Assembly District Maps

Map Showing Assembly Districts in effect from 2001–2011, as Drawn by the Legislature

(under a new law, the 2012 maps were drawn by the Citizens Redistricting Commission)

Chapter VII

Legislators' Districts, Qualifications, Terms, and Compensation

United States Senators

The Constitution of the United States provides that "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years . . ."[1] and that "No person shall be a Senator who shall not have attained to the Age of Thirty years, and been nine years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen."[2] The salary received by United States Senators is $174,000 per year. The President pro Tempore, the Majority Leader, and the Minority Leader of the U.S. Senate each receives $193,400 per year. The President of the Senate (the Vice President of the United States) receives $235,300 per year.[3]

If a vacancy occurs in the representation of this state in the Senate of the United States, the Governor must issue a writ of election to fill the vacancy. However, the Governor may appoint and commission an elector of this state, who possesses the qualifications for the office, to fill the vacancy until his or her successor is elected and qualifies and is admitted to his or her seat by the United States Senate.[4]

Because the Federal Constitution provides that the two United States Senators from California are to be elected from the state at large, there is no apportionment of these districts by the Legislature.

House of Representatives

The United States Constitution provides that Representatives in Congress shall be apportioned among the several states according to their population.[5] In accordance with the 2010 federal census, California is entitled to 53 Representatives in Congress, more than any other state in the Union.

The California Constitution sets forth guidelines which the State Legislature must follow in the formation of the districts from which these Representatives are to be elected.[6]

The Federal Constitution provides that Representatives in Congress must be at least 25 years of age, they must have been citizens of the United States for seven years, and they must be inhabitants of the state from which they are chosen. Their terms of office are two years,[7] and their salaries are set at

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[1] *United States Constitution,* Amendment XVII.

[2] *United States Constitution,* Article I, Section 3(3). The Attorney General has opined that the language in the *Elections Code,* Section 10720, requiring the appointee to be a California elector enlarges upon the qualifications for the office of United States Senator as contained in the United States Constitution and is therefore invalid. 44 *Op. Atty. Gen.* 30.

[3] President Obama, Executive Order No. 13686, December 19, 2014. *See also*, 3 U.S.C. 104. U.S. Office of Personnel Management. Salaries effective January 1, 2015.

[4] *United States Constitution,* Amendment XVII; *Elections Code,* Section 25001.

[5] *United States Constitution,* Amendment XIV, Section 2.

[6] *Constitution,* Article XXI, Section 1.

[7] *United States Constitution,* Article I, Sections 1 and 2.

$174,000 a year. The Speaker of the House receives $223,500, and the House Majority and Minority Leaders each receive $193,400 per year.[8]

Congressional Term Limits (Declared Unconstitutional)

In May 1995, the U.S. Supreme Court struck down the term limits on federal legislators recently added to the Arkansas Constitution. The court held that the individual states do not have the authority "to change, add to, or diminish" the age, citizenship, and residency requirements for congressional service as set forth in Article I of the U.S. Constitution.[9] This action by the court also nullified the similar Congressional term limit provisions adopted by California voters only three years earlier.

In November 1992, California voters had passed Proposition 164, which enacted a limitation on the number of terms a U.S. Senator or Representative from California may serve. This represented an expansion of the scope of term limits from Proposition 140, passed two years earlier, which only acted to limit the terms of elected *state government* representatives.

Under the provisions of Proposition 164 a candidate for the office of U.S. Senator or Member of the House of Representatives was denied access to appear on the ballot if he or she had served either (1) 12 or more of the previous 17 years as a U.S. Senator; or (2) six or more of the previous 11 years as a Representative.[10] All other qualifications for these two elected offices were unaffected by this now-defunct provision.

Senate and Assembly Districts

The Legislature of California is composed of a Senate consisting of 40 Senators and an Assembly of 80 Members, each elected to serve no more than 12 years in either or both houses of the Legislature (see page 101).[11] Such a legislature, composed of two houses, is called bicameral, while a legislature with only one house is known as unicameral. California employs the bicameral system as do 48 other states. Nebraska is the only state in the Union with a unicameral legislature.

The size of the Assembly and Senate has not always been set at 80 and 40 Members, respectively. Membership fluctuated several times in the 1800s: 1850 (36 Assembly/16 Senate); 1851 (63 Assembly/27 Senate); 1853 (80 Assembly/33 Senate); 1861 (80 Assembly/40 Senate). These fluctuations were enacted by statutory changes made in compliance with a formula embodied in the 1850 Constitution. The Constitution of 1879 abolished the old formula and permanently fixed the membership of the houses at 80 Assembly Members and 40 Senators.

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[8] President Obama, Executive Order No. 13686, December 19, 2014. *See also*, 3 U.S.C. 104. U.S. Office of Personnel Management. Salaries effective January 1, 2015.
[9] *U.S. Term Limits v. Thornton* (1995) 115 S.Ct. 1842.
[10] *Elections Code,* Section 8700.
[11] *Constitution,* Article IV, Sections 1, 1.5 and 2.

Reapportionment of Districts

Since 1880, the federal census, taken every 10 years, has been the basis upon which the Assembly, senatorial, and congressional districts have been apportioned.[12]

Prior to the adoption of the 1965 Reapportionment Plan, Senate districts could not be composed of more than three counties, and Assembly districts were based upon population. No county lines could be crossed in the formation of either Senate or Assembly districts, and, in the case of Senate districts, no county, or city and county, could be divided, nor could any county, or city and county, contain more than one district.

