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## CALIFORNIA'S RECALL IS NOT OVERPOWERED

**David A. Carrillo, Joshua Spivak, Natalie Kaliss & Jared Madnick\***

*The recall is one of three direct democracy tools in California. Following the failed 2021 recall attempt against California Governor Gavin Newsom, the state recall process has been criticized for evolving beyond its intended purpose to the point of being overpowered and prone to abuse. After reviewing the recall's original intent, we conduct a quantitative analysis of state and local recall attempts in California and compare this to other recall states. We conclude that the critique is unjustified. In California and elsewhere, state official recalls are frequently attempted but rarely qualify for the ballot, demonstrating that the existing recall system is an effective filter. We validate the charge that the recall is primarily a tool of out-party interests, but conclude that this is an intended design feature rather than an unanticipated defect. We conclude instead that California's local recall is the better target for reform efforts, given its comparatively easier qualifying requirements, greater use, and higher success rates. Rather than deviating from its intended purpose, in its 110 years the California state official recall proved to be exactly what its Progressive designers intended: a voter weapon to menace and remove public officials, but one that is difficult to deploy. We frame the recall as less about politics and more about policy: recalls function as public opinion or policy polls and overall tend to validate existing policy. Finally, we conclude that most proposed reforms are solutions seeking a problem, and that California's recall system merits just a few small procedural changes. The upshot is that the view of California's recall as a force gone amok is incorrect.*

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## I. INTRODUCTION

The recall is a century-old direct democracy tool for voting out an elected official before their term ends. This article addresses three issues: how California's state and local recall processes perform, whether the California recall process is overpowered, and the merits of certain proposed reforms to the state recall. To evaluate claims that California's recall is overpowered, we analyze all California state-level recalls and a sample of local-level recalls and compare those California data with data from other recall states. From that quantitative analysis we conclude that in California the recall has been employed often and with significant success at the local level, and less frequently and with less success at the state level. Given those results and the experience of other states with various proposed reforms, we conclude that most proposed changes to California's state-level recall are at best unwarranted, and at worst, will neuter the recall.

At the state level in California the recall is frequently attempted but rarely successful. From 1911 to 2021, California voters filed 179 recall petitions against state officials; only 11 qualified (6% of filed) and 6 succeeded (54.5% of qualified), resulting in 5 recalled legislators and 1 recalled governor.<sup>1</sup> The other 173 petitions either failed to qualify or were rejected at the ballot, an overall 96.6% failure rate.<sup>2</sup> This shows that recalls rarely qualify or result in a vacated office, which rebuts claims that the recall is overused.

At the local level the recall is attempted even more than at the state level and with greater success.<sup>3</sup> We analyzed all California local recalls from 2011 to 2021 and found that in 555 completed recall drives, 139 petitions qualified (25% of filed) and 86 (61.9% of qualified) succeeded at the ballot.<sup>4</sup> The 469 petitions that either failed to qualify or lost at the ballot constitute an overall 84.5% percent failure rate. Other states mirror this result, where the vast majority of recall attempts never reach the ballot.

Our review of a decade of local California recalls shows that far more recall petitions are filed at the local versus the state level, that local

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1. CAL. SEC'Y OF STATE, COMPLETE LIST OF RECALL ATTEMPTS 1 (n.d.), <https://elections.cdn.sos.ca.gov/recalls/ca-recall-history.pdf> [hereinafter COMPLETE LIST OF RECALL ATTEMPTS].

2. *Id.* Data for Figures 1 to 5, Table 1, and state-level recall statistics provided by the California Secretary of State publication COMPLETE LIST OF RECALL ATTEMPTS.

3. *Recall of State Officials*, NAT'L CONF. ST. LEGISLATURES (Sept. 15, 2021), <https://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx> ("Historically, recall attempts at the state level have been largely unsuccessful. The recall is used much more often, and with more success, at the local level.").

4. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1, at 16-18; *see infra* tbl.3.

recalls are significantly more likely to qualify and to succeed than state recalls are, and that the local overall success rate (15.5%) is 5 times the state overall success rate (3.4%). This supports our conclusion that the state recall is not overused—it pales in comparison to the robust local recall. But even the local recall is used infrequently compared to the thousands of elected positions subject to the recall in California.

Finally, we analyze various proposed reforms. We conclude that California could benefit from some recall process reforms and that other proposals would weaken or end recalls in California.

## II. RECALL DESIGN CONSIDERATIONS

### A. *The recall in general*

A recall is a procedure for removing and replacing a public official by plebiscite before that official's term ends.<sup>5</sup> It is a political process in which proponents file a petition, gather signatures, campaign for their position, and seek a win at the ballot.<sup>6</sup> Nineteen states and the District of Columbia permit recalling at least some state officials.<sup>7</sup> At least 41 states and the District of Columbia permit local recall elections.<sup>8</sup> Recall states all share several basic elements:

- Proponents apply to circulate a recall petition; some states require stating grounds.

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5. *Recall of State Officials*, *supra* note 3.

6. See CAL. CONST. art. II, §§ 14-15. See generally DAVID A. CARRILLO & DANNY Y. CHOU, CALIFORNIA CONSTITUTIONAL LAW at 161-62 (2021); David A. Carrillo, Stephen M. Duvernay, Benjamin Gevercer & Meghan Fenzel, *California Constitutional Law: Direct Democracy*, 92 S. CAL. L. REV. 557, 568 (2019).

7. *Recall of State Officials*, *supra* note 3 (listing the following 19 states: Alaska, Arizona, California, Colorado, Georgia, Idaho, Illinois, Kansas, Louisiana, Michigan, Minnesota, Montana, Nevada, New Jersey, North Dakota, Oregon, Rhode Island, Washington, and Wisconsin); see also JOSEPH F. ZIMMERMAN, THE RECALL: TRIBUNAL OF THE PEOPLE 21 (State Univ. of N.Y. Press 2013) (1997). Virginia has a unique process: it requires citizen petitions, but after the required number of signatures is verified, a court conducts a recall trial to decide whether the official will be removed from office. Authorities differ on whether this counts as a recall procedure.

8. There is no consensus on this figure. Compare the 30 states listed in *Recall of Local Officials*, NAT'L CONF. ST. LEGISLATURES, <https://www.ncsl.org/research/elections-and-campaigns/recall-of-local-officials.aspx> (last visited Mar. 30, 2022), with the 39 states listed in *Laws Governing Recall*, BALLOTEDIA, [https://ballotpedia.org/Laws\\_governing\\_recall](https://ballotpedia.org/Laws_governing_recall) (last visited Mar. 30, 2022). Yet the numbers are higher: for example, Vermont is listed in the no-recalls column, but had one in Underhill on October 19, 2021. It is unclear if New Hampshire allows recalls, but it is on the books for certain jurisdictions. See Kimberly Houghton, *Nashua parents seek to oust school officials over remote learning*, N.H. UNION LEADER (Jan. 17, 2021), [https://www.unionleader.com/news/health/coronavirus/nashua-parents-seek-to-oust-school-officials-over-remote-learning/article\\_1651b452-55fd-51e8-bca5-89ae806a519e.html](https://www.unionleader.com/news/health/coronavirus/nashua-parents-seek-to-oust-school-officials-over-remote-learning/article_1651b452-55fd-51e8-bca5-89ae806a519e.html).

- Proponents must gather a number of signatures in a period of time.
- Election officials verify that the signature threshold is met.
- A recall election is held, and if it succeeds, a replacement procedure applies.

The recall makes representative government more responsive to majority will.<sup>9</sup> This is consistent with California's expressly voter-directed government.<sup>10</sup> The recall is often accurately described as a weapon. Progressives called it the "gun behind the door," opponents called it the "hair-trigger form of government," and California Governor Hiram Johnson asked, "How best can we arm the people to protect themselves hereafter?"<sup>11</sup> The ballot argument framed the recall as the power "to remove a dishonest, incapable, or unsatisfactory servant."<sup>12</sup> It also described the recall as a means to require a public servant "whose stewardship is questioned . . . to submit the question of his continuance in office to a vote of the electors. If a majority of all voting at the election say that their servant is unfit to serve them longer, he is thereby retired."<sup>13</sup> From their inception in California the recall and other direct democracy powers commanded strong public support and were adopted by large majorities.<sup>14</sup> Periodic calls to abandon or weaken the recall are commonly met with "strong popular disapproval."<sup>15</sup> Modern polling

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9. FREDERICK L. BIRD & FRANCES M. RYAN, *THE RECALL OF PUBLIC OFFICERS* 3 (1930); ZIMMERMAN, *supra* note 7, at 111 ("The device clearly is a constant reminder sovereignty resides in the voters.").

10. *See* CAL. CONST. art. II, § 1 ("All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.").

11. The Progressive reforms were contemporaneously described as "significant and useful weapons of democratic control." BIRD & RYAN, *supra* note 9, at 2. Woodrow Wilson also used "the gun behind the door" metaphor. *Id.* at 10; *see also* ZIMMERMAN, *supra* note 7, at 1. William Howard Taft used the hair-trigger comment in his book, *POPULAR GOVERNMENT: ITS ESSENCE, ITS PERMANENCE AND ITS PERILS* 81 (1913). Hiram W. Johnson, Governor of Cal., First Inaugural Address (Jan. 3, 1911), <https://governors.library.ca.gov/addresses/23-hjohnson01.html>.

12. LEE C. GATES & WM C. CLARK, *REASONS WHY SENATE CONSTITUTIONAL AMENDMENT NO. 23 SHOULD BE ADOPTED* (1911), [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1023&context=ca\\_ballot\\_props](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1023&context=ca_ballot_props).

13. *Id.*

14. ZIMMERMAN, *supra* note 7, at 13; BIRD & RYAN, *supra* note 9, at 54; *see also* BIRD & RYAN, *supra* note 9, at 362 ("The public is too well satisfied with the sense of security which the existence of the recall conveys to permit it to be discarded. As a defensive weapon of democracy it apparently has come to stay."). The recall was approved by a vote of 4 to 1; it received the second largest vote and won by the largest majority out of all 23 proposals on the October 10, 1911 special election ballot. ZIMMERMAN, *supra* note 7, at 13; BIRD & RYAN, *supra* note 9, at 54.

15. BIRD & RYAN, *supra* note 9, at 7.

shows that the electorate still strongly favors its direct democracy powers.<sup>16</sup>

*B. Designing a recall system*

We frame recall systems as choices between availability and integrity.<sup>17</sup> A recall should be easy enough to deploy that it is both a credible threat to a targeted official and a realistic means for the voters to remove that official.<sup>18</sup> Yet ballot integrity must be protected so that the process is not abused. There is a subjective element here. Elected officials, for example, are likely to view the recall as too easy to use, given their self-interested view that the electorate should not be empowered to vote out officials. Voters are likely to be unhappy with how costly and time-consuming it is to gather enough signatures to qualify a recall for the ballot, given their self-interested view that it should be easier to achieve their political aims. And there is a normative question here about what constitutes a bad elected official.

The answer to these subjective and normative questions is that (like other direct democracy tools) the recall is a mechanism to enforce majority will, with the underlying assumption that the majority's will is the conclusive answer. Thus, the electorate's decision to retain or recall an elected official is itself the answer to the normative question: recalling an official proves that a majority viewed them as a bad public servant. Accordingly, the question about whether it should be more or less difficult to secure that voter opinion turns less on how easy or hard the recall *should* be to use, and more on practical effects of a recall system's design: whether that design makes the system prone to abuse, or if the design makes the recall impractical to use at all.

*C. Genesis of the California recall*

In 1911, California Governor Hiram Johnson and his legislative allies proposed that the voters adopt the recall along with two other direct

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16. CARRILLO & CHOU, *supra* note 6, at 626. Commentators similarly disfavor diluting the recall: "because the people are sometimes vanquished by their own weapon is no justification for depriving them of so desirable a potential means of protection." BIRD & RYAN, *supra* note 9, at 351.

17. This question dates to the recall's origins in Los Angeles in 1903. See BIRD & RYAN, *supra* note 9, at 90. "The flexibility necessary for the useful functioning of any democratic instrument makes the abuse of those instruments possible." *Id.* at 351. Others frame the tradeoff as between public empowerment, accountability, and participation versus government control, insulation, and efficiency. See CARRILLO & CHOU, *supra* note 6, at 561.

18. See THOMAS E. CRONIN, DIRECT DEMOCRACY: THE POLITICS OF INITIATIVE, REFERENDUM, AND RECALL 135 (1989).

democracy tools: the initiative and referendum.<sup>19</sup> In Progressive circles Dr. John Randolph Haynes was considered the recall's primary mover.<sup>20</sup> Nearly all existing literature describes Los Angeles as the first California city to originate the recall in 1903.<sup>21</sup> Yet we found evidence that San Diego had a recall law in its 1889 charter; it is unclear why sources in that period ignore this.<sup>22</sup> Supporters praised these innovations for returning power to the voters to use against wealthy and influential political interests, primarily the Southern Pacific Railroad.<sup>23</sup>

The Progressives intended that the new direct democracy tools would "give to the electorate the power of action when desired, and . . . place in the hands of the people the means by which they may protect themselves."<sup>24</sup> Assemblyman William Clark argued that the recall "is an essential step in the movement in this State to place its government in the hands of the people—a necessary part of the machinery that makes possible a government of the people, by the people, for the people."<sup>25</sup> The Progressives intended that direct democracy would ensure that political power remained in the electorate's hands, allowing them to make policy, rescind government actions, or remove corrupt officials from power between elections.<sup>26</sup> Thus, the recall's intended purpose is for voters to hold elected officials accountable.<sup>27</sup> California voters overwhelmingly (76%) adopted the recall in October 1911.<sup>28</sup>

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19. WINSTON W. CROUCH, *THE INITIATIVE AND REFERENDUM IN CALIFORNIA* 4 (Haynes Found. 1950) (1939); FRANKLIN HICHBORN, *STORY OF THE SESSION OF THE CALIFORNIA LEGISLATURE OF 1911*, at 42-43 (1911).

