

Survey #8: Variations of the “Top Two” Primary - Background & Literature Review

The United States is the only country where the state pays for and administers primary elections for political parties. The use of public primary elections to nominate candidates to the general election ballot was a Progressive Era-reform intended to protect the electoral process from party bosses operating in infamous smoke-filled rooms to control electoral outcomes. Publicly administered primary elections ensure that party nominees reflect the preferences of party supporters, rather than party bosses. [Our backgrounder for the discussion of reforms to eliminate primaries](#) discusses primaries and their history in some detail.

Briefly, when the state pays for and administers primary elections for private political parties, it mixes a private nomination process with the concept of public elections. Leon D. Epstein famously characterized American political parties as “public utilities” rather than the unequivocally private associations they were before the introduction of the direct primary (Epstein (1989) *Political Parties in the American Mold*). As a consequence, the exclusion of some voters from party nomination processes has been criticized as unfair - especially in the growing number of places where a plurality of voters do not choose to affiliate with a major party and where partisan voting patterns in the general election mean that the primary election will effectively decide who wins the office.

States do not have to conduct partisan nominating primary elections nor ever use pre-printed general election ballots, and, if they do, they are free to choose who will appear on the general election ballot by any constitutional means. Historically, they have used a wide variety of methods. Prior to 2000, Alaska, California and Washington used a blanket primary ballot: all candidates for all races appeared on the same primary ballot, so that voters could vote for any candidate they chose in an election for any given office. One candidate per political party then advanced to the general election. However, in 2000 the Supreme Court ruled that mandating political parties use this system to nominate their candidates was an unconstitutional infringement upon their First Amendment rights in *California Democratic Party v. Jones*.

In 2004 voters in Washington, which had used a blanket primary for several decades prior to 2000, responded to the *Jones* decision by adopting a “nonpartisan blanket primary”. In the nonpartisan blanket primary, voters receive the same blanket primary ballot as before, but the two candidates with the most votes advance to the general election, irrespective of political party. In fact, Washington removed party affiliation from the ballot entirely, and instead allowed each candidate to indicate any political party they “prefer.”

The system came to be known as “Top Two.” In 2010, California joined Washington, adopting Top Two with some minor changes, such as prohibiting general election write-ins, prohibiting substitute candidates after the primary, and listing political party affiliation on the ballot based on voter registration, rather than “prefers party.” In both Washington and California, the ballot labels are purely informational: they do not indicate any sort of endorsement by the political party listed.

Nebraska has used a completely nonpartisan form of Top Two since adopting a unicameral legislature with nonpartisan elections in 1934. Read about the [history of the system’s adoption and structure here](#). In the Nebraska Top Two, no information about party affiliation is included at any stage of the primary or general election process.

In this survey, we look at four variations of this Top Two model. Each uses a two-round election system, with a first round before November and a November general election. The first round is a "winnowing" election: all candidates participate on the same blanket ballot, and candidates with few votes are eliminated, so that the general election ballot lists a fixed number of candidates.

Some reform proposals in this survey incorporate ranked choice voting, which seeks to address the possibility of "vote splitting," wherein two or more candidates split a base of support, allowing a less popular candidate to win with a narrow plurality of votes. Ranked choice voting allows voters to rank candidates in order of choice. Then, if a candidate lacks sufficient support to win, their supporters' votes will count instead for their second or later choices. That way, voters can honestly rank candidates in order of choice, and their vote will ultimately count for the strongest candidate they prefer.

California Top Two

California voters adopted the Top Two primary in June 2010 and have used it in elections since a 2011 special election. The first election takes place prior to November. It is called a "primary," but might better be understood as a "preliminary." It features all candidates seeking office irrespective of political party. Voters select for one candidate. Only the two candidates with the most votes proceed to the general election, with all others eliminated. The winner is the candidate with the most votes in the general election.

For this exercise, we focus on the California model. There are slight differences between its system and the Top Two system as used in Washington State since 2008: 1) In Washington, each candidate can indicate any party preference listed alongside their name, or the words "no party preference", so as to inform voters. In California, the party label must be validly registered. 2) In California, no candidate may appear on the general election ballot by any means other than coming in first or second in the first election, and no write-ins are allowed. In Washington, parties may substitute for withdrawn candidates based on which party the candidate has preferred, and write-ins are permitted.