1965 Reapportionment

In 1965, the California Supreme Court, prompted by a series of United States Supreme Court decisions espousing the "one man, one vote" principle,[13] and particularly a federal district court ruling holding that California's State Senate was unconstitutionally apportioned,[14] assumed jurisdiction and decided that both the Assembly and the Senate had to be reapportioned on the basis of population.[15] The court established certain criteria to govern the new reapportionment, and also presented an alternative plan, should the Legislature fail to reapportion itself. In compliance with this ruling, the Legislature passed Assembly Bill No. 1 in October 1965, in special session, drawing new Assembly and Senate districts.[16]

While greatly affecting the Senate, this measure called for relatively modest changes in the lower house. For instance, San Francisco's five Assembly districts were reduced to four, and a new one, the 35th Assembly District, comprising parts of Orange and San Bernardino Counties, was created.

Following the reapportionment of the Senate and Assembly, the California Supreme Court in its application of the "one man, one vote" principle, held that the 1961 apportionment of the Congressional districts was repugnant to the provisions of the United States Constitution.[17] Prompted by this decision, the California Legislature in 1967 reapportioned California's Congressional districts in accordance with the guidelines set forth by the United States Supreme Court.[18]

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[12] *Constitution,* Article XXI, Sec. 1. Provision was made in the *1849 Constitution* that an enumeration of the inhabitants of this state should be taken, under the direction of the Legislature, in 1852 and 1855, and at the end of every 10 years thereafter. These enumerations, together with the federal census taken in 1850, and every 10 years thereafter, were to serve as the basis of representation for both houses of the Legislature.

The *Constitution of 1879,* Article IV, Section 6, provided that the federal census of 1880 and every 10 years thereafter be the sole basis for representation, and only those persons excluded from citizenship by the naturalization laws were to be omitted when making such readjustment. This section was amended November 2, 1926, to read "the Census taken under the direction of the Congress of the United States in the year 1920, and every 10 years thereafter, shall be the basis of fixing and adjusting the legislative districts."

[13] The court initiated this series of cases with its decision in *Reynolds v. Sims* (1964) 377 U.S. 533.

[14] *Silver v. Jordan* (S.D. Cal. 1964) 241 F. Supp. 576, *aff'd,* 381 U.S. 415 (1964).

[15] *Silver v. Brown,* 63 Cal.2d 270.

[16] Formerly *Elections Code*, Sections 30100 and 30201 (repealed 1975). For the 1990–2000 Assembly and Senate districts, *see Wilson v. Eu,* 1 Cal.4th 707, 741 (Appendix: Report and Recommendation of Special Masters on Reapportionment).

[17] *Silver v. Reagan,* 67 Cal.2d 452.

[18] *Elections Code,* Section 30000 (repealed 1975). For the 1990–2000 Congressional districts, *see Wilson v. Eu,* 1 Cal.4th 707, 741 (Appendix: Report and Recommendation of Special Masters on Reapportionment).

1971 Reapportionment

As required by the Constitution, in 1971 the Legislature passed bills providing for the reapportionment of Congressional, Senate and Assembly districts, which were presented to the Governor.[19] These bills were subsequently vetoed by the Governor,[20] and as a result of this impasse, the issues were placed before the California Supreme Court.

The court held that the Governor had the authority to veto the reapportionment bills. However, the court, in the case of the congressional plan, was presented with the practical problem of deciding how to provide for the election of the five additional congressional seats to which California was entitled on the basis of the 1970 federal decennial census. In this case, the court held that Assembly Bill No. 16 would serve as the basis for electing California's Congressional representatives for the 1972 elections, as to hold otherwise would have required an extremely costly statewide election to fill the five additional seats and because the U.S. Congress had specifically mandated that the Members of Congress be elected from single-member districts.[21]

However, in the case of the Assembly and senatorial districts, the court found no compelling reason to disregard the veto of the Governor, and held that unless the Legislature enacted valid legislative reapportionment statutes in time for the 1972 elections (i.e., that the Governor does not veto the bills, and that the veto was not subsequently overridden by the Legislature) that the Members of the California Legislature would be elected from the existing districts.

In addition, the court retained jurisdiction to draft new reapportionment plans (for Congressional, Senate and Assembly districts), governing the elections of 1974 through 1980, if valid legislation was not passed by the Legislature by the end of the 1972 Regular Session.[22]

By the end of the 1972 session, the issue of reapportionment had still not been resolved. In 1973 the court indicated that, while it retained and was exercising jurisdiction, it would entertain an application to dismiss the proceedings if valid congressional and legislative plans were enacted.

Accordingly, the Legislature, pursuing a different tack, presented to the Governor a single bill containing proposed California Congressional, senatorial and Assembly districts.[23] Again, however, the Governor vetoed the bill.[24]

The California Supreme Court, having anticipated an impasse similar to the one with which it was confronted in 1972, had, early in 1973, appointed

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[19] 1971 First Extraordinary Session: AB No. 16—Congressional reapportionment; SB No. 2—Senate reapportionment; AB No. 12—Assembly reapportionment.

[20] *Journal of the Assembly, 1971 1st Extraordinary Session,* January 3, 1972, pp. 513–519; *Journal of the Senate, 1971 1st Extraordinary Session,* January 3, 1972, pp. 336–337.

[21] 2 U.S.C.A. 2(c).

[22] *Legislature v. Reinecke,* 6 Cal.3d 595. The court also held that the Reapportionment Commission, as constituted by Article IV, Section 6, of the California Constitution, has no jurisdiction to reapportion the Legislature.

