

Alert | California Government Law & Policy



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California Election Update: November 2018

Overview

Candidate and independent expenditure committees spent over \$1 billion, and more than six in 10 registered voters turned in their ballots, making California's 2018 midterm election cycle one for the record books. With every statewide constitutional office, one U.S. Senate seat, every member of Congress (including a handful of battlegrounds), and 100 of 120 state legislative seats on the ballot, along with several hotly contested ballot measures, there were plenty of reasons to vote and spend.

At the top of the ballot, voters re-elected U.S. Senator Dianne Feinstein to her sixth consecutive term and made incumbent Lt. Gov. Gavin Newsom their overwhelming choice for governor. In addition to the top two slots, Democrats captured at least five of the six remaining partisan constitutional offices. There are two down ballot races still too close to call, but they will either be won by a Democrat or no-party-preference (NPP) candidate. Thus, California has still not elected a Republican to statewide office since 2006.

In the battle for the majority in Congress, California voters handed Democrats at least two of the half-dozen Republican seats they hoped to flip, with a strong possibility that two more seats could change hands once all votes are counted.

In the state Legislature, Democrats easily maintained their two-thirds supermajority in the Assembly and could claim as many as 59 of 80 seats when all votes are counted. More significantly, Democrats have almost certainly captured a two-thirds supermajority in the Senate, as current tallies give them 28 of 40 seats.

Although eight million votes have been counted so far, approximately six million remain, including almost one million in Los Angeles County alone. In close races, counting of ballots may not be completed before early December. Past election outcomes suggest that late-counted ballots are likely to move results approximately two percent in Democrats' favor – a troubling prospect for Republican or NPP candidates in close races.

Statewide

Governor. Gavin Newsom was never seriously challenged during what was effectively an eight-year campaign. Recovering from an early misstep during his first year as lieutenant governor, Newsom held off challengers within his own party and easily defeated Republican John Cox. Preliminary results give Newsom a nearly 19 percent margin of victory (59.4 – 40.6) that is likely to grow as all votes are counted.

Newsom's margin of victory is no surprise given Democrats' statewide registration advantage over Republicans of 43.5 percent to 24 percent, and the campaign run by his opponent. In order to win, Cox had to appeal to a critical group of Californians: the 27.5 percent of the state electorate who occupied the political center and registered NPP. Instead, he directed his campaign at the base of conservative Republicans mostly located inland and in suburban California, focusing on issues such as immigration and taxes. Ironically, Cox fared significantly worse in his own race than the ultimately defeated Yes on 6 initiative to repeal the gas tax; the Yes on 6 initiative was central to Cox's campaign, so a substantial number of anti-tax voters must have preferred his opponent.

As governor, Newsom is expected to shift state politics and policy even further to the left, following up on a campaign agenda that included state-sponsored health care, universal preschool, more funding for higher education, and a promise to build 3.5 million new housing units by 2025. Newsom also stands to be more aggressive in taking on the Trump administration and Republicans in Congress, and he may be less vigorous in pursuit of his predecessor's pet projects: climate change, high-speed rail, and the twin tunnels.

Lieutenant Governor. Eleni Kounalakis edged out Ed Hernández in this Democrat face-off, courtesy of California's somewhat unique top two or "jungle primary." Kounalakis is a little-known and never-before-elected businesswoman and former ambassador to Hungary (appointed by Barack Obama). In the end, three things that likely made a difference are her gender, in the wake of another election "year of the woman," personal donations of more than \$3 million to her own campaign, and independent expenditures of more than \$5 million prompted by her family. Although the lieutenant governor position has almost no power and little say in policy matters, it can provide a useful springboard for those who aspire to be governor; look no further than Gavin Newsom for evidence of that.

Attorney General. Incumbent Democrat Attorney General Xavier Becerra consolidated his hold on the office to which he had been appointed approximately two years earlier after the election of Kamala Harris to the U.S. Senate. Becerra easily dispatched his Republican challenger, retired Superior Court Judge Steven Bailey. Becerra is expected to continue to be an activist in the blue-state resistance against President Trump.

Secretary of State. Incumbent Democrat Alex Padilla easily held off his Republican challenger, election lawyer Mark Meuser. Padilla's victory represents an increasingly rare example of a Southern California candidate beating a Northern Californian for statewide office.

Controller. Incumbent Democrat Betty Yee easily dispatched her Republican opponent, Konstantinos Roditis, a Southern California businessman and co-chair of the Yes on 6 campaign to repeal the gas tax. So far Yee is the overall leading vote-getter with more than 4.5 million votes in her favor.

Treasurer. Democrat Fiona Ma parlayed her public service as a member and then chair of the State Board of Equalization, and her professional experience as a certified public accountant, into a decisive victory over Republican and fellow CPA Greg Conlon. Ma's win makes Conlon a three-time loser in the race for treasurer (2002, 2014 and 2018).