20. See TOM SITTON, *JOHN RANDOLPH HAYNES: CALIFORNIA PROGRESSIVE* (1992).

21. See DONALD MUSCH, *THE RISE OF ARNOLD SCHWARZENEGGER THE FALL OF GRAY DAVIS: RECALL ELECTIONS IN THE UNITED STATES* 13 (2004). The recall in another form existed in the Revolutionary-era United States. JOSHUA SPIVAK, *RECALL ELECTIONS: FROM ALEXANDER HAMILTON TO GAVIN NEWSOM 20-21* (2021). The Articles of Confederation contained a recall provision, as did the Pennsylvania Constitution. *Id.* The recall was proposed in the Virginia Plan and voted down at the Constitutional Convention of 1787. *Id.*

22. CRONIN, *supra* note 18 notes that smaller jurisdictions had it without naming them. Wake County, N.C. Election Board Member Gerry Cohen discovered that San Diego had the recall in its charter in 1889 as noted in Anna Johnson, *Could Raleigh hold a recall election? It's rare and complicated but mostly possible*, RALEIGH NEWS & OBSERVER (June 23, 2021, 2:55 PM), <https://amp.newsobserver.com/news/politics-government/election/article252276538.html>. See generally San Diego, Cal., City Charter (Mar. 16, 1889), <https://www.sandiego.gov/sites/default/files/legacy/city-clerk/pdf/archives/1889a.pdf>.

23. See HICHBORN, *supra* note 19, at 227.

24. *Id.* at 57.

25. *The Recall Amendment: Meeting of June 14, 1911*, 6 TRANSACTIONS COMMONWEALTH CLUB CAL. 158-59 (1912).

26. LARRY N. GERSTON & TERRY CHRISTENSEN, *RECALL!: CALIFORNIA'S POLITICAL EARTHQUAKE* 5 (2004).

27. The recall was adopted by 76% of voters. *Id.* at 2-3.

28. SPIVAK, *supra* note 21, at 31. Of the 22 amendments on the ballot in that election, the recall garnered the most votes and was passed by the second largest margin, with 76.82%

*D. California's recall system*

California's government is designed around the belief that the people possess supreme political power: "All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require."<sup>29</sup> These powerful direct democracy tools cause some observers to describe the electorate as California's fourth branch of government.<sup>30</sup> That perspective should inform our view of the recall system the Progressives designed—particularly regarding complaints that it is too easy to use.

The recall system designed by Johnson's Progressives is largely unchanged since 1911.<sup>31</sup> It is "the power of the electors to remove an elective officer."<sup>32</sup> Recalls are initiated by filing a petition, which may state a reason; this is optional because sufficiency of reason for a recall is not reviewable.<sup>33</sup> The persons who file the recall petition and gather signatures to qualify it for the ballot are known as the *proponents*. Recall petitions must qualify for the ballot within 160 days of filing the petition.<sup>34</sup> Qualifying a recall against a state officer requires submitting signatures equal to 12% of the last vote for the office for a statewide-elected officer, and equal to 20% of the last vote for the office for a district-elected official.<sup>35</sup> If a recall qualifies for the ballot, an election must be held 60 to 80 days from the date of signature certification.<sup>36</sup> The official is removed by majority vote and is succeeded by the candidate who receives a plurality.<sup>37</sup> A separate set of qualifying metrics applies to local officials.

In the next sections we consider California's experience with state and local recalls separately. State official recalls are directed at the governor, lieutenant governor, secretary of state, treasurer, controller,

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in favor (178, 115-53, 755). *Id.* This same election saw the adoption of the initiative and referendum along with women's suffrage. *Id.*

29. CAL. CONST. art. II, § 1; see Glen Gendzel, *The People Versus the Octopus: California Progressives and the Origins of Direct Democracy*, 37 *SIÈCLES* 1, 3-4 (2013).

30. Kathryn Mickle Werdegar, *Living with Direct Democracy: The California Supreme Court and the Initiative Power—100 Years of Accommodation*, 7 *CAL. LEGAL HIST.* 143, 147 (2012).

31. Compare CHARLES A. BEARD & BIRL E. SHULTZ, *DOCUMENTS ON THE STATE-WIDE INITIATIVE, REFERENDUM AND RECALL 264-70* (1912) (recall system adopted in 1911 as CAL. CONST. art. XXIII, § 1), with CAL. CONST. art. II, §§ 13-19 (current recall system).

32. CAL. CONST. art. II, § 13.

33. *Id.* § 14(a).

34. *Id.*

35. *Id.* § 14(b).

36. *Id.* § 15(a).

37. CAL. CONST. art. II, § 15(c).

attorney general, superintendent of public instruction, insurance commissioner, members of the State Board of Equalization, legislators, and justices of the Court of Appeal and the California Supreme Court.<sup>38</sup> Local recalls are directed at elected officials of a general law or charter city or county, districts (school, community college, or special), and Superior Court judges.<sup>39</sup>

### III. CALIFORNIA STATE OFFICIAL RECALLS

#### A. *The procedure*

The state officer recall procedure is described in California Constitution article I and Elections Code Division 11 chapters 1 and 2. There are five basic steps:

1. Proponents serve, file, and publish a notice of intention to circulate a recall petition. Although a notice of intention must contain a statement (under two hundred words long) of the reasons for the recall, that requirement has no practical effect because “sufficiency of reason is not reviewable.”<sup>40</sup> The notice must be signed by either 10 proponents or a number of signatures equal to that required to file the targeted official’s nomination papers, whichever is greater.<sup>41</sup> The notice of intention is filed with the secretary of state and published in at least one newspaper of general circulation.<sup>42</sup> The targeted official may file an answer with the secretary of state within 7 days.<sup>43</sup>
2. The secretary of state must approve the petition’s form and may reject the petition for discrepancies between it and the notice of intention.<sup>44</sup> If the petition is rejected the proponents have 10

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38. CAL. SEC’Y OF STATE, PROCEDURES FOR RECALLING STATE AND LOCAL OFFICIALS 1 (2020), <https://elections.cdn.sos.ca.gov/recalls/recall-procedures-guide.pdf> [hereinafter PROCEDURES FOR RECALLING STATE AND LOCAL OFFICIALS]; CAL. ELEC. CODE §§ 11001, 11006 (Deering 2021).

39. ELEC. §§ 11001, 11004. Superior Court judges are local officials for some purposes and state officers for others; the Elections Code treats them as local officials for recall purposes and so do we.

40. CAL. CONST. art. II, § 14(a); ELEC. § 11020(b); PROCEDURES FOR RECALLING STATE AND LOCAL OFFICIALS, *supra* note 38, at 3.

41. ELEC. §§ 11020(c), 11041(a)(2).

42. *Id.* §§ 11021, 11022.

43. *Id.* § 11023(a). If the governor or secretary of state is targeted, the recall duties of that office are performed by the lieutenant governor or controller, respectively. CAL. CONST. art. II, § 17.

44. *See* ELEC. § 11042(c).

- days to correct it.<sup>45</sup> The process is repeated until no alterations are required.<sup>46</sup>
3. Proponents have 160 days from the petition being approved to circulate it and gather signatures.<sup>47</sup> Petition signers must be qualified to vote for the office of the targeted official.<sup>48</sup> Signers must include their name, signature, and residence address.<sup>49</sup> Circulators must submit a declaration that they both witnessed the signatures being written and believe that each signature is genuine.<sup>50</sup> Voters may withdraw their signatures from the recall petition up to 30 business days after the secretary of state announces that a sufficient number of signatures has been reached.<sup>51</sup>
  4. Election officials verify whether the signature threshold has been met. Before the 160th day, proponents file the petition and accompanying signatures with the secretary of state and with elections officials of each county in which it was circulated.<sup>52</sup> For a statewide official, the number of registered voter signatures accompanying the petition must be 12% of voter turnout during the last vote for that office.<sup>53</sup> For district-elected officials the signatures must be 20% of the last vote for that office.<sup>54</sup> Signatures for statewide officer recall petitions must also be obtained in at least 5 different counties and be equal to at least 1% of the last vote for that office in each of 5 counties.<sup>55</sup>
  5. If the required number of valid signatures is met, an election is held to determine whether to recall an official and, if appropriate, to elect a successor.<sup>56</sup> Upon determining that enough valid signatures exist the secretary of state notifies the

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45. *Id.*

46. *Id.*

47. CAL. CONST. art. II, § 14.

48. ELEC. § 11045.

49. *Id.* §§ 100, 11043(a). *See generally* Assembly of Cal. v. Deukmejian, 639 P.2d 939 (Cal. 1982) (finding that recall petition forms must direct signers to include their “residence address” rather than “address as registered” or other address).

50. ELEC. §§ 104, 11046.

51. *Id.* § 11108(b).

52. CAL. CONST. art. II, § 14(a); *see* ELEC. §§ 11102, 11103.

53. CAL. CONST. art. II, § 14(b). For example, 12,464,235 votes were cast for governor in 2018, so the Newsom recall petition required at least 1,495,709 signatures to qualify for the ballot. *See* CAL. SEC’Y OF STATE, RECALL OF GOVERNOR GAVIN NEWSOM FINAL REPORT (2021), <https://elections.cdn.sos.ca.gov/recalls/recall-final-withdrawn-signatures.pdf> [hereinafter RECALL OF GOVERNOR GAVIN NEWSOM].

54. CAL. CONST. art. II, § 14(b); ELEC. § 11221(c).

55. CAL. CONST. art. II, § 14(b); ELEC. § 11221(c).

56. *See* ELEC. §§ 11104, 11107, 11109, 11110, 11227.

Department of Finance of the results.<sup>57</sup> That department then estimates the recall election's cost.<sup>58</sup> The election must be within 60 to 80 days from the certification, unless it can be consolidated with a regular election within 180 days.<sup>59</sup> Recall elections are decided by a simple majority (50%+1).<sup>60</sup> The state will reimburse officials who are not recalled for their costs and another recall may not be initiated against that official for at least 6 months.<sup>61</sup>

### B. Quantitative analysis

Recalls have been attempted against every branch of California state government, but nearly all failed either in the signature phase or at the ballot.<sup>62</sup> Of the 179 state officer recalls attempted since 1911 only 11 qualified for the ballot, and just 6 succeeded.<sup>63</sup> That's a 6% qualifying rate for all attempts, an overall success rate of 3.4%, and 54.5% success for qualified recalls. This shows that state official recalls are often attempted but rarely qualify. When they do qualify, recalls are more likely than not to succeed. Our analysis shows that any given recall petition has only a small chance of making the ballot, which counters claims that the recall is overused. And despite the outsize attention paid to California's two gubernatorial recalls, those contests are outliers when considered in the broader context of all California state official recalls.

Figure 1 shows that in general recall attempts are periodic rather than linearly increasing or decreasing, suggesting that the recall is more popular in some periods than in others. This pattern also supports the view that the recall is being used more frequently now than in other periods, because both the qualifying and the success rates are higher in recent years. More state official recalls qualified in the past 28 years

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57. *Id.* § 11108(c), (d).

58. *Id.* § 11108(d).

59. The recall election may only be consolidated with the next regularly scheduled election within 180 days of the date of signature certification if the regularly scheduled election is occurring wholly or partially within the same jurisdiction in which the recall election is held, and the number of voters eligible to vote at that next regularly scheduled election equal to at least 50% of all the voters eligible to vote at the recall election. CAL. CONST. art. II, § 15(a), (b).

60. ELEC. § 11383.

61. CAL. CONST. art. II § 18.

62. As used here, an *attempt* is filing a recall petition to start a signature drive; *qualifying* means gathering enough signatures to make the ballot; *succeeding* means the voters removed the official.

63. *Recall History in California (1913 to Present)*, CAL. SECRETARY ST., <https://www.sos.ca.gov/elections/recalls/recall-history-california-1913-present> (last visited Mar. 30, 2022).

than in the previous decades. Although 114 recalls were attempted between 1914 and 1993, none qualified for the ballot. By contrast, of the 61 petitions filed since 1993, only 8 qualified—that’s a 13% qualification rate. The total recall qualification rate since 1911 is 6.15%, but that rate nearly doubles for recalls after 1993.

### *1. The legislature*

As Figures 3 and 4 show, more recalls have been filed against legislators than any other state official, and more of these recalls have qualified for the ballot. Of the 179 state official recall petitions since 1911, 80 (45%) targeted state legislators—specifically, 50 Assembly members and 30 state senators.<sup>64</sup> Of the 11 recall attempts that qualified for the ballot since 1911, 9 (81.8%) targeted legislators.<sup>65</sup> Other than the 2003 Governor Gray Davis recall, every recalled state official has been a legislator: in California’s 6 successful recalls, 5 removed legislators (3 senators and 2 Assembly members).<sup>66</sup> Compared with the overall recall success rate of about 3.4%, the overall success rate of recalling legislators (5 of 80) is nearly double at 6.25%. From this we conclude that the recall is most often used, and most successfully used, against legislators compared with any other state official.

### *2. Gubernatorial recalls*

Governors received the second-most recall petitions after the legislature. Of the 179 state official recall petitions since 1911, 55 (30.7%) were filed against governors.<sup>67</sup> Table 1 shows that gubernatorial recall petitions have been equal opportunity, filed against Democratic and Republican governors in the past century.<sup>68</sup> As with judicial recalls (discussed next), gubernatorial recall efforts had a slow start. The first recall petition against a governor was filed in 1939 against Governor Culbert Olson; he received 5 recall petitions (none qualified).<sup>69</sup> Starting with Governor Edmund G. “Pat” Brown in 1959, recall petitions have

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64. *Id.*

65. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

66. *Recall History in California (1913 to Present)*, *supra* note 63.

