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Jarvis, Matthew

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## Redistricting Reform Revisited

Matthew Jarvis  
California State University, Fullerton

In the first issue of the *California Journal of Politics and Policy* in 2009, Justin Buchler and I engaged in a debate over whether redistricting reform was an appropriate tool to help solve the dysfunction of California's government (Buchler 2009; Jarvis 2009). With the release of the final versions of the maps drafted by the California Citizens' Redistricting Commission (CRC), we felt that a reassessment of our arguments was in order. Before I turn to that task, let me briefly summarize our arguments.

In 2009, I argued that, "While districts are not necessarily the primary cause of California's budget woes, redistricting provides one of the only feasible solutions" (Jar-

vis 2009, abstract). In essence, my argument was one of desperation. In my analysis, I concluded that the voters of California seemed very unlikely to approve of any changes to the fundamental causes of the legislature and governor being unable to produce realistic or timely budgets. The main culprit for this state of affairs was the combination of ideologically rigid partisanship in the legislature and a two-thirds rule for passing the budget. Previous attempts to change the nature of the two-thirds rule for budgets (either the rule directly or similar restrictions on tax increases) had failed, and polling indicated that the idea of a supermajority requirement was appealing to Californians.

While redistricting was hardly the biggest contributor to partisan polarization, other causes (like residential selection, interest groups, media coverage, and ideological sorting) admitted to no ready solution. Thus, in that paper, I argued that redistricting reform—in particular, creating more districts that were competitive—while not the most effective remedy or even directly related to the problem, was likely the best solution available. In essence, the argu-

ment was that redistricting reform was a poor tool for the job, but it was the only tool voters seemed to support. Buchler's response was that efforts should go into repealing the two-thirds rule, since polarization was not primarily caused by districting and the costs of competitive districts for representation were too great (Buchler 2009).

In essence, our disagreement was over three issues. First, we disagreed on how likely competitive districts were to produce moderate legislators; while both of us thought they would be rare, Buchler argued for a lower likelihood than did I. Second, we disagreed on the tradeoffs we were willing to make; Buchler valued accurate representation of constituents by individual legislators, whereas I put a higher priority on representation of the statewide constituency. Finally, we disagreed over the likelihood of voters returning California to a majoritarian budgeting system (as that was Buchler's solution, and mine was predicated on that being unfeasible).

The purpose of this essay is not to recapitulate our disagreement, but to assess how the redistricting maps drawn up by the CRC fit into the arguments we were making. In addition, I will consider the ramifications for the argument of some other fairly substantial changes made to our system in the last few years. Since redistricting was the focus of the first piece, and the just-released maps are the occasion for this one, this essay will focus on redistricting.

### **The Existing Districts**

The districts for the legislature for the last decade were so safe for the parties that held those districts that very few seats changed hands between the parties. In 2002, Republicans gained two seats in the Assembly. No seats changed hands in 2004 or 2006, five seats changed hands in 2008, and one changed hands in 2010. The story is even more stark on the Senate side: one Republican pickup in 2002 was the only seat to change parties in the entire decade. All this stability is despite some large "waves" seen in other institutions in the United States over this decade; in 2010, Republicans picked up 63 seats in the House of Representatives and six seats in the Senate (14-17% of the elections for those chambers), while Democrats gained one seat in the California Assembly. Put simply, legislative districts in California can hardly be said to be competitive.

Legislators elected from these districts are partisans to the core.<sup>1</sup> While Buchler and I disagree on how little of an impact the district lines have on this partisanship (with Buchler arguing nearly none, and me arguing for a small effect), the lines were very clearly safe for incumbents.

### **The New Districts**

The California Citizens Redistricting Commission certified their maps as final on August 15, 2011. The argument

I made in 2009 was that more competitive districts would help ameliorate the situation in the legislature by making it slightly more likely moderates would get elected and by making it possible for Democrats to occasionally have a supermajority. Thus, we need to examine how well the new districts are likely to achieve either of these results. To do so, I am going to employ data on the new districts generated by Redistricting Partners, Inc.<sup>2</sup> Redistricting involves a lot more interests than just partisan voting patterns, interests that will only be dealt with here tangentially at the end of the essay.

