

ALERT

VOLUME 36, NUMBER 31 • NOVEMBER 5, 2010



Jerry Brown Returns to Governor's Office

California voters returned Jerry Brown to the Governor's office on Tuesday by a large margin, as well as electing other Democrats to fill statewide offices.

With a campaign message of "living within our means" and no new taxes without a vote of the people, Brown won 54 percent of the vote to 41 percent for Republican Meg Whitman.

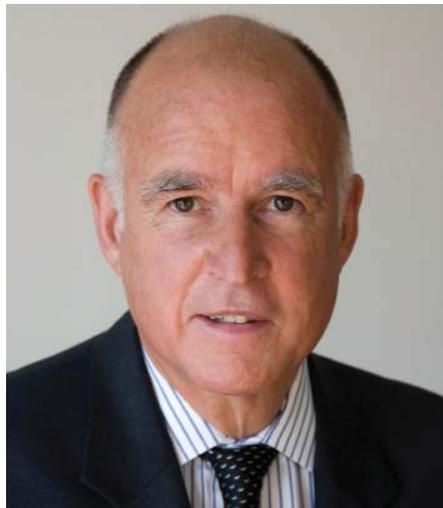
In the high-profile race for U.S. Senate, Democratic incumbent Barbara Boxer held off a challenge by Republican Carly Fiorina, winning by a margin of 52 percent to 43 percent.

Among the other statewide races, only the campaign for attorney general was too close to call as *Alert* went to press. San Francisco District Attorney Kamala Harris was leading Los Angeles County District Attorney Steve Cooley by just under 9,000 votes, 45.9 percent to 45.8 percent.

Statewide Offices

Serving with Brown as lieutenant governor will be Gavin Newsom, the Democratic mayor of San Francisco. He won 50 percent of the vote to 39.5 percent for Republican Abel Maldonado, the current lieutenant governor.

Secretary of State Debra Bowen, a Democrat, will return to office, having



Governor-Elect Jerry Brown

won 53 percent of the vote to 38.6 percent for Republican Damon Dunn.

Treasurer Bill Lockyer, also a Democrat, won 56.4 percent of the vote, compared to 36.5 percent for his challenger, Senator Mimi Walters (R-Laguna Niguel).

Dave Jones, a Democratic Assembly member from Sacramento, won the campaign for insurance commissioner.

He gained 50.5 percent of the vote, compared to 37.8 percent for Mike Villines, a Republican Assembly member from Clovis.

The non-partisan position of superintendent of public instruction went to Tom Torlakson, a current Democratic Assembly member from Contra Costa who ran as a second generation teacher, touting his classroom experience. Torlakson won 54.6 percent of the vote to 45.4 percent for Larry Aceves, a former county superintendent of schools.

Congress/Legislature

Democrats continue to hold a majority of positions in both the California congressional delegation and both houses of the California Legislature.

Incumbent Congressman Jerry McNerney (D-Pleasanton) was just 121 votes ahead of his Republican opponent, David Harmer, in the 11th Congressional District.

In the 20th Congressional District, the anti-incumbent sentiment of voters resulted in incumbent Democrat Jim Costa losing to Republican challenger Andy Vidak, 48.5 percent to 51.5 percent.

Democrats picked up one seat in the California Assembly and will hold 52 seats when the new legislative session begins in December, still short of the 54 needed for a two-thirds majority. The party balance in the Senate remained the same at 25 Democrats, 15 Republicans (27 votes make a two-thirds majority).

The latest election results are available at www.sos.ca.gov.

Assembly Republicans Choose New Leader

Connie Conway of Tulare has been chosen by Assembly Republicans as their new leader.

She succeeds Martin Garrick of Carlsbad, who did not choose to seek a second term as leader, according to a news release from the Assembly Republican Caucus.

Conway was elected to her second term in the Assembly this week. She is the first woman to serve as Assembly

Republican leader since 1981.

Conway represents Assembly District 34, which includes Inyo County and parts of Kern, San Bernardino and Tulare counties.

Before being elected to the Assembly, she served eight years on the Tulare County Board of Supervisors. She also served as president of the California State Association of Counties.

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Labor Law Corner

Set Guidelines for Social Media Use to Help Prevent Difficult Situations



Dana Leisinger
HR Advisor

I have an employee who posted some very negative comments about our company on his Facebook page. Can I take action against this employee based on the Facebook comments?