In 2010, FairVote analyzed the Top Two law after its passage, [making several recommendations](#) to address deficits it saw in the system. In 2013, FairVote issued reports on the [first Top Two elections in California](#) and the [first three uses of Top Two in Washington](#). In 2014, its [detailed blog](#) analyzed problematic results of the 2014 primaries in California. In 2015, Rob Richie summarized FairVote's analysis in a Democracy Slam paper: [Reform Traditional Parties and Top Two Primary with Ranked Choice Voting](#).

Relevant Sources

- Ahler, Douglas J., Jack Citrin, and Gabriel S. Lenz. (2013) "Do Open Primaries Help Moderate Candidates? An Experimental Test on the 2012 California Primary." *Prepared for presentation at the annual meeting of the Western Political Science Association*, March 28-30, 2013, Los Angeles, California. [Online](#). The authors conduct an experiment in California just before the June 2012 Top-Two Primary, asking a group of registered voters in seats with extreme candidates how they would vote using the top-two ballot and the control group how they would vote on a ballot in the old format. They find that moderate candidates fared no better under the Top-Two.
- Ahler, Douglas, Jack Citrin, and Gabriel S. Lenz. 2013. "Can California's New Primary Reduce Polarization? Maybe Not." *The Monkey Cage*, March 27. Retrieved from: <http://themonkeycage.org/2013/03/27/can-californias-new-primary-reduce-polarizat>

[ion-maybe-not/](#). Summarizes findings from their research on the California June 2012 Top-Two Primary (see above).

- Alvarez, Mike and J. Andrew Sinclair. 2015. [*Nonpartisan Primary Election Reform: Mitigating Mischief*](#). Cambridge University Press. Alvarez and Sinclair explore the early impact of the Top-Two Primary, concluding the the Top-Two is better for moderate candidates where they can force an intraparty runoff in the general election.
- Beck, John H., and Kevin E. Henrickson. "The Effect of the Top Two Primary on the Number of Primary Candidates." *Social Science Quarterly* 94, no. 3 (2013): 777-794. [Online](#). The authors study the Washington State Legislative Primaries in 2004, 2006, 2008, and 2010, estimating the factors impacting the number of primary candidates in a race for each political party, *including* the change in the primary format (to Top-Two) in 2008. Beck and Henrickson's results indicate that the switch to Top-Two reduced the likelihood that multiple Democratic candidates sought election in the same primary race. While the study found that the top-two primary did not impact the amount of Republican candidates, the authors were able to conclude that top-two primaries should overall discourage parties from running "excess primary candidates" (777).
- Donovan, Todd. 2012. "The Top Two Primary: What Can California Learn from Washington?" *California Journal of Public Policy* (4)1. [Online](#). Explores Washington's experience with the Top-Two, finding that the effects of the reform have been quite limited, with only a slight increase in turnout and a small increase in campaign expenditure as a consequence of Top-Two.
- Hill, Seth J. and Thad Kousser. "Turning Out Unlikely Voters? A Field Experiment in The Top-Two Primary." (Working paper last updated March 30, 2015.) [Online](#). Hill and Kousser explore whether voter contact with interested parties and groups affected primary turnout. Using a field experiment, in which 150,000 letters were sent out to California voters who voted in general elections but not primaries, Hill and Kousser find that a single letter increased turnout by 0.5 points from a base rate of 9.3 percent. They conclude that "registrants who typically abstain from primaries - and who are thus often ignored by campaigns - can be effectively mobilized."
- Kousser, Thad. "The Top-Two, Take Two: Did Changing the Rules Change the Game in Statewide Contests?." *California Journal of Politics and Policy* 7, no. 1 (2015). [Online](#). Kousser explores the impact of the Top-Two on voter turnout and on candidate tactics in closely contested races. Kousser concludes that the new rules did not much affect the outcomes of the 2014 primaries.
- Kousser, Thad, Justin H. Phillips, and Boris Shor. 2013. "Reform and Representation: Assessing California's Top-Two Primary and Redistricting Commission." *Presented at the 2013 Annual Meeting of the American Political Science Association*, Chicago. [Online](#). The authors explore whether electoral reforms can create conditions that lead to better legislative representation. Using the congruence between a legislator's ideological position and the average position of his/her district's voters as their central measure, they show that, immediately after the introduction of Top-Two and an independent citizens redistricting commission, state legislators were no more

congruent with the districts than before, and indeed may have strayed further from their district's average voter.