[23] Senate Bill No. 195, *1973–74 Regular Session.*

[24] *Journal of the Senate, 1973–74 Regular Session,* June 27, 1973, pp. 3866–70.

Special Masters and a staff to prepare reapportionment plans for the various districts involved. The plan, with minor variations, was adopted by the Supreme Court as the basis for the new districts for the 1974 elections.[25]

1981 Reapportionment

In 1981, legislation was enacted creating new Congressional, Assembly and senatorial districts.[26] The plans adopted were not acceptable to most of the Republican members and a referendum drive was launched almost immediately after the bills were signed by the Governor.

On December 15, the Secretary of State announced that the referendum petitions contained the requisite number of signatures (5 percent out of all the votes cast for Governor at the last gubernatorial election) to place them on the ballot.

In the meantime, four separate suits had been brought against the chairmen of the California Republican Party and the Republican National Committee attacking the referendum petitions and asking the Supreme Court of California to use the newly formed districts in the 1982 elections.[27] The Supreme Court consolidated the proceedings and rendered its decision on January 28, 1982.

The court found merit in the petitioners' contention that the referenda contained substantive violations of statutory law, but held that the court's policy of liberally construing the power of referendum should be continued. The court decided that, although the referenda did not strictly comply with the legal requirements,[28] these defects were not sufficient to overcome the court's predilection to preserve the constitutional power of referendum and, therefore held the referendum valid. The Secretary of State was directed to place it on the June 1982 primary ballot.

On the question of which districts were to be used for nominating Assembly, Senate and Congressional candidates for the June primary and the members-elect in November; the court was presented with a dilemma. The court found it necessary to weigh one constitutional provision against another, i.e., the peoples' referendum power in the California Constitution[29] versus the "equal protection" clause of the Federal and State Constitutions and the California Constitutional directive that the *Legislature* establish Assembly, Senate and Congressional district boundaries.[30]

In reaching its decision, the court rejected the solution of conducting the elections in the *old* Assembly and Senate districts; which a previous court had reached. The court felt that the existing districts were too malapportioned as a result of population shifts occurring in the 1970s to serve as the basis for the 1982 elections. Justices concluded that the equal protection (one man, one vote) considerations were the more compelling of the competing

[25] This ultimate "plan" took shape through a series of four Supreme Court decisions: *Legislature v. Reinecke,* 6 Cal.3d 595; *Brown v. Reagan,* 7 Cal.3d 166; *Legislature v. Reinecke,* 9 Cal.3d 166; and *Legislature v. Reinecke,* 10 Cal.3d 396.

[26] *Elections Code,* Sections 30030–30032 (repealed 1994) and *Statutes of 1981,* Chapter 590 (Congress); *Elections Code,* Sections 30010–30012 (repealed 1994) (Assembly); *Elections Code,* Sections 30020–30023 (repealed 1994) (Senate).

[27] *Assembly of the State of California v. Deukmejian,* 30 Cal.3d 638.

[28] *See Elections Code,* Section 9020.

[29] *Constitution,* Article II, Section 10(a).

[30] *United States Constitution,* Amendment XIV; *Constitution,* Article I, Section 7 and Article XXI, Section 1.

constitutional imperatives and decided (4 to 3) that the 1981 legislation would be the basis for electing Assembly Members, Senators and California's Representatives in Congress in the 1982 primary and general elections.

The referendum was successful, and as a result the 1981 reapportionment plans were rejected and inoperable for elections after 1982.[31] When the 1983–84 Legislature reconvened for the regular session, the Governor issued a proclamation convening the 1983–84 First Extraordinary Session to consider again the questions of reapportioning Assembly, Senate and Congressional seats.[32]

The Legislature responded by enacting new reapportionment plans for Assembly, Senate and Congressional districts.[33] The bill affecting Assembly and Senate districts contained an urgency clause causing the bill to take effect immediately, thereby forestalling any referendum attempt.

With the referendum alternative denied, the opponents instigated a successful initiative petition. The initiative redrew the district boundaries contained in the latest legislatively approved districts.[34] The Governor subsequently called a special election to present the initiative to the electorate.[35] However, the Legislature and 28 members of California's congressional delegation petitioned and attacked the constitutionality of the initiative in the Supreme Court. The Supreme Court agreed with the petitioners.[36] The court found that, under Article XXI of the California Constitution, redistricting could occur only once during the 10-year period following the decennial census and that the Legislature had accomplished such redistricting, and, therefore, a second redistricting plan, even though proposed by initiative, could not be submitted to the voters. As a result, the California Members of Congress and the Members of the State Legislature were elected from districts created by the legislation passed in the 1983–84 First Extraordinary Session.

1991 Reapportionment

The decennial federal census conducted in 1990 began a familiar series of events on the road to redrawing district lines in California for Assembly, Senate, Board of Equalization and congressional districts.

In the closing months of 1991, the Legislature finalized and passed three different plans to redraw Assembly, Senate and Board of Equalization districts, and to provide for the seven new congressional seats to which California was entitled as a result of population growth.[37] All three of the bills were passed on partisan lines; all three were vetoed by the Governor.[38]

[31] *Propositions 10, 11 and 12,* June 8, 1982 direct primary election.
[32] *Journal of the Assembly, 1983–84 First Extraordinary Session,* December 6, 1982, p. 3; and *Journal of the Senate, 1983–84 First Extraordinary Session,* December 6, 1982, p. 2.
[33] Statutes of 1983–84 First Extraordinary Session, Chapters 6 and 8.
[34] The initiative was dubbed the "Sebastiani Plan" after its main proponent, Assemblyman Don Sebastiani.
[35] Governor's Proclamation, issued pursuant to *Constitution,* Article II, Section 8(c); *Elections Code,* Sections 12000 and 10700, filed July 17, 1983. The election was set for December 13, 1983.
[36] *Legislature of the State of California v. Deukmejian,* 34 Cal.3d 658.
[37] 1991–92 Regular Session, AB No. 2239, SB Nos. 287 and 587. Each individual bill contained a complete set of district lines for Assembly, Senate, Congress and Board of Equalization districts.
[38] *Journal of the Assembly, 1991–92 Regular Session,* September 23, 1991, p. 4845; *Journal of the Senate, 1991–92 Regular Session,* September 23, 1991, pp. 4456–4459.

