

Singing the California Blues

California is a blue state. And not just blue, but deep blue, right? After the 2014 general election, news organizations and political commentators universally declared, "The 2014 Republican tidal wave that swept the country didn't reach deep blue California."

Deep blue? I don't think so. Pale blue? Maybe. A corporate hue? Increasingly. For traditional Democratic interests in California, the 2014 general election was a disaster. That's right. A disaster. And you thought it was just Proposition 46. The big winner, however, was not the Republican Party, which continues to languish, but corporate interests. Under the euphemism of electing "moderate" Democrats, corporate interests moved a little bit closer to dominating the legislature. But don't worry; all is not lost.

We are in the midst of dramatic changes to California's political landscape, and we need to adjust. Thanks to a strong staff and excellent guidance from recent and not so recent boards and past presidents, CASD has a robust and active membership, a vibrant list serve, many engaging networking opportunities and first-rate educational programs for new and experienced members. The organization is doing great and, as your 2015 president, I hope to build on these successes, but also to take this time to increase our collective political education so we appreciate the complex and nuanced political landscape, recognize the many political opportunities that will present themselves, and adapt to and shape the new political world in which we live. After all, in nearly every other area of law, the lawyer doesn't need to be concerned with politics in order to adequately represent his or her clients. Tax lawyers work with whatever tax laws are passed. The banks, insurance companies, automobile manufacturers and other large corporate interests employ armies of lobbyists and political strategists, leaving their lawyers to focus on litigating against our clients. But we have to represent our clients' interests in the legislature as well as the courtroom because when it comes to the civil justice system, there simply is no one else looking out for our clients. So with that, why did large corporate interests have such a great election cycle in deep blue California?

First, in 2012, California became a "top two" open primary state. In a top two primary system, the top two vote getters in a primary election advance to the general election, regardless of political party. Advocates of this system argued that the old system, where Democrats and Republicans nominated their own candidates who then faced off in the general election, tended to produce politicians that were more liberal and more conservative than most voters in their districts. Advocates predicted a top two primary system would produce more moderate candidates that would better reflect the people of the district. Gone would be the type of harsh partisanship that currently defines Congress.

Now that we have completed two election cycles under the new system, we know that those predictions were off. In the many Assembly and Senate districts that are either safely Democratic or safely Republican, the top two system produced two Democrats or two Republicans in a general election runoff. In every Democrat v. Democrat race, the candidates were generally not politically more moderate in any ideological sense. In fact, the candidates' issue positions tended to be remarkably similar. Instead, in every one of these races, the candidate with the largest campaign war chest won. And in each

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instance, the winning candidate's campaign (or independent expenditure committee supporting the campaign) was financed by the medical-industrial complex, other insurance interests, oil and tobacco companies and the U.S. Chamber of Commerce and its affiliates. None of these winning Democratic candidates ran as the candidate of large corporate interests, but as traditional Democrats. The difference was they had an overwhelming financial advantage.

It used to be that Democratic candidates who took money from such interests would be viewed as tainted. Times have changed. Now, this money is sought out and gladly taken.

Rather than revolutionize California politics by electing level-headed politicians eager to build coalitions and seek reasonable compromises, the top two primary system is electing the candidates with the most campaign cash. And that cash is increasingly corporate.

As columnist George Skelton of the Los Angeles Times reported after the November election, a Democratic consultant who advises the "moderate" Democratic caucus in the state legislature "says that 15 years ago only six Assembly Democrats were considered moderates. In the next legislative session, he says, half the Assembly Democrats will be." See

Skelton, George, "California Legislature is Looking More Moderate Due to Voting Reforms," *Los Angeles Times*, November 13, 2014. The top two system is working exactly as its corporate backers planned.

And what is a moderate? "The whole mission of moderates," the moderate Democratic advisor stated, "is economic growth. If you're out there trying to regulate everything, you're not a moderate." *Id.* Politically, reducing regulation and tort reform are synonyms. As we've all heard, the demagoguery of the corporatist is that the civil justice system hurts economic growth. The notion that half of the Assembly Democrats will be singularly focused on "economic growth" through deregulation and tort reform is alarming.

