

And Now for Something Really Different: The Alien World of Open Primaries and Redistricting

California politics is about to enter a new era. Two voter-passed initiatives took effect in 2011 – open primaries and a new process for drawing state and federal legislative districts. Approved as a result of voter frustration with a seemingly ineffective, dysfunctional political system, these initiatives will have a profound impact on California politics. But will these changes usher in a golden era of good government in the Golden State or will they further empower the special interest corporate elites? CAOC's State Political Director, Lea-Ann Tratten, with some help from her minion, Tim Blood, explains the change we are about to experience.

by Lea-Ann Tratten and Timothy G. Blood
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The Age of Aquarius this is not. Voters have chosen to realign the political constellations, with newly drawn state and federal legislative districts resulting from Propositions 11 and 20, combined with the all-new open primary resulting from Proposition 14. Think “Big Bang” as the political galaxy rapidly and unexpectedly forms, not inter-galactic peace.

First, legislative districts will be drawn as never before. The newly formed Citizens Redistricting Commission is tasked with dividing California’s diverse population of nearly 40 million into equal, compact and geographically contiguous political divisions that comply with the Federal Voting Rights Act. The commission of 14 will have 131 days, until August 15, 2011, to draw maps for state legislative and federal congressional districts. While this may seem like plenty of time, the task is enormous. As interim Chair Peter Yao notes, the commission has less than one day per district to complete its task. How districts are shaped and where lines are drawn have a major impact on which party gains seats in the state legislature and House of Representatives and which party loses them. Gone will be the highly gerrymandered districts currently carving up the state. In their place will be more geographically uniform and geometric divisions. Where the Commission draws those straight lines, however, will determine whether California becomes more Democratic or more Republican.

Despite early worries about competence and diversity, the 14-member Commission, selected from more than 30,000 applicants, is highly educated and diverse. As required by the ballot initiative, the Commission is made up of five Democrats, five Republicans and four people not affiliated with any political party. Ethnically, the Commission is composed of four Asian Americans, three Caucasians, three Latinos, two African Americans, one member of Pacific Islander descent and one of American Indian descent. The Commission is nearly evenly split between women and men. Each member holds an advanced degree. Its members are drawn from across the state. Republican Gil Ontai, a member of the San Diego Planning Commission, represents San Diego.

California now joins 11 other states with citizen redistricting commissions. California’s version gives its commission more power than the commissions of any other state. With the composition now determined, the Commissioners must hire staff, plot a strategy for completing its task and start drawing boxes.

The new districts will be determined primarily from the new census data, which will not be available in the detail necessary for redistricting until April 1, 2011. For now, we know that California will not gain a congressional seat (the first time since 1920). Florida and Texas will be the states gaining the most of those.

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Continued on page 6

The Commission is required to hold public hearings. The first round of hearings will take place before the maps are tentatively drawn and the second round after. The final map must be available for public view at least 14 days before the 2011 primary election.

Given the daunting task of redistricting the nation's largest state, the initiative provides for the possibility that the commission may not complete its job in time. The initiative also allows voters to reject the plan through referendum. Get ready for a wild ride!

If the commission fails to adopt a plan, or if the voters reject it, the California Supreme Court steps in. The Supreme Court has original jurisdiction in all proceedings challenging the redistricting maps. If either a plan is not timely adopted or if it is rejected by referendum, the Supreme Court is charged with appointing a team of special masters to adopt, adjust or certify the maps.

Supreme Court intervention in redistricting has happened before, following redrawn districts after both the 1970 and 1990 censuses. The 1971 redistricting plan was ultimately determined after the Supreme Court appointed a panel of special masters. The 1981 plan was overturned by voter referendum, but the Court ruled that the districts would remain

as drawn after determining an insufficient amount of time remained to redraw the district lines and permit candidates to file and run for seats.

No matter what the Commission does, it will almost certainly be challenged and is certain to shake up the political landscape. The census is expected to show a massive population shift from coastal areas to the state's interior, which might result in an equally massive political shift. This type of potential power shift is certain to draw challenges, either from political stakeholders threatened with the loss of power or political stakeholders disappointed that their hope of greater power did not materialize.