### **More Competitive Districts?**

Did the CRC create more districts that are competitive? This phrasing is deliberate: the question is not whether districts, on average, became more competitive, but whether there is a larger number of total districts that could be fairly considered “competitive.” So, what are the criteria for whether districts are competitive or not? Rather than restricting my analysis to one measure, I will employ several.

The first measure is the registration numbers in the districts. Analyzing these numbers is not as simple as it might seem. First, registered Democrats have historically had lower voter turnout than Republicans, so it’s not clear that a small Democratic registration advantage is similar

to a small Republican advantage. A rule of thumb used by journalists and political observers has been that a district was not “Democratic” unless it had a five-point registration advantage for them.

With the large rise in the number of decline-to-state (DTS) voters, it is not clear that such a rule of thumb is still valid. In 1991, DTS and minor party registrants made up 11.2% of the electorate; by 2001, they made up 18.8%, and in 2011, they make up 25.1% Old rules of thumb might no longer apply. For the purposes of this essay, I shall define a district with a difference in partisan registration less than one-third the size of the nonpartisan registrants as competitive, figuring that a candidate who captured two-thirds of the nonpartisans could win such a district. In practice, this generally means a cutoff of  $\pm 6-7\%$  partisan advantage, so I shall present the counts using both this new rule of thumb and the old.

We can also use electoral returns for other recent elections as a measure. Redistricting Partners provides two of these metrics, the presidential vote from 2008 and the gubernatorial vote from 2010. While both are useful, neither is individually particularly satisfying. Obama’s vote share in California was quite high, and George W. Bush was very unpopular in California for his entire presidency.

It is even more difficult to know what to do with the Brown/Whitman numbers in the California governor’s race. This was a Republican wave year, but that wave

seemed to break on the shoals of the Rocky Mountains, and the election was to replace the then unpopular Republican, Arnold Schwarzenegger. On average,<sup>3</sup> Jerry Brown ran about 5.5% behind Obama in the new districts, but the variation ran from 13 points more for Obama to 6 points more for Brown. So, what cutoffs should be used? Rather than over-analyze the issue, I will count any districts with election results within the conventional 10 points as competitive.

Finally, we can use the judgments of other observers. In this case, I shall use the coding of Redistricting Partners of the districts. Those coded as “swing” or “leaning” to one party or the other shall be considered competitive. Unfortunately, I do not have similar data available on how they considered the existing districts. We can also compare the measures to each other.

So, how many competitive districts were there under the old maps, and how many under the new? Table 1 presents the results. For the Assembly, it seems that the lines drawn by the CRC, somewhat surprisingly, create slightly fewer competitive districts than before. Only using gubernatorial vote shares within 10 points as our measure of competitive districts generates a higher count for the new maps.

However, the differences between the two sets of maps are not that great. Except for the Obama measure (which almost certainly overstates competitiveness, relying as it

**Table 1. Counts of Competitive Districts under Old and New Lines**

	Assembly	
	Old Districts <sup>a</sup>	New Districts
Registration (new RoT)	14	12
Registration (old RoT)	9	8
Obama Votes	25	20
Brown Votes	10	11
Redistricting Partners Consensus <sup>b</sup>	---	11
	11	8
Senate		
Registration (new RoT)	5	8
Registration (old RoT)	4	5
Obama Votes	8	11
Brown Votes	6	8
Redistricting Partners Consensus	---	5
	4	4

<sup>a</sup> Data for the old districts comes from 2008 or 2010, depending on appropriateness. In this sense, since populations change and move over time, we are somewhat comparing apples to oranges, as districts may not be competitive when they are drawn, but become so over time as populations shift.

<sup>b</sup> “Consensus” means that, for a district to be considered competitive, there is no more than one measure that does not consider it competitive.

does on a Democratic wave year in a Democratic state), most counts are roughly the same. The Senate districts do seem to have marginally more competitive districts than the old lines. Since the Senate is half the size of the Assembly, the increase in the number of competitive districts there, which is of the same small magnitude, may have a bigger impact.

