

California Top Two Primary (2010)

A **California Top Two Primaries Act** ballot proposition is on the [June 8, 2010 ballot](#) in [California](#) as a [legislatively-referred constitutional amendment](#).

A **legislatively-referred constitutional amendment** is a proposed [constitutional amendment](#) that appears on a state's [ballot](#) as a [ballot measure](#) because the [state legislature](#) in that state voted to put it before the voters.

A legislatively-referred constitutional amendment is a limited form of [direct democracy](#) with comparison to the [initiated constitutional amendment](#). With the initiated constitutional amendment, voters can initiate the amendment and approve it, whereas with the legislatively-referred amendment, they can only approve or reject amendments initiated by their [state's legislature](#).

49 states have a law in place that allows citizens to vote on proposed [constitutional amendments](#) offered by the [state legislature](#). The exception is [Delaware](#), where the legislature alone acts on constitutional amendments.

If approved by voters, the proposal will require that candidates to run in a single primary open to all registered voters, with the top two vote-getters meeting in a runoff.

Specifically, it would provide for a "voter-nominated primary election" for each state elective office and congressional office in California. Voters could vote in the primary election for any candidate for a congressional or state elective office without regard to the political party affiliations of either the candidate or the voter. Candidates could choose whether or not to have their political party affiliation displayed on the ballot.

The proposition also prohibits political parties from nominating candidates in a primary, although political parties would be allowed to endorse, support or oppose candidates. Elections for presidential candidates and for members of political party committees and party central steering committees would not fall under the "top two" system.

Californians defeated [Proposition 62 in 2004](#), a similar measure, by 54-46%.

Supporters

- [Thomas Elias](#), a journalist based in southern California, says that this proposition provides California voters with "rare opportunity to free their government from the kind of ideological gridlock that leads to lengthy budget stalemates, one-sided elections and control of this state's politics by special interests at the extremes of both major parties."^[1] Even as [Richard Winger](#) continues to dispute Elias' claims, Elias continues to pen enthusiastic endorsements of the proposal, most recently in December 2009 when he wrote, "This should sound familiar; it's exactly how hundreds of local elections in California have been conducted over decades. This is why two Democrats often are the finalists in mayoral elections in places like Los Angeles, Oakland and Sacramento."^[2]
- Jonathan Alter, a Newsweek columnist, wrote a column in September 2009 in favor of the Top-Two plan. His column is called "The Jackass-Reduction Plan." In it, he says, "Under this 'open primary' system, which exists in Washington state and will likely be on the ballot in California next year, the top two winners in the primary face off in the general election regardless of party affiliation. Both

parties are opposed. But if the concept spreads, the jackass quotient in state legislatures and Congress will decrease."^[3]

- [Tom Campbell](#), a candidate for [Governor of California](#).^[4]
- [Abel Maldonado](#).^[5]
- [Allan Hoffenblum](#), who publishes the [California Target Book](#). He says the measure would cut down on "meaningless runoffs".^[6]
- [Arnold Schwarzenegger](#). Schwarzenegger says [California's state legislators](#) are "scared of everything because their main purpose is to get re-elected" and that this measure will solve that problem.^[7]

Opponents

- Reservations have been expressed by state senator [Loni Hancock](#) who says the measure is likely to increase the cost of campaigning and make it more expensive to run for office than is currently the case.^[8]
- The group "Californians for Electoral Reform" (CfER) voted on November 21 to oppose the Top Two measure. CfER has been organized in California for about ten years. It focuses on ways to make voting more fair.^[9]
- Steven Greenhut of the Pacific Research Institute, who says, "One of the reasons California is in such a financial pickle is that there aren't enough new and innovative ideas or discussions about serious old ideas. The top-two initiative seeks to address that issue by reducing choices even more and making general elections more about personalities than issues."^[10]
- [Richard Winger](#) of [Ballot Access News](#) is a leading opponent of the Top-Two Primary proposal. When arguments in favor of the measure are advanced by others, he often counters with a detailed rebuttal.^[11]

Winger on Elias

Winger has written that arguments in favor of the top-two primary put forward by [Thomas Elias](#) in favor of the Top-Two system contain "several important factual errors."^[12]

The inaccuracies that Elias is said to be responsible for include:

- Elias says that the top-two system is "just like special elections" whereas, according to Winger, in California special legislative and U.S. House elections are not like "top-two". Winger writes, "The first round in the California 'top-two' proposal is never an election. No one can be elected in the first round under 'top-two.' The first round is nothing but an exclusionary device to keep candidates off the general election ballot."
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- Elias says the under current law, "voters can only cast ballots (in the primary) for candidates in the party where they're registered."^[11] Winger says, "In reality, independent voters may vote in California Democratic primaries for all office, and in California Republican primaries for all office except President."^[12]