The conservative Rose Institute, experts on the effects of redistricting, predicts a loss of coastal Democratic seats as a result of the migration shift. The Rose Institute believes that once the census results are tallied, Nancy Pelosi's congressional district will be found to be the most under-populated in the State, while the districts in the predominantly Republican Riverside region will be found to be the most over-populated, which could result in increased Republican seats. Some of this is partisan dreaming. Specific predictions about the gain or loss of seats are largely premature until the actual census figures are available. The November 2010 general election con-

firmed that California is and will remain a blue state. However, it is a fair bet that more seats will be competitive than ever before, with narrower margins and greater uncertainty in any given election.

Second, many incumbent legislators worry that when the lines are redrawn, they will no longer reside in the districts they currently represent and where their base of support resides. Experienced legislators, popular in their current districts, may find themselves deciding whether to run in the newly defined districts as relative unknowns or seeking votes from people with significantly different political views than their own, possibly making upsets and uncertainty the rule rather than the exception, at least in the near term.

What is certain is that no one really knows the impact redistricting will have. The outcome of the census is not yet known with sufficient certainty or precision and until the new districts are finally drawn and those determinations finalized, no one can make accurate predictions about how the actual elections will come out. Overall, most experts believe that legislative contests will be more competitive, but the big question is, by how much?

Open Primaries

And if redistricting were not enough to put the political pundits

Continued on page 29



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into overdrive, open primaries certainly will. California has adopted the so-called "Louisiana" style primary in which the top two vote getters in the primary, regardless of party affiliation, advance to run in the general election. In some districts, two Democrats or two Republicans will face off in the general election. This type of system leads to dramatically more expensive elections. In turn, it increases the chances of well-funded corporate candidates prevailing. Ironically, the problem becomes more pronounced in predominantly Democratic districts.

In predominantly Republican districts, the primary election is likely to result in two Republicans running against each other in the general election. The belief is that the more moderate of the two Republicans will prevail, since voters of all political persuasions will be voting, leading to the election of the candidate that is closer to the middle. This may create an opportunity for CAOC and its allies to back a Republican candidate who is willing to buck the corporate establishment.

In districts with more evenly split voters, it is more likely that a Democrat will face a Republican in the general election. This familiar dynamic also provides a more readily manageable one for CAOC and other political organizations. However, the larger the field of candidates in the

primary, the more confusing the dynamic, the more difficulty candidates have in reaching voters with their message and the more uncertain the outcome. The challenge for consumer attorneys is to join with our allies in the environmental and union communities to clear the field for the strongest pro-consumer candidates. To do this, even greater coordination with local trial lawyer associations such as the Consumer Attorneys of San Diego will be required.

The more vexing problem will result when two Democrats, one corporate and one pro-consumer, run in a heavily weighted Democratic district. The corporate Democrat will be heavily financed by the insurance, tobacco and other big corporate special interests and, as a result, will have the advantage of a larger campaign coffer. As we know, corporate Democrats are most vulnerable when voters learn who is really backing them and what their legislative agenda really is. To successfully combat the money advantage, CAOC will mobilize through education, using models shown to be successful in the past election. The pro-consumer Democrat can be elected with less money which is more wisely spent. However, even with that win in place, the election is not over.

Unfortunately, the open primary system is certain to result in more

expensive elections. Under the old system, the battle was fought largely at the primary stage in select races, followed by fewer costly battles in the general election. With open primaries, there will be far more competitive races – more races in which our allies and we will be called on to participate, both in the primary and general elections. Under the old system, the candidate elected in the primary was usually assured victory in November. Under the open primary system, the battle will be waged twice. And with redistricting, the battle will be waged in more districts.

But with disruption comes opportunity. The realignment of certain districts, combined with the new primary system will present us with unique, yet currently unknown, opportunities to unseat incumbent legislators who have told the voters one thing, but been corporate shills once in office. We will be carefully watching those legislators most like to shill and take advantage of the opportunities the new political landscape will provide. After all, the Force is with us. **TBN**

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