The rapid growth of the social media, including Facebook, Twitter, LinkedIn, Plaxo, and many more, have raised a lot of issues for employers, including the proper response to the question posed above.

Labor Code Section 96(k) protects an employee engaging in “lawful conduct occurring during nonworking hours away from the employer’s premises.” In addition, all employees have the right to freedom of speech as guaranteed in both the U.S. and California constitutions.

Defamatory Comments

That right, however, is not without limits. It is impermissible to post defamatory comments on social media, and employers can pursue legal remedies when blatantly defamatory comments are posted for everyone to read.

Another example of when an employer can take action is when employees brag about misconduct on their Facebook page, such as calling in sick when they want to go skiing, revealing confidential information about the company, or even posting about spitting in food by a restaurant worker (yes, this was a question the Helpline received!).

The more difficult issue is when an employee posts his/her opinion, which might not be pleasant, but isn’t specifically actionable. An employee can cause awkward, even possibly harassing situations by misuse of social media.

Additional difficult situations result when former employees ask their former bosses to provide references, often on LinkedIn. Supervisors who do so should be aware that such a reference has the force and effect of a written

recommendation, and therefore should proceed with caution.

Suggested Guidelines

To help prevent difficult situations, it is advisable for employers to issue guidelines to their employees. Some recommendations include:

- Prohibit the use of their blogs and posts during business hours.
- Give notice that misuse of social media may be grounds for disciplinary action, up to and including termination.
- Ask that employees bring any complaints to the company’s human resources contact versus posting on the Internet.
- Prohibit employees from revealing the employer’s confidential information or trade secrets on social media.

This list is by no means all inclusive, and it is recommended that employers consult their attorneys to draft appropriate language.

Employers cannot ignore social media use, however. They must understand all the issues involved, and then draft policies and procedures to address those concerns accordingly.

The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

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Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.

POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremborg. Executive Editor: Ann Amioka. Art Director: Marcy Wacker. Capitol Correspondent: Christine Haddon. Photographer: Megan Wood.

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ajantha@aod.lk.

Outbound Mission to India. Western U.S. Agricultural Trade Association (WUSATA). November 13–20, India,

Delhi and Bangalore. (559) 324-6401.
Webinar: Dried Fruit Opportunities in Mexico. U.S. Department of Agriculture, California Department of Food and Agriculture. November 16. (916) 563-3200.
Asia Society Green Finance Conference. Asia Society Northern California. December 8, San Francisco. (415) 421-8707.

**Next Alert:
November 19**



Voters Show Concern About Jobs, Economy

Although many pundits will write that the national Republican tidal wave stopped at the Sierra Nevada mountains, a closer analysis indicates that California voters are no less concerned about the direction of government, employment issues and deficit spending than the rest of the country.

California is a state with an overwhelming registration advantage for Democrats, which certainly has an impact on statewide candidate races.

But, if Jerry Brown received a mandate from the voters, it is to follow through on his pledges for the state to “live within its means” and to adopt no new taxes without a vote of the people.

Mood of Voters

An analysis of the outcome of the ballot propositions serves only to reinforce the mood of the voters.

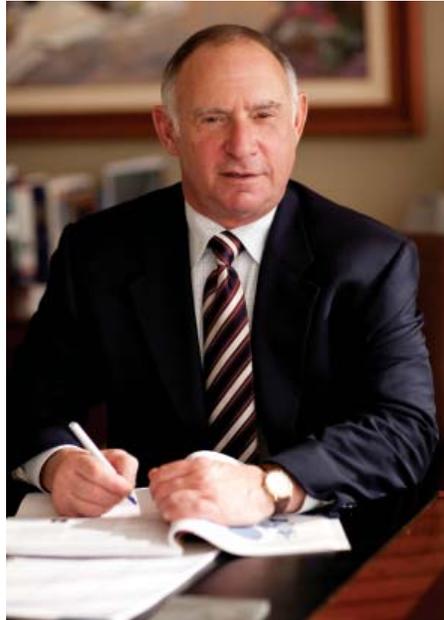
- Proposition 21, an \$18-per-vehicle fee increase to fund state parks, was soundly rejected, even though there was little opposition.

- Proposition 22, which was approved, limits the ability for the state to use local government funds to balance the state budget. Clearly, this shows a distrust of the Legislature to solve the state’s fiscal issues with local government resources.