### **Supermajorities Possible?**

The second component of my argument was that redistricting reform, in creating more competitive districts, could make it possible for one party (the Democrats) to achieve a two-thirds majority in both chambers of the legislature and get around budget rules that way. Do the new maps drawn by the CRC make it possible for an election to return a supermajority to Sacramento?

First, as before, we must ignore the possibility of a Republican supermajority, as it simply is not possible in deeply blue California. Having said that, let us return to the criteria that we were using before. Using registration numbers, the Obama and Brown vote shares, and the Redistricting Partners' coding, the single question now becomes two: how many safe districts do the Democrats have, and what seats would they need to pickup in a wave election to get to the two-thirds threshold (54 in the Assembly, 27 in the Senate)?

Let us start with the Assembly. Using the Redistricting Partners' coding, the Democrats would need to hold serve in the 48 safe Democratic districts and the two that Lean Democratic. After that, they would need to pick up four of five swing districts. If swing districts really are up for grabs, with a 50/50 chance of either party winning them, then, statistically, random noise would generate an 18% chance of this happening. But, elections are not random events. In wave years, voting for president, Congress, governors, and state legislatures shifts one way or the other. If, in a wave year, Democrats had a two-thirds chance of winning in any individual swing district, they would have a 46% chance of capturing at least four of these swing districts.

How about with the other measures? Using registration numbers, there are 54 Assembly seats (exactly) with a plurality of Democrats in them. With the Obama vote, Democratic Assembly candidates would have to win 53 districts where Obama beat McCain by seven or more percentage points, plus one of the two districts where Obama beat McCain 51-46%. Using the Brown vote measure, Democrats would have to win every district he won, plus at least one more, the closest one being AD 66, which Brown lost by 2%. In sum, the Assembly seems quite likely to generate an occasional two-thirds majority for the Democrats, if the Democrats have a good year.

In the Senate, the story is similar. Redistricting Partners considers 24 Senate seats safely Democratic, and another two Lean Democratic. Thus, the Democrats would need one of the two swing seats to get to the two-thirds threshold. The laws of probability being what they are, a 50% chance of winning individual swing seats would make this outcome actually 75% likely.

The other metrics tell a similar story. Democrats need to win districts where their registration advantage is greater than 4%, that Obama won by more than 9%, or where Brown won to get to two-thirds in the Senate. By all measures, the Democrats are actually quite likely to have a supermajority in the Senate fairly often under these new maps.