This leads to the second major trend in California politics – how the corporate cash is spent. On the federal level, the Supreme Court's decision in *Citizens United* has changed how campaigns are funded and has increased the already staggering amounts of special interest money pouring into elections. But in California, the rule announced in *Citizens United* has long been the rule. In state politics, the effect of *Citizens United* has been more about approach and culture. In the wake of *Citizens United*, electoral and political strate-

gies have changed, and those changes have been adopted in California.

Meanwhile, corporate interests have realized that California isn't turning back to a Republican state anytime soon. They know that to be successful, they need to infiltrate the Democratic Party. Corporate interests have spent heavily and strategically to build the Democratic "Mod" Caucus in the Assembly and Senate. "Mod," which is short for "moderate," is the same euphemism used to pass the top two open primary system and the same Democratic caucus that some political operatives hope will dominate the Assembly Democrats.

Other examples of corporate influence in the state Democratic Party abound. Major sponsors of the state Democratic Party convention are now insurance companies and large corporations – unheard of just a few years ago.

Meanwhile, union power and influence are continuing to wane. While unions are still potent political players, the trend has caused some unions to trade support on issues that are helpful to their members, but more tangential to their primary mission, in return for support on their central issues. We saw this with Proposition 46. Lifting malpractice caps is good for union members and

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their families who fall victim to medical malpractice and face often devastating economic consequences as a result. But some prominent unions felt it politically advantageous to cut deals to oppose Proposition 46 in return for support on other issues.

The third factor is term limits. Because of relatively new term limits rules, we are in the midst of a historically large turnover in the Assembly and state Senate. Once this turnover cycle is complete, there will be some increased stability, as new members can remain in a particular legislative office for up to 12 years. And this is where opportunities exist.

The 2015 legislature is younger and less experienced than previous legislatures. There are also fewer lawyers than ever. None of these newly elected officials ran for office to become corporate stooges. They ran to improve the lives of the people in their districts and in the state. For our clients, it is our job to ensure that the members of the legislature understand the critical role the civil justice system plays in holding people accountable for their actions, compensating those harmed by others, and improving product safety, road safety, nursing home care, medical

care, the financial and insurance markets, the mortgage industry and so much more. Accountability, fair compensation and a justice system that incentivizes economic actors to make improvements in what they do are values shared by Democrats and Republicans alike. They are not radical or reactionary notions, but truly moderate ones.

Corporate lobbyists are already hard at work wooing state legislators. As the *Los Angeles Times* reported just after the election, "With the dust just settling from last week's election, two dozen state lawmakers are flying to luxury resorts in Hawaii for conferences subsidized and attended by interests that lobby the Legislature: oil companies, public employee unions, drug and tobacco firms, and others." McGreevy, Patrick, "California Legislators Flying to Maui to Meet with Special Interests," *Los Angeles Times*, November 12, 2014.

This is nothing new. The other side has always had far more resources than us. We have been successful because we are excellent messengers and the facts are on our side. Our strategies and tactics, however, need to adapt. One area that can yield successes is by increas-

ing our grassroots efforts so that all legislators – Republican and Democrat – know about the issues our clients face and why the civil justice system needs to be preserved and enhanced. We need to work with Democrats and Republicans who want to help their constituents.

Take, for example, Republicans. The Republican Party will be changing dramatically in the coming months and years. Many of the values that animate the civil justice system are also values that form the core of traditional Republican orthodoxy – holding accountable those responsible for their actions and then letting the economic consequences of those actions dictate conduct changes in the marketplace. We need to build relationships with them and Democrats and then convey to them what we already know are the values of a well-functioning civil justice system. We also need to be more involved in the political process, in campaigns and with the political parties. On a daily basis we persuade people with facts. We need to do the same in the world of politics.

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