



Joint Informational Hearing
Assembly Elections Committee and
Senate Elections & Constitutional Amendments Committee
Assemblymember Berman and Senator Glazer, Chairs

Subject: Evaluating California's Recall Process

October 28, 2021, 1:00 PM
State Capitol, Room 4202

Hearing Overview and Background

On October 10, 1911, California voters considered 23 proposed amendments to the California Constitution that the state Legislature placed on the ballot. Of the 23 ballot measures, two proposals sought to expand the tools of direct democracy available to California voters. Proposition 7, which gave voters the power of the initiative (allowing voters to propose statutes and amendments to the Constitution) and the referendum (giving voters the ability to approve or reject statutes or parts of statutes enacted by the Legislature), was approved with 76.4% of the vote. Proposition 8, which gave electors the power to remove an elected official from office prior to the end of the official's term through the recall process, received 76.8% of the vote. Governor Hiram Johnson, who campaigned for the measures, explained that while the initiative, referendum, and recall were not the "panacea for all our political ills, yet they do give to the electorate the power of action when desired, and they do place in the hands of the people the means by which they may protect themselves."

According to information from the Secretary of State, in the 110 years since California adopted these three tools of direct democracy, Californians have proposed more than 2,000 state initiative measures, of which nearly 400 qualified for the ballot. By contrast, the referendum and recall processes have been more sparingly used. In all, voters have proposed 94 referenda to reconsider state statutes, of which 52 qualified for the ballot, and there have been 179 recall attempts of state elected officials in California, of which 11 qualified for the ballot.

While three of the state's 11 recall elections for elected state officials occurred in the first three years after the recall was adopted, the next recall to qualify for the ballot did not take place for another 80 years. In all, eight of the 11 attempts to recall elected state officials that have qualified for the ballot have taken place since 1994.

Notably, the only two *statewide* recall elections in California history occurred in the last 18 years. In October 2003, 43.1% of California's eligible voters cast a ballot in an election to

consider whether to recall then-Governor Gray Davis. In all, 55.4% voted “yes” to recall the Governor, while 44.6% voted “no” (4.6% of voters did not cast a valid vote on the recall question). On the second question of who should replace the Governor if he was recalled from office, 92.0% of voters voted for a replacement candidate. The top replacement candidate—Arnold Schwarzenegger—received 48.6% of the replacement vote (equal to 44.7% of the total number of voters who participated in the election), and was sworn in as California’s 38th Governor the following month.

California’s most recent state recall election was held last month, when voters went to the polls to vote on whether to remove Governor Gavin Newsom from office. According to the final official election results released by the Secretary of State, 51.9% of eligible California voters participated in the September 14, 2021, recall election. In all, 38.1% voted “yes” to recall the Governor, and 61.9% voted “no” on the recall (0.4% of voters did not cast a valid vote on the recall question). On the second question of who should replace the Governor if he was recalled from office, just 57.1% of voters cast a ballot for one of the replacement candidates. Of the replacement candidates, the candidate who received the most votes received 48.4% of the replacement vote, amounting to 27.6% of the total number of voters who participated in the September 14, 2021, recall election. Because the recall failed, the second question to determine who would replace Governor Newsom has no legal effect.

Even before the most recent gubernatorial recall election qualified for the ballot, proposals were introduced in the Legislature in each of the last three legislative sessions to modify the process for recalling elected state officials. During and since last month’s recall election, legal experts, political scientists, editorial boards, and others similarly have called for changes to the state’s recall process. Last month, the state’s Little Hoover Commission (Commission) voted to hold hearings to study whether California’s recall system should be changed. The Commission held its first hearing on that topic earlier this month, and is scheduled to hold its second hearing on the same day as this Joint Informational Hearing.

The purpose of this Joint Informational Hearing of the Assembly Elections Committee and the Senate Elections & Constitutional Amendments Committee is to begin examining California’s recall process to help inform Legislative consideration of proposals to change that process. The committees will hear from various current and former elected officials about their views on recall reform and will receive an overview of recall procedures in other states. Subsequently, the committees will hear from two panels of academics about potential changes to the recall process that have been widely discussed following last month’s election – whether the threshold for qualifying a recall for the ballot should be changed, and what the process should be for replacing an official who is recalled.

California Recall Law

State Recall Procedures

Article II, Section 13 of the California Constitution defines a recall as “the power of the electors to remove an elective officer.” A recall against a state elected official may be initiated by delivering a petition alleging reasons for recalling the official to the Secretary of State. The Constitution specifies that the sufficiency of the reason for recalling the official is not reviewable by a court. In other words, the Constitution does not specify the circumstances under which a recall is justified. Recall proponents have 160 days to circulate the petition and collect sufficient

signatures from registered voters to qualify a recall election. Specifically, for a statewide elected official, proponents must collect signatures “equal in number to 12 percent of the last vote for the office, with signatures from each of 5 counties equal in number to 1 percent of the last vote for the office in the county.” To recall a State Senator, member of the State Assembly, member of the Board of Equalization (BOE), or a judge of a court of appeal or trial court, proponents are required to collect signatures equal to 20% of the last vote for the office. The Legislature, by statute, must provide for the circulation, filing, and certification of petitions.