### **Fitting the New Districts with Our Old Arguments**

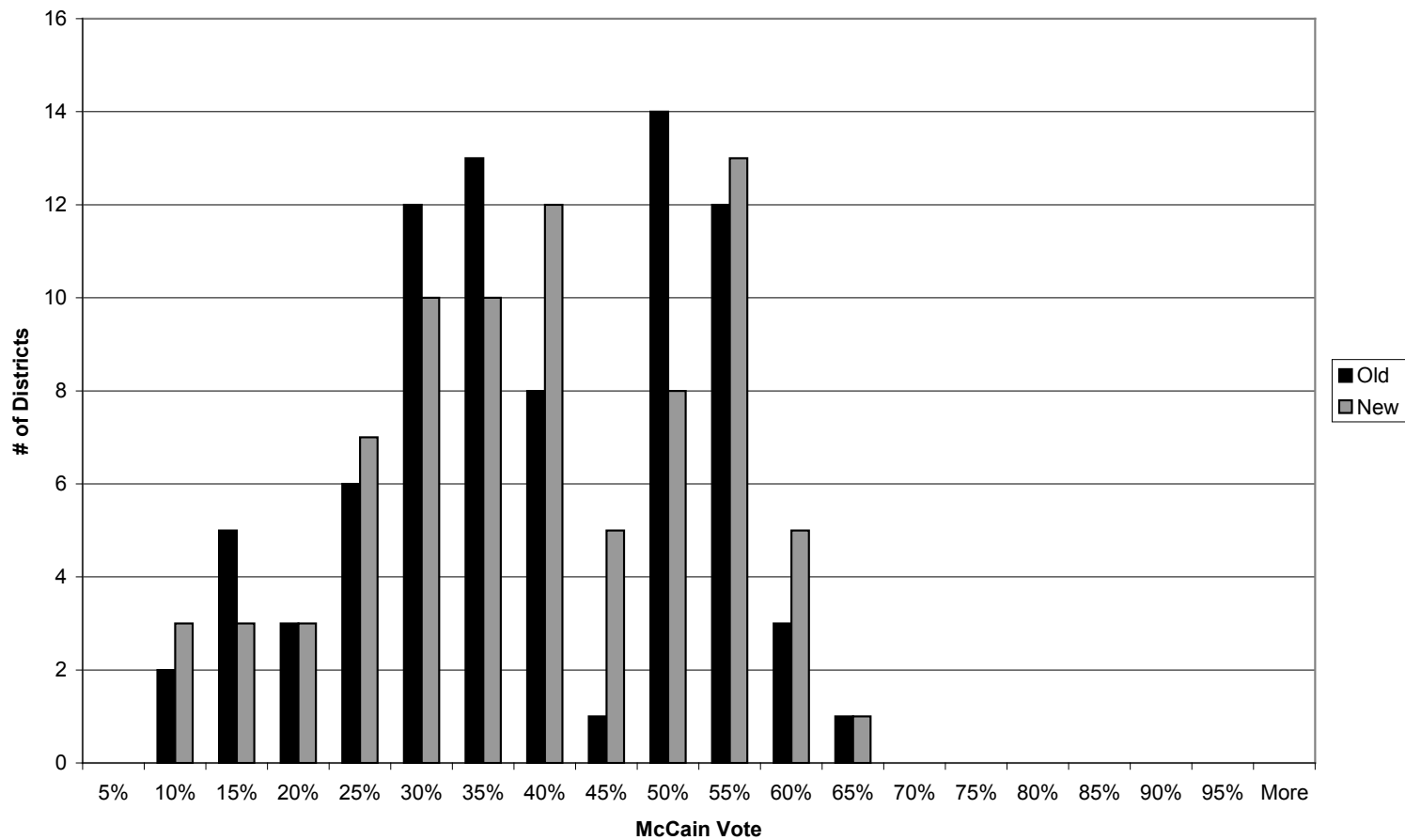
How do these districts fit with our recommendations? I argued for the creation of more competitive districts, in order to either elect more moderates willing to compromise on the budget, and to introduce more “error” into the election process, so that Democrats could more often obtain a supermajority and be able to legislate. The new lines do not have substantially more competitive districts than the old lines did. Thus, I would not expect any increase in the number of moderate legislators would be due to the lines drawn. In 2009, I argued that perhaps 30% of those elect-

ed by competitive districts would be moderates; to allow moderates to be a substantial force in the legislature would have required the creation of a great deal more competitive districts—something close to a double digit increase in the Assembly.

The lines drawn by the CRC are clearly more likely to elect more Democrats than the old lines were. It is for this reason that Republicans are considering backing a referendum drive on the lines; the lines seem very likely to increase Democratic numbers in the Senate, Assembly, and Congress. Two years ago, I was arguing for more uncertainty in the districts, so that a supermajority could get elected in wave years. Rather than increase the size of the waves, the CRC raised the base level of Democratic seats. From that perspective, the new lines have to be considered consonant with my earlier argument.

How was this accomplished? Consider Figure 1. There are six fewer Assembly districts where McCain won a narrow majority under the new lines than the old. On the Republican side, three of these districts became more Republican. But three became more Democratic, making up a large chunk of the new “swing” districts. Some mostly Democratic districts became slightly less Democratic as well, but are still likely to elect Democrats. In other words, Republicans were packed into fewer districts, and Democratic districts were cracked to spread their voters around. This is all relative, though; the highest McCain vote share

**Figure 1**      **Partisanship in Old vs. New Districts in the Assembly**





in any of the new districts is only 63%, whereas the highest Obama vote share is 88%, a natural product of the urban vs. suburban and rural bases of the parties.

To answer a question about Buchler's argument, (Buchler 2009) these districts don't necessarily increase the representational congruity between members and their constituents. While conservative Republicans are now likely to represent slightly more conservative Republican districts, that is offset by more overwhelmingly Democratic districts getting somewhat dispersed. Thus, it seems as if the lines will bring the legislature more in the direction I was advocating than the one Buchler advocated. However, this brings up a question for my argument: will the new *legislature* reflect the policy preferences of the state electorate?

