases, Nevada, Orange, and Shasta counties). Of these 66 recall petition efforts, five of them actually started before 2021 but remained ongoing in 2021. Nearly half of the 127 public officials for which recall petitions were circulated were members of local school boards (see Figure 16). Approximately one-quarter of recalls were initiated against members of city councils. Governor Newsom was the only statewide official with an attempted recall in 2021.

Despite 66 recalls in 2021, relatively few received enough signatures to qualify for a vote. Forty-seven recalls initiated in 2021 failed to receive enough signatures or otherwise did not proceed to a recall vote in 2021. Twelve 2021 recall initiatives remained underway and collecting signatures as of March 2022. Although five 2021 recall initiatives resulted in the resignation of one or more officials subject to the recall, the recall process still sometimes went to a vote if there were enough signatures and one or more officials remained in office. Six recall efforts obtained enough signatures to go to a vote. Three of these were defeated at the ballot box, including the Governor Newsom recall, the recall of a District Attorney in Sonoma County, and the recall of another two city council members in Vernon, CA. Only three recalls of the six that went to a vote were approved by voters, including the San Francisco Unified School District recall, a recall of two city council members in Vernon, CA, and a Shasta County Board of Supervisors recall. One 2021 recall initiative—to recall the District Attorney in San Francisco—is currently scheduled for a vote in mid-2022. Despite the small percentage of recall efforts that end up with a vote (six of 66 in 2021, or 9 percent), recall efforts disrupt the governing process for a significant period of time even when they do not end up in a vote. They also are increasingly used for partisan political purposes, thereby replacing the normal cycle of elections with recall efforts. We now turn to evaluating the process.

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Figure 16 2021 California Officials with Recalls Initiated

SOURCE: Authors’ calculations based on Ballotpedia listing of recall filings.
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.\textsuperscript{173}

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

\textsuperscript{173} Little Hoover Commission, February 2022, “Reforming the Recall,” Sacramento, California. \url{https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/266/Report266.pdf}
sense to think about, as there are in most states,\textsuperscript{174} 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. No other state has had more than four.\textsuperscript{175} 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.

\textsuperscript{174} See Appendix 1 in Ibid., pages 33-37. In California, recalls for local offices can only occur after an official has been in office for at least 90 days and they cannot occur during the last six months of a term. See California Secretary of State, 2020, op cit., page 2.

\textsuperscript{175} Nationwide, there have been 39 elections for the recall of state legislators of which 21 have been successful. Wisconsin leads the nation with 17 of which five have been successful. See National Conference of State Legislatures, “History and Use of the Recall in the U.S.,” https://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx
In 32 States, the State Legislature Retains Most of the Ultimate Power with Respect to Statutes

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 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 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

176 The term “referendum” typically refers to referrals of legislation from the state legislature to the electorate for a vote. It should not be confused with the “veto referendum” which is a type of initiative emanating from actions of the general public through the gathering of signatures. Although the referendum was part of the Progressive Era reforms in the early twentieth century, it still provided that the representative body, the legislature, would control the agenda.

177 The data on the requirements for initiatives comes from Ballotpedia, “States with Initiative or Referendum” https://ballotpedia.org/States_with_initiative_or_referendum.

178 For both the veto referendum and the legislative initiative, some states require some minimum percentage of the total votes cast as well as a majority (New Mexico, Washington, Wyoming) and there are some super-majority restrictions for specific topics (two-thirds for anything affecting the hunting or fishing seasons in Utah and 60 percent for a lottery in Washington).

179 Ballotpedia, op cit. Florida requires a 60 percent vote (67 percent for anything involving taxes), Illinois a majority of those voting in the election or 3/5ths of those voting on the proposition, and Mississippi requires a majority of those voting on the proposition plus 40 percent of total voters.
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.\footnote{180}{The states are Arizona, Arkansas, California, Illinois, Michigan, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota. All of these allow all three forms of initiatives except for Illinois which only allows a constitutional initiative. Also see the discussion below of the initiative reforms of 2014 in California.}

Twelve of these thirteen 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 50 states that allow for expansive direct democracy. These direct democracy mechanisms are equally present at the level of local government in California, although it is most widely used in the Bay Area and South Coast regions of the state.\footnote{181}{Tracy M. Gordon, 2004, The Local Initiative in California, Public Policy Institute of California, \url{https://www.ppic.org/wp-content/uploads/content/pubs/report/R_904TGR.pdf}}

**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.\footnote{182}{In every state, the percentages either increase or remain the same as we move from veto referendum to statutory initiative to constitutional initiative. The percentages for veto referendums vary from 1.5 to 15 percent with a median of 5; the percentages for statutory initiatives vary from 2 to 15 with a median of 6; the percentages for constitutional referendums vary from 3 to 15 with a median of 10.} 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.

Percentages for signature requirements and the base upon which those percentages are calculated (e.g., last vote total in a presidential or gubernatorial race, registered voters, etc.) vary from state to state. Many states also have distributional requirements such that signatures must be gathered from all parts of the state. Given these complexities it is hard to get an exact rating of which states have the lowest or highest thresholds, but California is definitely at the low end, comparatively. Of the 17 other states with constitutional initiatives, only three states (Colorado, Massachusetts, and Missouri) clearly have lower thresholds than California’s, which requires 8
percent of voters from the last gubernatorial election to sign an initiative proposal. Only two other states (Illinois and Oregon) have the same requirement. One (Florida) has an 8 percent requirement based upon presidential vote which is usually significantly larger than gubernatorial vote, especially when gubernatorial elections are held in midterm elections. Eleven states have a requirement of 10 percent or more.

The story for the 20 other states with statutory initiatives is similar. Two states (Massachusetts at 3 percent and Missouri at about 3.3 percent) have a lower requirement than California’s 5 percent and three are tied at 5 percent (Colorado, Montana, and South Dakota). Three-quarters of the twenty states have a threshold of 6 percent or more, and one-half have one of eight percent or more. With a 5 percent figure based upon the last gubernatorial election, California is closer to the median state for the 23 states with veto referendums, although nine states have a figure of 6 percent or more. 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.

183 Colorado requires 5 percent of the last gubernatorial election; Massachusetts only requires 3 percent but it has an indirect initiative process. Missouri requires approximately two-thirds of 8 percent of the votes in the last gubernatorial election.

184 Also, Florida requires a 60 percent super-majority for passing a constitutional initiative.

185 North Dakota has a threshold of 4 percent of its population (762,000) which would be 28 percent of the vote turnout in its last gubernatorial election (107,379). The base for other states is votes for governor, votes in the last general election, or registered voters.

186 The base for Montana and South Dakota is the number voting in the last gubernatorial election; the base for Colorado is the number voting in the last election for Secretary of State which probably is somewhat lower than the vote for the governor in the same election. In the 2018 Colorado election, the Secretary of State received 98.7 percent of the votes received by the Governor.
In California’s 2016 election, 17 statewide initiatives appeared on California’s November ballot. The ballot sent to voters was 224 pages long. The topics ranged from cigarette taxes to the death penalty (two propositions), from school bonds to Medi-Cal hospital fees, from adult films to English proficiency in multilingual education, from firearms and ammunition sales to marijuana legalization, from plastic bags (two propositions) to criminal sentences, and from legislative procedure to corporation political spending. No wonder a 2008 Public Policy Institute of California (PPIC) 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 working for citizens’ initiative is often too complicated and confusing for voters to understand what happens if the initiative passes.” A 2002 report by the National Council of State Legislatures on initiatives found that “initiatives ask voters to make simple yes-no decisions about complex issues without subjecting the issue to detailed expert analysis and without asking voters to balance competing needs with limited resources. In short, the initiative affects the ability of representative democracy to develop policies and priorities in a comprehensive and balanced manner.” 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 17). 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.

