

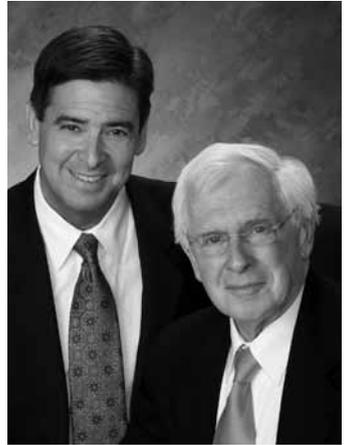
On Your Behalf ...

Legislative and Practice Affairs Division

Electoral Reforms Debut with Mixed Results

By William E. Barnaby Sr. and William E. Barnaby III, CSA Legislative Counsel

Potentially game-changing reforms to California's electoral process received their first test in the recent June 5 primary election. Despite a near record low voter turnout, there were some notable, though mixed, results. Reform advocates hoped the partisan gridlock in the California Legislature and Congress would be lessened by (1) ending legislative gerrymandering and (2)



having the two candidates receiving the most primary votes qualify for a runoff in the general election regardless of party affiliation. Supporters predicted these reforms would force candidates and incumbents to run and govern in a way that appealed to a broader range of the electorate, as opposed to the current situation where political party activists at the polar opposite ends exert far greater influence than their sheer numbers would dictate. Realization of these goals may take more than one election cycle, but the new reforms did shake up the system.

Redistricting Breaks a Logjam

The new boundaries for state legislative and congressional districts had a distinct impact even before Election Day, especially at the congressional level. By prodding longtime Capitol Hill incumbents into retirement, redistricting opened seven seats for the first time in decades. Another two incumbents are certain to lose in November since they are competing against fellow incumbents. Still another six or seven sitting members of Congress face serious challenges in seeking re-election among constituencies different from those of the past.

Since Congress is not subject to term limits, it is very attractive to those state legislators whose political aspirations have been blocked when their time in state elected office has expired. The district lines drawn by the Citizens Redistricting Commission broke the logjam at the top and created new opportunities for individuals interested in Congress. This, in turn, has a domino effect in opening state districts held by legislators trying to "move up." Examples are State Sens. Doug LaMalfa (R) of Butte, Tony Strickland (R) of Thousand Oaks and Juan Vargas (D) of San Diego. None faces imminent expiration of his state term

limits, but all are seeking congressional offices vacated by retiring incumbents. If they win as expected, their state districts will become open. And vacant Senate seats will attract sitting Assembly members as well as others.

'Top Two' Primary Gives Voters More Choices

Under the new system, voters no longer are restricted to casting their primary ballots for candidates of their own party. They can choose among any of the candidates for a given office without regard to the candidates' political party. The June 5 primary produced "top two" finishing candidates of the same party in at least 24 districts.

An entirely new set of political dynamics comes into play when a candidate is no longer just seeking his or her own party's nomination. Instead, candidates will aim to be one of the top two choices of *all* of a district's voters in order to qualify for the general election. No longer will appealing only to a party's activist base be the formula for a primary election victory.

No Party Preference (NPP)

The fastest growing segment of California's electorate is those who decline to state a party preference. The latest official registration numbers for California show Democrats at 43 percent, Republicans at 30 percent and those indicating NPP at 21 percent. Several smaller parties make up the remaining 6 percent. Since 2004, Democratic registration has essentially held even, Republicans have dropped by 5 percent and NPPs have gained 5 percent.

In the past, NPP voters (previously referred to as DTS — decline to state) could ask for a Democratic or Republican ballot but very few did. Under the new system, their participation in primary elections is more directly encouraged. They now vote using the same primary ballot as all other voters, and their impact can be expected to grow as this realization sinks in.

Of the 36 NPP candidates in the June 5 election, five made it into the top two. The best NPP showing was in Assembly District 28 (San Mateo), where incumbent Democrat Paul Fong's only opposition was Chad Walsh, a former Republican now an NPP. The outcome was Fong 54 percent, Walsh 46 percent. If Fong wins a third and final Assembly term in November, Walsh's effort this year may boost his name recognition and chances in 2014.

Conclusion

While the full impact of the new reforms may not be seen for another election cycle or two, there is no turning back. The redistricting that takes place every 10 years has been permanently removed from the state legislature and vested

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with an independent citizen's commission. Likewise, the "top two" primary system is here to stay. Whether or not voters will be energized by the new electoral environment remains to be seen.

The June 5 primary did not have top-of-the-ticket appeal or a lot of controversy to lure voters to the polls. The presidential race and a number of controversial ballot measures should produce a higher turnout in the November general election than the mere 25 percent who participated in the primary.

As incumbents, candidates, campaign consultants and the media begin to understand the need to appeal to voters across party lines, the impact of the reforms should grow over time. One can only hope that the reforms produce more moderate officeholders willing to work on problem solving for the common good.

The significance of the new electoral changes was well summarized by Sherry Bebitch Jaffe, political analyst for NBC4 of Los Angeles: "Meaningful reforms are going to take patience in a world driven by instant gratification. Even then, they're only one small step toward reclaiming California from the state's current fiscal, educational, political and governmental dysfunction."