- Elias says the [California State Legislature](#) is "loaded with ideologues".^[11] Winger says, "[Elias] doesn't say who they are. Proponents of "top-two" constantly make this claim but they never have the nerve to list which legislators they mean."^[12]
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- Elias says Louisiana has been using a top-two system "for more than 50 years".^[11] Winger says, "Louisiana started using its current system for state office (in which there are no party primaries) 34 years ago. Also the Louisiana system is not quite the same as "top-two" because in Louisiana, the first round is an election."^[12]
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- Winger says, "Elias ignores all evidence of how 'top-two' worked in Washington state in 2008, the first time it had been used there. Only one incumbent state legislator (out of 124 seats that were up) was defeated in the primary, and the percentage of Washington state legislative seats that switched parties was lower than in California that same year. Also, Washington state's first "top-two" primary, in 2008, had a lower voter turnout than in 2004, when Washington state used a classic open primary. "Top-two" proponents commonly assert that turnout increases under "top-two", but ignore the actual evidence."^[12]

Winger on Alter

In response to a September 2009 column in Newsweek by Jonathan Alter advocating for the Top-Two measure on the grounds that it will reduce the number of what Alter referred to as "jackasses" in public life, Winger responded:

- The "top-two" system helps incumbents, according to Winger: "When it was used for the first time in Washington state in 2008, out of 123 state legislative races, only one incumbent was defeated in the primary, and his reputation at the time of the primary was such that he probably would have been defeated under any election system."^[13]
- According to Winger, "Corrupt special interests were the top financial backers" when [Proposition 62](#) qualified for the [2004 ballot in California](#). The leading financial backer of Proposition 62 was Countrywide Home Loans, which has subsequently been sued by 10 states for its sales practices with regard to adjustable rate loans. Winger says, "big business executives favored "top-two" because it screens out from the general election" those candidates who don't have the resources to place first or second in the first round."^[13]
- The top-two system "wipes minor party and independent candidates out of the general election campaign season. Winger says, "This was shown when Washington state used the system for the first time in 2008. For the first time since Washington became a state, no minor party or independent candidates appeared on the November ballot in any congressional election or any statewide state office election."^[13]
- The top-two system may be unconstitutional. On August 20, 2009, a U.S. District Court in Washington state said the system may be unconstitutional, ordering additional hearings and possibly a trial.^[13]
- The top-two system increases the cost of campaigns, according to Winger, because it "forces candidates to run, in effect, two campaigns in front of the entire electorate (assuming they qualify for the second round."^[13]

Comparison to Proposition 62

Californians defeated [Proposition 62 in 2004](#). According to [Richard Winger](#), a "...detailed look at the 2010 ballot measure shows that it is significantly less respectful of voter rights than the 2004 California proposal had been."

Comparing the two, Winger says:

- The 2010 measure curtails the ability of voters to cast a write-in vote for anyone they wish in the general election by including as a provision "8606. A person whose name has been written on the ballot as a write-in candidate at the general election for a voter-nominated office shall not be counted." According to Winger, "If this passes, California would be one of only 7 states in which no voter could cast a write-in vote for Congress or state office in a November election, and have that write-in counted." Proposition 62 from 2004 had no such limitation. Californians have elected members of Congress using write-in votes in 1930, 1946 and 1982. That could not happen under the 2010 ballot proposition.^[14]
- Proposition 62 had a provision in it to make it easier for smaller parties to remain ballot qualified. By contrast, the 2010 proposition does not. Winger says, "It becomes law, the only way a party will be able to remain on the ballot will be to have registration above 1% of the last gubernatorial vote. Currently that requirement is 88,991 registrants, but after 2010 it is likely to be close to 100,000 registrants. In October 2008 the Peace & Freedom Party only had 56,350 registrants, and the Libertarian Party only had 83,574, so both parties would need to significantly increase their registration, if the 2010 measure passes."^[14]

Path to the ballot

The "Top Two" primary ballot proposition was voted onto the ballot by the [California State Legislature](#) as part of an agreement reached between [state senators](#) to pass a tax-increase budget in 2009.^[15]

Similar ballot measures

Oregonians defeated [Oregon Ballot Measure 65 \(2008\)](#), a similar measure, in the [November 4, 2008 election](#). 34% voted in favor of it.

External links

- [Text of Amendment 4](#)
- [Open-primary proposal could shake up politics](#)
- [Dangerous Proposition to Limit Voters Choices](#)

References

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15. [↑ Sacramento Bee, "Maldonado's price for budget vote: 3 constitutional amendments", February 19, 2009](#)