67. *Id.*

68. See Zachary J. Siegel, *Recall Me Maybe? The Corrosive Effect of Recall Elections on State Legislative Politics*, 86 U. COLO. L. REV. 307, 316-17 (2015) (“After they are initiated, political recalls polarize state and local politics, but it is important to note that the tactic itself is ideologically neutral. On the whole, liberals attempt to recall conservative politicians about as often as conservatives attempt to recall liberals. . . . The use of political recall to oust members of both political parties should therefore concern legislators on both sides of the aisle.” (footnotes omitted)).

69. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

been filed almost annually against every sitting governor (Figure 5).<sup>70</sup> Ten of the 18 governors since 1911 received recall petitions, and every governor since 1960 received at least 3 recall petitions (Table 1). Both Republican and Democratic governors received recall petitions, but only recalls against Democratic governors qualified (twice).<sup>71</sup> Nine of California's last 11 governors faced multiple recall attempts (Table 1). Only 2 gubernatorial recall attempts have qualified: one against Governor Gray Davis in 2003 (it succeeded) and the other in 2021 against Governor Gavin Newsom (it lost).<sup>72</sup>

### 3. *Recalling justices*

The California Supreme Court has been targeted in several recall attempts. Just 28 of the 179 total statewide officer petitions (15.6%) were filed against a justice, and all targeted California Supreme Court members rather than justices of the Court of Appeal.<sup>73</sup> The first attempt was a petition filed against the entire court in 1966.<sup>74</sup> Since then petitions have targeted individual justices. Of the 14 chief justices since 1911, only 4 received recall petitions: Traynor, Bird, Lucas, and George. Most attempts against the court's justices occurred in one decade: all but 2 of the 28 petitions filed against the court's justices were filed in the 1980s.<sup>75</sup> From 1981 to 1986, 9 petitions were filed against Chief Justice Rose Bird and 17 against other justices.<sup>76</sup> Six more were filed in 1987 and 3 more in 1988.<sup>77</sup> Since 1988 there has been just 1 petition, against Chief Justice Ronald George in 1997.<sup>78</sup> No recall petition against a California appellate justice has ever qualified for the ballot.

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70. *Id.*; see also *infra* fig.5.

71. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

72. *Id.*; see *Recall History in California (1913 to Present)*, *supra* note 63.

73. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1; David A. Carrillo, Joshua Spivak & Brandon V. Stracener, *California's Electorate Runs the Game In Recall Elections*, HARV. ADVANCED LEADERSHIP INITIATIVE SOC. IMPACT REV. (Sept. 8, 2021), <https://www.sir.advancedleadership.harvard.edu/articles/californias-electorate-runs-the-game-in-recall-elections>.

74. Cal. Constitution Ctr., *What Does California's Experience with Recall of Judges Teach Us?*, SCOCABLOG (Nov. 10, 2016), [http://scocablog.com/what-does-californias-experience-with-recall-of-judges-teach-us/#\\_ftnref25](http://scocablog.com/what-does-californias-experience-with-recall-of-judges-teach-us/#_ftnref25).

75. *Id.*

76. *Id.*

77. *Id.* Rose Bird, Cruz Reynoso, and Joseph Grodin were voted out of office in a mandatory retention election. Some reports erroneously called the retention race a recall. See John Balzar, *Few Rules to Go By: Justice Bird's Recall Becoming Epic Battle*, L.A. TIMES (Apr. 7, 1985, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1985-04-07-mn-27518-story.html>. It is more correct to say that they were *not retained*.

78. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

#### 4. Other executive branch officials

Recalls against executive branch officials besides the governor are less common than those targeting governors: there are only 16 such petitions (8.9%) since 1911.<sup>79</sup> Although gubernatorial recall attempts started in 1939 and have regularly recurred since 1960, the first petition against another executive officer was not filed until 1986 against Lieutenant Governor Leo McCarthy.<sup>80</sup> The next year, two petitions were filed against Attorney General John Van de Kamp.<sup>81</sup> Several petitions between 1995 and 2012 targeted Board of Equalization member Dean Andal (1995), Insurance Commissioner Chuck Quackenbush (2000), and Attorneys General Edmund G. “Jerry” Brown (2009) and Kamala Harris (2012).<sup>82</sup> In 2019, recalls were filed against the lieutenant governor, attorney general, secretary of state, treasurer, insurance commissioner, and controller.<sup>83</sup> And in 2020 another petition targeted Attorney General Xavier Becerra.<sup>84</sup>

Recall efforts against other executive branch officials are too few and too recent to permit meaningful conclusions. They are less common than gubernatorial recalls and have generated little public attention. We suspect that the two gubernatorial recalls received outsized attention because they targeted the most high-profile state official, not because those two specific recalls were evidence of some larger pattern in the recall itself. From this review we conclude that individual legislators have the most to fear from the recall compared with other state officials. Overexamined as they are, the two gubernatorial recalls are not representative of the larger state official recall field.

#### C. The qualified recalls show the power of interests

In this section we evaluate all qualified state-level recalls (successful or not) to highlight two themes: how often political interest groups attempted recalls to serve their own ends, and how often those attempts failed or backfired. Most state recall attempts have broadly partisan motivations: they are driven by interest groups to punish political opponents, or by political parties to drive their agendas.<sup>85</sup> Yet

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79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

85. Siegel, *supra* note 68, at 334 (“[T]he power of well-financed special interest groups often dominates the recall process.”). On the state level, we frequently see an interest group start a recall with a political veneer. The best example of this is the 2012 Wisconsin gubernatorial recall, which was started by labor groups, but who later lost control to more

as the individual campaigns and overall arc described below demonstrate, those partisans generally fail. The recall has not been effective as a partisan weapon—instead, it is most successful at validating existing public policy.

Recalls are generally weapons of the weak, used by those out-of-power to target those in-power.<sup>86</sup> Occasionally, they have been used for partisan purposes. In four cases nationwide, the recall resulted in a state legislative body switching control from one party to the other.<sup>87</sup> But the infrequency of state-level recalls shows that it is a poor tool for that approach. The 2011–2012 recalls in Wisconsin (the only attempt to simultaneously recall large numbers of officials) were a failed endeavor for Democrats: although the party managed to win the recall elections in three total senate seats over the two years, they were unable to gain control of either the governor's office or the state senate (except for a brief time at the end of 2012) and failed to achieve any policy changes. Starting in 2019, Colorado Republicans began targeted campaigns against Democrats to regain power in a state that has been slipping from their grasp.<sup>88</sup> All these recalls failed to qualify.<sup>89</sup> Rather than improving Republican fortunes, the next election in 2020 saw Colorado Democrats achieve a double-digit victory margin for the first time in over 50 years.<sup>90</sup> The failed recalls against Wisconsin Governor Scott Walker and California Governor Gavin Newsom are evidence that using the recall for partisan purposes is unlikely to achieve a satisfying outcome.

### *1. The first recalls: 1913–1914*

The earliest California recalls were filed shortly after the recall was added to the California Constitution. Five recalls were filed between

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established Democratic Party advocates. See JASON STEIN & PATRICK MARLEY, *MORE THAN THEY BARGAINED FOR: SCOTT WALKER, UNIONS AND THE FIGHT FOR WISCONSIN*, at xix (2013).

86. In some instances, the recall is used by officials in power to gain more power, such as the Senator Denham recall discussed below, but generally that is not the case.

87. SPIVAK, *supra* note 21, at 40–62, describing each recall contest in detail. The tallies are original sums of those contests, from data collected by and on file with the authors. The four cases are Michigan's Senate in 1983, California Assembly in 1995, Wisconsin Senate in 1996, and the Wisconsin Senate in 2012.

88. See Ken Buck's "Spell R-E-C-A-L-L" Speech Bites Back Hard, COLO. POLS (Sept. 16, 2019, 1:07 PM), <https://www.coloradopols.com/diary/128160/ken-bucks-spell-r-e-c-a-l-l-speech-bites-back-hard>.

89. See Megan Verlee, *After Facing Numerous Recall Attempts, Democratic Lawmakers Want to Change Rules*, CPR NEWS (May 6, 2021, 11:30 AM), <https://www.cpr.org/2021/05/06/after-facing-numerous-recall-attempts-democratic-lawmakers-want-to-change-rules/>.

90. *Colorado*, 270TOWIN, <https://www.270towin.com/states/Colorado> (last visited on Apr. 6, 2022).

1913 and 1916, all against legislators.<sup>91</sup> Three qualified for the ballot and two succeeded.<sup>92</sup> These first recalls are each standard-setting examples for how several recall variations have played out since 1911. One is the rare recall targeting actual criminal conduct. Another is the interest group recall, which is often attempted but rarely succeeds. The third is the partisan revenge ploy in which partisans wield the recall against their political enemies, with some success.

Senator Marshall Black was recalled in 1913.<sup>93</sup> This was a unique event from several perspectives: it was the first recall in California history, Black is the only state officer recalled for wrongdoing, and this appears to be the only state official recall to qualify for the ballot without the aid of interest groups. In 1912 Black was indicted, pleaded guilty, and sentenced to 10 years in prison for embezzling bank funds.<sup>94</sup> This initial recall success is the archetype of using the recall against corrupt politicians. As the following examples show, this recall category proved to be a rare occurrence.

A recall attempt against Senator James Owens failed in 1913.<sup>95</sup> This second recall attempt is an archetype of how interest groups try and fail to use the recall for political ends. Labor groups targeted Owens, claiming that he failed to fulfill his campaign promises.<sup>96</sup> Owens survived the recall, which backfired on the labor movement by revealing its political weakness.<sup>97</sup> This interest group recall category, as the other examples below show, is often attempted but rarely succeeds.

Senator Edwin Grant was recalled in 1914.<sup>98</sup> This third recall attempt is an archetype of a political recall: using the recall for revenge or to challenge the results of a close election. Democrat Grant narrowly defeated incumbent conservative Republican Senator Eddie Wolfe by 95 votes in 1912. Despite being in the same party, Wolfe was a leader of the forces opposing Governor Johnson.<sup>99</sup> A first recall attempt against Grant failed to qualify in 1913; a second attempt qualified in 1914.<sup>100</sup> Both campaigns were led by the conservative political machine in San Francisco.<sup>101</sup> Contemporary reports note that Grant's sponsorship of the

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91. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

92. *Id.*

93. *Id.*

94. See BIRD & RYAN, *supra* note 9, at 271-72.

95. See *id.* at 272-74.

96. See *id.*

97. See *id.*

98. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

99. See *Convention Characteristics*, CAL. OUTLOOK, Oct. 3, 1914, at 12.

100. See BIRD & RYAN, *supra* note 9, at 277-79.

101. See HICHBORN, *supra* note 19, at 67-69, 80.

Redlight Abatement Act was a precipitating event, yet it was not cited by recall proponents because “to recall a state senator for having opposed vice conditions did not seem possible even in San Francisco.”<sup>102</sup> This recall was a naked effort to undo the previous election, and it succeeded: Grant was recalled and Wolfe was elected to replace him.<sup>103</sup> As the following recall examples show, the political revenge recall category shows mixed results: some successes, some failures. After these three events, the recall hibernated for about 80 years. Over 110 recalls were filed against state-level officials between 1916 and 1993, but none qualified for the ballot.<sup>104</sup>

## 2. The post-1993 recalls

Senator David Roberti beat a recall in 1994.<sup>105</sup> This campaign shows how difficult it can be for an interest group to use the recall offensively. Roberti was the California Senate president *pro tem* and in 1994 he was termed out and was running for treasurer.<sup>106</sup> The gun lobby targeted Roberti for his role in passing a semiautomatic assault weapons ban in 1989.<sup>107</sup> Roberti defeated the recall effort with 59%, but it did weaken him by costing his campaign \$700,000 and he argued that it hurt his losing primary campaign for treasurer.<sup>108</sup> As the remaining recall stories and the quantitative analysis below show, even partially successful results like this are uncommon.

Assembly members Paul Horcher and Doris Allen are in the partisan revenge category—from their own party. In the 1994 election, the Republicans captured a bare 41–39 majority in the Assembly.<sup>109</sup> Republican Horcher broke from his party and declared himself an independent, handing the Assembly majority and speaker gavel to long-

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102. BIRD & RYAN, *supra* note 9, at 276; Joshua Spivak, *California's Recall*, 82 CAL. HIST. 20, 29 n.79 (2004).

103. With over 50% of the district voting in the election, Grant was removed by a margin of 531 votes. See BIRD & RYAN, *supra* note 9, at 278-79.

104. Data for Figure 1, subsequent charts, and recall statistics provided by COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

105. *Id.*

106. SPIVAK, *supra* note 21, at 42.

107. William Hamilton, *Gun Control Stance Makes California Legislator Target of Recall*, WASH. POST (Apr. 10, 1994), <https://www.washingtonpost.com/archive/politics/1994/04/10/gun-control-stance-makes-california-legislator-target-of-recall/0555716a-4249-4bc2-a974-8e7f7cfa6c91/>.

108. *Treasurer*, CAL. J. WKLY, Nov. 21, 1994, at 13. For an argument that the recall benefitted Roberti, see Edward Epstein, *Recall Victory Gives Roberti an Edge in Treasurer's Race*, S.F. CHRON., Apr. 14, 1994, at A20.

109. See Jon Matthews, *Republican Says He'll Seize Assembly Post From Brown*, SACRAMENTO BEE, Nov. 11, 1994, at A1.

time Democratic Speaker Willie Brown.<sup>110</sup> As political payback, Republicans qualified a recall against Horcher, which succeeded.<sup>111</sup> Following this successful recall, Allen (who blamed her fellow Republicans for her loss in a 1995 special election) also flipped.<sup>112</sup> She cooperated with Democrats, who voted her in as Assembly speaker.<sup>113</sup> Republicans qualified a recall against her, which succeeded, and finally allowed the Republicans to gain control of the Assembly.<sup>114</sup> Although these may seem like successful recalls, both were short-term victories. Republicans suffered in the long term: they lost their majority in the next election in 1996 and have not regained it since, and Republican aides were indicted for misuse of offices in the Horcher and Allen recalls.<sup>115</sup> These recalls show that partisan revenge ploys can be Pyrrhic victories.