- Proposition 24, which would have reinstated taxes on California companies that invest in jobs and property, was overwhelmingly defeated despite an aggressively funded “yes” campaign by the teachers’ union.

- Proposition 26, sponsored by the California Chamber of Commerce, clearly defines fees and taxes at the state and local levels so that governments can’t pass real taxes with a simple majority vote. In spite of a well-financed “no” campaign and a confusing ballot label, the voters approved this measure, indicating a desire for transparency in their government.

- Although the CalChamber opposed Proposition 25, the majority vote budget measure, it passed, mostly because of the



Commentary
By Allan Zarembeg

“...a closer analysis indicates that California voters are no less concerned about the direction of government, employment issues and deficit spending than the rest of the country.”

provision that will withhold legislators’ pay if the budget is late and the ballot label referencing intent language that the measure maintains the two-thirds vote for tax increases. (We believe, however, that the Legislature will *try* to implement majority vote taxes because of Proposition 25.)

- Finally, the voters overwhelmingly

supported removing the Legislature’s involvement in reapportionment, when they defeated Proposition 27, which would have eliminated the Citizens Redistricting Commission, and passed Proposition 20, which extends the commission’s authority to redrawing congressional districts.

Jobs: No. 1 Issue

So what does all this mean for the business community and doing business in California?

Even though the anti-incumbent attitude in the rest of the country did not prevail in California, we do know that jobs were the No. 1 issue for voters. Since the beginning of May, the CalChamber’s action plan to promote economic recovery and job creation has been posted on our website. Some elements of that action plan appeared to be part of Governor-Elect Brown’s platform.

Over the next couple of months, we will be preparing the CalChamber’s comprehensive annual guide to major business issues. Although the *Business Issues and Legislative Guide* normally is not published and distributed until

January, we will make it available to Governor-Elect Brown and his transition team in advance to provide background on some of the issues we think will improve both the California economy and the revenues it generates for the state and local governments.

I have said many times that advocacy at CalChamber is not about a political philosophy. It is about doing what’s best for business and the political process. Our job is to work with the new administration to ensure that it has the benefit of the business community’s ideas on what it will take to move our economy forward.

Allan Zarembeg is president and chief executive officer of the California Chamber of Commerce.

CalChamber Radio Ads, Legal Analysis Help Turn Tide Against Marijuana Initiative



California voters this week soundly rejected California Chamber of Commerce-opposed **Proposition 19**, which would have legalized pot use in California, but also would have

created a legal quagmire for employers, compromised workplace safety and established a new class of protected workers in the state.

As *Alert* went to press, Proposition 19 had failed with 54 percent of voters rejecting the measure and 46 percent supporting it.

Until a couple of weeks before the election, polling showed that Proposition 19 was likely to pass.

CalChamber Radio Ad

In late October, CalChamber began running radio ads educating voters about how the initiative would undermine the rights of employers to ensure their workers are not high, raising the risk of injury, lawsuits and increased insurance costs.

CalBusPAC, the CalChamber's issues PAC, commissioned a statewide survey to determine the message for a paid media campaign and funded the statewide radio ad campaign.

In an interview with the *Los Angeles Times*, Denise Davis, CalChamber vice president of media relations and external affairs, explained, "When people understand what would happen in the workplace when this becomes law, they are inclined to vote no."

Legal Analysis

Another key to the successful campaign was the CalChamber legal analysis, used by all the major papers that editorialized against Proposition 19.

CalChamber's products division began looking into the employer implications if Proposition 19 were to become law in July. That initial review raised many questions and led to the preparation of the full legal analysis by CalChamber's

employment law advisor that was released in August.

Proposition 19 sought to legalize the cultivation, processing, transportation, distribution and sale of marijuana for personal use in California.

The measure was written in a way that blurred the line for employers regarding important workplace issues, however, including whether employers must allow marijuana smoking at work and who would pay for marijuana-related accidents.

The measure established a new, higher, but yet-undefined standard of "actual impairment."

As CalChamber General Counsel Erika Frank explained at a joint legislative committee hearing in September, the vague wording in Proposition 19 would have made sweeping changes to the way that employers do business and would have required employers to offer extra protections to marijuana users.

If the measure had been approved, employers, including the State of California, would have faced the burden

of proving that an employee who tested positive for marijuana was "actually impaired" from performing the job before taking any adverse action against the employee.