Despite there being just seven months until the primary elections scheduled for June 1992, California was once again without a constitutionally valid set of districts.

As in previous years, the issue was brought before the State Supreme Court. On September 25, just two days after the Governor's veto of the three reapportionment bills, the Supreme Court announced its intent to appoint a panel of Special Masters to take on the task of redrawing district lines.[39] In making its decree, the court recalled its similar actions in 1973 and cited as justification its responsibility for ensuring that the protections of the federal Voting Rights Act and principles of equal protection were extended to all Californians.

Though the court noted the similarities between its actions here and the events of 1973, one fact in this case stood in contrast to that previous year. Where the court had given the 1973 Special Masters five months to prepare their report, the 1991 panel would have only two. This compressed time period, the court noted, was necessitated by a key statutory deadline before which the new district information for the June primary had to be in place.[40]

Over the next two months, the Special Masters studied the issue, taking public testimony at hearings in Sacramento, San Francisco, San Diego, and Los Angeles. Aided by the considerable advances in computer technology since 1973, the Special Masters were able to redraw all the district lines and complete their assignment on time by submitting their report to the Supreme Court on November 29, 1991. On January 27, 1992, with just 22 days remaining until the deadline, the Supreme Court formally adopted, with minor modifications, the plans submitted by the Special Masters.[41]

2001 Reapportionment

The redrawing of district lines in 2001 was remarkable for its lack of partisan conflict. After Senate and Assembly committees held a combined 13 hearings around the state to gather public input, proposed district lines were released in late August. Those proposed district lines were the subject of two additional days of public hearings on September 4 and 5, held in Sacramento with video teleconference hookups at various locations around the state.

A week later, the Congressional, Senate, Assembly, and Board of Equalization districts were finalized and approved by the Legislature.[42] Assembly and Board of Equalization districts were approved unanimously (40–0) by the Senate and 71–8 by the Assembly, with 3 Democrats and 5 Republicans voting "no." Senate and Congressional districts were approved by a vote of 62–10 in the Assembly and 38–2 in the Senate. All "no" votes on the Senate and Congressional districts were cast by Democrats. The new

[39] *Wilson v. Eu,* 54 Cal.3d 471.
[40] *Elections Code,* Section 12101. Requires the Secretary of State to notify each county clerk of all offices in each district to which candidates may be nominated.
[41] *Wilson v. Eu,* 1 Cal.4th 707.
[42] AB 632 (Cedillo), Chapter 348, Statutes of 2001, contained district lines for Senate and Congressional districts. SB 802 (Senate Committee on Elections and Reapportionment), Chapter 349, Statutes of 2001, contained district lines for Assembly and Board of Equalization districts.

district lines were approved by Governor Davis two weeks later. Unlike in years past, there were only a few court challenges to the new districts, and all challenges were ultimately unsuccessful.

Since the adoption of these lines, there have been a number of unsuccessful efforts to remove reapportionment from the hands of the Legislature. Those efforts gained momentum when Governor Schwarzenegger took up the cause in late 2004, and Proposition 77 qualified for the ballot in 2005 that would require Congressional, Senate, Assembly, and Board of Equalization districts to be drawn by a panel of three retired judges. Proposition 77 would have required new districts to be drawn in time for the 2006 elections. The proposition was defeated by voters in a special election in November 2005.

2011 Reapportionment

In November 2008, California voters passed Proposition 11 (the Voters FIRST Act), transferring the responsibility of redistricting to the Citizens Redistricting Commission. In November 2010, voters passed Proposition 20, which gave the Commission the added responsibility of redrawing Congressional district lines. The 14-member Commission is empowered with redrawing the state Assembly, Senate, Board of Equalization, and Congressional district lines according to nonpartisan rules based on the 2010 census.

The Voters FIRST Act requires the State Auditor to develop regulations to implement the Act every 10 years. As a result, the State Auditor established an application and selection process. Before any commissioners were selected, a three member Applicant Review Panel was randomly selected from the State Auditor's office on November 16, 2009. The first stage of the commissioner applicant process ended on February 16, 2010, followed by the supplemental application process that ended on April 16, 2010. Nearly 31,000 Californians applied to become commissioners.

The Applicant Review Panel was tasked with reviewing all of the applications and identifying 120 of the most qualified applicants (40 Democrats, 40 Republicans, and 40 decline-to-state or another party). In 2010, the 120 applicants were interviewed and 60 were selected (20 Democrats, 20 Republicans, and 20 decline-to-state or another party). The names of the selected applicants were submitted to the Assembly Speaker, the Assembly Minority Leader, the President pro Tempore of the Senate, and the Senate Minority Leader. The State Auditor submitted the names of the selected applicants to the Legislature on September 29, 2010. Each legislative leader was given the option to remove two applicants from each pool by November 15, 2010. The Assembly held a public hearing on October 20, 2010, to review these candidates. On November 10, 2010, the two leaders of each house met to strike applicant names pursuant to the law. Under the provisions of Government Code Section 8252(e), the Assembly Chief Clerk and Secretary of the Senate jointly presented the remaining applicant names to the Bureau of State Audits on November 12, 2010. The following week, on November 18, 2010, the State Auditor randomly selected the names from the remaining

candidates (3 Democrats, 3 Republicans, and 2 applicants who are neither). These initial 8 commissioners then selected 6 more commissioners from the remaining applicants (2 from each pool) by December 31, 2010.