Assemblyman Michael Machado defeated a recall in 1995 in another example of a political party trying to gain a partisan advantage with a recall by relitigating a close election.<sup>116</sup> The Machado recall was part of the speakership battles that resulted in the Horcher and Allen recalls.<sup>117</sup> After a Republican (Horcher) switched allegiances and voted for a Democrat for speaker, Republicans targeted both Horcher and Machado.<sup>118</sup> Republicans launched a recall drive claiming that Machado misled voters by promising to be an independent voice during the campaign but then voted for Brown (a Democrat) for speaker.<sup>119</sup> Unlike in the general election, Machado easily triumphed in the recall vote.<sup>120</sup> The candidate who finished first for the replacement question was the same Republican Machado beat for the seat, which shows that the real

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110. See Susan F. Rasky, *In California, Political Prestidigitation*, N.Y. TIMES, Jan. 8, 1995, § 4, at 4, <https://www.nytimes.com/1995/01/08/weekinreview/the-nation-in-california-political-prestidigitation.html>.

111. Greg Lucas, *GOP Backed Recall Succeeds — Horcher Thrown Out/ Vote could affect S.F. Mayoral race*, SFGATE (May 18, 1995, 4:00), <https://www.sfgate.com/news/article/GOP-Backed-Recall-Succeeds-Horcher-Thrown-Out-3032493.php>.

112. See B. Drummond Ayres Jr., *California Speaker Frustrates G.O.P. One Last Time*, N.Y. TIMES, June 6, 1995, § A, at 14, <https://www.nytimes.com/1995/06/06/us/california-speaker-frustrates-gop-one-last-time.html>; see also ZIMMERMAN, *supra* note 7, at 72.

113. ZIMMERMAN, *supra* note 7, at 72.

114. *Id.* at 72-73.

115. *Id.*

116. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

117. See *Assemblyman Defeats GOP Recall Attempt*, S.F. CHRON. (Aug. 23, 1995, 4:00), <https://www.sfchronicle.com/news/article/Assemblyman-Defeats-GOP-Recall-Attempt-3026691.php>.

118. Steven A. Capps, *GOP's backing of Assembly recall efforts questioned*, CTINSIDER (May 22, 1995, 4:00), <https://www.ctinsider.com/news/article/GOP-s-backing-of-Assembly-recall-efforts-3145344.php>.

119. See *id.*

120. *Assemblyman Defeats GOP Recall Attempt*, *supra* note 117.

motivation was to overturn the previous election for a very specific purpose (regaining the speakership and control of the Assembly).<sup>121</sup>

The 2007 Senator Jeffrey Denham recall attempt was another partisan effort that backfired. Democrats wanted to remove him to secure a veto-proof legislative majority.<sup>122</sup> The recall qualified, but Denham defeated it and was elected to Congress in 2010.<sup>123</sup> This recall both failed to achieve its chief aim of securing legislative control and likely raised the target's political profile and enabled him to win a higher seat.

The 2018 Senator Josh Newman recall is another example of a political party using the recall to relitigate a close election. Newman's recall is the inverse of the 2007 attempt against Denham: Democrats needed to remove Republican Denham to secure a legislative supermajority, and Republicans needed to remove Newman to prevent a Democratic legislative supermajority.<sup>124</sup> Newman was recalled and replaced by Ling Ling Chang, the candidate Newman had defeated for the seat in 2016.<sup>125</sup> Newman roared back and took the seat from Chang in 2020.<sup>126</sup> This again shows the mixed results of partisan recalls: the Republican victory was short-lived.

The Governor Gray Davis recall in 2003 is an anomaly. It was both the first statewide-elected official recall ever to qualify for the ballot and the only one ever to succeed.<sup>127</sup> Recalls are frequently filed against California governors of both parties; all but two failed to qualify.<sup>128</sup> Davis suffered from a variety of problems, including rolling power outages and high electricity bills from an energy crisis precipitated by a deregulated market, and an economic recession.<sup>129</sup> A combination of a low signature threshold and major financial backing put the Davis recall

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121. SPIVAK, *supra* note 21, at 44.

122. *Id.* at 60.

123. *Id.*

124. Nick Gerda, *Josh Newman is Recalled, Ending Democrats' Supermajority in State Senate*, VOICE O.C. (June 7, 2018), <https://voiceofoc.org/2018/06/josh-newman-is-recalled-ending-democrats-supermajority-in-state-senate/>.

125. *Id.*; *see also* SPIVAK, *supra* note 21, at 62.

126. William D'Urso, *Chang Concedes to Newman in District 29 Race in SoCal*, SPECTRUM NEWS 1 (Nov. 13, 2020, 3:37 PM), <https://spectrumnews1.com/ca/la-west/politics/2020/11/13/chang-concedes-to-newman-in-district-29-race>.

127. *See* COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

128. *Id.* Seven recalls were filed against Governor Arnold Schwarzenegger, 5 against Governor Jerry Brown during his second stint in the governor's mansion, 6 against Governor Gavin Newsom (5 did not qualify, 1 qualified but failed). Since the 2003 Davis recall, 17 of 18 gubernatorial recalls failed to qualify. *Id.*

129. GERSTON & CHRISTENSEN, *supra* note 26, at 17, 20.

on the ballot.<sup>130</sup> The 2002 Davis gubernatorial election saw the lowest-ever voter turnout by percentage in California history, resulting in a qualification bar of only 897,158 signatures—proportionally the lowest ever.<sup>131</sup> And Republican Darrell Issa gave nearly \$2 million to gather signatures, which was key to qualifying the recall.<sup>132</sup>

This shows that the Davis recall was a perfect political storm, combining a unique political landscape where an unpopular governor confronted a uniquely low signature threshold and a well-funded antagonist. That matrix resulted in the only removal of an executive branch official in California state history. These combined extreme circumstances of the only successful gubernatorial recall in California, coupled with the many failed efforts, suggest that a unique confluence of extraordinary factors may be necessary. And as the 2021 Newsom recall shows, even a confluence of black swan events does not guarantee recall success. This may explain why, despite the comparative ease of qualifying a recall in California, we do not see high qualification rates in general, and why only 2 of 55 (3.6%) gubernatorial recall petitions qualified.<sup>133</sup>

The failed 2021 recall attempt against Governor Gavin Newsom shares a factual context with the successful 2003 Davis recall: both arose in unique circumstances. Davis confronted an unprecedented confluence of energy-and-economic crises; Newsom confronted an equally extraordinary pandemic.<sup>134</sup> Both recall proponents capitalized on unusual qualifying metrics: the Davis signature requirement was unusually low, and the Newsom proponents received extra signature gathering time.<sup>135</sup> Yet those broadly similar factual premises led to divergent results. From a macro perspective these recalls were a policy

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130. Reid Wilson, *'If this thing qualifies, I'm toast': An oral history of the Gray Davis recall in California*, HILL (Jun. 2, 2021, 6:00 AM), <https://thehill.com/homenews/campaign/556014-if-this-thing-qualifies-im-toast-an-oral-history-of-the-gray-davis-recall/>.

131. GERSTON & CHRISTENSEN, *supra* note 26, at 50; PUB. POL'Y INST. CAL. RES. BRIEF, *VOTERS' VIEWS OF POLITICS IN CALIFORNIA: DISSATISFACTION, DISTRUST, AND WITHDRAWAL* (2004), [https://escholarship.org/content/qt1xs4n3sf/qt1xs4n3sf\\_noSplash\\_3d33d65e24c116583273e16e28bcae96.pdf?t=q0wxfd](https://escholarship.org/content/qt1xs4n3sf/qt1xs4n3sf_noSplash_3d33d65e24c116583273e16e28bcae96.pdf?t=q0wxfd).

132. SPIVAK, *supra* note 21, at 46; GERSTON & CHRISTENSEN, *supra* note 26, at 56-57.

133. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

134. Shawn Hubler & Jennifer Medina, *How Gavin Newsom Landed in a California Jam*, N.Y. TIMES (Apr. 27, 2021), <https://www.nytimes.com/2021/04/27/us/politics/gavin-newsom-recall-california.html>; see Ryan Matsumoto, *Higher Approval, a New Electorate and No Arnold. This Isn't 2003*, N.Y. TIMES (Sept. 13, 2021), <https://www.nytimes.com/2021/09/13/upshot/california-recall-election-newsom.html>.

135. David A. Carrillo, Joshua Spivak, and Brandon V. Stracener, *California's Electorate Runs the Game In Recall Elections*, HARV. SOC. IMPACT REV. (Sep. 8, 2021), <https://www.sir.advancedleadership.harvard.edu/articles/californias-electorate-runs-the-game-in-recall-elections>; Hubler & Medina, *supra* note 134.

validating mechanism in which the voters rejected Davis's energy policies and endorsed Newsom's pandemic policies. At the times of their respective recall elections, Newsom's approval rating was 53%; Davis's was 24%.<sup>136</sup> Nor did Newsom face a star-power opponent, as Davis did with Arnold Schwarzenegger. In 2003, Schwarzenegger was popular with voters and campaigned on politically moderate positions.<sup>137</sup> Governor Newsom instead was able to paint his leading opponent, Larry Elder, as a far-right conservative with radical views.<sup>138</sup> These factors explain why Governor Newsom defeated his recall with 62%, but Davis lost his by 55%.<sup>139</sup> Both Newsom and Davis saw the result closely mirror their past elections. Newsom won office in 2018 with the same 61.9% of the vote.<sup>140</sup> Davis won in 2002 with 47.4%.<sup>141</sup> The same recall-tracking-election-results factor also appears in the gubernatorial recalls in Wisconsin in 2012 (less than 1% difference)<sup>142</sup> and in North Dakota in 1921 (2% difference).<sup>143</sup>

Thus, both the Davis and Newsom recall campaigns are outliers, but in different directions. Both show that a unique confluence of factors is necessary to qualify or succeed with a state officer recall. Absent that confluence, the difficulty and cost of signature gathering will bar qualification. The Davis recall proponents benefitted from a low signature gathering threshold and major financial backing; had the required number been near its usual level that recall probably would have failed to qualify. The Newsom proponents similarly had major financial backing and benefitted from an extra 120 days to gather signatures; absent that their drive also likely would have fallen short.<sup>144</sup> In both

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136. GERSTON & CHRISTENSEN, *supra* note 26, at 47; *see* Matsumoto, *supra* note 134.

137. *See* Mark Landy, *Schwarzenegger, the Radical Moderate*, WASH. POST (Aug. 27, 2003), <https://www.washingtonpost.com/archive/opinions/2003/08/27/schwarzenegger-the-radical-moderate/ad865a7f-1a4c-463f-9e63-9a0482257ca2/>; David Schechter, *California's Right of Removal: Recall Politics in the Modern Era*, 12 CAL. POL. & POL'Y, no. 1, 2008, at 1; *see also* Matsumoto, *supra* note 134.

138. *See* Maeve Reston, *California Gov. Gavin Newsom was facing a right race. Then Larry Elder came along*, CNN (Sept. 14, 2021, 5:23 PM), <https://www.cnn.com/2021/09/14/politics/larry-elder-covid-newsom-recall/index.html>.

139. SPIVAK, *supra* note 21, at 47; Shawn Hubler, *Newsom Survives California Recall Vote and Will Remain Governor*, N.Y. TIMES (Sept. 14, 2021), <https://www.nytimes.com/2021/09/14/us/newsom-governor-california-recall.html>.

140. SEC'Y OF STATE ALEX PADILLA, STATEMENT OF VOTE: NOVEMBER 6, 2018 GENERAL ELECTION 1 (2018), <https://elections.cdn.sos.ca.gov/sov/2018-general/sov/2018-complete-sov.pdf>.

141. SEC'Y OF STATE BILL JONES, STATEMENT OF VOTE: NOVEMBER 5, 2002 GENERAL ELECTION, at iii (2002), <https://elections.cdn.sos.ca.gov/sov/2002-general/sov-complete.pdf>.

142. SPIVAK, *supra* note 21, at 55.

143. *Id.* at 57-58.

144. Lara Korte, 'Lost in the shuffle.' *Did Democrats miss a chance to block a Newsom recall election?*, SACRAMENTO BEE (Mar. 15, 2021, 5:00 AM), <https://www.sacbee.com/>

cases, qualifying for the ballot depended on extraordinary circumstances. The successful Davis recall shows how voter disapproval of a governor's response to a crisis can be fatal. The failed Newsom recall shows how voter approval of a governor's emergency response can overcome a seemingly mortal threat.

*D. California state official recalls are consistent with national data*

*1. Procedures compared*

Nineteen other states and the District of Columbia have recall procedures for removing state officials.<sup>145</sup> State recall laws vary greatly across the country. The distinctions can be substantive or procedural:

- Is there a legal reason needed for the recall?
- How many signatures need to be gathered?
- Who can sign?
- How much time is allowed to collect the signatures?

Eleven states are, like California, *political recall* states: the recall can be launched for any reason.<sup>146</sup> The other 8 recall states require a statutorily described reason.<sup>147</sup> In these *malfesance standard* states, a judge or an election official can quash the recall for not meeting the requirements, such as violations of the “oath of office,” “failure to perform duties prescribed by law,” “Conviction for a Felony,” “Corruption,” “Incompetence in office,” or “Malfesance in office.”<sup>148</sup>

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news/politics-government/capitol-alert/article249843718.html. See generally Carrillo, Spivak & Stracener, *supra* note 73.

145. Alaska, Arizona, California, Colorado, Georgia, Idaho, Illinois, Kansas, Louisiana, Michigan, Minnesota, Montana, Nevada, New Jersey, North Dakota, Oregon, Rhode Island, Washington, and Wisconsin. ZIMMERMAN, *supra* note 7, at 21; see also *Recall of State Officials*, *supra* note 3.