Employers would have been prohibited from discriminating against marijuana users by taking marijuana use into account when deciding whether to hire an applicant. Any marijuana-smoking job applicant not hired could have filed a lawsuit claiming marijuana use was the reason, even if the employer had no knowledge of the use.

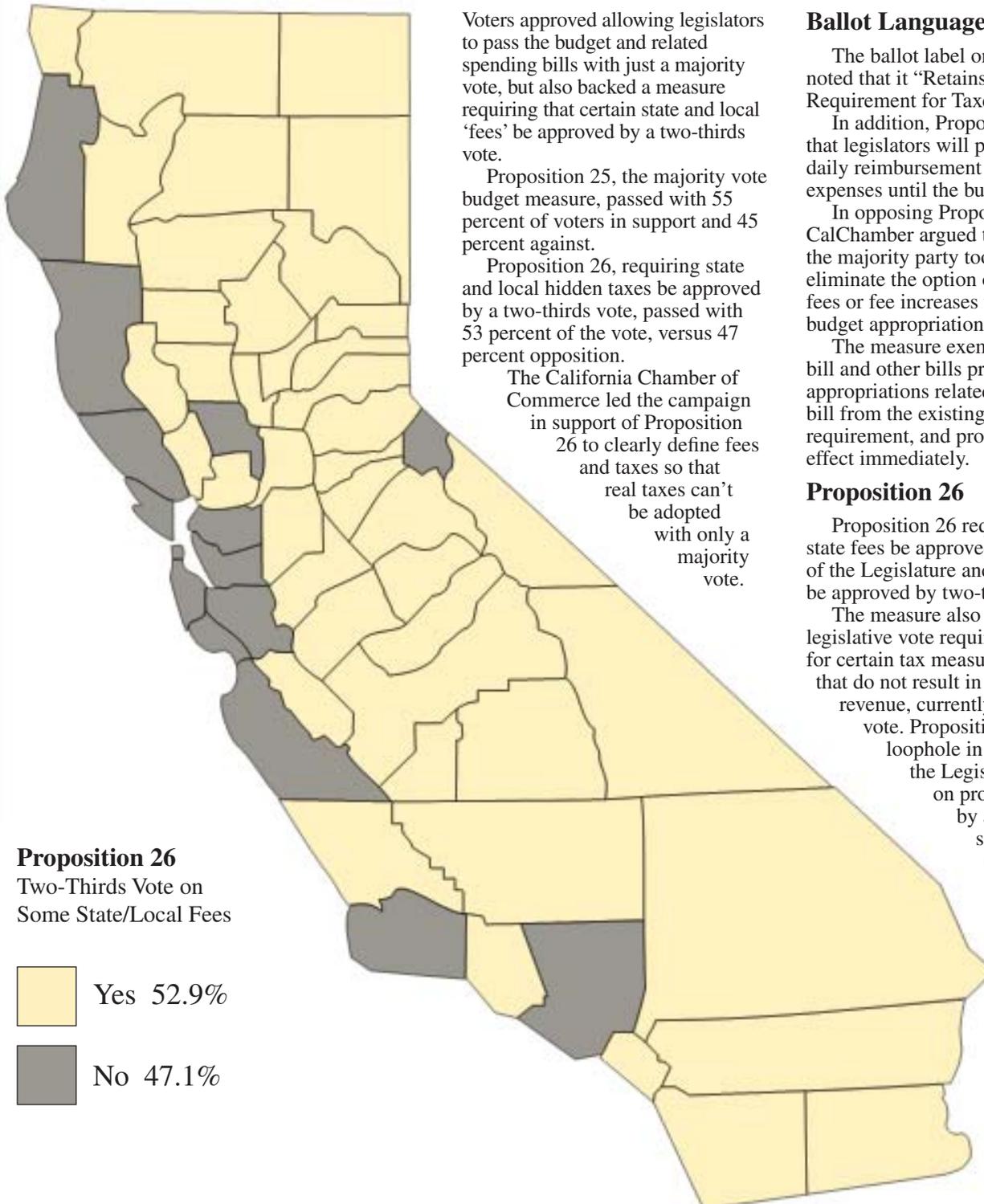
Moreover, unlike alcohol use, which employers can prohibit at work, under Proposition 19, employers could have taken action only for marijuana use that "actually impairs" work performance. Frank reiterated in her testimony that the term "actually impairs" is a new legal standard that has never been defined or tested in court. The lack of a clear definition would have forced a delay in disciplinary actions used to protect workplace safety and driven up costs due to increased litigation.



