

HOW MANY CALIFORNIAS SHOULD WE HAVE?

A HISTORY OF EFFORTS TO DIVIDE THE STATE

By John S. Caragozian

We tend to take for granted California's boundaries, which are unchanged since admission as a state. However, efforts to divide California began even before statehood and have continued into the 21st century.

Under Spain, California stretched 1,500 miles from the southern tip of Baja to present-day Sonoma. It was originally governed as a single province, despite difficult or impossible travel from one end to the other. In 1804, Spain's Mexico City viceroy divided California into Alta and Baja, with the boundary approximately 35 miles south of the current Mexico-U.S. border.

After Mexico's 1821 independence, Alta California's capital alternated between Los Angeles (the largest town or pueblo) and Monterey (the commercial center and customhouse location). During the Mexican era, most Californians of European ancestry lived in present-day southern California, where missions and large ranchos produced livestock, grain, and fruit. In 1836, Mexico officially re-combined Baja and Alta California, but ten years later re-divided them.

The Mexican-American War began in 1846, and U.S. forces eventually captured and occupied Alta California's major towns. Under the 1848 Treaty of Guadalupe Hidalgo that ended the war, Mexico ceded today's American southwest, including the state of California, to the U.S., and Baja remained part of Mexico.

That same year, the gold discovery at Coloma convulsed California. Through 1849, nearly 100,000 people, mostly Americans, rushed in. Overnight, California's weight shifted from a Spanish-speaking, agrarian south to an English-speaking, mining north.

In September and October, 1849, California held a convention to write a state constitution for admission to the U.S. The convention's delegates grappled with related questions: (a) what would be California's eastern boundary, (b) would California seek admission as a single entity or as two or more entities, and (c) would California seek admission as a territory or a state?

The boundary issue involved lengthy debate over whether to extend California into most of the formerly Mexican lands (now, Arizona, Nevada, New Mexico, and Utah). Eventually, the delegates decided against this extension on various grounds, including the difficulty of governing such a large state.

Questions (b) and (c) were also controversial. Southern California accounted for approximately one-quarter of the convention delegates, all of whom originally voted against a single California state.

Southern Californians' concerns included taxes and representation. In a single California, property taxes would fall disproportionately on southern California. Northern Californians typically did not have title to their mining claims, but the southern Californians owned ranchos that would be taxed. Southern Californians were concerned, too, that the newly populous north would dominate California's government.

Southern California delegates therefore proposed dividing California at San Luis Obispo. California north of San Luis Obispo's latitude would be admitted as a state and responsible for financing its own government. The southern section would be admitted as a territory, with the federal government responsible for financing the territorial government.

Eventually, delegates compromised. All of California would be a single state, but each county would elect its own tax assessors, thereby giving southern counties some local control over property taxes. See William Ellison, "A Self-Governing Dominion," at 27, 36-37 (1950).

In 1850, Congress admitted California as a state. Southern Californians, though, continued to agitate for dividing the state and, beginning in 1851, elected state legislators who favored division.

In 1855, the assembly, citing the difficulty of governing the state with its remote regions, voted to divide California into three states: "Colorado," consisting of the coastal counties from Monterey south, including all of southern California; "Shasta," consisting of the far northern counties; and the Bay Area and mining counties remaining "California." The state senate, however, feared that "Colorado" (namely, southern California) would be pro-slavery and killed the bill.

Four years later, in 1859, Los Angeles's assemblyman Andres Pico authored a bill to bisect California at San Luis Obispo. Both the assembly and state senate voted in favor, and the governor signed the bill. Voters in a plebiscite also endorsed dividing the state.

Under U.S. Constitution, article IV, section 3, once a state's legislative houses vote to divide the state, Congress must approve the division for it to become effective. In 1859 and 1860, Congress remained pre-occupied with slavery and tabled California's request. The 1861 outbreak of the Civil War ended any chance of approval.

After the war, efforts to divide California ebbed. Tax inequalities lessened because northern California's property tax base increased as it became agricultural. Similarly, representation inequalities lessened as southern California's population grew.

Still, some dissention existed. In 1881, southern Californians held a convention to advocate splitting the state. Ultimately, though, they failed to act out of fear that fast-growing Los Angeles would dominate a separate southern California.

In 1941, several northern California and southern Oregon counties purported to secede from their respective states to form a new state, "Jefferson." On December 4, 1941, they even held a Jefferson gubernatorial vote, but the December 7 bombing of Pearl Harbor and U.S. entry into World War II ended the misadventure.

A 1964 U.S. Supreme Court decision ignited a northern California attempt to split the state. *Reynolds v. Sims*, 377 U.S. 533, barred states from apportioning their state senates by one senator per county, regardless of the county's population; instead, state senates must be apportioned by population.

Before *Reynolds*, California largely apportioned the state senate on a one county-one senator basis. With most of California's 58 counties in the north, a majority of the state senators represented northern California, even though more people lived in southern California.

The new state senate—with most senators from southern California—would be elected in 1966. See *Silver v. Brown*, 63 Cal.2d 270, 278-79 (1965). Accordingly, northern California's senators saw one last chance for avoiding a post-*Reynolds* shift in power from the north to the south: in 1965, San Mateo County's state senator Richard Dolwig introduced a bill to split California into "North California" comprised of 51 northern counties and "South California" comprised of seven southern counties. (Dolwig's bill was effectively a reprise of Pico's 1859 bill, except that the roles of northern and southern California legislators were reversed, in that, now, northerners favored a split out of fear of southern domination.)

The senate voted 27-12 in favor of Dolwig's bill. However, it died in the assembly, which was already apportioned one person-one vote and therefore weighted in favor of southern California. Dolwig re-introduced his bill in 1967, 1968, and 1970, but to no avail.

Since then, California has seen sporadic stabs at splitting the state—including on an east-west basis—but neither state legislative house has voted in favor.

In 2013, Silicon Valley billionaire Tim Draper believed that California had become too big to govern effectively. To bypass the state legislature, Draper drafted a statewide voter initiative to divide California into six states, but failed to gather enough signatures to qualify for the ballot.

Draper tried again in 2017. His “Cal-3” voter initiative would divide California into (1) “Northern California” consisting of far northern, Sacramento Valley, and Bay Area counties; (2) “California” consisting of the coastal counties from Monterey through L.A.; and (3) “Southern California” consisting of Orange, San Diego, Inland Empire, and San Joaquin Valley counties. He gathered sufficient signatures for the November, 2018 ballot.

Cal-3 lacked key details such as how to allocate assets—ranging from statewide water projects to the capitol—or liabilities. Further, Cal-3 raised the state constitutional question of whether any initiative could effect such a fundamental change in California government. *See, e.g., Strauss v. Horton*, 46 Cal. 4th 364, 444 (2009) (voter initiatives may “amend” the state’s constitution, but may not “revise” it, the latter being defined as “a far reaching change in the fundamental governmental structure....”).

On July 18, 2018, the California Supreme Court preliminarily enjoined California’s Secretary of State from placing Cal-3 on the ballot. The Court did not specify its bases, stating only that “significant questions have been raised regarding the proposition’s validity.” *Planning & Conservation League v. Padilla*, S249859 (unpublished). Draper tacitly agreed not to contest the ruling, and it became final.

History suggests that attempts to divide California will recur, unless the Big One causes half the state to fall into the ocean, thereby mooting the rationale for dividing us.

John Caragozian is a Los Angeles lawyer and on the Board of the California Supreme Court Historical Society. He thanks Janie Schulman for her contributions to this column. He welcomes ideas for future monthly columns on California’s legal history at jcaragozian@sunkistgrowers.com.

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