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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, it is not clear whether withdrawals simply were not counted before the 1980s or they have, in fact, increased to become a small fraction of those initiatives that do not qualify. It seems likely that they were combined with “failed” before the 1980s. The average non-qualification rate was 40% until 1960. From 1971 onwards, 86.2%.

Figure 17: Decadal Average Number of Initiatives Titled Per Year and then Failed or Withdrawn

SOURCE: Authors' calculations from California Secretary of State data.
to closer to six, it is not as dramatic an increase as the number titled – see Figure 18, which also includes the number approved by the voters.

The data from the last decade suggest that the number of initiatives titled and qualified may be decreasing a bit, but it is hard to know for sure whether this is a temporary dip or a long-term trend. This feature of the data and the dramatic rise of initiatives in the 1970s might be partly explained by the fact that prior to 1960, initiative measures appeared on general election

**Figure 18** Decadal Average Number of Initiatives Per Year Qualified and then Approved

![Graph showing decadal average number of initiatives per year qualified and then approved.](source: Authors’ calculations from California Secretary of State data.)
ballots only. From 1960 to mid-2011, initiative measures appeared on primary, general, and special election ballots. From July 2011 forward, initiative measures once again only appear on general election ballots. Yet, the real increase in ballot initiatives started in the 1970s and not the 1960s, and although a look at the year-by-year data since 2011 suggest a downward trend as indicated by Figures 17 and 18, it is also true that in 2015 the second highest number of initiatives were titled (94) and the fifth highest number (10) qualified.

The amount of spending on recalls 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.”191 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>
<thead>
<tr>
<th>Year</th>
<th>Number of Propositions</th>
<th>Total Contributions</th>
<th>Average per Proposition</th>
</tr>
</thead>
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<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>
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<tr>
<td>Averages</td>
<td>16</td>
<td>$543,275,633</td>
<td>$36,474,815</td>
</tr>
</tbody>
</table>

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

SOURCE: Ballotpedia.

191 Robert Reich, “How to Stop Uber’s Corporate Power Grab,” Salon, [https://www.salon.com/2020/10/19/robert-reich-on-how-to-stop-ubers-corporate-power-grab_partner/](https://www.salon.com/2020/10/19/robert-reich-on-how-to-stop-ubers-corporate-power-grab_partner/)
Reforming the Initiative Process

There have been calls for reform to the Initiatives process. In January 2002, the Speaker of the State Assembly, Robert M. Hertzberg, released a report recommending changes. 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 financial contributions, available to the public about the sponsorship of initiatives and increasing public awareness about the possibility 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.

In 2014, Governor Brown signed a bill that went part way to the kind of reform recommended in the 2002 Speaker’s report—see the box below for more details. 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 percent 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 a 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 10 donors for and against the initiative, providing for more transparency about who was promoting an initiative.

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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 all 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 super-majority (Colorado, 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 6 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 disintermediate 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.\(^{195}\) 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 disintermediated 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 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 disintermediated 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 law-making 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.

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Challenge of Progressive Era Governance Reform: A BITA History

In 2014, a coalition of nonprofit and good governance groups sought the first major set of reforms to California’s initiative process in decades, culminating in the Ballot Initiative Transparency Act (BITA). The evolution of BITA illustrates the challenges and political headwinds to fundamental reforms of California’s Progressive Era policies. BITA was supported by California Common Cause, the California NAACP, the AARP and California Forward among other groups.

BITA did create more opportunities for transparency and public input for initiatives in California. It required a 30-day online public comment period for all initiatives. It also required a series of legislative public hearings for initiatives which are triggered once proponents receive 25% of the signatures required for the ballot. BITA also enabled proponents of initiatives to withdraw or adjust them based on feedback from the public comments. The legislation also included requirements for a voter information website including information on the proponents of the initiative.

BITA was proposed to address concerns over a lack of information on the financial backers of initiatives, confusing wording of initiatives, and confusion among voters with respect to the impacts of initiatives. Reforms to address these issues were widely popular in polling. Support for BITA grew over concerns that the initiative process was becoming captured by special interests and professional signature gathering firms. BITA’s initiative amendment and withdrawal provisions were designed to encourage initiative proponents to seek compromises with the legislature and introduce some flexibility into the initiative governance process.

While BITA introduced flexibility and transparency into the initiate process, it did not reduce the power of initiative proponents to bring laws before voters, and initiative proponents are by no means required to seek compromise with the legislature under BITA. BITA’s supporters, in fact, argued that the law would increase the power and flexibility of citizens to directly govern the state. Other proposed measures to reduce initiative proponent’s power, such as advanced judicial review of initiatives, were not included in the law.
GOVERNING AND DIRECT DEMOCRACY: CASE STUDY OF CEQA

GOVERNANCE SHORTCOMINGS THROUGH THE LENS OF CEQA

This report examines California governance writ large, but focuses specifically on California’s governance mechanisms that seek to increase the role of direct democracy in the state’s governance. Recalls, ballot initiatives, and referenda, have complicated governance in California by multiplying veto points in decision-making and fostering a short-term time horizon on state officials. But one of the most important shapers of collective action is a procedural law that is unique to the state, the 1970 California Environmental Quality Act (CEQA).

Like many other federal and state laws passed at the time, 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.

The expansion of CEQA’s scope has come about almost exclusively via the evolution of case law rather than proceeding from the statute itself. The law focused on the procedural evaluation of environmental impacts, rather than explicitly limiting those impacts themselves. From procedural evaluation to promoting the ideals of democratic governance was but a step in case law, and it can be found as early as the 1976 No Oil ruling, in which the purpose of an Environmental Impact Report (EIR) was not only to study the environmental impacts of a project, but “to demonstrate to an apprehensive citizenry” that the government had done so.

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.

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:

1. **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 private 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.

2. **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.

3. **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.
4. **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.

5. **CEQA has Evolved Increasingly Toward “The Fullest Possible Protection Standard”**: CEQA has evolved through case law that has generally expanded its scope and impact.

After providing an overview of the CEQA statute and CEQA process, we discuss each of these aspects of CEQA in turn.

**THE CEQA STATUTE AND THE CEQA PROCESS**

Environmental law is not an intuitive setting in which to evaluate California’s governance writ large. Today, however, CEQA is a procedural statute that operates as far more than an environmental protection law. In fact, it can better be understood as a governance law, and the California Supreme Court has even recognized CEQA’s importance as a key component of California’s democratic governance, in that it “protects not only the environment but also informed self-government.”

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.

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What Is CEQA? – An Unsatisfactory Introduction

The California Environmental Quality Act (CEQA) is simple in the abstract and almost impossible to define in practice. This is because the actions CEQA requires and the activities it applies to are both in a constant state of evolution. CEQA changes in response to case precedent, legislative tweaks, and guidance from the Governor. It is one of many state “mini-NEPAs” that regulate public decisions that impact the environment in California.

CEQA’s intent is simple and has remained somewhat consistent since its passing in 1970. The law is intended to prevent significant environmental impacts by informing decisionmakers, identifying ways they can be mitigated, and disclosing to the public why an agency is approving a project despite the impacts studied.

Procedurally, CEQA includes a number of general steps that an agency (the “lead agency”) must complete before undertaking an action, or “project.” First, it must determine if CEQA applies to its action. Ministerial government decisions do not require CEQA, and there are other specific exemptions in the law. Second, it determines if the action will have significant environmental impacts. A Negative Declaration (ND) is written for projects without impacts. An Environmental Impact Report (EIR) is written for projects with impacts. Since the 1990’s, agencies could also write a Mitigated Negative Declaration (MND) for projects with impacts that have been adequately mitigated. For EIRs with unmitigated environmental impacts, agencies may also publish a Statement of Overriding Considerations, which documents its reasons (economic, social) for taking the action despite its impacts.