If those signature thresholds are met, the Governor is then required to call a recall election “not less than 60 days nor more than 80 days from the date of certification of sufficient signatures” to qualify the recall. However, under certain circumstances, a recall election is permitted to be consolidated with a regularly scheduled election that is held within 180 days of the certification date. When the Governor is the target of the recall, the Lieutenant Governor assumes the Governor’s duty of setting the date of the recall election.

Recall elections ask voters two questions: First, should the targeted elected official be recalled? Second, which candidate should replace the recalled official? On the first question, the Constitution requires a majority vote in order for the recall to succeed, and for the elected official to be removed from office. For the second question, if the targeted official is recalled, the Constitution provides that the replacement candidate who receives the most votes (i.e. a plurality, which may be less than a majority) is elected to succeed the recalled official. A voter does not need to vote “yes” on the first recall question in order to cast a vote on the second question.

The Constitution requires that the Legislature provide for the nomination of replacement candidates. The Elections Code generally provides that “[n]ominations of candidates to succeed the recalled officer shall be made in the manner prescribed for nominating a candidate to that office in a regular election,” except that recall elections have different deadlines for candidate filing and the target of a recall is prohibited from running as a replacement candidate. For the purposes of both the 2003 and 2021 gubernatorial recall elections, the Secretary of State determined that the procedures that govern candidate nomination at a direct primary election were applicable to replacement candidates. If the recall fails, the Constitution prohibits another recall from being initiated against the officer until six months after the election.

Local Recall Procedures

In accordance with Article II, Section 19 of the California Constitution, which states “[t]he Legislature shall provide for recall of local officers,” most local jurisdictions conduct recalls in accordance with state law. Some charter cities and counties, which have greater autonomy and authority to structure and organize their government under the Constitution, specify different recall procedures in their charters. The Elections Code generally provides that local officers may be recalled by submitting a petition signed by at least 10% to 30% of the registered voters eligible to vote for the targeted official, with the exact percentage depending on the number of registered voters in the electoral jurisdiction. Additionally, the timeframe for collecting petition signatures varies from 40 to 160 days depending on the number of registered voters in the electoral jurisdiction. Generally, proponents seeking to recall an official from an electoral jurisdiction with fewer registered voters must collect signatures equal to a higher percentage of registered voters and have less time to do so. For example, in an electoral jurisdiction with fewer than 1,000 registered voters, proponents have 40 days to collect signatures equal to 30% of registered voters, whereas, in an electoral jurisdiction with more than

100,000 registered voters, proponents have 160 days to collect signatures equal to 10% of registered voters. Moreover, the Elections Code places temporal restrictions on when local officials may be recalled. Recall proceedings may not be commenced against a local officer if the officer has not held office in their current term for at least 90 days or if the officer’s term ends within six months or less. Furthermore, as is the case with recalls for state officials, recall proceedings cannot be commenced against a local officer if a recall against the officer was defeated in the prior six months.

If the relevant signature threshold for the recall of a local officer is met, the governing body has 14 days after the meeting at which it receives a certificate of sufficiency to order the recall election, which must be held between 88 and 125 days later, and must be consolidated with any special or regular election held in that time period throughout the electoral jurisdiction.

Comparison: Time Allowed and Signatures Required to Qualify a State or Local Recall Election

Office	Signature Collection Period	Signatures Needed
Statewide Officers	160 days	- 12% of the last vote for the office - 1% of the last county vote for the office in 5 counties
Senators, Assembly Members, BOE Members, Courts of Appeal and Trial Court Judges	160 days	20% of the last vote for the office
Local Officers, based on the number of registered voters (RVs) in the electoral jurisdiction (<i>except for certain charter cities and charter counties</i>)	<1,000 RVs: 40 days	<1,000 RVs: 30% of RVs
	1,000 – 4,999 RVs: 60 days	1,000 – 9,999 RVs: 25% of RVs
	5,000 – 9,999 RVs: 90 days	
	10,000 – 49,999 RVs: 120 days	10,000 – 49,999 RVs: 20% of RVs
	50,000+ RVs: 160 days	50,000 – 99,999 RVs: 15% of RVs
		100,000+ RVs: 10% of RVs