The Commission will serve for 10 years starting with the first selected commissioner. The terms of the commissioners will end when the first commissioner of the subsequent Commission is selected no later than November 20, 2020. Initial maps were unveiled in June 2011; final maps were due by August 15, 2011. The maps define the boundaries of all 40 Senate districts, 80 Assembly districts, four Board of Equalization districts, and all 53 of California's Congressional districts. Final maps are subject to voter referendum and Supreme Court intervention in certain cases outlined in the law.

The Constitution states that the final district maps must be approved by at least nine affirmative votes, which must include at least three votes of members registered from each of the two largest political parties in California and three votes from members who are not registered with either of these two political parties.[43] The district maps were successfully approved by a supermajority of the commission. The maps were legally challenged on multiple occasions, but the California Supreme Court and the United States Department of Justice upheld the newly drawn districts in each case.[44] Additionally, a referendum was placed on the November 6, 2012 ballot as Proposition 40 to overturn the state Senate map, but more than 71% of voters voted in favor of the new map. In 2015, the constitutionality of independent state redistricting commissions was upheld by the U.S. Supreme Court in *Arizona State Legislature v. Arizona Independent Redistricting Commission*.

Qualifications of Members of the Legislature

Members of the Senate and Assembly must be over 18 years of age and be citizens of the United States and of California. Although the state Constitution imposes residency requirements on legislative candidates, these provisions conflict with federal court decisions and are therefore unenforceable.[45]

The Constitution provides that each house shall judge the qualifications and elections of its Members.[46]

In 1911, women were granted the right to vote in California,[47] although women's suffrage was not included in the Federal Constitution until 1920, when the 19th Amendment was ratified by the states. This amendment provides that "the right of the citizens of the United States to vote shall not be

[43] *Constitution*, Article XXI, Section 2(c)(5).

[44] In *Vandermost v. Bowen (2012)*, the California Supreme Court upheld that the state Senate map drawn by the Commission shall be used in the 2012 election. Two other similar petitions and an emergency stay were denied by the court. In the case of the Congressional map, the U.S. Department of Justice ruled that new districts did not dilute minority voting power in four counties within federal oversight under the federal Voting Rights Act of 1965.

[45] *Constitution,* Article IV, Section 2(c). The *Constitution of 1849,* Article IV, Section 5, provided that a Member of the Legislature was required to be a citizen and inhabitant of the state for one year and of the county or district from which he was chosen for six months preceding his election. An amendment in 1862 upped the residence requirement to one year in the county or district from which he was to be chosen. The California Constitution currently imposes a three-year "in-state" residency requirement, and a one-year "in-district" residency rule for legislative candidates. These restrictions are federally unconstitutional. Legally, a candidate must merely "be a registered voter and otherwise qualified to vote for that office at the time nomination papers are issued." Letter from Secretary of State to Assemblyman Gil Ferguson, Dec. 19, 1989. *See also*, *Woodlock v. Eu,* Superior Court, Sacramento County (1986), No. 338299.

[46] *Constitution,* Article IV, Section 5.

[47] *Constitution,* Article II, Section 1 (Amendment of 1911). *See now, Constitution,* Article II, Section 2. Statewide suffrage was first granted to women in 1869 in Wyoming.

denied or abridged by the United States or by any State on account of sex." The 19th Amendment did not confer upon women the right to vote, but it did prohibit the various states from discriminating against them in suffrage qualifications.

In 1918, four women (Esto Broughton, Grace Dorris, Elizabeth Hughes, and Anna Saylor) became the first women to serve in the California State Legislature, after they were successfully elected to the Assembly. Orfa Jean Shontz, elected to the Board of Equalization in 1934, was the first female constitutional officer. Ivy Baker Priest was the first woman elected to a statewide office (State Treasurer, 1966).[48] When Senator Rose Ann Vuich was elected in 1976, she became the first woman ever to serve in the California State Senate.

The Women's Legislative Caucus was not established until 1985. Assemblywoman Teresa Hughes served as the first Chairwoman of the caucus with Senator Rose Ann Vuich serving as the Vice Chairwoman.

California Term Limits

Proposition 140 of 1990

In November 1990, California voters narrowly passed Proposition 140, an amendment to the California Constitution limiting the terms of state constitutional officers and Members of the Legislature.[49] Proponents of the measure argued that term limits would end the "unfair incumbent advantage" that discourages qualified candidates from seeking public office. Those in opposition responded, in part, that Proposition 140 would take away a voter's right to elect the public official of his or her choice.

Under Proposition 140, Senators are restricted to two four-year terms and Members of the Assembly to three two-year terms.[50] The limitation is a lifetime ban and applies to any Member elected after November 1990. If a candidate is elected to fill more than half the remaining term of a previously elected Member, that entire term will be counted toward the candidate's total allowable number of terms.[51] Legislators first elected in 2012 or after are subject to the new term limits law (Proposition 28), which is described in the next section.