- McAdams, David. "Could the Top-Two Primary Tame the Tea Party Threat?" *The Washington Post: Monkey Cage*. 16 June 2014. [Online](#). McAdams argues that the Top-Two could be used by Republican incumbents concerned about primary challenges from the right (in this case, the Tea Party). Uses Eric Cantor as an example.
- McGhee, Eric. 12 February 2015. "Has California's Top Two Primary Produced a New 'Business Democrat?'" *Mischiefs of Faction blog*. [Online](#). McGhee discusses his article in the *California Journal of Politics and Policy* ([Online](#)), in which he charts the California Chamber of Commerce scores of California legislators by political party since the 1980s. His results, although preliminary, indicate that one impact of the Top-Two worthy of further research may be a tendency to elect more pro-business Democrats. McGhee urges caution in attributing the increase in pro-business Democrats to the Top-Two, instead suggesting unified party government may be the more likely cause.
- Nagler, Jonathan. (2015) "Voter Behavior in California's Top Two Primary." *California Journal of Public Policy*. 7, no. 1. [Online](#). Nagler surveyed voters at the primary and general election in 2012 and uses this data to estimate how many voters chose to cross party lines and engaged in strategic voting behavior. Nagler finds that few voters crossed party lines, and, when they did, it was rarely for strategic reasons. Additionally, at the general election, voters who were faced with two candidates from the opposite party, often chose to abstain. Concludes that, if the absence of strategic behavior were to continue, the impact of Top-Two will likely be small.
- Sides, John. "California's Top-Two Primary Hasn't Lived Up to Reformers' Hopes." *The Washington Post: Monkey Cage* 11 Feb 2015. [Online](#). Sides summarizes recent scholarly work on the impact of the Top-Two, which shows Top-Two has had a minimal impact on legislative polarization.
- Stephanopoulos, Nicholas, Eric McGhee, and Steven Rogers. "The Realities of Electoral Reform". *Vanderbilt Law Review* 68 (2015): 761-853. Stephanopoulos et al combine district and legislative information with new data on varieties of enacted policy to examine how electoral reforms in each state impact the relationship between voter and legislative alignment and responsiveness. Of the several reforms they examine, one key conclusion is that primary formats seem to have little effect on voter and legislator alignment and responsiveness. However, they suggest from their analysis that top-two primaries do not impact voter and legislative representation and alignment- and might possibly make it worse.

Nebraska Nonpartisan Top Two

In the Nebraska State Senate, Top Two operates exactly as in California and Washington above, except that no party labels appear on the ballot for any candidates, at the primary or the general election. Write-ins are permitted. The Nebraska state legislature has been nonpartisan since the 1936 elections, the first after a unicameral legislature with nonpartisan elections was [established in a 1934 ballot measure](#). The literature focuses on

the function of Nebraska's state senate as a nonpartisan, unicameral legislature and less on the Nebraskan electoral system.