Photo by Megan Wood

Erika Frank, CalChamber general counsel, outlined at a joint legislative committee hearing in September how Proposition 19, the marijuana initiative on the November ballot, would have compromised workplace safety and established a new class of protected workers in the state.

Voters Say ‘Yes’ to Majority Vote Budget, But Also Back Two-Thirds Vote on ‘Fees’



Voters approved allowing legislators to pass the budget and related spending bills with just a majority vote, but also backed a measure requiring that certain state and local ‘fees’ be approved by a two-thirds vote.

Proposition 25, the majority vote budget measure, passed with 55 percent of voters in support and 45 percent against.

Proposition 26, requiring state and local hidden taxes be approved by a two-thirds vote, passed with 53 percent of the vote, versus 47 percent opposition.

The California Chamber of Commerce led the campaign in support of Proposition 26 to clearly define fees and taxes so that real taxes can’t be adopted with only a majority vote.

Ballot Language

The ballot label on Proposition 25 noted that it “Retains Two-Thirds Vote Requirement for Taxes.”

In addition, Proposition 25 provides that legislators will permanently forfeit daily reimbursement for salary and expenses until the budget bill passes.

In opposing Proposition 25, the CalChamber argued that it will give the majority party too much power and eliminate the option of referendum for fees or fee increases that are part of a budget appropriation.

The measure exempts the budget bill and other bills providing for appropriations related to the budget bill from the existing two-thirds vote requirement, and provides that those take effect immediately.

Proposition 26

Proposition 26 requires that certain state fees be approved by two-thirds vote of the Legislature and certain local fees be approved by two-thirds of the voters.

The measure also increases the legislative vote requirement to two-thirds for certain tax measures, including those that do not result in a net increase in revenue, currently subject to majority vote. Proposition 26 closes a loophole in the law that allows the Legislature to raise taxes on products and services by a majority vote simply by calling them “fees” instead of taxes.

The CalChamber argued that hidden taxes and fees work against job creation, driving businesses out of California and forcing many small businesses to close.

See Election: Page 6

Voters Keep Redistricting Commission, Extend Authority for Congressional Remaps



California voters kept the task of redrawing political district boundaries in the hands of the Citizens Redistricting Commission and extended the commission's assignment to congressional districts.

Voters rejected Proposition 27, which would have eliminated the Citizens Redistricting Commission created by the California Chamber of Commerce-supported reform initiative of 2008.

Nearly 60 percent of voters said "no" to Proposition 27, while about 41 percent voted "yes."

Those percentages were reversed for Proposition 20, which extends to the Citizens Redistricting Commission the additional authority to draw new boundaries for U.S. congressional districts in 2011.

Proposition 20 was supported by 61.2 percent of voters, with 38.8 percent opposing the measure.

Only San Francisco County voted to approve Proposition 27, 51 percent to 49 percent, and to oppose Proposition 20, 54 percent "no" to 46 percent yes.

Election Reform

CalChamber supported Proposition 20 as a critically important part of election reform, helping to make the congressional redistricting process more open, fair and transparent, in addition to increasing competition in elections.

Currently, there are 53 congressional districts in California—34 Democrat members and 19 Republican members. Only one seat has changed parties over the last decade when Democrat Jerry McNerney defeated Republican Richard Pombo in the 11th Congressional District in 2006.

As *Alert* went to press following the November 2 election, only 121 votes separated McNerney from his Republican opponent, David Harmer.

In the 20th Congressional District, incumbent Democrat Jim Costa was losing to Republican challenger Andy Vidak, with 48.5 percent of the vote to Vidak's 51.5 percent.

Citizens Commission

The CalChamber believes California cannot afford to return to a system where the politicians select their voters. Although the 2008 measure creating the Citizens Redistricting Commission was not popular with politicians, it was strongly supported by a bipartisan coalition of consumer, senior, public interest, taxpayer, community and business groups.

The first phase of the application process to become a member of the Citizens Redistricting Commission ran from December 15, 2009 through February 16, 2010.

Applicants who were tentatively eligible based on information they provided in the first application were invited to complete the supplemental application and return it by April 19.

The Applicant Review Panel on September 29 submitted to legislative leadership the names of 60 of the most qualified applicants—20 Republicans, 20 Democrats, and 20 not affiliated with either of those two parties. Legislative leaders can strike up to eight names from each of the three groups.