Some charter cities and charter counties have adopted recall provisions that differ significantly from state law. For example, Alameda County requires that proponents collect signatures equal to 15% of the last gubernatorial vote in the county to qualify a recall against a countywide officer or 25% of the gubernatorial vote in a supervisorial district to qualify a recall against a supervisor. Alameda and Sacramento counties do not allow an elected official to be recalled until the official has been in office for at least six months, instead of 90 days. The City of Los Angeles requires a recall petition to be signed by 15% of registered voters (instead of 10%, as would be required for a citywide official and most council members under state law

based on Los Angeles’s voter registration) and provides only 120 days to gather those signatures (instead of 160 days). In addition, if the recall is successful but no replacement candidate receives a majority of the vote, a runoff election is held between the top two candidates. By contrast, the City and County of San Francisco does not hold a successor election with the recall election; if an official is recalled, the successor is appointed, rather than elected.

However, many charter cities’ and charter counties’ charters expressly provide that state law governs their local process. Such cities and counties include, for example, Los Angeles and San Diego counties and the cities of Anaheim, Fresno, and Long Beach.

Other States

According to information from the National Conference of State Legislatures (NCSL), 19 states allow voters to recall state officials and 30 states provide a recall process for local officials. The procedures for qualifying and conducting a recall differ significantly between those 19 states.

California is one of fourteen states that set the number of signatures that are needed to qualify a recall as a percentage of the last vote for that office (or of the last gubernatorial vote in the electoral jurisdiction). California’s signature requirement of 12% of the last vote for a statewide office is the lowest of these 14 states. The median state requires recall proponents to collect signatures equal to 25% of the last vote for the office. Five other states instead base the signature threshold for qualifying a recall on a percentage of registered voters or of eligible voters in the electoral jurisdiction, with the percentage varying from 10% to 40%.

State Comparison: Signatures Required to Qualify a State Recall Election

Percent of Last Vote for Office (14)	Percent of Registered Voters (3)	Percent of Eligible Voters (2)
Alaska (25%) Arizona (25%) California (statewide office: 12%; other: 20%) Colorado (25%) Illinois (Governor: 15%) Kansas (40%) Michigan (25% of gubernatorial vote in electoral district) Minnesota (25%) Nevada (25%)	Georgia (statewide office: 15%; others: 30%) Idaho (20%) New Jersey (25%)	Louisiana (20% to 40%, depending on the number of eligible voters) Montana (statewide office: 10%; district office: 15%)

North Dakota (25% of gubernatorial vote in electoral district)		
Oregon (15% of gubernatorial vote in electoral district)		
Rhode Island (15%)		
Washington (statewide office: 25%; other: 35%)		
Wisconsin (25% of gubernatorial vote in electoral district)		

The time period that recall proponents have to collect signatures also varies significantly between states. Four states allow as little as 60 days, whereas New Jersey gives proponents 320 days to collect signatures for gubernatorial recalls. Of the 19 states that provide for the recall of state officials, at least 13 have a shorter period for gathering those signatures than the 160 days that is allowed under California law.

State Comparison: Days to Collect Signatures to Qualify a Recall Election

Circulation Time	State(s)
60 days	Colorado, Idaho, Michigan, Wisconsin
90 days	Georgia, Kansas, Minnesota, Montana (time period is 3 months), Nevada, Oregon, Rhode Island
120 days	Arizona
150 days	Illinois
160 days	California , New Jersey (offices other than Governor and US Senator)
180 days	Louisiana, Washington (offices other than statewide officers)
270 days	Washington (statewide officers)
320 days	New Jersey (Governor and US Senator)
Not specified	Alaska, North Dakota

States have also adopted very different methods for replacing a recalled state official. California is one of only two states (along with Colorado) to hold the recall and replacement elections simultaneously, with both questions appearing on the same ballot. The plurality of states (7) hold these two elections separately: first a recall election is held and then, only if the official is recalled, a second election is held to elect the successor. By contrast, five states hold only a recall election; if the official is recalled, a successor is selected using the normal procedures for filling vacancies, rather than by election. Depending on each state's procedures

and the affected office, the recalled official might be replaced by appointment (e.g. gubernatorial appointment) or by another official taking the recalled official's position (e.g. the Lieutenant Governor succeeding a recalled Governor). Finally, five states do not have a recall question on the ballot at all. In those states, according to NCSL, "the recall ballot consists of a list of candidates for the office held by the person against whom the recall petition was filed." The list of candidates may include the incumbent who is the target of the recall. If the incumbent receives the most votes in the election, the recall fails and the incumbent remains in office. If a replacement candidate receives the most votes, the recall succeeds and that candidate takes office.