Relevant Sources

- Ansolabehere, Stephen, John Mark Hansen, Shigeo Hirano, and James M. Snyder. "More democracy: The direct primary and competition in US elections." *Studies in American Political Development* 24, no. 02 (2010): 190-205. [Online](#). Without addressing Nebraska in particular, the authors assess the impact of the direct primary of electoral competition finding that findings were never broadly competitive, and that the competitiveness of federal and statewide primaries decreased sharply beginning in the 1940s.
- Comer, John C. "The Nebraska Nonpartisan Legislature: An Evaluation." *State & Local Government Review* (1980): 98-102. [Online](#). Assesses the nonpartisan Nebraska state legislature's performance on four measures (responsibility, responsiveness, accountability, and leadership structure) and finds that it performs reasonably well on responsibility and responsiveness, but less well on accountability and leadership structure. Nebraskan survey respondents differed little from the national average on the subject of whether the "legislature has dealt efficiently and effectively with public problems." As in other states, the legislature was responsive toward organized interest groups but less so to "unorganized interests or individual citizens." On accountability, because citizens cannot know how their votes will affect which legislative majority controls the Unicam, Nebraska did not fare well especially because at the time (1980) there were no stable coalitions in the legislature. The legislature's leadership structure was, at that time, still evolving, with little policy leadership present.
- Masket, Seth E. (2012) "Polarization without Parties: Term Limits and Legislative Partisanship in Nebraska's Unicameral Legislature". *Paper prepared for presentation at the Center for the Study of Democratic Politics*, Princeton, NJ, April 5, 2012. [Online](#). Masket explores polarization in the nonpartisan Nebraska Senate and the role of term limits in increasing polarization. In doing so, he discusses the Nebraska primary system.
- Robak, Kim. "The Nebraska Unicameral and its Lasting Benefits" (1967). Available [Online](#) Then-Lieutenant Governor Robak writes a ringing endorsement of the nonpartisan legislature. Robak asserts that "[w]hile many senators join the Legislature with strong partisan ties and the belief that a nonpartisan system is foolish, within a short time they become true believers in the one-house, nonpartisan process. Ask any senator why they keep the system and you will hear the same answer - it works." Robak argues that "[t]he most innovative feature of the Nebraska Unicameral is its nonpartisan nature." She explains that state "Senators are elected on a local ballot without regard to party affiliation. The top two candidates in the primary election proceed to the general election. The candidate with the most votes in the general election is seated." Robak cites Hugo F. Srb (1961), who claimed that "[t]he election of members of the legislature on a nonpartisan ticket has attracted many candidates with enviable records of public service who had not sought office on a partisan ticket." (Hugo F. Srb, *The Unicameral Legislature-a Successful Innovation*, 40 NEB. L. REV. 626 (1961). Srb was a member of the Legislature from 1931 to 1933. He also served as the first Clerk of the Nebraska Unicameral, holding that

position for 32 years).

- Rodgers, Jack, Robert Sittig, and Susan Welch (1984) "The Legislature" in Miewald, Robert D. *Nebraska Government and Politics*. University of Nebraska Press: pp. 57-86. Rogers et al evaluate the performance of the Nebraska state legislature, finding that it tends to perform well, but not exceptionally well, when compared against other state legislatures. The authors conclude that the Unicam ranked (in the 1970s) low on some measures (functionality and independence) "due in large part to the nonpartisan nature of the body; nonpartisanship makes the legislature vulnerable to outside pressures and is a contributing factor in the weak leadership system within the Unicameral" (p. 86).
- Schaffner, Brian F., Matthew J. Streb, and Gerald C. Wright. "A new look at the Republican advantage in nonpartisan elections." *Political Research Quarterly* 60, no. 2 (2007): 240-249. [Online](#). The authors examine aggregate-level data from state legislative races in nonpartisan Nebraska and partisan Kansas, mayoral races in nonpartisan Phoenix and partisan Tucson, and California statewide races including the nonpartisan contest for superintendent of public instruction to investigate whether nonpartisan elections tend to favor Republicans. Their findings indicate that nonpartisan elections have partisan consequences but that the effect is in favor of whichever party happens to be the minority party in a chamber (rather than systematically benefitting the Republican Party).
- Shor, Boris and Nolan McCarty (2010) *The Ideological Mapping of American Legislatures*. Working Paper. [Online](#). Explores ideological divisions within the state legislatures. In 2010, Shor and McCarty found that the ideological distance between the parties is lowest in the state legislatures of Rhode Island and Louisiana and greatest in California and Washington. They excluded Nebraska from their initial analysis because of its nonpartisan status. In their 2013 update ([Online](#)), the Nebraska Senate ranked as the 9th least polarized legislature. Shor and McCarty explain that "despite the fact that the Unicameral is officially nonpartisan in its organization and elections, Nebraska's hidden parties are polarizing quite quickly."
- Wright, Gerald C. and Brian F. Schaffner. "The Influence of Party: Evidence from the State Legislatures". *American Political Science Review* 96 no 2 (2002): 367-390. Wright and Schaffner compare Nebraska's nonpartisan legislature with Kansas' partisan one. Through examining stances campaign issue and roll call voting, Wright and Schaffner find that without the structure provided by parties, there is no succinct and often clear stance on an issue. Having a cohesive message helps voters identify with a particular party and further serves to keep representative accountable because voters have a general expectation of what to expect from a party candidate.
- Alford, Robert R., and Eugene C. Lee. "Voting turnout in American cities." *American Political Science Review* 62.03 (1968): 796-813. Demonstrates that voter turnout decreases under nonpartisan elections compared to partisan elections for local offices.