All of the above procedures are also subject to public disclosure and comment requirements. EIRs, for instance, must be published in draft form for a 60-90 day public comment period. The lead agency must publish and then address the public comments received in the final EIR.

CEQA’s simplicity in the abstract is complicated in practice, largely due to the law’s enforcement mechanism. As “private attorney’s general” citizens and stakeholder
groups may challenge CEQA documents in California's judicial system, which adjudicate whether the lead agency has complied with CEQA's requirements.

As a result, almost every consequential term in the preceding paragraphs has been the subject of a substantial amount of litigation and thus legal precedent. Many continue to be litigated to this day, as courts continue to rule on whether actions are a “project,” analyses are “adequate,” consequences are an “impact” or “significant” and on and on. This is why CEQA can be summarized in a few paragraphs but is understood by very few people outside of the industries that comply with or enforce it.

Another noteworthy introductory quality of CEQA is that the law is entirely, and explicitly, procedural. It does not specify certain emissions or species to be protected. It does not ban certain projects or require specific mitigations. It applies equally to coal-fired power plants, housing developments, solar farms and wetland restorations.

CEQA is also a unique part of California’s governance because it has evolved almost as much as the state since its passing. Governors may change CEQA practices by publishing guidance for lead agencies, but more substantial changes often come from the courts. CEQA has evolved through the interpretation of hundreds of appellate and state Supreme Court opinions. The legislature also regularly passes or proposes amendments to parts of the statute. In 1993, for instance, over 60 CEQA reform bills were introduced in the state legislature. 201

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.

Some projects under CEQA may qualify for an exemption. The State Legislature has passed dozens of statutory or categorical exemptions (CEs) to CEQA. For example, the repair of a property after a disaster would be exempt from CEQA. Likewise, ballot measures, laws passed by the legislature, or ongoing government operations are also exempt from the CEQA process.202

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. This initial study also discusses potential mitigation measures to mitigate the impact of each of the potentially significant environmental effects and examines whether the project aligns with other zoning or area plans.

The precise requirements of Lead Agencies under CEQA are determined by the broad language of the statute as interpreted by decades of court precedent. For example, 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.203


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.

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 publication. For EIRs, the Lead Agency must publish a Draft EIR and make it available for a 30–90-day comment period. The Lead Agency must then publish a Final EIR that responds to the public comments received and makes adjustments to the EIR in response to the comments. If substantial changes are made between the Draft and Final EIR, the Final EIR may also be subject to a public comment period. Finally, once the process is complete there is a statute of limitations under which participants have a limited window to challenge the CEQA permit in court. Any litigation against a CEQA permit must also be derived from comments submitted during the public comment period.

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The I-710 Freeway’s Five Decades of CEQA

The I-710 Freeway extension project is an excellent, and epic, example of CEQA governance. The 4.5-mile freeway extension was planned before CEQA existed, and the permitting process for the small segment of the freeway that was not yet complete when CEQA became law has been ongoing for the entire fifty-plus years since. The I-710 extension project will officially be cancelled on 1 January 2024, after Governor Newsom in 2019 signed legislation to remove the project from the state’s transportation plans at that date.

Fifty years of CEQA indicates that there are some “differing perspectives” on the I-710 project and its environmental and social impacts. However, the economic justification for the extension is obvious. The project would have extended the I-710 freeway to the I-210 freeway, alleviating a nationally significant bottleneck near the Ports of Long Beach and Los Angeles, which are the two busiest container terminals in the United States. The 4.5-mile gap in the I-710 is currently bookended by two stubs that dead end in local streets. Decades of environmental studies have projected that the extension would not only alleviate congestion but pull thousands of cars and trucks off local streets.

The city of South Pasadena has been litigating against the I-710 freeway projects for generations. The section of I-710 up to El Sereno (which remains the southern terminus) opened in 1964, and Caltrans purchased homes in the Pasadena and Alhambra gap in the 1960s. In 1970, CEQA was passed. The I-710 project then received its first injunction in 1973. That injunction was followed by several decades of local obstinance and demand for the project’s completion by every regional, state and federal governing institution involved in the project. Later that decade South Pasadena amended its general plan to place public buildings in the path of the freeway, and Caltrans sued in response. Caltrans amended CEQA documents to reduce the size of the freeway to four lanes in the late 1970’s, but federal officials did not accept the smaller project. In 1982 a young Governor Jerry Brown signed legislation excluding the requirement that local governments like South Pasadena consent to the project, but the legislation also required an additional CEQA study.
with a final decision on the route by 1985. The route selected in 1985 was the same as the original route for the project.

In 1992 the project was still not under construction. Then-Governor Pete Wilson ordered the project to be completed and the FHWA published its NEPA study for the project. In 1995 activists filed a racial discrimination lawsuit against the project, but the NEPA record of decision was eventually published in 1998. South Pasadena sued again, and the project received another injunction in 1999.

In 2003 the federal government stated that a new environmental review would be needed since more than a decade had passed since the prior draft EIS. In 2008, however, voters approved Measure R, which allocated more than $780 million to improvements on the I-710 corridor. South Pasadena sued to block Measure R, but that suit was thrown out, and Caltrans began a new environmental study for the project, this time as a multibillion-dollar tunnel.

That new draft EIR was published in 2015, with an estimated cost for the tunnel project of $5.6 billion. That same year, Caltrans began the process of selling some of the properties that it had purchased for the original project in the 1950s. In 2017, however, the LA Metro board approved redistributing the Measure R funding for the I-710 project to other projects in the region, given that the tunnels project would still face a multibillion-dollar funding gap.
CEQA ENABLES EXTENSIVE PUBLIC PARTICIPATION

Public participation is a particularly important part of governance under CEQA. The California code reads that “Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency’s activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.”

In his 1993 evaluation of the state of CEQA practice, Robert Olshansky described the intent of the CEQA process well: “CEQA stands for environmental protection, public communication, open decision processes, technical analysis as a fundamental component of development decisions, comprehensive analysis as a basis for decision making, the intelligence and social learning value of pluralist decision processes, and the need for elected officials to be accountable for their decisions - in short, it stands for both science and democratic decision making as paths to environmental protection.” 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. In this way CEQA represents an extreme example of California's Progressive Era ideals of an open, participatory governance process.

This extreme openness of participation is another reason that CEQA is an important and widely available part of California governance. CEQA is open to all Californians; all people, agencies, local governments, and stakeholder groups may participate in any CEQA process in the state. 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

Today the CEQA process is applied to almost every “project” in the state. 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.

*Friends of Mammoth* had an immediate impact on the state. A construction industry association announced that the ruling would result in the immediate loss of more than one million jobs. Building inspectors were patrolling home construction sites in Los Angeles and ordering workers to stop. Local governments began declaring immediate moratoria on all construction projects until they could get clarification on what CEQA applied to. Eventually, the State Legislature stepped in to pass a 120-day “tooling up” period for the state to create new guidance, which went into effect in March 1973.²⁰⁸

No CEQA appellate ruling has been more consequential in expanding CEQA’s jurisdiction, or immediately impactful, than *Friends of Mammoth*. Nevertheless, other rulings would continue to expand the areas of California governance to which CEQA applies.²⁰⁹ These are discussed in more detail below, but several examples illustrate this trend. The 1975 *No Oil* case determined that CEQA’s EIRs were required not only when there would be clear environmental impacts but also when there was “fair argument” to be made that a project may have a substantial impact. The 1976 *Wildlife Alive v. Chickering* case determined that the exemptions to CEQA that the legislature was passing needed to be narrowly construed.

A 1982 decision in the *Fullerton Joint Union High School District* case expanded the application of CEQA to governance actions that do not directly impact the environment (in that case the

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formation of a new school district) because they are a step towards actions (such as building a school) that may have potential impacts. In 2007, the Supreme Court ruled in the Muzzy Ranch case on whether the denial of a development also requires a CEQA analysis of the impacts of the displaced development which would presumably happen elsewhere.