Report from the Legislative and Practice Affairs Division (LPAD)

By Paul Yost, MD, Chair, Legislative and Practice Affairs Division

The Opt-out: A Recap

As physicians specializing in the medical practice of anesthesiology, we were appalled and shocked when Gov. Arnold Schwarzenegger signed a letter to the Centers for Medicare and Medicaid Services (CMS) in the summer of 2009 opting California out of the requirement for physician supervision for Medicare patients receiving anesthesia care delivered by nurses. We quickly coordinated with the broader house of medicine including both the California Medical Association (CMA) and our national society, the American Society of Anesthesiologists (ASA). We assembled a very talented and capable legal team, and we sued the governor. The judicial system of California did not agree with us and found in favor of the governor. We appealed that decision on behalf of our patients and profession and we were similarly denied judicial relief at the Appellate Court level. Together with our CMA partners, we appealed the appellate decision to the California Supreme Court. In mid-June 2012, the highest court in the state declined to hear our arguments. The legal process,



on this specific issue, has now run its course. The courts have found that the governor was within his legal rights to order the opt-out of physician supervision of nurses delivering anesthesia to Medicare patients.

In the shadow of this legal decision, what should be our next course of action to protect the patients of California? The types of actions that we have been working on and are continuing to explore are as follows:

- 1. Legislative Remedies** There are several potential legislative approaches that can be taken and that have been continually explored by the CSA. However, legislative remedies are challenging, especially in the current climate of partisan bickering and budgetary Armageddon. We are working with our lobbyists, the Barnabys, as well as the CMA and the ASA to continue our legislative efforts. Stay tuned!
- 2. Expanded Public Relations Campaign** We must do a better job of informing the public about what anesthesiologists do, and why we are critical to patient safety. The CSA is coordinating with the ASA, CMA and other state component societies to leverage our impact. The CSA's Committee on Professional and Public Communication, under the very capable direction of Dr. Karen Sibert, has been working with LPAD to help us let the world know why anesthesiologists are crucial to the delivery of optimal patient care.
- 3. Regulatory Remedies at the National Level** The ASA has been working at the CMS level to ensure physician supervision of mid-level providers, through regulations such as the CMS interpretive guidelines, which were recently amended to ensure that all sedation in hospitals really falls under the direction of anesthesiologists.
- 4. Alternative Physician Extenders** If the arguments that have prevailed are those of access and cost of care (never mind that CMS pays independently practicing CRNAs the same as anesthesiologists), then perhaps we should consider the broader use of a group of physician extenders that, by its very nature, is less likely to pursue independent practice (i.e., anesthesiologist assistants). It may be possible to allow anesthesiologist assistants to practice in California under existing law. However, California has traditionally been a physician-delivered-anesthesia state. Most of our members do not work in a care team model, and it is unclear whether our members would support this idea. However, it appears as though the judicial system has given the green light to physician extenders, and we can either watch the train wreck happen, or get on a different railroad track and move forward. What do you think?

Also: Remember the importance of your own institution's bylaws, rules, and regulations. Regardless of the governor's opt-out, our individual hospitals and ASCs have medical staff bylaws that govern credentialing and granting privileges to licensed independent practitioners. The supervision requirement can certainly be upheld by these facilities at their discretion and in the interests of patient care and safety. By your involvement in medical staff governance, you will safeguard these interests, and this can be far more effective and practical than anything that may or may not happen in Sacramento.

Winning Hearts and Minds

At the CSA House of Delegates (HOD) meeting in May 2012, the HOD voted to pursue a legislative approach to the opt-out, and we are vigorously pursuing this option. The primary obstacle is getting votes and winning the hearts and minds of the public and politicians. Any legislative issue must appeal to the general public and address the biggest issues of the day: cost, quality, and access to care. If we can favorably frame our legislative issues in these terms, then we can get the support we need for passage. However, we must get support from people outside of our professional society, even outside the sphere of medicine, if we are to succeed.

We need your help. There are two ways that you can help us and our patients:

1. Join the CSA Grassroots Network. Get to know your legislator. We will need your voice telling your representative why legislation is necessary. The politicians need to hear from many different individuals telling them, in their own words, why this is important. All politics are local!

2. Be Politically Involved. As physicians, all of us must recognize that "politics" is part of politics, and we should understand that we ignore "political" activity such as campaigns, fundraisers and the like at our peril. **CSA members need to be involved in the political process, including providing financial support to candidates and political action committees, at both the state and the federal levels, that share our interests.** Building relationships with lawmakers at the campaign level is just as important as building relationships with them at the policy level. In accordance with federal law and basic ethical principles, the two activities must always be separate and distinct, but they are equally important.

GASPAC, our CSA political action committee for candidates for California office, is one way for our members to become involved in the political process. GASPAC supported 38 candidates in the 2012 election, 37 of whom finished first in their respective races. In spite of these successes, we can do better, especially with fundraising and participation. As the late Jesse Unruh is often quoted as saying: "Money is the mother's milk of politics." Please contribute to PACs; they are one of our most powerful instruments of change for our patients and our profession. We need your help. Together we are stronger!