Insurance Commissioner. State Senator Ricardo Lara, a Southern California Democrat, holds a slight lead over Steve Poizner, a Northern Californian who ran as NPP. Poizner looks to have lost this race notwithstanding his previous election as insurance commissioner as a Republican in 2006. Conventional wisdom suggests that Lara's lead will grow, as late vote count favors Democrats.

Superintendent of Public Instruction. Marshall Tuck holds a slight lead over Assemblymember Tony Thurmond in this \$60 million-plus proxy war between independently wealthy charter school proponents supporting Tuck and the public-school establishment supporting Thurmond. Since both candidates are Democrats, the race to be Superintendent of Public Instruction is non-partisan, so it will be interesting to see the extent to which Thurmond, the preferred candidate of traditional Democrat constituencies, benefits from the late vote count.

Legislative Offices

State Senate. Democrats needed to pick up just one seat to match the two-thirds supermajority enjoyed by their colleagues in the Assembly. Going into Election Day, they pinned their hopes on the SD 12 open-seat race between Democrat Anna Caballero, an incumbent Assemblymember and former cabinet level appointee of Gov. Jerry Brown, and Republican Rob Poythress, a Madera County Supervisor. Preliminary results favor Caballero, who holds a 1 percent advantage that is likely to grow as late votes are counted.

Regardless of what happens in SD 12, Democrats have effectively secured their supermajority with a surprise victory in Senate District 14. That race pitted Republican incumbent Andy Vidak against Melissa Hurtado, a first-generation American who was the first in her family to graduate from college. Despite little support from the party or traditional Democrat constituencies, Hurtado looked to have won on Election Day and currently enjoys a 3.5 percent advantage in the preliminary count.

One other race of note presented a Democrat face-off in SD 22, where Susan Rubio, a city council member and sister of nearby incumbent Assemblymember Blanca Rubio, appears to have held off Mike Eng, a former assemblymember and spouse of incumbent Congresswoman Judy Chu.

State Assembly. Democrats easily maintained their two-thirds supermajority in the Assembly and could claim as many as 60 of 80 seats when the counting is done. At the outset, Democrats were guaranteed to pick up one seat in AD 76, where two of their own faced-off for an open seat held previously by Republican Rocky Chavez. Democrats gained another open seat in AD 40, where county supervisor and tribal leader James Ramos easily dispatched Republican Henry Nickel. Making matters worse for Republicans, AD 74 incumbent Matthew Harper appears to have lost his seat to his Democrat challenger, Cottie Petrie-Norris. Another Republican incumbent, Dante Acosta, holds a 1 percent edge against his opponent, Christy Smith, in AD 38. However, that margin has already narrowed since Election Day and appears likely to evaporate when all votes are counted. Republicans enjoyed a pleasant Election Day surprise in AD 60, where incumbent Democrat Sabrina Cervantes is losing by 0.4 percent to her Republican challenger, Bill Essayli. However, that lead has eroded substantially and appears unlikely to

hold. Finally, in one other close contest, incumbent Republican Catharine Baker held an Election Day margin of almost 2.5 percent margin over her Democrat challenger, Rebecca Bauer-Kahan, but Baker's lead has shrunk to less than 0.5 percent as the counting continues.

Ballot Measures

Voters soundly rejected Proposition 6, a cornerstone of Republican efforts to mobilize conservative voters across the state, which would have reduced ongoing state revenues of \$5.1 billion dedicated to transportation infrastructure by repealing certain fuel and vehicle taxes passed by the Legislature in 2017. Apparently in a spending mood, voters approved two bond measures, both placed on the ballot by the Legislature, which together authorize up to \$6 billion to support affordable housing programs for low-income individuals (\$4 billion) and for individuals with mental illness (\$2 billion). Voters also approved a third measure, placed on the ballot by petition signatures, which authorizes up to \$1.5 billion to support qualifying California children's hospitals. Voters rejected a fourth bond measure that would have authorized almost \$9 billion for various water-related infrastructure projects.

Voters also rejected Proposition 5, another controversial initiative, which would have allowed homeowners over 55 to purchase a new home while continuing to pay property tax based on the lower-assessed value of the home they sold. There was virtually no campaign in favor of this measure as the sponsor, California Association of Realtors, abandoned it in the face of a fiscal analysis predicting a \$2 billion hit to state and local government funding. Other ballot measures of note include Proposition 10, whose opponents spent \$80 million-plus to prevent expansion of local government authority to enact rent control; Proposition 8, whose opponents spent \$100 million-plus to avoid price controls on dialysis providers; and Proposition 11, whose supporters spent \$30 million to ensure private ambulance companies could require workers to remain on call during lunch and rest breaks without paying overtime.