Legislative leaders are to return the list by November 15. By November 20, there will be a random selection of the first eight commissioners, who have until December 31 to select the remaining six.

The commission is to begin work by January 1, 2011.

For more information about the commission visit WeDrawTheLines.ca.gov.

Election Results on Propositions

From Page 5

Other Measures

In other election results:

- Proposition 21 would have established an \$18 annual vehicle license surcharge to help fund state parks and wildlife programs. The initiative failed to pass, 42 percent to 58 percent. CalChamber had no position on Proposition 21.

- California voters passed CalChamber-supported Proposition 22, 61 percent to 39 percent. Proposition 22 prohibits the state, even during a severe fiscal hardship, from delaying the distribution of tax revenues for transportation, redevelopment or local government projects and services.

- Proposition 23 would have suspended state law that requires

greenhouse gas emissions be reduced to 1990 levels by 2020 until California unemployment drops to 5.5 percent or less for four consecutive quarters. Proposition 23 failed, 39 percent to 61 percent. CalChamber had no position on Proposition 23.

- Proposition 24 would have repealed recent legislation that would: allow businesses to shift operating losses to prior tax years and that would extend the period permitted to shift operating losses to future tax years; allow corporations to share tax credits with affiliated corporations; and allow multistate businesses to use a sales-based income calculation rather than a combination property-, payroll- and sales-based income calculation. The CalChamber-opposed measure failed, 41.5 percent to 58.5 percent.

CalChamber Calendar

Public Affairs Council Post-Election Retreat: November 10–12, Riverside

Business Services Committee: December 2, San Francisco

Board of Directors: December 2–3, San Francisco

International Trade Breakfast: December 3, San Francisco

Annual Meeting: December 3, San Francisco

Fundraising Committee: December 3, San Francisco

Business Support Leads to Victory for Pro-Jobs Candidates in Key Races



Support from a business-supported independent expenditure committee helped pro-jobs candidates prevail in several legislative districts.

The California Chamber of Commerce is a major supporter of JobsPAC, which has been backing pro-jobs candidates running in open legislative seats since 1992.

In the November general election, JobsPAC helped boost the following candidates to victory:

- In Senate District 12, Anthony Cannella, the Republican mayor of Ceres, defeated Anna Caballero, a Democratic Assembly member and former mayor of Salinas, with 53 percent of the vote to her 47 percent. This was a key race in keeping the Senate at the same balance of 25 Democrats and 15 Republicans.

- In Assembly District 30, David Valadao, a Republican dairy farmer, defeated Fran Florez, a Democrat and

longtime community leader, with 62 percent of the vote to her 38 percent.

- In Senate District 34, incumbent Senator Lou Correa (Santa Ana), the Democrat ranking highest in CalChamber vote records, won with 64 percent of the vote.

The general election victories followed a major special election win in Senate District 15 for Assemblyman Sam Blakeslee (R-San Luis Obispo), which also helped maintain the current party ratio in the Senate (see June 25 *Alert*).

In the primary election, JobsPAC support helped former Assemblyman Juan Vargas secure a 22-vote victory over a fellow Democrat, Assemblywoman Mary Salas, in Senate District 40.

General Election

Senate District 12 includes Merced and San Benito counties, along with parts of Madera, Monterey and Stanislaus counties.

The seat is currently held by Jeff Denham (R-Merced), who was elected to Congress and has consistently supported CalChamber positions.

Assembly District 30 includes Kings

County and part of Fresno, Kern and Tulare counties.

The seat is currently held by Danny Gilmore (R-Hanford), who chose not to seek re-election.

Campaigns in both Senate District 12 and Assembly District 30 were hard fought. Democrats would have been one-vote closer to a two-thirds, veto-proof majority in both houses of the Legislature if their candidate had won either seat.

Primary Victory

Senate District 40 includes parts of San Diego and Riverside counties, and all of Imperial County. Incumbent Senator Denise Moreno Ducheny of San Diego has reached her term limit.

Vargas served in the Assembly from 2001 to 2006. His CalChamber vote records placed him among the more moderate Democrats in his last term in office, before he reached his term limit in 2006.

Salas, who succeeded Vargas in Assembly District 79, has been among the Democratic Assembly members ranking lower on the CalChamber vote record.

California Chamber of Commerce Public Affairs Council Fall Retreat

November 10–12, 2010
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