146. These are Arizona, California, Colorado, Idaho, Louisiana, Michigan, Nevada, New Jersey, North Dakota, Oregon, and Wisconsin. ARIZ. CONST. art. VIII, §§ 1 & 2; see ZIMMERMAN, *supra* note 7, at 61 (California); COLO. CONST. art. XXI; IDAHO CONST. art. VI, § 6; IDAHO CODE § 34-1703 (2021); LA. CONST. art. X, § 26; MICH. CONST. art. II, § 8; NEV. CONST. art. II, § 9; N.J. CONST. art. I, § 2(b); N.D. CONST. art. III, §§ 1 & 10; OR. CONST. art. 2, § 18; WIS. CONST. art. XIII, § 12; see also Joshua Spivak, *Recall Elections in the US: Its Long Past and Uncertain Future*, in THE POLITICS OF RECALL ELECTIONS 73, 75-76 (Yanina Welp & Laurence Whitehead eds., 2020) [hereinafter Spivak, *Recall Elections in the US*].

147. A recent Alaska Supreme Court decision has arguably pushed them into the political recall state category. See *State v. Recall Dunleavy*, 491 P.3d 343 (Alaska 2021).

148. These are Alaska, Georgia, Kansas, Minnesota, Montana, Rhode Island (which exempts the legislature), and Washington. ALASKA CONST. art. XI, § 8; GA. CODE ANN. §§ 21-4-1 to 21-4-21 (2021); KAN. CODE § 25-4302; MINN. CONST. art. VIII, § 6; MONT. CODE ANN. §§ 2-16-601 to 2-16-635 (2021); R.I. CONST. art. IV, § 1; WASH. CONST. art. I, §§ 33-34. Illinois, which only allows recalls for the Governor, does not list specific reasons, but

Nearly all state official recalls have occurred in political recall states. The only state official to ever face a recall vote in a malfeasance standard state was a state senator in Washington in 1981.<sup>149</sup>

California has arguably the least burdensome procedure for recalling statewide officials.<sup>150</sup> Proponents need to gather signatures equal to 12% of the vote cast in the last election within 160 days.<sup>151</sup> The signature laws in recall states have various metrics for the required mark. As Table 5 shows, it may be based on eligible voters, registered voters, or a percentage of turnout at the last election. Comparing these various signature requirements is difficult because the populations vary. Assuming identical population percentages and qualifying percentages, measuring by eligible voters produces the highest number, followed by registered voters, and with turnout giving the lowest qualifying number. Using those assumptions, California has the lowest *real* signature requirement.<sup>152</sup>

- Kansas requires 40% of turnout in the last election.<sup>153</sup>
- New Jersey requires 25% of registered voters.<sup>154</sup>
- Nine states require signatures equal to 25% of turnout.<sup>155</sup>
- Idaho and Louisiana require 20% of eligible voters.<sup>156</sup>
- Georgia requires 15% of eligible voters.<sup>157</sup>
- Oregon and Rhode Island require 15% of turnout.<sup>158</sup>
- Illinois requires 15% of turnout and the support of a bipartisan grouping of legislators.<sup>159</sup>
- California requires 12% of turnout.<sup>160</sup>

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requires that a bipartisan collection of legislators sign the petition. *See* ILL. CONST. art. III, § 7; Spivak, *Recall Elections in the US*, *supra* note 146, at 75-76.

149. Joshua Spivak, *The unique challenge of the Alaska gubernatorial recall*, ANCHORAGE DAILY NEWS (Aug. 20, 2019), <https://www.adn.com/opinions/2019/08/20/the-unique-challenge-of-the-alaska-gubernatorial-recall/>.

150. *See* ANN BOWMAN & RICHARD C. KEARNEY, STATE AND LOCAL GOVERNMENT 84-85 (6th ed. 2014).

151. CAL. CONST. art. II, § 14(a), (b).

152. *See* LITTLE HOOVER COMM'N, REFORMING THE RECALL REPORT #266, at 12, 13 tbl.3 (2022).

153. KAN. STAT. § 25-4311 (2021).

154. N.J. REV. STAT. § 19:27A-5 (2013).

155. ALASKA STAT. § 15.45.610 (2021); ARIZ. REV. STAT. ANN. § 19-201 (2021); COLO. REV. STAT. § 1-12-104(1) (2021); MICH. COMP. LAWS §§ 168.951-955; MINN. CONST. art. VIII, § 6; NEV. CONST. art. II, § 9; N.D. CONST. art. III, § 2; WASH. REV. CODE § 29A.56.180 (2021); WIS. CONST. art. XIII, § 12(1).

156. IDAHO CODE § 34-1702(2) (2021); LA. STAT. ANN. § 18:1300.2(B)(3)(d) (2022).

157. GA. CODE ANN. § 21-4-4(a)(1) (2021).

158. OR. CONST. art. II, § 18(2); R.I. CONST. art. IV, § 1.

159. ILL. CONST. art. III, § 7.

160. CAL. CONST. art. II, § 14(b).

- Montana requires 10% of registered voters.<sup>161</sup>
- Virginia requires 10% of turnout, but this state may not have a recall law impacting state officials, or specifically governors. It also uses a procedure called recall trials, where if enough signatures are gathered a judge holds a trial rather than an election. We discount Virginia as an unverifiable outlier.<sup>162</sup>

Montana's 10% requirement seems to be easier to reach than California's 12% mark. But those are the *absolute* metrics. California's *real* number is much easier to achieve because Montana requires the signatures of 10% of *registered* voters, while California requires 12% of voter *turnout*. California's turnout rule required the 2021 Newsom recall proponents to gather 1,495,709 signatures;<sup>163</sup> if California used registered voters as Montana does the proponents would have needed 2,215,430 signatures. Montana recalls are more difficult for other reasons: it is a malfeasance standard state, and its signature collection timeframe is just 90 days compared with California's 160 days.<sup>164</sup> And that 160-day signature gathering period is the fifth longest of any state.<sup>165</sup> Thus, overall California's requirements for qualifying a recall petition are arguably the easiest to meet in practice.<sup>166</sup>

## 2. Data compared

Despite the comparative ease of qualifying recall petitions in California discussed above, in California state official recalls qualify and succeed at low rates that are comparable to the results in other recall states. In 179 statewide recall attempts since 1911, only 11 have qualified for the ballot, and only 6 were successful (54.5%).<sup>167</sup> Thus, in over a century just 6.1% of all California state official recall attempts qualified for the ballot and only 3.4% of those attempts succeeded.

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161. MONT. CODE ANN. § 2-16-614(2) (2021).

162. VA. CODE ANN. § 24.2-233 (2021).

163. RECALL OF GOVERNOR GAVIN NEWSOM, *supra* note 53.

164. MONT. CODE ANN. §§ 2-16-601 to 2-16-635 (2021); *id.* § 2-16-614 (addressing number of electors required for a recall petition); *see also* ZIMMERMAN, *supra* note 7, at 40 tbl.2.2.

165. Alaska has no time limit. ALASKA CONST. art. XI; ALASKA STAT. §§ 15.45.470-.720 (2021); ALASKA ADMIN. CODE tit. 6, § 25.240 (2021); *see also* ZIMMERMAN, *supra* note 7, at 40 tbl.2.2. New Jersey grants 320 days when a Governor or United States Senator is sought to be recalled. N.J. REV. STAT. § 19:27A-10(1) (2021). Washington provides 270 days. WASH. REV. CODE § 29A.56.150(2) (2021). Louisiana gives 180 days. LA. STAT. ANN. § 18:1300.2(C)(2) (2022).

166. LITTLE HOOVER COMM'N, *supra* note 152, at 13-14 (discussing the two perceived issues with California's recall process).

167. RECALL OF GOVERNOR GAVIN NEWSOM, *supra* note 53.

Of the 179 California state official recall petitions since 1911, 80 (45%) targeted state legislators: 50 Assembly members and 30 state senators.<sup>168</sup> Of the 11 recall attempts that qualified for the ballot since 1911, 9 (81.8%) targeted legislators.<sup>169</sup> And other than the 2003 Governor Gray Davis recall, every recalled state official (5 of 6) has been a legislator.<sup>170</sup> The qualification rate for California legislator petitions is 11% (9 of 80). Of the 6 successful recalls in California, 5 succeeded in removing legislators (3 senators and 2 Assembly members).<sup>171</sup> Compared to the overall recall success rate of about 3.4%, the overall success rate of recalling legislators is nearly double at 6.25% (5 of 80). The success rate for qualified legislator petitions is 55.6%.

No other state appears to tabulate recall attempts against their state-level officials. But our analysis shows that recall efforts in other states (as in California) are vastly more likely to qualify and succeed against local officials than state officers. And among the few state recalls, also as in California, attempts against state legislators in other recall states are more common than against other state officials. In the other states, 30 state legislator recalls qualified for the ballot.<sup>172</sup> Seven state-wide officials faced a recall: 2 governors, 1 lieutenant governor, 1 attorney general, 1 agriculture and labor commissioner, and 2 public services commissioners.<sup>173</sup> Five of these 7 recalls occurred over a century ago.<sup>174</sup> Of the 39 state legislative recalls in United States history, in 21 of those attempts the legislator was unseated.<sup>175</sup> Thus, outside California the nationwide success rate for qualified legislator petitions is 55%, which is nearly identical to California's 55.6% success rate for qualified petitions against legislators. This shows that, despite having arguably the easiest qualifying metrics and arguably the largest field of targetable officials, California is about average in the number of qualified and successful recalls.<sup>176</sup>

Gubernatorial recall qualifying and success rates in California are similar to those in other recall states. Only 2 California recall efforts

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168. *Recall History in California (1913 to Present)*, *supra* note 63; COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

169. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1; *Recall History in California (1913 to Present)*, *supra* note 63.

170. *Recall History in California (1913 to Present)*, *supra* note 63.

171. COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1; *Recall History in California (1913 to Present)*, *supra* note 63.

172. SPIVAK, *supra* note 21, at 40–62, describing each recall contest in detail. The tallies are original sums of those contests, from data collected by and on file with the authors.

173. *Id.*

174. *Id.*

175. *Id.*

176. See SPIVAK, *supra* note 21, at 58–62 (listing all recall results).

targeting governors (3.6%) have qualified among 55 attempts.<sup>177</sup> Five governor recall petitions have qualified in the United States, and only 2 of these governors were recalled.<sup>178</sup> By our rough count, there have been 486 governors since 1900 in the 19 recall states; with just 5 of them (1%) ever facing a recall, it's safe to conclude that gubernatorial recalls are very rare.

There are just a few examples of campaigns to recall judges in California or in other recall states.<sup>179</sup> Twenty-eight petitions were filed against California justices; none qualified.<sup>180</sup> We found evidence of 4 petitions against California judges that qualified; all 4 succeeded.<sup>181</sup> The 2018 recall of Santa Clara Superior Court Judge Aaron Persky was a rare event. Before that no California judge had been recalled since 1932, no recall petition against a judge had qualified since one in Wisconsin in 1982, and Persky was the first judge recalled nationwide since 1977 in Wisconsin.<sup>182</sup> We found no recalls against a statewide judge in any other state. The upshot is that recalls against judges, in California and nationwide, are quite rare.<sup>183</sup>

Given these low historical qualifying and success rates for recalls (overall and parsed by position) in California and other recall states, we conclude that California's comparatively easy qualifying standard for state official recalls may encourage recall attempts, but the data show

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177. *Recall History in California (1913 to Present)*, *supra* note 63.

178. See ZIMMERMAN *supra* note 7, at 60 (noting that by comparison 16 governors have been impeached). The five qualified governor petitions are: North Dakota Governor Lynn J. Frazier (1921, succeeded), California Governor Gray Davis (2003, succeeded), Arizona Governor Evan Mecham (1988, impeached before the recall election), Wisconsin Governor Scott Walker (2012, defeated), California Governor Gavin Newsom (2021, defeated). *Id.* at 60-68.

179. See Cal. Constitution Ctr., *supra* note 74.

180. See COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1.

181. A petition targeting California Superior Court Judge Aaron Persky qualified in 2018 and succeeded at the June 2018 ballot. Maggie Astor, *California Voters Remove Judge Aaron Persky, Who Gave a 6-Month Sentence for Sexual Assault*, N.Y. TIMES (June 6, 2018), <https://www.nytimes.com/2018/06/06/us/politics/judge-persky-brock-turner-recall.html>; see *California Judge Recalled for Sentence in Sexual Assault Case*, 132 HARV. L. REV. 1369 (2019). And three Los Angeles judges were targeted simultaneously in 1932; all three were recalled. See Wilbank J. Roche, *Judicial Discipline in California: A Critical Re-Evaluation*, 10 LOY. L.A. L. REV. 192, 197-98 (1976).

182. See Astor, *supra* note 181; Joshua Spivak, *Kicked out of the Robe: Will Judges be Targeted with Recall Campaigns?*, AM LAW LITIG. DAILY (Apr. 30, 2018, 5:52 PM), <https://www.law.com/litigationdaily/2018/04/30/daily-dicta-kicked-out-of-the-robe-will-judges-be-targeted-with-recall-campaigns/> [hereinafter Spivak, *Kicked out of the Robe*].

183. See Cal. Constitution Ctr., *supra* note 74. See generally BIRD & RYAN, *supra* note 9, at 49. Taft vetoed the Arizona Constitution over its recall of judges plan. See Special Message of the President of the United States Returning Without Approval, H.R.J. Res. 14, 62d Cong. (1911).

that the qualifying standard neither results in more petitions qualifying, nor in more recalls succeeding.