In April 1997, a federal district court ruled that the term limits imposed by Proposition 140 were in violation of the United States Constitution. This decision was later upheld by a three-judge panel of the Ninth Circuit Court of Appeals, which agreed that Proposition 140 should not be enforced, but for entirely different reasons. The district court had ruled that the "lifetime ban" on legislative service violated incumbents' federal rights, whereas the appellate panel found that the proposition did not provide California voters with

[48] Priest had served as the first female U.S. Treasurer under President Eisenhower.

[49] Secretary of State, *Statement of Vote and Supplement, November 6, 1990, General Election,* p. 14. There were 3,744,447 votes for (52.2%) and 3,432,666 votes against (47.8%) the measure. The constitutionality of Proposition 140, with the exception of limits on vested legislative retirement benefits, was upheld by the California Supreme Court. *Legislature v. Eu,* 54 Cal.3d 492. On March 9, 1992, the U.S. Supreme Court refused to review the California Supreme Court's decision. *Legislature v. Eu,* 503 U.S. 919, 112 S. Ct. 1292 (certiorari denied).

[50] *Constitution,* Article IV, Section 2.

[51] *Constitution,* Article XX, Section 7.

sufficient notice that the measure imposed lifetime (rather than consecutive) term limits, and therefore the law was invalid. Term limits had now been declared void by two separate courts, but one more court ruling would actually determine the fate of Proposition 140.[52]

In November 1997, the Ninth Circuit commenced an *en banc* review of the entire case. In December, the *en banc* panel reversed the two prior court decisions, declaring that "Proposition 140 makes no distinction on the basis of the content of protected expression, party affiliation, or inherently arbitrary factors such as race, religion, or gender," and therefore does not impinge on the federal rights of incumbents. The judges opined that "entrenched legislators may obtain excessive power," which justified the imposition of term limits as adopted by the voters. Term limits thus remain in force.

The courts ruled on how terms are counted under the provisions of Proposition 140. Former Assembly Member Doris Allen filed a Declaration of Intention to run as a candidate in the June 1998 primary, even though she had been elected to three terms in the Assembly. Allen argued that since she had been recalled in the middle of her third term (November 1995), she had not "served" a full three terms, and could therefore run for the Assembly again. The Secretary of State disagreed, and refused to certify Allen as an eligible candidate on the grounds that Allen had already been "termed out" under the provisions of Proposition 140. On March 6, 1998, a trial court ruled in Allen's favor, ordering the Secretary of State to certify her as a candidate. Allen lost the primary, but the legal battle continued. The Court of Appeals reversed the lower court's ruling on December 31, 1998. The appellate court ruled that any portion of a term served by a Member of the Legislature counts as a full term as defined by Proposition 140. If the lower court's ruling had remained in effect, legislators could have repeatedly run for reelection, resigning shortly before the end of their term each time so as to not have the term counted against them, thwarting the spirit of term limits. The court argued that "such wholesale evasion would be absurd, therefore we reject the interpretations which would allow it."[53]

Other provisions of Proposition 140 (not addressed in above court cases) limit the state in paying the employer's share for any legislator to participate in a retirement system. With the exception of "vested" retirement benefits, the measure prohibits the accrual of any additional pension or retirement benefits. Alternatively, Members are allowed to participate in the federal Social Security program.[54]

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[52] The suit was filed by former Assembly Members Tom Bates and Barbara Friedman, incumbent Assembly Member Martha Escutia, and several of their constituents. The district judge ruled that the lifetime term limits "impose a severe burden on Plaintiff's First and Fourteenth Amendment rights of voting and association." *Bates v. Jones,* 958 F.Supp.1446 (N.D. Cal. 1997). After a three-judge appellate panel affirmed the district court decision (*Jones v. Bates,* 127 F.3d 839 (9th Cir. 1997)), a majority of the active judges of the full appellate court then voted to rehear the case by an 11-judge "en banc" panel. This en banc panel reversed the previous district and appellate decisions, declaring term limits to be constitutional (*Bates v. Jones,* 131 F.3d 843).

[53] "The term limitation of Proposition 140 is a lifetime limitation: If plaintiff were allowed to serve again, she would serve more than three terms in her lifetime, and that result would defeat the purpose and intent of her earlier recall. Hence, Proposition 140 is properly read to impose three terms as an absolute maximum. . . Furthermore, Proposition 140 provides for only one limited exception to this absolute limitation, i.e., election to an unexpired term when the remainder is less than half of the full term, which did not cover the plaintiff's situation." *Schweisinger v. Jones* (1998) 68 Cal.App.4th 1320, 81 Cal.Rptr.2d 183.

[54] *Constitution,* Article IV, Section 4.5.

Proposition 140 also had a dramatic impact on the Legislature by drastically reducing the legislative operating budget by approximately 40 percent. The Legislative Analyst's Office had estimated that legislative expenditures for the fiscal year following passage of the initiative would be reduced $77.7 million. After the passage of the measure, this 40% reduction was implemented, resulting in massive layoffs in both houses of the Legislature and the premature retirement of many experienced and talented professional staff.[55] The initiative established a spending formula to control the future growth of the Legislature's operational budget. As a result, the Legislature's annual operating budget is now automatically set by a constitutional formula tied to population growth and changes in the cost of living.[56]

The term limit provisions additionally preclude the Governor, Lieutenant Governor, Attorney General, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, and members of the Board of Equalization from serving more than two four-year terms in office.[57] Comparable restrictions, however, on retirement benefits and operating budgets are not applicable to these constitutional officers.