### **Changes in California Since 2009 and Their Impacts on the Argument**

So, the new lines drawn by the CRC, while not substantially increasing the number of competitive districts, do increase the likelihood of the election of a supermajority of Democrats to both chambers. It remains an open question, though, whether that is a good thing, in light of three changes in California since 2009: changes in the opinions of Californians, changes to the two-thirds rule for budget-

ing, and changes to the rules for raising fees. Perhaps the nature of the problem we face has changed.

### **Have Californians Changed Their Opinions on the Budget?**

Delivering a Democratic budget on time was clearly in line with public desires in 2009, with voters expressing severe displeasure at the lateness of budgets and with Sacramento, as well as leaning strongly towards budgets that looked more like those of the Democrats and Schwarzenegger than legislative Republicans. Do voters still lean towards Democratic budget solutions?

The question has no easy answer, in part because voter preferences on budgets, in the aggregate, are often paradoxical. If we talk about majority opinions, voters tend to favor tax cuts, spending increases, and no deficits; they want to have their cake and eat it, too. The legislative parties and governor are more constrained in their options, both by rules on the budget process, and by the fact that their arguments are subject to public scrutiny. Nevertheless, we can tease out some rough preference alignment from the Californian public, and that preference leans towards the Democratic Party's solutions, albeit not particularly strongly.

Voters (52%) would prefer the solution to current deficit be done "through an equal mix of spending cuts and

increases in tax revenue.”<sup>4</sup> Around a third (32%) want all cuts, and only 11% want all tax increases.<sup>5</sup> Voters are still unwilling to pay increased taxes personally (43% willing/55% unwilling), but on questions of taxation, voters often feel others should pay more taxes, and those numbers are slightly higher than in 2009 (40% were willing to pay more taxes then).

Voters support extending the temporary tax increases that were passed in 2009 for five years (58% to 39%). Given the consistent findings in polling that voters hate taxes, these numbers seem like mild public support for increased taxes, putting them more in the Democratic than the Republican camp. That said, we should not do too much discounting of the basic fact that taxes are unpopular.

On spending, voters have moved slightly towards the Republican Party on most issues. Increasing portions of voters are willing to cut spending for the judiciary, prisons, environment regulations, highways, parks, public transportation, welfare, and water storage. Solid majorities opposed cuts to most of these areas in 2002 and 2008, but by 2009 and this year, support for cuts had increased by anywhere from four to 13 percentage points. The public is also more accepting of cuts to more treasured programs—such as schools, police, MediCal, higher education, child care, and mental health—by a few percentage points. But 61 to 74% of voters remained opposed to cuts in these areas. In fact, the only areas of spending where cuts are favored are

the judiciary and prisons, which is likely voters trying to say the same thing.

What to make of all of this? On balance, these opinions favor the Democratic position more than the Republican. In part, this is because the Republican position is so absolute—no taxes, all cuts—and voters tend to favor opinions that sound moderate to them. Also, it would be foolish to ignore the fact that California is a Democratic state. It would be strange if voters did not lean towards the Democratic position. Voters have moved somewhat towards a position of support for increased taxes (on others), with cuts to prisons and other services. Voters’ opinions have become slightly less paradoxical (more favoring taxes, fewer opposing cuts). On balance, with Democrats proposing budgets that have both tax increases and spending cuts, and Republicans proposing no tax increases and deeper cuts, voters in 2011 still support the Democratic position.

### **Have Changes to Budgetary Rules Made Reform Unnecessary?**

In November 2010, voters approved two propositions that made notable changes to the budgetary process in the legislature. The first, Proposition 25 got rid of the two-thirds requirement to pass the budget, although it retained it for raising taxes. The second, Proposition 26, extended

the two-thirds requirement to fee increases as well. Proposition 25 also docks legislators' pay for not passing a budget on time. What are the consequences of these changes?