#### IV. CALIFORNIA LOCAL OFFICIAL RECALLS

Our analysis shows that existing local recall qualification requirements are sufficiently burdensome to prevent abuse and unnecessary waste of resources. As our analysis in this section shows, much of the criticism directed at the recall is based on perceptions of the state recall. By contrast, little quantitative and qualitative research exists concerning the local recall, yet it is often conflated with state level recalls. Consequently, the local recall is misunderstood because it is understudied. Our data analysis in this section shows that the recall has served its intended purpose at the local level: keeping elected officials accountable and removing bad actors who no longer command broad public support. We conclude that the local recall's bad reputation is undeserved because it is not grounded in quantitative evidence, and that the existing recall requirements are generally sufficient to check local electorate power.

##### *A. The procedure*

The local recall process (for county, city, and special district officials) is largely similar to the state-level process. Local election officials perform the duties that the secretary of state would for a state official recall.<sup>184</sup> Statutes provide for local official recalls in general law cities, and charter counties and cities set their own recall procedures by charter.<sup>185</sup> Due to the number and diversity of recall procedures among charter cities, we exclude them and analyze only general law county and city recalls.<sup>186</sup> There are three main differences between the requirements for general law local recalls and state official recalls: the

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184. CAL. ELEC. CODE § 307 (Deering 2021) (providing the definition of “clerk”); *id.* § 1100203 (providing the definition of “elections official”); *see also id.* §§ 11021-23; *id.* §§ 11041-43; *id.* §§ 11220-27; *id.* §§ 11240-41 (providing general procedure for initiating a recall).

185. CAL. CONST. art. II, § 19. Examples of charter cities with their own recall procedures include San Francisco and Berkeley. Charter of the City and County of San Francisco sec. 14.103; Berkeley Charter art. IV sec. 7.

186. Most California cities have opted to remain general law cities. The state has 482 incorporated cities: 361 are general law and 121 are charter cities. LEAGUE CAL. CITIES, <https://alcl.assembly.ca.gov/sites/alcl.assembly.ca.gov/files/League%20of%20California%20Cities.pdf> (last visited Apr. 1, 2022). The same preference is true for counties, which can also adopt charters under CAL. CONST. art. XI, § 3(a). Of California's 58 counties, 44 are general law counties and 14 are charter counties. *County Structure & Powers*, CAL. ST. ASSN. COUNTIES, <https://www.counties.org/general-information/county-structure-0> (last visited Apr. 1, 2022).

timing for when local officials can be recalled, the signature threshold, and the petition filing deadlines.

Recall proceedings against local officials cannot be commenced if the official has held office during the current term for less than 90 days, if the voters rejected a previous recall election against the official within the last 6 months, or if the official's term ends in 6 months or less.<sup>187</sup> As Table 2 shows, the signature requirement varies according to the number of registered voters in the target's voting district and on the type of office targeted.<sup>188</sup> For example, if a Superior Court judge is targeted proponents must collect signatures equal to at least 20% of the last turnout.<sup>189</sup> Or if a water district official is targeted the threshold is 10% of the assessed value of land in the official's jurisdiction.<sup>190</sup> Filing deadlines for local recall petitions also vary depending on the population size and number of registered voters in a voting district. A deadline can range from 40 days after the petition is approved for voting districts with fewer than 1,000 registered voters, to 160 days for districts with over 50,000 registered voters.<sup>191</sup>

## *B. Quantitative analysis*

### *1. Methodology*

We compiled California general law local recall data for the 10-year period from 2011 to 2021. Assembling a larger dataset for local California recall elections is prohibitively difficult due to the difficulty in accessing information on local recall efforts before 2011. Even if this period is not representative of long-term local recall trends, we can assume that this decade at least reflects current distinctions between the state and local recall, and that it accurately represents the current state of local recalls in California. We analyze the correlations between a recall effort's outcome and the targeted official's office type, gender, voting district population size, year of the recall, location, and margin-of-victory or defeat for recalls that resulted in elections. Our analysis produces several conclusions:

- Recalls are attempted, qualify, and succeed more often at the local level compared with state official recalls. There are more

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187. ELEC. § 11007. These provisions do not apply to local officers appointed in lieu of an election code pursuant to California Elections Code section 10229. *Id.* § 10229.

188. *Id.* § 11221(a).

189. *Id.* § 11221(c); CAL. CONST. art. II, § 14(b).

190. ELEC. § 11221(d).

191. *Id.* § 11220.

local than state officials, so we compared percentages rather than raw numbers.

- Although recalls are used more at the local than the state level, both have similarly low qualifying rates: the majority of recall efforts at both levels fail to qualify.
- When local recall petitions do qualify, they are more likely than not (61.9%) to succeed. (Compare that with the state level 54.5% recall success-after-qualifying rate.)

We summarize our findings by comparing them with other states and find that, nationwide, the recall is primarily a local tool: in all 19 recall states, state officer petitions qualify at lower rates than local petitions. We also argue that the overall dynamics of recalls reveal them to be primarily policy-validating tools.

## 2. Dataset

As with the state recall discussion above, here we distinguish between a recall petition being filed, qualifying for the ballot, and success or defeat at the ballot. From 2011 to 2021 there were 600 recall petitions initiated against local officials in California.<sup>192</sup> Table 3 (summary of local recalls) shows that of those 600 petitions, 45 are currently active as of December 2021: 5 are scheduled for the future and 40 are still gathering signatures. In the other 555 completed (by failure to qualify or by vote) recall drives, 139 qualified for the ballot. Of the qualified petitions, 112 officials (20% of petitions, 80.6% of qualified) left office by some means (either by successful recall vote or by other means such as resignation). The majority of those who left office were removed from office through a recall election: 86 succeeded at the ballot (15.5% of petitions, 61.9% of qualified), 23 officials resigned from office, and 2 officials were removed by fellow board members before the recall election. The remaining 416 petitions (75% of all completed attempts) did not qualify for the ballot.

## 3. Analysis

Although the vast majority (75%) of local recall petitions do not qualify for the ballot, a clear majority (61.9%) of those that qualify

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192. See *infra* tbl.3. Supporting data for Table 3 and the analysis in this section are compiled by and on file with the authors. Supporting data and calculations are also available online. See *Recall data archive*, BERKELEY L., <https://www.law.berkeley.edu/research/california-constitution-center/publications-and-submissions/recall-data-archive/> (last visited Sept. 20, 2022).

succeed in removing the targeted official.<sup>193</sup> This success rate could be even higher because the threat of a recall can cause officials to vacate their seats before an election. If seats vacated-by-any-means are counted as successful removals of a targeted official, then the qualified petitions success rate increases significantly to 79% (Table 3). This supports several conclusions. Recalls are very difficult to qualify for the ballot, with just 25% qualifying. But local recalls that qualify are overall very likely (80.6%) to force the official from office and have an approximately 60–40 chance of winning the vote. Yet any given recall petition faces long odds: even including the vacated-by-any-means figure, just 20% of all petitions in this dataset resulted in a vacated seat.

The high 469:86 attempt-to-ballot-success ratio for completed local recalls in our dataset may result from the enticing, better-than-even chances of succeeding. A *victory margin* is the difference between the percentage of votes cast in favor and against the recall, and recalls typically succeed with wide victory margins. For example, with 60% in favor and 40% against recalling the official, the victory margin is 20%. Defeat margin here refers to the difference between the percentage of votes cast against an official's recall and the percentage of votes cast in favor of the recall. Figure 8 (victory or defeat margin) shows that on average, education officials are removed from office by a 41% margin. The victory margin varied anywhere between 100% for the recall election of City of Industry Council Member Abraham Cruz in 2020, to as low as 2% in the recall election of Los Banos School Board member John Mueller in 2016.<sup>194</sup> Elections are, of course, binary result games. Yet the psychology of a 61.9% chance of thumping a recall target by a wide victory margin may outweigh the reality of any given recall petition's low 20% chance of succeeding.

When local officials survive their recall elections they do so by much narrower margins. On average, recall elections feature a 21% margin of defeat, but range from as low as 4% to as high as 60%.<sup>195</sup> This permits three conclusions: local recall elections are not very competitive, targeted officials whose recalls qualify are generally unpopular, and

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193. Supporting data is compiled by and on file with the authors. See *Recall data archive*, *supra* note 192.

194. See *Abraham Cruz recall, City of Industry, California (2019-2020)*, BALLOTPEdia, [https://ballotpedia.org/Abraham\\_Cruz\\_recall,\\_City\\_of\\_Industry,\\_California\\_\(2019-2020\)](https://ballotpedia.org/Abraham_Cruz_recall,_City_of_Industry,_California_(2019-2020)) (last visited Aug. 11, 2022); see also *John Mueller recall, Los Banos Unified School District, California (2016)*, BALLOTPEdia, [https://ballotpedia.org/John\\_Mueller\\_recall,\\_Los\\_Banos\\_Unified\\_School\\_District,\\_California\\_\(2016\)](https://ballotpedia.org/John_Mueller_recall,_Los_Banos_Unified_School_District,_California_(2016)) (last visited Aug. 11, 2022) (showing that 51.85% of voters chose to recall John Mueller while 48.15% of voters chose to retain John Mueller, leading to a 2% victory margin).

195. See *Recall data archive*, *supra* note 192.

targeted officials who survive their recall elections can be wounded by a weak mandate to remain in office. The fact that targeted officials often lack clear mandates may also explain why 16 elected officials were each targeted for recall twice. Four of those attempts were successful on the second try at removing the official through election or resignation, and another official was targeted a second time after beating a first recall by 14%.<sup>196</sup> Again, appearances may matter more than the bare result: an official who survives a recall by a narrow margin may be weakened by the perception of weak voter support. Thus, recall proponents may score political benefits even if the target survives. And as the 2021 Newsom recall demonstrates, that dice roll can break in the target's favor and demonstrate political strength by repelling the recall with a wide margin.

Figure 7 (recall attempts by population size) shows that even as the qualification rate decreases as the size of the voting district population increases, the removal rate remains high at all population sizes. Here, qualification rate ( $Q$ ) is the percentage of all recall attempts that qualify for the ballot, and removal rate ( $R$ ) is the percentage of all qualified attempts that result in either the removal or resignation of the targeted official. The leave rate ( $L$ ) is the percent of all petitions that result in a vacated seat by any means. As  $Q$  and  $R$  both increase,  $L$  increases as the percentage of all recall attempts that result in the targeted official leaving office.<sup>197</sup> This relationship is expressed through the formula  $Q \times R = L$ .

If  $Q$  and  $R$  are both high or are both low, it is difficult to draw conclusions about recall process requirements. On the one hand, if both  $Q$  and  $R$  are high, then recalls are easy to qualify for the ballot *and* successful at removing the targeted official. This could indicate local electorate support in favor of the recall, or potentially an overly lenient recall process. Recall attempts in voting districts with fewer than 1,000 people represent this relationship. For example, even in districts with fewer than 1,000 registered voters and a 30% signature requirement, recall attempts in these small towns qualify 100% of the time and succeed in removing the targeted official 78% of the time (Figure 7). On the other hand, if both  $Q$  and  $R$  are low, then recalls are both difficult to

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196. For example, Westminster City Council member Kimberly Ho survived a recall election for her position in 2020 (43% voted to remove her and 57% voted to keep her in office). See *Mayor and city council recall, Westminster, California (2020)*, BALLOTPEdia, [https://ballotpedia.org/Mayor\\_and\\_city\\_council\\_recall,\\_Westminster,\\_California\\_\(2020\)](https://ballotpedia.org/Mayor_and_city_council_recall,_Westminster,_California_(2020)) (last visited Apr. 1, 2022). She was then the target of another recall attempt which failed to qualify for the ballot in 2021. See *Kimberly Ho and Carlos Manzo recall, Westminster, California (2021-2022)*, BALLOTPEdia, [https://ballotpedia.org/Kimberly\\_Ho\\_and\\_Carlos\\_Manzo\\_recall,\\_Westminster,\\_California\\_\(2021-2022\)](https://ballotpedia.org/Kimberly_Ho_and_Carlos_Manzo_recall,_Westminster,_California_(2021-2022)) (last visited Apr. 1, 2022).

197. This count includes officials who left office via election, resignation, or removal by fellow elected representatives.

qualify for the ballot and unsuccessful when they do make it to the ballot. This suggests that either the local electorate disfavors removing elected officials through a recall, or that the recall requirements may be too difficult.

From Figure 7 we draw several conclusions. The overall chance of any given petition ultimately resulting in a vacated seat sits in a narrow 10-point band across all electorate sizes. For instance, a recall petition has about the same average chance of causing a vacant seat, regardless how big the voting pool is.<sup>198</sup> Viewed in isolation that factor would suggest that voting pool size does not significantly affect a local recall's success or failure at the ballot. But other factors make the picture more complex. One complicating factor is that  $Q$  is inversely related to voting population size: a low voter pool sees a high qualification rate, and the qualification rate drops as the voter pool increases. And the success rate of qualified petitions is also inversely related to the electorate size: the success rate drops as the electorate size increases. Those two inverse relationships track with each other: both the qualification rate and the success rate decline to approximately the same degree as the voting pool grows.

From that combination of factors, we conclude that the recall's power is inversely proportional to population size: the smaller the electorate the more effective the recall. This probably results from the relative ease of gathering a smaller real signature number in a smaller population. Table 7 shows that 97% (542 out of 560 total attempts) occurred within voting districts with over 1,000 people, where recalls qualified for the ballot 45% or less of the time, but 75% to 85% of qualified recalls succeeded.<sup>199</sup> Thus, in 97% of local recalls  $Q$  is low and  $R$  is high. The fact that most local electorate size ranges experience low qualification rates and high removal rates suggests that qualifying recalls is difficult in almost any given local voting pool size (because most pools have populations over 1,000), and that qualified recalls have a high chance of removing the official. The signature requirement decreases as the voting district population increases and  $Q$  decreases—effects that can be attributed to how the real signature number rises with larger populations.<sup>200</sup>

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198. The average chance varies between a low of 75% and a high of 85%.