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. “Fearing legal challenge, most localities exclude only those types of projects specifically identified in the statutes as being exempt from CEQA review.”

**CEQA HAS TEETH THROUGH ITS MITIGATION REQUIREMENTS**

The allocation of environmental mitigation is a critical part of the CEQA process, in terms of both environmental protection and governance. The inclusion of mitigations in CEQA acts as a draw for third-party organizations or neighboring government agencies to participate in the Lead Agency’s CEQA process. In some cases, it may also incentivize stakeholders to oppose streamlining and other reforms of CEQA procedures.

CEQA specifies five general ways in which an environmental impact can be mitigated, which are also in a general order of preference. They are:

1. Avoid the impact,
2. Minimize the impact by limiting the degree of the proposed impact,
3. Rectify the impact through rehabilitation,
4. Reduce or eliminate the impact over time, and
5. Compensate for the impact.

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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 wetlands, 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.

Because CEQA encourages stakeholders to participate in the process in order to receive environmental mitigation measures, some stakeholders may have an incentive to oppose legislative attempts to streamline the CEQA process. For example, SB 375, which became law in 2009, created a narrowly streamlined process for Transportation Priority Projects (TPPs) that were infill developments near public transportation. Some transit interests opposed the streamline at the time, and the League of California Cities stated that the streamlining may be contrary to the public interest.211 While the intent of TPPs was to promote and streamline infill development, it would also deprive some stakeholders an opportunity to intervene in the CEQA process and negotiate for mitigations.

CEQA EXTENDS THROUGHOUT CALIFORNIA’S GOVERNING INSTITUTIONS

The scale of CEQA as a component of California’s public administration is underappreciated in part because, outside of the sectors of planning, development and environmental science, and law, many Californians do not participate in CEQA regularly. The state does, however, maintain some records that illustrate the volume of CEQA applications in aggregate. Lead agencies file documentation under CEQA through an online portal called CEQANet.

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. Others consisted of various draft documents for public comments. 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 US 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 U.S. federal government is completing EISs under NEPA.

This phenomenon is not new, either. In 1990, California lead agencies completed more than three times the number of EIRs under CEQA as the federal government did EISs under NEPA. Even then, CEQA’s broad scope differentiated it from any similar state or national environmental protection act in the world, as noted one analyst: “Because of its extensive use by local government,
CEQA may well produce more environmental impact reports than any other similar act in the world."212

<table>
<thead>
<tr>
<th>Year</th>
<th># Notice of Decisions</th>
<th>w/ Significant Impacts</th>
<th>NODs w/ EIRs</th>
<th>NODs w/ Negative Declarations</th>
<th>w/ Statement of Overriding Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>2,405</td>
<td>509</td>
<td>700</td>
<td>1,538</td>
<td>499</td>
</tr>
<tr>
<td>2011</td>
<td>2,256</td>
<td>482</td>
<td>706</td>
<td>1,409</td>
<td>440</td>
</tr>
<tr>
<td>2012</td>
<td>2,165</td>
<td>437</td>
<td>686</td>
<td>1,329</td>
<td>373</td>
</tr>
<tr>
<td>2013</td>
<td>2,051</td>
<td>423</td>
<td>655</td>
<td>1,289</td>
<td>364</td>
</tr>
<tr>
<td>2014</td>
<td>2,411</td>
<td>410</td>
<td>769</td>
<td>1,501</td>
<td>391</td>
</tr>
<tr>
<td>2015</td>
<td>2,369</td>
<td>413</td>
<td>746</td>
<td>1,466</td>
<td>393</td>
</tr>
<tr>
<td>2016</td>
<td>2,377</td>
<td>465</td>
<td>803</td>
<td>1,430</td>
<td>425</td>
</tr>
<tr>
<td>2017</td>
<td>2,222</td>
<td>441</td>
<td>752</td>
<td>1,337</td>
<td>398</td>
</tr>
<tr>
<td>2018</td>
<td>2,618</td>
<td>527</td>
<td>840</td>
<td>1,633</td>
<td>496</td>
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<tr>
<td>2019</td>
<td>3,701</td>
<td>1,468</td>
<td>1,835</td>
<td>1,697</td>
<td>1,457</td>
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<tr>
<td>2020</td>
<td>2,906</td>
<td>712</td>
<td>1,108</td>
<td>1,602</td>
<td>732</td>
</tr>
<tr>
<td>Total</td>
<td>27,481</td>
<td>6,287</td>
<td>9,600</td>
<td>16,231</td>
<td>5,968</td>
</tr>
</tbody>
</table>

**SOURCE:** Authors’ calculations from CEQANet.

CEQA has Evolved Toward “Fullest Possible Protection Standard”

CEQA requirements have evolved primarily in response to case law, with CEQA litigation decisions changing the process and governance requirements for future actions. We note a few of the most important milestones in CEQA’s case law evolution here.

**Friends of Mammoth:** CEQA’s most impactful case precedent. This decision determined that CEQA also applied to private projects that required discretionary permits from state or local governments, vastly expanding CEQA’s application just a few years after it was passed into law. However, this was not the only critical piece of case law that Friends of Mammoth created. The CA Supreme Court also determined in this case that “the Legislature intended [CEQA] to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” This “fullest possible protection” standard has largely persisted even despite Legislative modifications to CEQA’s statutory law to curb this interpretation.

**No Oil** (1975): This case defined the term “significant” environmental impact. The CA Supreme Court adopted a test that an impact is “significant” if a “fair argument” could be made that it is so. This created an extremely low hurdle for environmental impacts to be “significant” in litigation that persists to this day.

**Wildlife Alive v. Chickering** (1976): As the legislature began passing exemptions to CEQA, in this case the courts determined that any exemptions needed to be “narrowly construed” stemming from the standard established in Friends of Mammoth.

**Laurel Heights I:** This case 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. This expanded the interpretive test created by Friends of Mammoth even further, into “reasonable” impacts of future actions that could follow from the present one.

**Communities for a Better Environment:** A 1998 CEQA guideline from the governor’s office attempted to limit “significant” impacts by stating that effects that complied with an existing regulatory standard were not “significant.” The courts overruled this guidance and ruled that their “fair argument” standard based on substantive evidence on the particular project in question was still held.
**City of Marina** (2006): This case determined that the mitigation requirements under CEQA may apply to impacts that occur off-site, rather than at the specific location of the project.

**Muzzy Ranch** (2007): In this case the 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.

**Ebbetts Pass Forest Watch** (2008): This case concerned whether the agency had correctly analyzed the “cumulative impacts” when permitting a timber harvest plan under CEQA. The cumulative impacts consist of the interrelating impacts from multiple CEQA projects.

There are numerous other extremely important cases that have determined how CEQA is applied and how courts enforce the law – far too many to mention and far too nuanced to assess in detail here. 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*.

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**Extreme CEQA Litigation Examples**

Jennifer Hernandez, who leads the West Coast Land Use and Environmental Team at the law firm Holland & Knight, has written many public reports on the frequency of CEQA litigation data and including some of the most extreme examples of CEQA abuse. Below are just a few of the examples cited in one such report (Hernandez, Friedman and DeHerrera 2015).

**Study the Environmental Impacts of My Protest:** In San Francisco, a CEQA lawsuit was filed by anti-abortion protesters against a project to build a Planned Parenthood clinic in an already-existing building. The lawsuit, which reportedly held up the project for 18 months, claimed that the city of San Francisco did not adequately study the traffic and public safety impacts of “reasonably probable First Amendment activity.” In other words, the litigants were arguing that the city needed to study the environmental impacts of the protests that the litigants themselves were threatening to organize (San Francisco Chronicle 2015).
**Entrepreneurial Innovation from the Al-Qaeda of CEQA:** Several entrepreneurial young alumni of the University of Southern California (USC) sought to corner the student housing market there through the aggressive use of CEQA litigation, going as far to refer to themselves as the “Al-Qaeda of CEQA.” They sued a competing developer’s student housing project under CEQA, and then, in order to gain negotiating leverage, filed eight additional CEQA lawsuits against the developer’s other projects in the state. The entrepreneurs then filed two lawsuits against projects by family members of the developer under Washington State’s environmental law, after which the developer and USC filed a 2007 federal racketeering lawsuit against the entrepreneurs.