Top Two with Ranked Choice voting in Primary

This reform uses either the California/Washington or the Nebraska system, but it modifies the ballot format and rules for counting the votes in the first election. Instead of being asked to vote for one candidate, voters may rank the candidates in order of preference. Every ballot counts as one vote for its first-choice candidate. The candidate with the fewest votes is eliminated, and ballots counting for that candidate are added to the totals of the candidate ranked next on the ballot. This process is repeated, with each ballot always counting as one vote for its highest ranked candidate still in the race, until exactly two candidates remain. The two candidates identified at the end of the process then advance to the general election.

This reform could be achieved with a statutory change to Top Two in California.

Top Two with RCV in the primary will share many of the same features as California's form of Top Two without RCV. The key differences are: 1) a large political group (more than a third of voters) is highly unlikely to be denied a candidate of choice in the general election because vote-splitting is less of an issue; 2) candidates will have incentives to reach out to more voters in the primary; 3) candidates will have more incentives to avoid highly negative tactics.

These issues are discussed in our [Survey 7 backgrounder document on ranked choice voting](#). In addition, FairVote in 2015 issued an [analysis of California statutory options](#) for reforming Top Two that analyzed the legality of this system and made arguments for doing so.

Top Four with Ranked Choice Voting in the General Election

Top Four retains the first round of election from the California/Washington or the Nebraska system, but instead of the top *two* candidates, the top *four* candidates advance to the general election. Then, in the general election, voters may rank their first, second and third choice. Ranked choice voting in the general election is conducted as described above, except that after two candidates remain, the one with the most votes wins the election. (Ideally, ranked choice voting would be used in the primary also, but is not a necessary part of this proposal.)

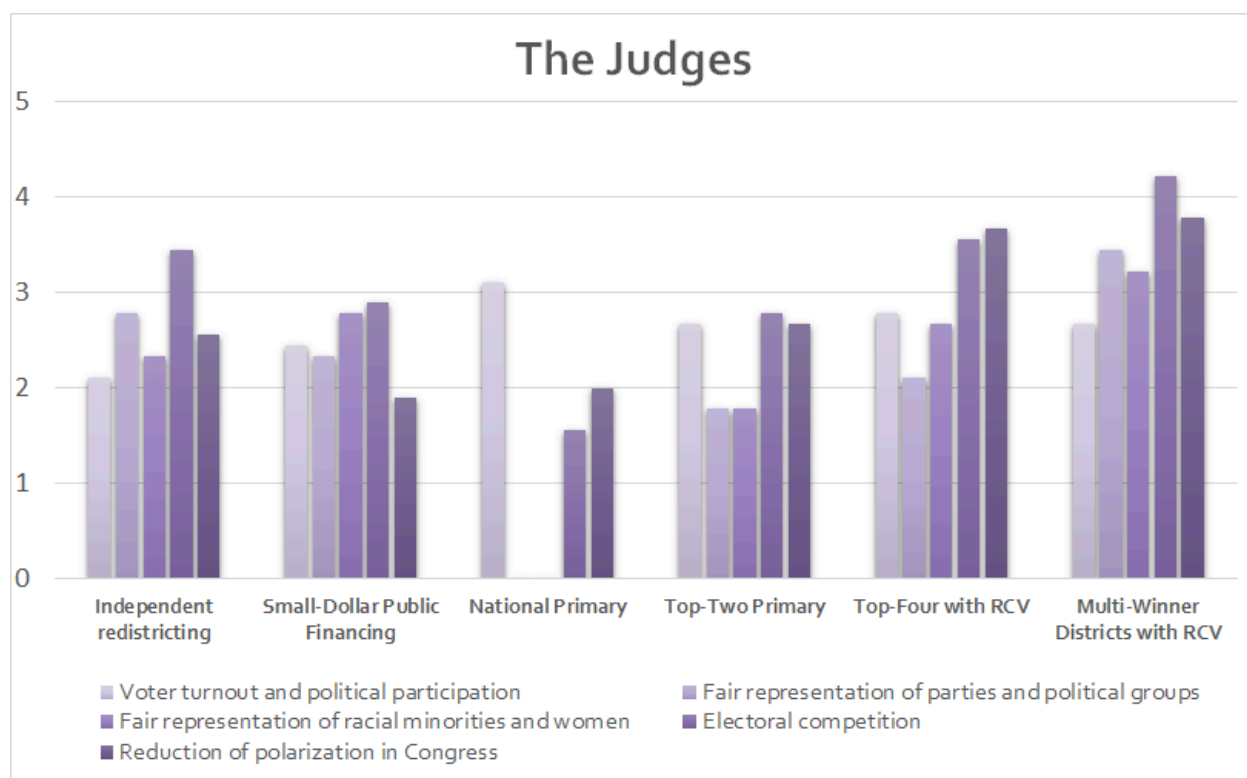
Although this system seems superficially similar to California's form of Top Two, the fact that four candidates advance rather than two will have significant impacts, including: 1) if both major parties field candidates in the primary, it is near certain that one candidate from each major party will advance to the general election; 2) if there is more than one primary candidate from the district's largest political party, it is likely that at least two candidates from that party will advance to the general; 3) far more minor parties and independents will make it to the general election ballot.