199. See *infra* tbl.7.

200. The link inverse relationship between  $Q$  and population size, all else equal, is also seen at the state level. For example, the  $Q$  rate for California gubernatorial recall attempts is under 4%, versus 20% for state senatorial recall attempts. See *Recall data archive*, *supra* note 192 for supporting data and calculations.

That inverse relationship, combined with the 97% of local electorates with low  $Q$  and high  $R$  rates, suggests that recalls in these districts are already difficult enough to qualify, yet are successful enough when voters are motivated. This permits conclusions about the stringency of recall requirements and the appeal of the recall as a direct democracy tool when  $Q$  is high and  $R$  is low, or vice versa. If  $Q$  is high and  $R$  is low, recall requirements are not very restrictive and recall elections are not successful at removing the targeted official. That scenario arguably encourages abusing the recall process, and consequently wasting taxpayer money and voter time. Yet our analysis shows that this scenario does not exist at any population size, which refutes arguments that the local recall is too easy to use.

Instead, the low qualifying rate suggests that the recall is being used sparingly by local voters, especially in larger voting districts; again, just 3% of the local recalls in the past decade arose in sub-1,000-person electorates. And the consistently high success rate for qualified recalls across all population sizes suggests that local voters have the power to eject an official if the voters are motivated to do so. These conclusions counter arguments about making the recall harder to use in larger population sizes (which describes most local electorates) because recalls already qualify at low rates in those population brackets. The fact that qualified recalls have such a high success rate suggests that local voters only qualify recalls when there is a consensus to remove the official. Making that harder to do arguably would thwart majority will.

We also found that the officials who hold an education-related office, city council, or other non-mayoral city position are the most likely recall targets. Table 4 (summary of recall rates, by office type) shows that officials holding city council and other city positions were the most targeted by recall efforts (191 attempts). Officials serving on school boards, as superintendents, or in other education-related positions were the second-most-targeted group (190 attempts). By contrast, officials in law and law enforcement positions (such as judges, sheriffs, and city and district attorneys) were the least likely to be the target of a recall campaign (15 attempts).<sup>201</sup> Although recall campaigns most often target education and city council related positions, they do not have the highest  $Q$  or  $R$  rates. Instead, special district recall attempts have the highest  $Q$  (38%) and the highest  $R$  (96%), while education recalls have the second

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201. Under the California constitution, charter counties have the power to create their own recall and removal procedures for sheriffs. CAL. CONST. art. XI, § 4. The California constitution also require that all counties, including charter counties, have a recall process for the electorate to remove sheriffs, regardless of what other provisions that have for removing sheriffs through a governing body vote or statutory law. *Id.*

highest *R* (86%). These results may be partly explained by the lower signature requirement for water districts. Unlike recalls in most voting districts, recalls in water districts only require the signatures of voters who own 10% of the assessed value of land within the water district, which allows just a few wealthy landowners to successfully qualify a recall petition for the ballot.<sup>202</sup> But even accounting for this outlier signature requirement and removing water districts from the special districts category, Table 4 shows that special district recall attempts still qualify at the highest rate (33%) and successfully remove special district officials 100% of the time.<sup>203</sup>

This suggests that local electorates are most likely to successfully use the recall to remove officials concerned with direct services. If there are issues with the management, price, or delivery of services like water, firefighting, parks, and healthcare, then the local electorate is more likely to qualify a petition and succeed at recalling the relevant officials because these services affect a large number of individuals on a day-to-day basis.<sup>204</sup> For example, in the 2016 Yorba Linda Water District recall the water district's significant rate hike so enraged voters that they initiated a recall against the board members, sued the district, and submitted a referendum petition to repeal the new rates or put them up to a vote.<sup>205</sup>

Parsing victory and defeat margins by office type shows that the least competitive types of recall elections involve special district and law-related recalls; conversely, the most competitive recalls involve county supervisor, city council, and non-mayoral city official recalls. We measure competitiveness as the difference between the average margin at which an official is removed, and the average margin at which a recall attempt fails. Figure 8 (average victory and defeat margin by office type) shows that, after law and law enforcement recalls, special district recall elections are on average the least competitive with a 32.3%

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202. See generally SHANNON BUSHEY, GUIDE TO RECALL FOR LOCAL OFFICES 15 (rev. 2019), <https://scevote.sccgov.org/sites/g/files/exjcpb1106/files/County%20Recall%20Guide.pdf>; CAL. ELEC. CODE § 11221(d) (Deering 2021).

203. Note that not all water districts are landowner voting districts.

204. School board district recalls are notoriously contentious. See, e.g., *San Francisco Unified School District recall, California (2021–22)*, [https://ballotpedia.org/San\\_Francisco\\_Unified\\_School\\_District\\_recall,\\_California\\_\(2021-2022\)](https://ballotpedia.org/San_Francisco_Unified_School_District_recall,_California_(2021-2022)) (last visited Apr. 1, 2022) (overview of the recall); Joe Eskenazi, *The strange and terrible saga of Alison Collins and her ill-fated tweets*, MISSION LOC. (Mar. 23, 2021), <https://missionlocal.org/2021/03/alison-collins-school-board-tweets> (detailing racist tweets and allegations made by a school board member).

205. See Matt Stevens, *A cautionary tale for water districts as Yorba Linda's water rate battle leads to a recall vote*, L.A. TIMES (Nov. 8, 2016, 5:30 AM), <https://www.latimes.com/local/lanow/la-me-ln-yorba-linda-water-recall-20161107-story.html>.

difference between average victory and defeat margins. Special district officials who remain in office after a recall election also do so by the narrowest margin of all office types (8%).

Figure 8 also shows law and law enforcement recalls are on average the least competitive recall elections (38% difference between victory and defeat margins), and are the only office type where average voting margin for successful recall elections (60%) is higher than that for elections that remove the official (22%).<sup>206</sup> This suggests that special district officials are the most likely to be targeted for a recall, and that they may have the weakest mandate to remain in office. The fact that special district officials are elected for one specific task may make them particularly vulnerable for a recall because there is no other performance metric for them to rely on for retaining the position.

By contrast, recall elections for city council and non-mayoral city positions have the lowest difference between average victory and defeat margins (2.2%), and are closely followed by county supervisor recall elections (3%). This suggests that recalls against county supervisor and non-mayoral city officials are the most competitive recall elections. Like presidential or gubernatorial elections, county supervisor and city council officials (who make up 96% of officials counted in the non-mayoral city officials category) are often the most visible and publicly known elected officials in government. This visibility may increase voter turnout and local electorate support for the targeted official, but also polarize the local electorate and result in more competitive recall elections. For example, the 2020 recall targeting Santa Cruz City Council members Chris Krohn and Drew Glover was the first time a Santa Cruz recall qualified and removed a council member. Both Chris Krohn and Drew Glover were removed from office by narrow margins (2% for Krohn and 6% for Glover).<sup>207</sup> Although the recall election was held with the March 2020 presidential primary, the recall election still

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206. See *infra* fig.8. These data may be outliers however because law and law enforcement officials have been the target of the fewest number of recall attempts (15). Only 3 of those 15 attempts resulted in an election, and only 1 of those 3 elections was sustained (by a margin of 60%). See *Recall data archive*, *supra* note 192 for supporting data and calculations. See also *Jill Ravitch recall, Sonoma County, California (2020-2021)*, BALLOTEDIA, [https://ballotpedia.org/Jill\\_Ravitch\\_recall\\_Sonoma\\_County\\_California\\_\(2020-2021\)](https://ballotpedia.org/Jill_Ravitch_recall_Sonoma_County_California_(2020-2021)) (last visited Apr. 1, 2022) (noting that the district attorney remained in office after recall election with 76% of votes cast against the recall).

207. Nicholas Ibarra, *History made as Santa Cruz voters recall two City Council members*, SANTA CRUZ SENTINEL (Mar. 30, 2020; 7:55 PM), <https://www.santacruzsentinel.com/2020/03/30/history-made-as-santa-cruz-voters-recall-two-city-council-members/>.

garnered 64% voter turnout and produced acrimonious debate about the policies of the two targets.<sup>208</sup>

There are no obvious trend lines in terms of number of recall attempts, qualification rate, or removal rate by year over the last 10 years. Excluding the currently active recall attempts, 2012 had the largest number of local recall attempts of any year (83), but 2015 had the highest *R* (95%). Recalls qualified for the ballot most often in 2011 (45% of the time), and the least in 2019 (zero).<sup>209</sup> These figures undercut complaints that the recall is either being overused or that its use has increased over time. Yet it does not completely refute those claims because our dataset only covers the most recent decade.

Finally, there is no obvious bias in terms of which gender is recalled more often. Although 63% of all recall targets were male, this imbalance is likely explained by the fact that men still continue to hold the majority of government elected positions in California.<sup>210</sup> Once recall petitions qualify for the ballot, men are removed from office at only a slightly higher rate (82%) than women (78%), and the proportion of all recall attempts against men that result in the official leaving office (21%) is also similar to the corresponding figure for women (19%).<sup>211</sup> This suggests that local recalls are individualized events: local electorate motivation to initiate and vote for recall petitions targeting local officials is unrelated to the gender of the targeted official.

### *C. California local recalls are consistent with national data*

Although this dataset only encompasses the last 10 years and precludes historical trend conclusions about the local level recall, it does permit a present-day evaluation of the local recall in California and comparison with recent state-level recalls.

At least 41 states and the District of Columbia have recall procedures for removing local recall officials.<sup>212</sup> Once again, we see that state level recalls are extremely rare compared to local recalls. In United

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208. See *id.*; CTY OF SANTA CRUZ ELECTION DEP'T, CALIFORNIA PRESIDENTIAL PRIMARY COUNTY OF SANTA CRUZ (2020), <https://www.votescount.us/Portals/16/mar2020/finalresults.htm?ver=2020-04-01-145124-690>.

209. See *Recall data archive*, *supra* note 192 for supporting data and calculations.

210. Although data on the gender makeup of elected officials at the local level in California is not readily available, women represent 32% of the California legislature. See Jennifer Paluch, *Where California Stands with Women in the Legislature*, PUB. POL'Y INST. CAL. (Nov. 19, 2020), <https://www.ppic.org/blog/where-california-stands-with-women-in-the-legislature/>.

211. See *Recall data archive*, *supra* note 192.

212. Many states simply allow localities to pass recall laws, which results in only a few localities in the state having such procedures. Note that there is no consensus on this figure. See *supra* note 8 and accompanying text.

States history, just 48 state level recalls qualified—compared with approximately 7,000 to 10,000 local recall attempts since 1903.<sup>213</sup> For example, over the last 10 years, Oregon alone has had a total of 114 recalls, all on the local level. Michigan, the next largest state by population to have a full state-level recall law, has had at least 515 recall threats and 175 recall votes, and all but one of the votes took place on the local level.<sup>214</sup>

As with California, the issue is not a lack of recall threats. For example, most Michigan governors since 1983 have faced recall threats.<sup>215</sup> In 2020, nationwide 14 governors faced recall attempts; only California's governor recall qualified.<sup>216</sup> Beyond the difficulty in getting enough signatures, the reality is that the more partisan nature of state-level politics may inhibit recall campaigns. As political scientist Lawrence Sych said: “[s]igning a petition for recall is often more than repudiating a single state official—it is also a rejection of his or her party.”<sup>217</sup>

From our review and comparison of recalls in California and across the nation, we reach several conclusions. State-level recall drives happen far less often than local recall drives in California, based on comparing the California-specific state and local data. State-level recall drives happen far less often than local recall drives consistently across California, other states, and nationwide. The data in California and other recall states show that the recall is primarily a local tool, and that state officer recalls qualify at low rates. Therefore, it is unnecessary to

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213. SPIVAK, *supra* note 21, at 88.

214. Mark Z. Barabak, *There are some drastic ideas to overhaul California's recall. Be careful, says one expert*, L.A. TIMES (Sept. 28, 2021, 5:00 AM), <https://www.latimes.com/politics/story/2021-09-28/expert-warnings-california-recall-election-reform>.

215. See Aaron Parseghian, *Whitmer recall petitions can move forward, face tall order due to law change*, FOX17 (May 30, 2021, 10:16 PM), <https://www.fox17online.com/news/politics/whitmer-recall-petitions-can-move-forward-face-tall-order-due-to-law-change>; Joshua Spivak, *Scott Walker and the Strange Rise in Recall Elections*, ATLANTIC (May 16, 2012), <https://www.theatlantic.com/politics/archive/2012/05/scott-walker-and-the-strange-rise-in-recall-elections/257263/> [hereinafter Spivak, *Strange Rise in Recall Elections*]; Ed Brayton, *Granholtz recall petition gets approval*, MICH. MESSENGER (Sept. 17, 2009, 6:56 AM), <https://web.archive.org/web/20101109035654/http://michiganmessenger.com/26428/granholtz-recall-petition-gets-approval>; *Engler recall campaign gets underway*, UPI (May 20, 1991), <https://www.upi.com/Archives/1991/05/20/Engler-recall-campaign-gets-under-way/9816674712000/?spt=su>; *Recall Blanchard Comm. v. Sec'y of State*, 380 N.W.2d 71 (Mich. Ct. App. 1985).

216. Joshua Spivak, *Recall Attempts Blew Up in 2020 — and COVID Had Everything to Do With It*, NEWSWEEK (Dec. 30, 2020, 11:00 AM), <https://www.newsweek.com/recall-elections-covid-1557963> [hereinafter Spivak, *Recall Attempts Blew Up in 2020*].

217. Lawrence Sych, *State Recall Elections: What Explains Their Outcomes?*, 17 COMP. ST. POL. 7, 9 (1996).

consider state officer recall reforms, or at least less necessary than for the local recall process.