State Comparison: Method of Replacing Recalled State Official

<p>Recall Election Only:</p> <p><i>The recall ballot only asks if the official should be recalled. If a majority votes to recall the official, the office becomes vacant and is filled by appointment.</i></p>	<p>Successor Election Only:</p> <p><i>A recall is conducted as a special election for the target office in which any qualified candidate, including the incumbent, may run.</i></p>	<p>Separate Recall and Successor Elections:</p> <p><i>The recall ballot only asks if the official should be recalled. If a majority votes to recall the official, a second election is held to elect a successor.</i></p>	<p>Simultaneous Recall and Successor Election:</p> <p><i>The recall ballot asks two questions: first, should the target official be recalled and, second, which replacement candidate should succeed them. If a majority votes to recall the official, the replacement candidate with the most votes is elected.</i></p>
<p>Alaska Idaho Kansas Oregon Washington</p>	<p>Arizona Michigan Nevada North Dakota Wisconsin</p>	<p>Georgia Illinois Louisiana Minnesota Montana New Jersey Rhode Island</p>	<p>California Colorado</p>

Recall Usage

According to the Secretary of State, since 1913, there have been 179 recall attempts of state elected officials in California (trial court judges are considered local officials for the purposes of state statutes governing recalls, and are not included in these figures). Eleven recall efforts collected enough signatures to qualify for the ballot. Of the 11 recall elections, the elected official was recalled in six instances. Below is a list of recall attempts of state officials that have qualified for the ballot and the outcome of the election:

Year	Officer	Outcome
1913	Senator Marshall Black	Recalled
1913	Senator Edwin E. Grant	Recalled
1914	Senator James C. Owens	Unsuccessful
1994	Senator David Roberti	Unsuccessful
1994	Assemblymember Michael Machado	Unsuccessful
1994	Assemblymember Paul Horcher	Recalled
1995	Assemblymember Doris Allen	Recalled
2003	Governor Gray Davis	Recalled
2007	Senator Jeffrey Denham	Unsuccessful
2018	Senator Josh Newman	Recalled
2021	Governor Gavin Newsom	Unsuccessful

The recall is much more common at the local level. According to data from the California Election Data Archive (CEDA), a joint project of the Center for California Studies at the California State University, Sacramento, and the Secretary of State’s office, there were 334 local recall elections for county, city, or school district officials in California between 1995 and 2019, or an average of about 13 per year. Although CEDA does not maintain comprehensive information about the number of local recall *attempts*, most local efforts to qualify a recall election fail. On the other hand, those that do qualify for the ballot generally are successful. According to the CEDA data, 73% of recall elections resulted in the recall of the local official. CEDA data seem to suggest that local recall elections have become less common in recent years; between 2013 and 2019, there were an average of just seven local recall elections per year.

There are some indications, however, that the number of local recall efforts may have increased since the end of 2019. In June of this year, for example, the *Los Angeles Times* reported that “During the first five months of 2021, active recall efforts — those in which an official step has been taken — have targeted at least 68 local officials in California, according to a *Times* analysis. The total has already surpassed the number of local recall attempts seen during four of the last five years in California, according to Ballotpedia, a nonpartisan website that tracks American politics and elections.” The *Times* report does not, however, specify the number of local recall elections that have *qualified* for the ballot, so it is unclear whether an increase in local recall attempts will result in an increase in the number of local recall elections that are actually held. Based on information from Ballotpedia, it appears that at least nine local recall elections were held in 2020 and at least five local recall elections have been held in 2021. Recalls against an additional four local officials have qualified for the ballot and are scheduled to be held in early 2022, and other recall efforts are underway against more than 40 local officials in California.

Recent Proposed Legislative Constitutional Amendments to Change the Recall Process

SCA 18 (Allen) of 2018 (March 6, 2018 version) proposed to repeal the constitutional prohibition on a recall target appearing on the same ballot as a successor candidate to their own recall, among other provisions. SCA 18 was not heard in a policy committee in this form.

SCA 18 (Allen) of 2018 (May 8, 2018 version) proposed to increase the vote required to recall a state officer from a majority to 55 percent. SCA 18 in this form was approved by the Senate Elections & Constitutional Amendments Committee on a 4-1 vote, but held on the Senate Appropriations Committee's suspense file.

SCA 2 (Allen) of 2019 proposed to eliminate the ballot question of whether or not a candidate should be recalled, except for judicial officers. Instead, SCA 2 would have provided that if a recall qualifies against an officer, other than a judicial officer, the name of the officer would be placed on the ballot as a successor candidate, unless the officer resigned, as specified. If the recall target received a plurality of the vote, the recall would fail. If a different successor candidate received the most votes, the recall would succeed and that successor candidate would be elected. SCA 2 was approved by the Senate on a 28-11 vote, but was not heard in a policy committee in the Assembly in that form, and instead was amended and used for unrelated purposes.

SCA 3 (Allen) of 2021 is identical to the Senate-approved version of SCA 2 (Allen) of 2019. SCA 3 is pending in the Senate Elections & Constitutional Amendments Committee.