**Years of Study for Moe’s New Pump:** Moe’s Stop and Gas in San Jose became a poster child for CEQA litigation abuse in 2011. The owner wanted to add an additional row of three pumps to his gas station and needed a conditional use permit from San Jose to do so. As an existing station, San Jose approved the permit with a Negative Declaration under CEQA. A competing gas station across the street sued to block the additional pumps, arguing that a full EIR was needed to study the traffic impacts of the three pumps. A judge agreed, and remanded Moe’s permit until an EIR could be completed. Moe’s permit for the pumps would be delayed more than two years from the original filing. Moe’s competitor would file a second CEQA lawsuit against the EIR, which Moe’s won. The process reportedly cost Moe’s and the city more than $500,000 in permitting costs.

**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. First, we show that while other states have similar laws, California’s is probably the most expansive in its reach and impact. Then we go on to note CEQA’s impacts in terms of litigation. Finally, we evaluate CEQA as a democratic governing mechanism.
**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 the National Environmental Protection Act (NEPA), which requires a similar environmental analysis of actions by the federal government. The number of state environmental policy acts varies by reporting criteria, from approximately 28 states with a NEPA-like protection act to 17 states and territories with “comprehensive” protection acts similar to NEPA. Comparisons between mini-NEPAs is challenging because they differ not only in statutory language but more importantly based on the legal precedents in state courts, which, as noted for CEQA, have a significant impact on the scope of the act’s application, the thresholds of analyses, and the specific study requirements and the ease of intervention via litigation.

In 2000, the state of Montana’s Environmental Quality Council completed a comparison of states with comprehensive environmental protection acts and identified 15 states plus Puerto Rico and Washington, DC with comprehensive acts. The comprehensive acts were categorized based on whether they apply to projects undertaken or permitted at the state or both the state and local level, and the statutory language for the threshold to trigger an Environmental Impact Statement-like study. In this comparison, the states of Hawaii, Minnesota, New York, and Washington are most similar to CEQA in terms of their scope of application and the ease in which an EIS is triggered. In these states, the acts apply to projects undertaken by or permitted by state and local agencies and the requirement for an environmental impact statement is just that it “may significantly affect environment.”

A similar categorization was made by Brooks and Liscow (2019) to create a measure of the restrictiveness of state environmental laws to examine the costs of infrastructure projects between states. They categorized restrictive states by (i) the degree to which uninjured parties can challenge a project in court; (ii) the threshold for triggering state environmental review; (iii) the degree to which private actions subject to government permitting also require environmental review; and (iv) the procedural opportunities for citizen involvement under state environmental laws. By this measure California is joined by Minnesota, Massachusetts, New York and Washington as “restrictive states” in terms of their state environmental laws.

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### Table 3: State Environmental Policy Act (SEPA) Comparison, Montana EQC

<table>
<thead>
<tr>
<th>State</th>
<th>Law since</th>
<th>SEPA applies to projects undertaken/funded by:</th>
<th>SEPA applies to projects permitted by:</th>
<th>EIS is required for actions that:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>state only</td>
<td>state and local agencies</td>
<td>state only</td>
</tr>
<tr>
<td>NEPA</td>
<td>1970</td>
<td>federal</td>
<td>federal</td>
<td>x</td>
</tr>
<tr>
<td>California</td>
<td>1970</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Connecticut</td>
<td>1971</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>District of Columbia</td>
<td>1989 ordinance</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Georgia</td>
<td>1991</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hawaii</td>
<td>1974</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Indiana</td>
<td>1972</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>1973</td>
<td>x</td>
<td></td>
<td></td>
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<tr>
<td>Massachusetts</td>
<td>1972</td>
<td>x</td>
<td>x</td>
<td></td>
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<tr>
<td>Minnesota</td>
<td>1973</td>
<td>x</td>
<td>x</td>
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</tr>
<tr>
<td>Montana</td>
<td>1971</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>New York</td>
<td>1976</td>
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<td>North Carolina</td>
<td>1971</td>
<td>x</td>
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<td>1970</td>
<td>x</td>
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<td>1974</td>
<td>x</td>
<td></td>
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<tr>
<td>Virginia</td>
<td>1973</td>
<td>x</td>
<td></td>
<td></td>
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<tr>
<td>Washington</td>
<td>1971</td>
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</tr>
<tr>
<td>Wisconsin</td>
<td>1971</td>
<td>x</td>
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<td></td>
</tr>
</tbody>
</table>

Unique Aspects of CEQA

CEQA is not necessarily more cumbersome than other state environmental laws in its explicit procedural requirements. It does not necessarily require additional procedural steps relative to other states, at least explicitly. In some respects, CEQA’s procedural requirements may even be less burdensome than some of California’s peers. For example, CEQA’s alternative analysis requirements are arguably less burdensome than some other states, which require project alternatives to be analyzed to the same degree of detail as the project.215

Still CEQA was the first of the mini-NEPAs, and it is unique among them in several ways. CEQA’s broad applicability, across both public and most private sector actions, is one major difference. Despite similar statutory language in some cases, no state law goes as far as wide in its scope of application, especially into private sector development projects, as CEQA does in California.

As with other aspects of environmental law, a combination of nuanced differences leads to significant differences in practice. While other state environmental laws apply to permits for private projects, many include clear, standardized thresholds for when a review is applied. Others have a higher statutory threshold than “may have” a significant environmental impact. Differences in case precedent also lead to wide variations in practice between states.

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. As noted below, litigation over CEQA procedures, especially impactful projects that require EIRs, is not uncommon.


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. Relaxation of standing requirements also increases 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.

CEQA litigation often focuses more on procedural, rather than substantive matters. California courts give considerable deference to Lead Agencies when plaintiffs challenge their substantive decisions or assumptions. However, courts may also intervene on procedural grounds, such as a lack of consideration for specific evidence or a project alternative.

Performance indicators regarding the impacts of CEQA on the California economy and environment are often indirect. Few studies exist which document the duration and cost of CEQA permitting in recent decades. 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.

References:


More recent studies have aggregated the rate of litigation generally and collected information on the subject of litigation.

- A review of CEQA litigation from 1997 – 2012 found that Lead Agencies prevailed in 56 percent of CEQA rulings. It also found that 36 percent of the projects challenged were public projects, as opposed to private developments, and that 62 percent of projects that were litigated were “infill” development projects rather than greenfield projects.\(^{221}\)

- A similar study of CEQA litigation between 2010 and 2012 found that roughly half of all CEQA litigation targeted a project in which there is no private sector proponent. That study determined that 80 percent of lawsuits also targeted “infill” projects. That same study found that more than half of the “infill” CEQA lawsuits targeted either public infrastructure projects or housing. Of the CEQA lawsuits against greenfield projects, 46 percent targeted housing projects.\(^{222}\)

- An updated study of 2018 CEQA litigation found that lawsuits targeting housing ballooned to comprise 60 percent of all CEQA litigation statewide.\(^ {223}\)

Conclusive data on the impacts of CEQA litigation and its impacts on California development is limited. The studies above indicate 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.