Prior to the 1993–94 session, the Insurance Commissioner was not subject to term limits, because that office was not included within the scope of Proposition 140. The Legislature passed a law in 1993, however, to subject the Insurance Commissioner to a limit of two four-year terms.[58]

Term limits dramatically impacted California politics. During the Proposition 140 era (1990 through 2012), almost 30 new Members were elected to the State Assembly every two years, and several new legislators have joined the Senate as well. Numerous special elections have been held, as incumbents leave their current positions to pursue openings in the other house, in Congress, or in local government. For example, 30-year legislative veteran Willie L. Brown, Jr., who served as Assembly Speaker for a record 15 years, left the Assembly one year before being "termed out," so that he could be sworn in as Mayor of San Francisco. The vacant Assembly seat was filled by special election a few months after he was sworn in as Mayor.

The dramatic turnover rate was applauded by some and criticized by others. Opponents of term limits argued that the "institutional memory" and effectiveness of the Legislature were stripped away, leaving new legislators at risk of being excessively influenced by lobbyists and the executive branch. On the other hand, term limit supporters argued that a high turnover rate provides the Legislature with "citizen politicians" who are more in touch with the issues of their district, and are less concerned with their own political careers. Regardless of these opinions, it is a fact that term limits have significantly

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[55] Compiled from, *After the Election: Analysis of Successful Propositions on the November 1990 Ballot,* California Senate Office of Research, pp. 14–15.

[56] *Constitution,* Article IV, Section 7.5, limits legislative operational expenditure growth to an amount equal to the percentage change in the state's appropriations limit established in Article XIII B. The legislative operating budget is the smallest of the three branches of government.

[57] *Constitution,* Article V, Sections 2 and 11; Article IX, Section 2; Article XII, Section 17.

[58] *Statutes of 1993,* Chapter 1227.

impacted California's Legislature. There were several attempts over the years to modify the term limits law in California, but all failed until Proposition 28 was adopted in 2012.[59]

Proposition 28 of 2012

With the passage of Proposition 28 in 2012, there are now two different term limits laws that apply to legislators, depending on when they were first elected. Any person that served in the Legislature prior to 2012 is still subject to the limitations of Proposition 140: three Assembly terms; two Senate terms. Under Proposition 140, a partial term is not counted if the legislator served less than half a term.

Any person first elected in 2012 or after is subject to the new Proposition 28 limitations. Unlike Proposition 140, which restricted the number of *terms* a person can serve in each *house*, Proposition 28 restricts the total number of *years* that can be served in the *Legislature* (Proposition 28 established a lifetime limit of 12 years total legislative service for anyone first elected in 2012 or after).[60] Furthermore, Proposition 28 allows a person to serve a total of 12 years in the Assembly, the Senate, or a combination of both. Under the plain language of Proposition 28 and its accompanying ballot arguments, anyone first elected in 2012 or after is subject to the hard cap of 12 years maximum service in the Legislature regardless of partial terms. In other words, a Member elected to a partial term does not qualify for an additional term since it would extend their service beyond the 12-year constitutional limitation.

By allowing longer service in a single house, this new term limits law is aimed at stabilizing the membership turnover of the two houses, which has led to a substantial increase in resignations, special elections, and a loss of institutional memory. Supporters of Proposition 28 theorize that the increased tenure in each house will provide legislators more time to learn the complexities of public policy and strengthen the legislature as a co-equal branch of government.

Compensation of Members

The Members of the first Legislature received $16 per diem and $16 mileage for every 20 miles traveled to and from the State Capitol, then located at San Jose.[61]

The Constitution of 1879 provided for per diems not to exceed $8, mileage not to exceed 10 cents per mile, and contingent expenses not to exceed $25 for each session.

In 1908, the Constitution was amended to provide compensation of $1,000 each for each regular biennial session, and $10 per diem for extraordinary or

[59] Proposition 45 (2002), Proposition 93 (2008).

[60] *Constitution*, Article IV, Section 2 (a)(4) reads as follows: "During her or his lifetime a person may serve no more than 12 years in the Senate, the Assembly, or both, in any combination of terms. This subdivision shall apply only to those Members of the Senate or the Assembly who are first elected to the Legislature after the effective date of this subdivision and who have not previously served in the Senate or Assembly. Members of the Senate or Assembly who were elected before the effective date of this subdivision may serve only the number of terms allowed at the time of the last election before the effective date of this subdivision."

[61] *Constitution of 1849,* Schedule, Section 15; *Statutes of 1850,* Chapter 16.

special sessions (not to exceed 30 days), mileage not to exceed 10 cents per mile, and contingent expenses not to exceed $25 per member for each regular session.

The next change in legislators' compensation was made by a 1924 constitutional amendment which provided that they each receive $100 per month during the terms for which they were elected, and mileage not to exceed 5 cents per mile. No allowance for contingent expenses was made.

In 1949, the Constitution was again amended, increasing the monthly salary to $300 during the term for which the Members were elected.

In 1954, the Constitution was amended to provide that each Member of the Legislature receive for his or her services the sum of $500 for each month of the term for which he or she was elected.[62]

Legislative salaries on an annual basis were first enacted as a result of a constitutional amendment and passage of a statute by the Legislature in 1966, and were set at $16,000 per annum. From 1966 until 1988, this annual amount was increased by way of amendments to the statute that were passed by the Legislature, and the annual amount rose from $16,000 to $40,816.

In 1990, the voters passed Proposition 112 which amended the Constitution to establish and confer salary setting authority on the California Citizens Compensation Commission.[63] This seven-member commission was given the authority to set the salaries of legislators and elected statewide officers by way of a resolution adopted by a majority of the members at the end of each fiscal year. Voters adopted Proposition 1F (May 2009), which prohibited the Commission from increasing legislator salaries during budget deficit years.