To provide an example of impact, FairVote simulated the results of such a system using vote totals in Washington and California. This chart summarizes Top Four in races for Congress and statewide office. Note in particular the increase in intra-party contests and fewer general elections fought between only one party.

	California US House Elections and Partisan Statewide Offices	Washington US House Elections
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	(2012-2014 – 114 Races)				and Partisan Statewide Offices (2008-2014 – 56 Races)			
	Top Two		Top Four		Top Two		Top Four	
	# Races (out of 114)	% Races	# Races	% Races	# Races (out of 56)	% Races	# Races	% Races
Both major parties in general election	90	78.9%	100	87.7%	54	96.4%	55	98.2%
Intraparty race in general	15	13.2 %	86	75.4 %	1	1.8%	43	76.8 %
Non-major party candidate in general	7	6.1%	36	31.6%	1	1.8%	22	39.3%

In April 2015, FairVote held a conference (the 2015 Democracy Slam) in which “Top Four” was among six reforms evaluated by a panel of nine judges, including journalists, scholars, and reformers: Norm Ornstein, American Enterprise Institute; David Lublin, American University; Melinda Henneberger, Bloomberg Politics; Aaron Blake, *Washington Post*’s The Fix; John Hudak, Brookings Institution; Leigh Chapman, Advancement Project; Jennifer Lawless, American University; Jamie Raskin, Washington College of Law; and David Keating, Center for Competitive Politics. [This write-up provides more information](#), and the chart below presents the judges’ average ratings for the six reforms evaluated.



Relevant Sources

- Drew Spencer and Rob Richie. "Fixing Top Two in California: The 2012 Elections and a Prescription for Further Reform." *FairVote*, (June, 2013). [Online](#). Spencer and Richie examine the impact of Top-Two in California on voter choice, representation and competition. They find that Top Two has made little difference on most measures.
- Drew Spencer. "The Top Two System in Action: Washington State, 2008-2012." *FairVote*, (July, 2013). [Online](#). Spencer argues that Top Two in Washington generally limits voter choice with little corollary benefit.
- Rob Richie drafted two relevant papers on Top Four for FairVote's April 2015 [Democracy Slam](#). The first paper, [Reform Traditional Parties and Top Two Primary with Ranked Choice Voting](#), explains the Top Four proposal in detail. The second paper [evaluates Top Four's impact on several criteria](#). The judges at the Democracy Slam [rated it the second most impactful reform](#) among the six evaluated.
- See background documents for surveys [5](#) and [7](#) for more information on RCV.