Fortunately for political scientists, we can analyze the impact the changes had on the budget negotiations this year, before the new lines were proposed.<sup>6</sup> And those changes were fairly minimal. Newly elected Governor Jerry Brown came into office promising to negotiate with Republicans, and through March, he and legislative Democrats were negotiating with a small group of Republicans on a plan that would have included Republican priorities in exchange for placing on the ballot the extension of temporary tax increases. The negotiations fell apart under pressure from the poles, as it became clear that neither side would (or could) go as far as was necessary to come to a deal.

However, with the threshold for increasing taxes still at two-thirds (and now joined by fees as well), Democrats could not pass the budget they wanted, either. Thus, after a vetoed attempt at a smoke-and-mirrors budget, Democrats passed what Senate leader Darrell Steinberg called "the most austere budget we have seen in a generation," with some of the steepest cuts falling on education. Thus, while Democrats passed the budget, it is an all-cuts budget as legislative Republicans favored, but with the cuts directed in ways Democrats wanted.

The budgetary outcomes produced by this system are the same as before Propositions 25 and 26, and for the

same reasons. Republican orthodoxy on tax increases means that the budgets that do pass do not reflect California's priorities. Californians are willing to pay temporary taxes, and feel that budget deficits should be made up with a mixture of tax increases and spending cuts.

While Californians (like everyone) want fantasy budgets with low taxes, high spending, and no deficits, when asked to balance budgets, their opinions side towards the solutions offered by Democrats. This is to be expected in a state where Democrats get a solid majority of votes and a solid plurality of residents. Proposition 25 allowed Democrats to pass a budget on time, but that budget was not the one they wanted to pass.

Previously, I argued that delivering Democrats an occasional supermajority would be good. Because a clear majority of voters were electing Democrats consistently, the supermajority requirements amounted to a minority veto (Jarvis 2009). The passage of Propositions 25 and 26 did not fundamentally change this situation. Proposition 25 does seem to have relieved the problem of late budgets, but the fundamental truth in modern California politics is that the Republican Party refuses to consider revenue increases in any form, while Democrats object to spending cuts. The public seems to prefer a mix of spending cuts and tax increases, although the public's preferences are not well formed.

### **Will Changes to the Primary System Help?**

In 2010, voters also passed Proposition 14, changing California's primary rules yet again, this time so that the top two primary vote getters, regardless of party, proceed to the general election. What changes will this have on polarization? While still early, the example of the contest for the 36<sup>th</sup> Congressional district this year is informative.

In this solidly Democratic district, five Democrats, six Republicans, one Libertarian, one Peace & Freedom, and three unaffiliated candidates ran in the primary; two of the Democrats were highly qualified candidates: the secretary of state and a Los Angeles councilwoman with deep family political connections. In the primary, one of the high-quality Democratic candidates (Councilwoman Janice Hahn) and a Republican, Craig Huey, from the "Tea Party" wing of the party, got the top two vote shares, and Hahn beat Huey in the general election that followed. Hahn promises to be a fairly liberal Democrat in Congress, and Huey was offering a quite conservative alternative.

This reform to the primary system is unlikely to make much of a difference. Primary elections (especially for the legislature) are low turnout affairs, where the name of the game is more about motivating your supporters to show up than it is about convincing folks to vote. In this competitive primary, 18% of registered voters showed up. Those who vote in legislative primaries are generally more inter-

ested in politics, which means they are more ideologically extreme. Moderation doesn't inspire turnout.

Simply put, the pressures that made legislators more polarized existed outside of their districts, and they existed, in a real sense, outside of the elections in those districts. Two-party primaries helped bring about the nomination and election of ideologically extreme candidates, but the candidates need to choose to run, interest groups need to choose to fund them, and party leaders need to encourage and endorse them. All of these factors are external to the primary process.

As the 36<sup>th</sup> District special election showed, regardless of the primary system, the general election is going to feature a conservative Republican running against a liberal Democrat. The top-two system could generate more moderation if two members of the same party get to run in the general. But if this didn't happen in the heavily Democratic 36<sup>th</sup> district, it is unlikely to happen outside of the most overwhelmingly Democratic districts (no districts are that overwhelmingly Republican).