The Axe and CEQA: Stanford and UC Berkeley Growth Plans

Part 1: No GUP for Stanford

Two of the Bay Area’s major university campuses, Stanford University and UC Berkeley, have faced similar CEQA challenges in recent years. Both universities need to grow their campus facilities to accommodate more opportunities for students in the coming decades. Both need to update long-term plans through CEQA to do so. And both have been challenged under CEQA by surrounding communities. Neither university has completed the process. The CEQA process for Stanford is the update of its General Use Permit (GUP), which was last completed in 2000. For Berkeley, CEQA governs the update of its Long-Range Development Plan (LRDP).

Stanford’s GUP Withdrawal

Stanford University began its GUP update process in June 2016 with a series of community meetings, and formally submitted an application in late 2016. Santa Clara County, which is the CEQA lead agency for the GUP, published a draft EIR in October 2017. After several additional rounds of community feedback and updated reports, including a recirculated EIR that looked at increasing housing on campus, the county published a final EIR in December 2018. In November 2019, Stanford withdrew its GUP application. At the time of the withdrawal, Stanford was offering the communities surrounding the university $4.7 billion in funding. That funding package included $3.4 billion for housing, $1.17 billion for transportation improvements, and $138 million directly to the Palo Alto Unified School District.

Stanford’s application would have increased the university’s academic facilities at the same growth rate of the past several decades (approximately 1% per year). The permit also included approximately 3,150 housing units for students and some staff, to be phased in over a 20-year planning horizon.

A poll of local residents conducted by Stanford at the time found that 75% supported Stanford’s agreement proposal, and that 91% agreed that it was important for
“institutions and organizations, like Stanford University, to have certainty about what regulations will apply to them when they plan for the future.”

Stanford withdrew its GUP application from the process because the county was not being cooperative in negotiating a development agreement with the university to provide certainty that the development included in the GUP could actually proceed, and because the county was proposing conditions of approval that would be infeasible for the university to meet. For example, the county was requiring the university to build additional housing on campus, while also requiring no additional traffic from the campus, throughout the day. This would effectively require the university to build housing without increasing traffic at all, even for vehicular trips not commuting to campus.

**Part 2: Cal Students Ruled an Environmental Impact**

**Berkeley LRDP Litigation**

The final EIR for Berkeley's LRDP was published in July 2021 and will govern campus development and housing until the 2036-7 academic year. As a public agency itself, the UC Regents are its own CEQA lead agency. Immediate projects include the Anchor House housing project as well as the Upper Hearst project for Berkeley's Goldman School of Public Policy. The Upper Hearst project was originally supposed to break ground in 2018 but was the subject of a CEQA conflict between the university and the city of Berkeley as well as local nonprofits.

In 2019, UC Berkeley offered to increase its services payments to the city by 30% in response to comments on the university's supplemental EIR for the project. The city and a local nonprofit Save Berkeley's Neighborhoods still sued UC Berkeley's CEQA permit.
In July 2021, the city settled its lawsuit with UC Berkeley. The university agreed to more than double its annual payments to the city for services as part of the agreement, and also agreed to limit enrollment increases to 1% per annum.

Save Berkeley’s Neighborhoods did not drop its suit, however, and in August 2021 an Alameda County judge ordered UC Berkeley to freeze enrollment at 2021 levels, ruling that enrollment increases consist of a “project” under CEQA and need to be environmentally studied. In a press release, the president of Save Berkeley’s Neighborhoods wrote that the city “could have negotiated a much better deal” had it too waited to settle with the university until after the ruling.

In August another nonprofit, Berkeley Citizens for a Better Plan, also filed a separate CEQA lawsuit against UC Berkeley challenging the broader LRDP CEQA permitting.

On February 10th, 2022, the California First Court of Appeal denied Berkeley’s request to stay the August 2021 decision requiring UC Berkeley to reduce enrollment by 3,000 students and in early-March the California Supreme Court refused to review UC Berkeley’s request for a stay. After a public outcry and editorials expressing outrage and dismay, state legislators unanimously passed a bill that provided a temporary fix so that the University could go forward with enrollment expansion.

CEQA AS A DEMOCRATIC GOVERNING METHOD

In its procedural requirements, CEQA is structured in pursuit of direct democratic governance. Lead Agencies must make available to the public a detailed analysis of an action’s environmental impacts and how they intend to mitigate them. Citizens get a mandatory review period to review that analysis before the government may act on it. Beyond simply making its analysis
public, representatives and administrators must also host public meetings, in which any con-
stituents may attend and comment or ask questions regarding the government’s plans. Mem-
bers of the public, civil society groups, and even other local governments or agencies may also
submit written comments on the plans, and the lead agency is required to respond to all of
them. Afterwards, any member of the public or organization that remains unsatisfied with the
lead agency’s responses, analysis, procedures, decisions or mitigations may intervene through
litigation, and may even do so anonymously to avoid possible reprisals. 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 democratic deliberation, agenda-setting, and
decision-making.

CEQA as a Form of Deliberation

Representative democracy relies upon deliberation through elections, public forums with legisla-
tors, 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. EIRs completed under CEQA often number in the many thou-
sands 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 con-
cerns, 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 compro-
mise 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 agencies’ legal counsel offices 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 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:** 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. Several potential reasons for this trend are discussed in this report.

- **Even Unsuccessful Lawsuits Can Stop or Hinder Projects:** 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 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 reinter-pret the law’s provisions and requirements.

Despite the fact that governors may adjust CEQA guidance through the Office of Planning and Research (OPR) rulemakings, they do not necessarily control when those adjustments are in conflict with a court’s interpretation of CEQA’s requirements. While courts have ruled that OPR guidance must be given “great weight” they have retained the right to interpret CEQA and overruled OPR in the past.224

California’s legislature is perennially introducing major reforms to CEQA, but when reforms do pass the legislature, they are generally compromised, as there is significant support for the status quo. When the Legislature creates exemptions to CEQA, courts are prone to treat them very narrowly.

CEQA also supersedes many of California’s other governance mechanisms. Exemptions exist for ballot measures, for instance, but ballot measures for popularly supported projects (such as stadiums) are commonly challenged in court.225 Over the last decade, stadium projects for California sports teams have instead sought (and in many cases received) explicit exemptions through the Legislature for their projects. Even these popularly supported projects often receive only minor process adjustments to give professional sports teams some development certainty and to convince them not to leave the state.226


Other projects are democratically selected or promised on the campaign trail only to begin the CEQA process afterwards and to get bogged down in it, such as California’s High-Speed Rail project or the list of transportation improvements on LA County’s 2016 Measure M ballot initiative (which won more than 70 percent of the popular vote). Only CEQA’s explicit exemptions or a state of emergency supersede the law from a governance perspective.

Final Assessment

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 3 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.
### Comparing Representative Democracy with Three Mechanisms of Direct Democracy

<table>
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<tr>
<th>TYPE OF MECHANISM</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>
</tr>
</thead>
<tbody>
<tr>
<td>Representative Democracy</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>
</tr>
<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 Majority rule 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>
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<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 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; Law suits 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>
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</table>
The three direct democracy mechanisms used in California consider small slices of public policy activity – 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 super-majorities 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 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.
The governance questions are especially pressing with respect to the environment. The State of California has taken more public initiative than any other state to protect the environment, reduce carbon emissions, and mitigate the effects of climate change. Few would argue otherwise. Despite these well-intentioned efforts, the state, in recent years, has experienced more environmental catastrophes than ever before, while large public development projects to address these challenges have stalled or even been cancelled. Currently public sentiment, for the most part, identifies climate change as the proximate cause of the state’s environmental challenges, rather than a lack of mitigation or adaptation efforts on the part of the state. This may not remain the case forever, and public demand for state action to improve resilience and reduce the impact of environmental catastrophes may increase in the future. As public concern over climate change increases, California’s citizens may demand more active and successful implementation of climate-friendly development projects such as transit or utility scale renewable energy development. It is hard to see how this will be possible with CEQA as it is currently designed.