Prop 1: Bonds to Fund Housing-Assistance Programs.

PASSED (54.1 percent to 45.9 percent)

Authorizes \$4 billion in general obligation bonds for existing affordable housing programs for low-income residents, veterans, farmworkers, manufactured and mobile homes, infill, and transit-oriented housing.

Prop 2: Bonds to Fund Existing Housing Program for Individuals with Mental Illness.

PASSED (61.2 percent to 38.8 percent)

Amends Mental Health Services Act to fund No Place Like Home Program, which finances housing for individuals with mental illness.

Prop 3: Bonds to Fund Projects for Water Supply and Quality, Watershed, Fish, Wildlife, Water Conveyance, and Groundwater Sustainability and Storage.

FAILED (47.6 percent to 52.4 percent)

Authorizes \$8.877 billion in state general obligation bonds for various water infrastructure projects.

Prop 4: Bonds to Fund Construction at Hospitals Providing Children's Health Care

PASSED (60.6 percent to 39.4 percent)

Authorizes \$1.5 billion in bonds, to be repaid from state's General Fund, to fund grants for construction, expansion, renovation, and equipping of qualifying children's hospitals.

Prop 5: Changes Requirements for Certain Property Owners to Transfer Their Property Tax Base to Replacement Property.

FAILED (41.8 percent to 58.2 percent)

Removes certain transfer requirements for homeowners over 55, severely disabled homeowners, and contaminated or disaster-destroyed property.

Prop 6: Eliminates Road Repair and Transportation Funding. Requires Fuel Taxes and Vehicle Fees Be Approved by Electorate.

FAILED (44.7 percent to 55.3 percent)

Repeals a 2017 transportation law's taxes and fees designated for road repairs and public transportation.

Prop 7: Conforms California Daylight Saving Time to Federal Law; Allows Legislature to Change Daylight Saving Time Period.

PASSED (59.9 percent to 40.1 percent)

Gives Legislature ability to change daylight saving time period by two-thirds vote if changes are consistent with federal law.

Prop 8: Regulates Amounts Outpatient Kidney Dialysis Clinics Charge for Dialysis Treatment.

FAILED (38.4 percent to 61.6 percent)

Requires dialysis clinics to issue refunds to patients or patients' payers for revenue above 115 percent of the costs of direct patient care and health care improvements.

Prop 9: On July 18, 2018, Proposition 9 was removed from the ballot by order of the California Supreme Court.

Prop 10: Expands Local Governments' Authority to Enact Rent Control on Residential Property.

FAILED (38.3 percent to 61.7 percent)

Repeals state law that currently restricts the scope of rent control policies that cities and other local jurisdictions may impose on residential property.

Prop 11: Requires Private-Sector Emergency Ambulance Employees to Remain On-Call During Work Breaks.

PASSED (60.5 percent to 39.5 percent)

Law entitling hourly employees to breaks without being on-call would not apply to private-sector ambulance employees.

Prop 12: Establishes New Standards for Confinement of Specified Farm Animals; Bans Sale of Noncomplying Products.

PASSED (61.0 percent to 39.0 percent)

Establishes minimum requirements for confining certain farm animals. Prohibits sales of meat and egg products from animals confined in noncomplying manner.

Federal Races in California

U.S. Senate. Incumbent Democrat Dianne Feinstein easily held off fellow-Democrat challenger Kevin de León. Despite serving nearly two years as President pro Tempore of the California State Senate, sometimes referred to as the second most powerful state-elected office next to governor, and positioning himself as the progressive alternative for a new era in Democratic politics, de León was not able to connect with sufficient contributors or voters. De León not only lost his home county of Los Angeles, but he also lost his own senate district. The only good news for de León on Election Day was that he had almost as many raw votes as Republican John Cox, despite having run as a Democrat.

U.S. House of Representatives. Going into the election, Republicans held just 14 of the 53 California seats in Congress. Notwithstanding their already small numbers, Democrats hoped for a blue wave that would flip as many as six seats, including several in what was once a Republican stronghold – Orange County. Democrats appear to have gained two seats and seem likely to pick up two or more additional seats once all votes are counted.

Republican losses in Orange County include CA 48, where incumbent Dana Rohrabacher is losing by nearly 2.5 percent to his Democrat challenger, Harley Rouda, and CA 49, where Democrat Mike Levin holds a nearly 7.5 percent advantage over Republican Diane Harkey in the contest for the seat vacated by Darrell Issa. Another likely Democrat pickup is CA 10, where incumbent Republican Jeff Denham has a mere 1.2 percent margin over his Democrat challenger, Josh Harder. Another close race where Democrats could pick up a seat is CA 45, where incumbent Republican Mimi Walters has a 2 percent lead over her Democrat challenger, Katie Porter.

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