In May 2009, the Compensation Commission voted to reduce the salaries of legislators and statewide officers by 18%. This was the first time in history that the Commission reduced salaries. The following month, in another unprecedented action, the Commission voted to reduce legislator per diem by 18%.[64] The legality of this action was immediately questioned and in an opinion to the State Controller dated September 15, 2011, the Attorney General stated that the commission did not have the authority to establish "legislative travel and living expenses" because they are specifically governed by Government Code Sections 8902 and 8903, not by the commission. The commission did not include a per diem rate for Members of the Legislature in its resolution, which became effective on December 2, 2013. Consequently, the rate established by the commission expired on December 1, 2013.

As of December 2015, the salaries of legislators are $100,113 per year. The Assembly Speaker, the President pro Tempore of the Senate, and the Minority Leaders of each house each receive a higher salary of $115,129 per year. The Majority Floor Leaders of each house and the Second Ranking Minority Leaders in each house each receive $107,621.[65]

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[62] Formerly, *Constitution,* Article IV, Section 4.

[63] *Constitution,* Article III, Section 8.

[64] In June 2009, the Commission voted to reduce the State contribution for health insurance benefits, automobile allowances, and per diem for legislators. Questions were raised as to the constitutionality of these actions, as the Commission has never before exercised authority in these areas. *See* CCCC Salary and Benefit Resolutions, May 20, 2009, June 16, 2009, and June 30, 2009.

[65] See CCCC Salary and Benefit Resolution, May 11, 2015.

Proposition 112 of 1990 also amended the Constitution to require that no Member of the Legislature is to accept any honorarium, that the acceptance of gifts that might create a conflict of interest be strictly limited or banned altogether, and that the Legislature enact laws to implement these provisions.[66] Subsequent legislation codified the prohibition of acceptance of honoraria by elected state officers and limited acceptance of gifts in any year from a single source to a specified maximum value.[67]

Each Member is allowed and reimbursed for living expenses (per diem) incurred while attending regular and extraordinary sessions of the Legislature or attending committee meetings, legislative functions or for legislative responsibilities as authorized by the respective Rules Committees. Under the Government Code, the California Victim Compensation and Government Claims Board establishes the per diem rate for legislators.[68] Such per diem may equal, but not exceed, the rate provided to federal employees traveling to Sacramento. At the present time, the Members are entitled to an allowance of $176 per day.[69]

The law also provides that Members of the Legislature, when traveling to and from sessions of the Legislature, committee meetings, legislative functions or responsibilities as authorized by the respective Rules Committees, are entitled to their actual travel expenses incurred when traveling by common carrier, or $0.53 per mile if traveling by private conveyance. No travel expense is allowed when traveling in a vehicle owned or provided by a public agency.[70]

Under Proposition 25 (adopted in 2010), legislators' salaries and per diem payments are forfeited each day the Legislature exceeds the June 15 constitutional deadline to pass the state budget. This new law raised constitutional questions in its first year of application: in 2011, the Legislature passed a Budget Bill by majority vote and delivered it to the Governor by the June 15 constitutional deadline (Article IV, Sec. 12(h)). The Governor vetoed the bill the following day. Even though the Budget was delivered on time, the Controller withheld legislators' pay, arguing that the Budget Bill delivered to the Governor was not balanced, as required in Article IV, Sec. 12(g). The Controller docked legislative pay and per diem during a 13-day stalemate. Another Budget Bill was passed on June 28, ending the budget stalemate.

Legal questions were raised as to the scope of the Controller's role in the forfeiture of legislator pay when a Budget was passed on time but deemed by the Controller to be unbalanced. Some legislators argued that the Controller's role is simply ministerial and s/he has no power to assess the constitutional viability of a Budget passed by the Legislature. The Controller argued that he had the duty to analyze the fiscal soundness of the Budget passed by the

[66] *Constitution,* Article IV, Sections 5(b) and 5(c).

[67] *Government Code,* Sections 89500–89506. The annual gift limit, which was $250 at its inception in 1991, is adjusted according to the Consumer Price Index every odd-numbered year.

[68] *Government Code,* Section 8902. Formerly the State Board of Control, renamed in 2000, pursuant to *Government Code,* Sections 13900 and 13901.

[69] Pursuant to a resolution passed by the VCGCB, effective July 20, 2009, the Board no longer passes an annual resolution to establish legislative per diem rates. Instead, the rate shall match the U.S. General Services Administration for federal employees traveling to Sacramento. Effective October 1, 2015, this rate was $176 per day. *Government Code*, Section 8902; *Joint Rule 35. Constitution*, Article IV, Section 4(b).

[70] *Government Code,* Section 8903; *Joint Rule 35*. On April 14, 2011, the Citizens Compensation Commission voted to provide a $300 per month car allowance for legislators, replacing the State-paid vehicle and gas card. The Legislature did not implement this unprecedented policy.

Legislature, although this authority could not be invoked once the Governor signed a Budget. A group of legislators requested a legal opinion from the Attorney General to determine the scope of the Controller's authority in the forfeiture of legislative pay and per diem. The courts later ruled that the Controller overstepped his authority during the budget process of 2011, when he withheld legislative salaries during the budget impasse. The appeals court affirmed the trial court's ruling that "the Controller does not have the authority to make an independent assessment that the budget bill is not in fact balanced… and on that basis withhold the salaries of legislators as a penalty for failing to enact a timely budget."[71]

[71] *Steinberg v. Chiang* (2014) 223 Cal.App.4th 338.