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 nineteenth century emphasized political responsiveness above all else, even if it meant corruption and inefficiency. The shooting of President James Garfield in 1881 by a disgruntled office seeker led to the Pendleton Act in 1883 creating the civil service emphasizing merit, technical competence and efficiency in government through examinations and carefully laid out hiring procedures. With the growth of government throughout the following decades, the tension between political responsiveness on the one hand and a “neutral” technically competent and honest civil service would prove to be an ongoing theme of waves of reform that emphasized one or the other in order to make government work better.

228 Donald E. Klingner, 2006, “Societal Values and Civil Service Systems in the United States,” in J. Edward Kelough and Lloyd G. Nigro (editors), Civil Service Reform in the States: Personnel Policy and Politics at the Subnational Level, State University of New York Press. Klingner notes that other values also were added such as concerns with the individual rights of the office-holder, social equity in hiring, individual accountability, limited government, and community responsibility – see page 22.
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 another complexity to the system.

In 1995 a Little Hoover Commission report entitled provocatively, “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.229 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. His successor, Democratic Governor Gray Davis did not see civil service reform as a high priority, and he soon became embroiled in other problems. In 2006, an academic wrote despairingly that “While for many years the need for reform has been apparent, and recommendations for modernization have been forthcoming, the system remains inert.” 230

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,231 another model


that would “dismantle civil service” was gaining ground in Florida, Georgia, and South Carolina.\textsuperscript{232} 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. Recognizing this, the Little Hoover Commission released a report in 1999 that focused on principles of reform and that eschewed specific recommendations.\textsuperscript{233} Governor Arnold Schwarzenegger launched a Government Performance Review that came to many of the same conclusions as these earlier studies, but he was unable to find a political formula to make progress after arousing union ire by proposing to cut salaries and pensions.

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.\textsuperscript{234} 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.\textsuperscript{235} The situation was especially acute since the state workforce was aging and many were likely to retire in the next 10 to 20 years. In 2003, 31 percent of the state workforce was fifty or over; in 2010, 37 percent. Of the leaders and managers, over half were 50 years or older in 2010.\textsuperscript{236} Given the strife between Republican Governors and the public service unions, it seemed unlikely that there could be reform.

Yet there were signs that unions would be willing to think about some changes. A 2008 report by the research department of Service Employees International Union (S.E.I.U) Local 1000 in 2008 expressed opposition to the management reforms being implemented in some states such as Florida and Georgia, but it concluded that the “Human Workforce Modernization Project” underway in California “copies what others are already doing. It is not on the cutting edge


\textsuperscript{236} Ibid., page 12. In 2020, 36.5% of all employees are 50 years or older and 46 percent of the leaders and managers. See: \url{https://www.calhr.ca.gov/state-hr-professionals/Pages/workforce-planning-statistics.aspx}
of right-wing efforts to do away with civil service, but rather conforms to mainstream ideas in the human resource profession about how workers should best be managed.” 237 It identified threats of reform such as adverse changes in pensions, work-force reduction, and political influence or favoritism in decentralization of personnel policies, but it also identified opportunities such as an improved classification system, better recruiting and selection, managerial training, and performance evaluation. And it concluded by noting that “It is easy to see the common values of merit and fairness that underlie both these institutions [civil service and unionism] – values that are still extremely important to Americans today.” 238

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.” 239 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). The Little Hoover Commission noted that “Given the agency’s nexus of personnel management, training, procurement and information technology, it is a natural location for a focused initiative on performance management, where lessons learned can be adopted and evaluated for broader use across government.” 240 The reorganization plan went forward in 2013.

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238 Ibid., pages 17-19.


Still, a lot depended upon leadership in the new agencies to actually solve problems. By all accounts, the first head of the Government Operations Office in 2013, Secretary Marybel Batjer, was very effective. She launched a “Civil Service Improvement” initiative that overhauled the classification system, made regulatory changes at the State Personnel Board, improved performance evaluation for managers, consolidated and simplified personnel policies, created a new jobs website, developed organizational performance dashboards, and improved training.241

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, 1000 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.242

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.243 And unfortunately, problems persist. During COVID-19, 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.244 And many information projects have

242 Another important contributor in this area is the nonprofit Institute for Local Government, https://www.ca-ilg.org/
243 Debra Kahn, August 22, 2020, “California is the world's tech capital, but state computers are failing residents.” https://www.politico.com/states/california/story/2020/08/22/california-is-the-worlds-tech-capital-but-state-computers-are-failing-residents-1309732.
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. The S.E.I.U report cited earlier made the crucial point that all these systems are devoted to merit and fairness, and there should be ways for them to join together in common purpose.

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247 David Doyle, 2020, Ask What YOU Can Do: Why Local Government Needs more Technologists and How you Too can Serve, Published by David Doyle, see especially Chapter 9, “Ask What Government Can Do.”


251 Amber Mace and Jun Bando, January 25, 2022, “States as Laboratories for Science Policy Innovation,” https://issues.org/states-laboratories-science-policy-innovation-mace-bando; California 100 is doing this with its Innovation Projects, see https://california100.org/innovation/
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, intergovernmental 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.

Trends in Seven Governance Areas: We have identified seven factors that affect governance in California.

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 solving problems 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 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, 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 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, we have shown that these democratic safeguards are often used in ways that stifle good decision-making.

CEQA is an extreme example impacting public works, property development, and other sectors of the built environment. However in many other cases a small but active group of stakeholders can veto a public (or in many cases private) action. The state created many of these veto points with good intentions, or in response to the negative outcomes of public actions. Taken in aggregate, however, these isolated and well-intentioned decisions have created a set of interlocking roadblocks and procedural hurdles that limit the ability of elected representatives to govern at
the state and local level, and which delay or block private actions to address the state’s challenges as well.

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.

California's High-Speed Rail and CEQA

The California High Speed Rail Authority (CHSRA) has been planning and developing California’s high-speed rail project for 25 years. The CEQA process(es) for the project are still ongoing, with the EIR for one southern California segment (Bakersfield to Palmdale) being approved in August 2021. At several decades of environmental permitting, and counting, no project better illustrates California's ambitions and governance challenges better than the high-speed rail project.

CHSRA completed its first draft programmatic EIR for the project in late 2005. It completed a separate programmatic EIR for the Bay Area route in mid-2008. That EIR was challenged in state court by several local governments and environmental groups in the Town of Atherton case. The plaintiffs claim included many challenges to the EIR, but the primary point of contention was substantive. CHSRA’s alignment would take HSR up the peninsula while several plaintiffs submitted comments during the EIR process in support of an East Bay alignment that would have routed the project back across the Dumbarton Rail Bridge. Despite the substantive disagreement, the EIS was eventually rejected on procedural grounds. The court remanded the EIR in response to plaintiffs’ claims that the study did not account for the Union Pacific Railroads opposition to HSR using its alignment, which could impact some of the routing in the EIR.

The High Speed Rail project has since become a shining example of infrastructure planning via litigation. The project has been sued an unknown, but certainly very high number of times. Many suits were filed under CEQA or NEPA against the environmental studies, but lawsuits have also been filed regarding right-of-way
acquisition, and even the Authority’s ability to use the state funds approved by voters in 2008. It was 2017 when the state Supreme Court ruled that the project could be sued under the CEQA rules and not just federal rules for aspects of the project federal regulations (which usually supersede state regulations) did not address. The ruling was anticipated to unlock a tidal wave of CEQA suits. The project has been sued by landowners, citizens, cities and counties. In 2013 the CHSRA took the rare step of suing everyone (High Speed Rail Authority v. All Persons Interested) to confirm that it could sell the bonds authorized by voters.

In his 2019 announcement indefinitely postponing the non-central valley parts of the project, Governor Newsom stated “We finish the environmental work, we continue to advocate for more federal dollars and private sector dollars, of which I think more are likely to come to California when we demonstrate that we can actually deliver on something.”