We have to recognize that the top-two primary solves the problem of polarization from the wrong side, at least from the perspective of passing budgets. The problem really isn't that there aren't enough Democratic moderates to pass budgets; it's that there aren't enough Republican moderates. While this may seem, as much of this piece does, to privilege the Democratic Party, we must remember: this

is a solidly Democratic state. The question is not how can California pass budgets that the majority of Republicans support because Republicans are a distinct minority.

### **Conclusion**

The lines drawn by the CRC are slanted in favor of the Democrats. It is likely that, in good years for their party, Democrats would get elected to a two-thirds majority in both chambers, with the Senate being more likely than the Assembly. The lines only marginally increase the number of competitive districts, so it is unlikely the lines will produce even one more moderate willing to cross party lines. Propositions 25 and 26 combined to push the legislature to produce a timely budget this year, but the budget negotiations and the final product still is largely dysfunctional and done through smoke-and-mirrors accounting tricks.

The problem is the two-thirds rules and the voters. In 2009, my analysis was that voters would not be willing to change those rules, based on the history of attempts to change them (Jarvis 2009). In 2010, voters both confirmed (Prop. 26) and refuted (Prop. 25) that assessment. Voters still seem committed to the idea that taxes should remain low and be difficult to increase. But, even after a decade of difficult budgets in Sacramento, voters seem committed to spending on social programs. Given these irreconcilable preferences, what is the state to do?

The new lines will likely deliver a supermajority to the Democrats at some point in the next decade.<sup>7</sup> That supermajority would be able to pass policies that voters claim to support: a mixture of tax increases and spending cuts. The new districts have a roughly neutral impact on representation at the individual legislator level, with Republican legislators representing voters that now are more Republican, but with Democrats likely to represent districts that have a few more Republicans in them than the old districts had.

Two year ago, I argued that the costs of poorer representation at the district level were more than offset by increased representation of the statewide electorate's preferences for both budget priorities and punctuality. Changes since then have slightly lessened the gains to be made for punctuality. Democrats are now able, as the majority party, to make budgetary cuts where they wish, and were a budget surplus to somehow emerge, to spend money where they choose.

But it remains true that a minority party with no statewide elected officials can dictate the overall size of the budget by having a veto over tax increases. This hardly seems like a democratic outcome. Then again, neither does hoping that a gerrymander produces overrepresentation for the majority party to overcome this scenario.

## References

- Buchler, Justin. 2009. "Redistricting Reform Will Not Solve California's Budget Crisis." *California Journal of Politics and Policy* 1(1): Article 3.
- Jarvis, Matthew G. 2009. "Redistricting Reform Could Save California from Itself." *California Journal of Politics and Policy* 1(1): Article 2.
- McGhee, Eric. 2009 "Reflections on "Redistricting and Legislative Partisanship." *California Journal of Politics and Policy* 1(1): Article 1.

## Notes

<sup>1</sup> Interested readers should consult Buchler 2009, Jarvis 2009, and McGhee 2009 for some relevant statistics and examples.

<sup>2</sup> Redistricting Partners, Inc. is not free of controversy (as is normal for anyone involved in the high-stakes game of redistricting). They are a Democratic-leaning firm. They are using data from the Statewide Database, housed at UC Berkeley. The data Statewide Database makes available use a statistical method to impute data to the census block level, to account for both the fact that precincts do not overlap well with census blocks, and for errors in the census data themselves.

<sup>3</sup> Meaning the average across the new districts, rather than the statewide totals.

<sup>4</sup> These data come from Field Poll Release #2368.

<sup>5</sup> Again, as a poll measuring opinions on budgeting, it is inevitably flawed. For example, this question did not give voters the option to prefer running deficits. While that would require a change to the state

constitution, it can hardly be argued that voters cannot have such a preference, even if few would likely admit to it.

<sup>6</sup> The lines changed somewhat substantially between the first and final drafts, so legislators at the time the budget passed cannot be said to have known what their new districts would look like. Still, the prospects of a new electorate could have affected the politics of the legislature.

<sup>7</sup> Naturally, a referendum on these lines is both being contemplated, and if successful, would render moot any analysis based on these lines.