The California HSR project once had a cost estimate of $30 billion. Today it has an estimate of $80 billion and going on $100 billion. It may not stop there.

**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

There are two critical uncertainties related to these trends:

- **Delegated versus Direct Democracy** – Will California move toward more representative or toward more direct democracy?

- **Informed and Capable versus Misinformed and Chaotic** – Against the backdrop of hard problems, political polarization, and declining trust in government, will Californians work to save local media, improve agency personnel and technical capacity, and to find ways to work with civil society?

DELEGATED VERSUS DIRECT DEMOCRACY

Representative democracy typically involves the bundling of issues in the choice of a candidate and the use of majority rule to make decisions. California needs to consider whether it wants to continue “unbundling” decisions so that every person on every decision can set the agenda, become involved in the deliberation, and affect the decision. It also has to consider whether it wants to continue to allow low thresholds for recalls and initiatives that makes it possible for small groups to set the agenda and to require super-majorities for some decisions that allow small groups to block them, thus thwarting majority rule.

CEQA illustrates the problems of unbundling. In the context of CEQA specifically, well-intentioned policies to maximize deliberative democracy and transparency have led to outcomes that are decidedly anti-democratic and non-transparent. They have also not adequately represented marginalized, underrepresented and new groups to California.

CEQA’s governance is confusing because the law has created a series of interlocking governance paradoxes. In one sense it is an extreme form of the administrative state, with technical guidance from the governor’s office used to guide detailed analyses of every discretionary public decision at every level of government in the state. In another sense, however, it is direct democracy to its most extreme, with every citizen able to comment on every discretionary public action, and the government is required to respond to each and every one of them, and take them into account when deciding as well. But in a third, and perhaps most important, sense, CEQA is governed by members of the bench – the state judges that adjudicate conflicts and write case precedent from all of CEQA’s litigation. While not necessarily lifetime appointments, judicial appointments in California are less limited in their democratic accountability of
any senior public officials. This is by design, and of course functions as intended in most areas of state law.

However, under CEQA’s statutory language, which includes aspirational requirements to study and protect the environment rather than specific regulations, the judiciary has almost complete discretion in its interpretation. Current case law requires members of the bench to adjudicate whether a “fair argument” could be made that a “significant” impact could result for a “project” and on and on. Judicial governance is fair and efficient with clear, specific laws that the courts (and laymen for that matter) can understand. It is then the job of courts to define the law’s contours and adjudicate conflicts. When laws are broad and aspirational, they invite discretion that amounts to judicial quasi-monarchy in practice. There is no better evidence that CEQA’s statutory language is a poor fit for this form of governance than the fact that the law continues to generate an enormous amount of judicial activity more than five decades after its passing.

Because of this judicial involvement in interpretation, CEQA governance is paradoxically lacking in transparency in the area where it matters most, which is in the resolution of conflicts. In some parts, CEQA is extremely transparent. All documentation is released publicly for review, and all public comments on the documentation is also posted publicly. Final documentation and the government’s responses to public comments are also required to be posted publicly after public input is received. CEQA’s public review process is arguably as transparent a public decision-making process as is possible to design.

In conflict resolution, however, CEQA is extremely opaque. Even prior to litigation, direct negotiations are common between project proponents and stakeholder groups, and these often lead to agreements for environmental mitigations in exchange for agreements that the mitigations are sufficient. During litigation, settlement negotiations between litigants and project proponents are often undisclosed, even when the settled mitigations consist of cash payments to plaintiff organizations or agreements to pay their legal fees. While judicial decisions in CEQA cases are public and somewhat accessible, filings and case information is limited by California’s judicial records access, which is some cases limited to the specific court in which the litigation is filed or an online system with fees for downloads or searches.

The initiative and recall have low thresholds for putting issues on the state’s agenda, and they have become tools for special interests. Much of the public support for California’s Progressive Era reforms stemmed from a need to alter the state’s governance because the existing institutions of representative democracy were being corrupted. Special interest groups were influencing elected representatives and leading to decisions that were not in the interests (or unsupported
by) the general public. This belief that existing governance was captured or corrupted was instrumental in the growth of the movement that led to California’s Progressive Era reforms. Today, however, interest groups and narrowly financial interests routinely exploit California’s initiative process to put laws directly to voters. An entire cottage industry exists for firms that professionally gather petition signatures for initiatives and recalls. Many recall elections are triggered because a representative angers a wealthy individual or small group, rather than a large portion of the voting public. The 2021 recall election of Governor Newsom did not involve a major financial interest, but it did involve a relatively small group.

Similarly, CEQA’s provisions to prevent capture have themselves led to an entire industry dedicated to the use to CEQA-based opposition and litigation. The intended purpose of facilitating public interest litigation as an enforcement mechanism was to prevent the regulatory capture of public institutions by the corporations or polluters that they regulate. Today individuals, corporations, and groups with obvious economic conflicts of interest regularly use the CEQA process or litigate against CEQA permits and claim to do so on behalf of the public or the environment.

Finally, through Propositions 13 (1978) and 26 (2010), California has placed supermajority requirements on the passage of state and local taxes, levies, and fees. These requirements can be seen as ways to protect the public from excessive taxation, but they also hamstring local and state officials from making investments in public policies supported by a majority of the voters. They have also had the effect of creating a state tax system that relies very heavily on the income tax. Decisions about these requirements get at fundamental questions about the size of government, the need for government services, the proper funding of them, and the degree to which government officials can be trusted to make decisions about these matters.

INFORMED AND CAPABLE VERSUS MISINFORMED AND LACKING IN CAPACITY

The decline of local media nationally has led to an increase in polarization and hyper-partisanship, where local issues tend to get “nationalized.” This makes it more difficult to focus on complex local projects that may not easily fit into ideological or policy divisions at the national level. The lack of capacity in agency personnel means that the best possible solutions are not identified or implemented. In addition, agencies fail to deliver on the programs that they do have in place.
Local news media are important to set local agendas, inform and mobilize voters, scrutinize public officials, and to ensure the proper implementation of programs. Local media, for example, are crucial to maintain transparency and to represent the general public in the CEQA deliberation and public comment process, in particular. Environmental studies produced under CEQA today are complex, massive documents containing detailed analyses of complex public decisions. Digesting and commenting on these analyses is well beyond the capacity of most members of the general public. Instead, the public meeting and comment process that would be widely participated in for general, straightforward public decisions is, for CEQA, the purview mainly of interest groups for and against the project. A large administrative hurdle to public participation can cause a process that is facially democratic and participatory in theory to be limited to interest group politics in practice.

This administrative barrier to participation is precisely why the decline of local news resources is so detrimental to governance under CEQA. The CEQA process fits the purpose of the role of news organizations — informing the public of important but complex topics or actions that will have an impact on their lives or their community. Ideally local news organizations will “represent” the general majority of the public that are impacted by a CEQA process though less directly than those interest groups that are already willing to devote the time and resources to participate actively.

In select cases of well-resourced local news organizations, or perhaps for very large CEQA projects of statewide or national importance, the participation of news media works extremely well to inform local stakeholders. For the vast majority of CEQA actions, California’s diminished and declining Fourth Estate has a direct impact on the effectiveness of governance under CEQA.

The threat of immobilization in public decision-making is exacerbated when public officials are not well-trained and attuned to innovation and public needs. Energetic leadership can design “win-win” situations that overcome veto points and that make government work for everybody. Thus the improvement of civil service complements the perpetuation of local media by creating trustworthy institutions that can work together to design, organize and implement innovative programs.
FINAL WORDS

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 more about ensuring competence and capability in governing institutions. One would expect more agreement on the second dimension, although even there, people can disagree based upon ideologically considerations such as whether government civil servants should be paid well and be well-trained and whether news media should be supported by government subsidies. California, however, needs to address these uncertainties to shape its future.