#### V. RECALL REFORM PROPOSALS ANALYZED

Our assessment is that the data analysis does not justify making it more difficult to use the recall at the state or the local level, and that the existing hurdles that prevent recalls from qualifying for the ballot are sufficient to prevent waste of public resources while permitting voters to hold elected officials accountable. We first evaluate two competing views of California's recall. The critical approach views the recall as an out-of-control fire hose wielded by the wealthy interests the recall was intended to combat. We present responses to that view and conclude that the opposing view is better supported by our data and California's experience. In our view, the recall in California overall performs largely as intended: as a public referendum on an official's policies that is rarely deployed and (when it is deployed) serves to validate those policies.

##### *A. The recall is already hard enough to deploy*

Critics charge that the recall does not meet the idealistic vision of the Progressive movement.<sup>218</sup> This has been so since the recall's birth in 1911.<sup>219</sup> Intended to give political power to the voters and to curb wealthy influences on California politics, critics argue that the recall failed in that mission.<sup>220</sup> There is some support for this: as our review of the state official recalls shows, interest groups and major political parties use recalls to attack their political opponents.<sup>221</sup> Rather than using the recall to get interests out of California politics, some argue that the interests themselves are using the recall for their own ends.<sup>222</sup>

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218. See The Editorial Bd., *California's Recall Election Is Broken*, N.Y. TIMES (Sept. 9, 2021), <https://www.nytimes.com/2021/09/09/opinion/california-recall-newsom.html>.

219. JOHN RANDOLPH HAYNES, DIRECT GOVERNMENT IN CALIFORNIA, S. DOC. NO. 738, at 5 (2d Sess. 1917). Haynes, credited as the recall's modern father, rebuts many of the same complaints that are made today.

220. See Ronald Brownstein, *The Trouble With the Gavin Newsom Recall*, ATLANTIC (May 13, 2021), <https://www.theatlantic.com/politics/archive/2021/05/newsom-recall-california/618872/>.

221. There also is contrary evidence. While there is risk that the recall "can be employed for partisan purposes, . . . it seldom has been so used." ZIMMERMAN, *supra* note 7, at 129-30 (noting that recall use to frivolously harass officials is "exceptional").

222. See *Recall of State Officials*, *supra* note 3 (click on "Pros and Cons" tab) ("Opponents argue that recalls can lead to an excess of democracy: That the threat of a recall election lessens the independence of elected officials; undermines the principle of electing good officials and giving them a chance to govern; and can be abused by well-financed special interest groups and give them undue influence over the political process.").

Whether wealthy interests still rule California politics and the recall failed its Progressive promises is debatable. Yet our data analysis shows that current recall requirements are sufficiently rigorous to prevent its abuse, or at least make it so rare as to be an outlier. Pursuing fundamental change to chase edge cases seems to be both a waste of resources and a tacit acknowledgement that the system already works well. Despite being easy to invoke compared with other states, few California recall petitions qualify, and even fewer result in a vacant seat. This suggests that California's recall is well-calibrated: difficult enough to exercise to prevent abuse, but not so onerous as to be unusable. Concerns about political polarization, cost to taxpayers, and potential for factional strife all seem plausible, yet the fact that despite numerous petitions few qualify for the ballot (and even fewer succeed) suggests that those concerns have not proved to be significant factors.

Several other factors may be more influential. A recall campaign's costs can substantially impact the qualifying rate. Using professional signature-gathering companies—typically a practical necessity to run a statewide campaign in California—requires millions of dollars.<sup>223</sup> And the fact that California's electorate is generally conservative (in the sense that it rejects far more measures than it approves) at the ballot may affect the success rate.<sup>224</sup> Voter fatigue may also be a factor: except for the Newsom recall effort, repeated recall attempts against the same governor have not resulted in greater success (and Newsom defeated his recall).

State-level petitions in recall states are rare when considered alone or when compared with the local recall, which is much more frequently used.<sup>225</sup> Across all statewide offices in all recall states, far more recall efforts fizzle than qualify for an election: the proponents abandon the effort, fail to gather enough valid petition signatures, run out of funds, or fall short from some combination of those factors.<sup>226</sup> The recall's originators predicted that it would be used sparingly, and early California commentators concluded that this proved to be accurate.<sup>227</sup>

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223. Carrillo, Duvernay, Gevecker & Fenzel, *supra* note 6, at 597-98.

224. *Id.* at 580-81 (noting that around 34% of all initiatives pass, with a maximum possible success rate for initiatives on any given ballot regardless how many initiatives are qualified).

225. See ZIMMERMAN, *supra* note 7, at 19, 48 (calling statewide officer recalls an "infrequent occurrence"); see also *id.* at 59 (noting that the recall "somewhat surprisingly has been little used" against state officers); *id.* at 78 (concluding that fears about the recall's frequent use to disrupt representative government have proved "unfounded" given how "seldom" the recall is used).

226. See ZIMMERMAN, *supra* note 7, at 19 (noting that state officer recalls have been "infrequent, in part because of the difficulty of collecting signatures on petitions").

227. See *id.* at xi (quoting Robert M. La Follette in 1920: the recall tools "will prove so effective a check against unworthy representatives that it will rarely be found necessary to invoke them"); BIRD & RYAN, *supra* note 9, at 19-20 ("[W]hen the large number of officials

We agree: modern national and California experience over a much larger timeframe supports a conclusion that the recall is rarely employed.

On these facts, we conclude that the recall is not overpowered in recall states generally, or in California specifically, because of its low qualifying rates and even lower success rates. In fact, the initiative is deployed comparatively far more often than the recall, in California and nationwide.<sup>228</sup> This makes the initiative's political impact far greater than the recall. Nor is California the leader among recall states: as noted above, Michigan has more recall petitions on the local level than California, and Oregon is about equal to California.<sup>229</sup> From those comparisons and California's 110 years of experience, the recall is an infrequently used tool that is less disruptive to the political sphere than its enactors may have imagined, or its opponents fear.<sup>230</sup>

Although some policy leaders believe the device should be limited solely to corruption and misconduct allegations,<sup>231</sup> California's recall

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which have fallen within the jurisdiction of the recall is borne in mind, the number of those who have fallen victims to its operation is still comparatively insignificant.”)

228. See Carrillo, Duvernay, Gevercer & Fenzel, *supra* note 6, at 578 tbl.4 (showing more and more consistent California initiative usage compared with the fewer and more periodic recall uses discussed here); see also Rich Braunstein, *State Initiatives Since 1904 – 2000*, INITIATIVE & REFERENDUM INST., <http://www.iandrinstute.org/docs/Statewide-Initiatives-1904-2000.pdf> (last visited Apr. 3, 2022); *Initiatives (number, approved) by State and Year (1904–2019) sheet*, INITIATIVE & REFERENDUM INST., [http://www.iandrinstute.org/docs/Number%20initiatives%20by%20state-year%20\(1904-2019\).xls](http://www.iandrinstute.org/docs/Number%20initiatives%20by%20state-year%20(1904-2019).xls) (last visited Apr. 3, 2022) (similarly showing more and more consistent initiative usage across all direct democracy states compared with their recall usage discussed here); cf. *History of California Initiatives: Initiative Totals by Title and Summary Year 1912-2022*, CAL. SECRETARY ST., <https://elections.cdn.sos.ca.gov/ballot-measures/pdf/initiative-totals-summary-year.pdf> (last visited Apr. 3, 2022) (listing California state-wide initiative historical data); *Initiative states compared by number of initiatives on their ballot*, BALLOTPEdia, [https://ballotpedia.org/Initiative\\_states\\_compared\\_by\\_number\\_of\\_initiatives\\_on\\_their\\_ballot](https://ballotpedia.org/Initiative_states_compared_by_number_of_initiatives_on_their_ballot) (last visited Apr. 3, 2022) (more initiative data).

229. See Barabak, *supra* note 214. See generally CITIZENS RESEARCH COUNCIL OF MICH., MICHIGAN'S RECALL ELECTION LAW 1-5 (2012), <https://crcmich.org/PUBLICAT/2010s/2012/rpt379.pdf>.

230. This longer experience validates the view in 1930 that after 25 years the recall “realized neither the highest hopes of its sanguine originators nor the darkest prophecies of its cynical opponents,” producing neither “a democratic Utopia” nor causing “political demoralization and chaos” given that it was deployed both to “drive from office unfaithful, incompetent, and arbitrary officials” and also employed “on occasion, without justification or beneficial result.” BIRD & RYAN, *supra* note 9, at 342. Those authors concluded (from a much smaller dataset than ours) that “on the whole the recall has been employed with moderation,” that only “a somewhat negligible percentage of public officials become involved in recall proceedings,” and that the recall has been “applied almost exclusively to local government officials.” *Id.* at 342-43. Zimmerman reaches similar conclusions. See ZIMMERMAN, *supra* note 7, at 131.

231. See Joshua Osborne-Klein, Comment, *Electoral Recall in Washington State and California: California Needs Stricter Standards to Protect Elected Officials from Harassment*, 28 SEATTLE U. L. REV. 145, 147 (2004); *Recall isn't the proper response*,

was never intended to have these limits. The original debates surrounding its adoption focus on the recall of judges, and on permitting the voters to resolve policy disputes.<sup>232</sup> And experience proves that policy is the clear focus in recall efforts.<sup>233</sup> Nearly all the recalls in California and throughout the United States over the last decade involved significant policy disputes, with very few involving corruption.

For example, the unprecedented number of recall attempts in 2020 and 2021 primarily targeted nonpartisan state and local officials (especially school board leaders) who had taken steps to combat the COVID-19 pandemic.<sup>234</sup> The pandemic restrictions that resulted in shutdowns of schools and businesses were among the most extensive policy changes in United States history. It is not surprising that voters who opposed these policies would want to take electoral action. Some of those recall campaigns were intraparty attempts, which shows that recall campaigns were being used as a means to address internal dissension over policy positions.<sup>235</sup> With most attempts failing to qualify and almost all being defeated at the ballot, the results of these attempts strongly ratified the pandemic policies. Thus, the recall bolstered the policy positions of the targeted officials and helped resolve policy disputes.<sup>236</sup>

Finally, we note that major recall reform requires constitutional changes, which seems unlikely. California voters strongly favored the recall at its inception and still do today.<sup>237</sup> Commentators have long been

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NORFOLK DAILY NEWS (Nov. 7, 2015), [https://norfolkdailynews.com/blogs/recall-isnt-the-proper-response/article\\_63f9ce2e-855c-11e5-b809-2b320860b4e2.html](https://norfolkdailynews.com/blogs/recall-isnt-the-proper-response/article_63f9ce2e-855c-11e5-b809-2b320860b4e2.html); Dick Spotswood, *Glickman Could avoid recall effort by running again*, MARIN INDEP. J. (June 15, 2019, 9:57 AM), <https://www.marini.com/2019/06/15/dick-spotswood-glickman-could-avoid-recall-effort-by-running-again/>.

232. GATES & CLARK, *supra* note 12 (“Laws henceforth under the enlarging powers of the people will embody the will and spirit of the people; in fact, will be what laws should always be—a transcription of the will, wisdom, and spirit of the people and of their times.”).

233. See Siegel, *supra* note 68, at 329 (“[P]olitically-motivated recalls generally serve as a referendum on one political issue.”).

234. Joshua Spivak, *Year that broke the recall? Why COVID led to recalls flopping nationwide*, HILL (Dec. 30, 2021, 1:30 PM), <https://thehill.com/opinion/campaign/587702-year-that-broke-the-recall-why-covid-led-to-recalls-flopping-nationwide/> [hereinafter Spivak, *Year that broke the recall*].

235. See Ruth Brown, *Effort to recall Idaho Gov. Little fails*, E. IDAHO NEWS.COM (Aug. 12, 2020, 8:11 PM), <https://www.eastidahonews.com/2020/08/effort-to-recall-idaho-gov-little-fails/>; Scott Bourque, *Effort To Recall Arizona Gov. Ducey Gains Unlikely Support from Paul Gosar*, KJZZ (Dec. 6, 2020, 3:16 PM), <https://kjzz.org/content/1641158/effort-recall-arizona-gov-ducey-gains-unlikely-support-paul-gosar>.

236. See Spivak, *Year that broke the recall*, *supra* note 234.

237. The recall was approved by a vote of 4 to 1, and it received the second largest vote and won by the largest majority out of all 23 proposals on the 1911 special election ballot. ZIMMERMAN, *supra* note 7, at 13; BIRD & RYAN, *supra* note 9, at 54. In a 2021 poll, 86% of

skeptical of restricting the recall because the fact that “the people are sometimes vanquished by their own weapon is no justification for depriving them of . . . a potential means of protection.”<sup>238</sup> Strong voter support coupled with the fact that the electorate must approve any constitutional changes to the recall makes radical reforms unlikely to pass.

In the following sections we consider several proposed reforms to California’s recall and conclude that only two (the qualifying signature number and the replacement candidate procedure) are worth considering. Part of our analysis here relies on the experience of other recall states. Some of the reforms proposed for California’s recall are already features of the recall in other recall states, and their experience with the design features discussed in this section should inform California’s decisions.

### 1. *Requiring malfeasance*

Recent California polls show support for requiring specific grounds for a recall.<sup>239</sup> A malfeasance requirement has common-sense appeal because it seems consistent with the concept of the recall as a means to remedy official misconduct that resembles a quasi-impeachment mechanism. Voters might expect that adopting a malfeasance requirement would prevent the recall from being abused for political and policy disputes. Eight of the 19 recall states require specific grounds for a recall, known as *malfeasance* because the required grounds all

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California voters said it was a “good thing” that the state constitution permits recalling elected officials. Mark Baldassare, *What’s Wrong With the California Recall?*, PUB. POL’Y INST. CAL. (July 27, 2021), <https://www.ppic.org/blog/whats-wrong-with-the-recall/>.

238. BIRD & RYAN, *supra* note 9, at 351. Mike Tate, former chair of the Democratic Party of Wisconsin, stated during the campaign to recall Wisconsin Governor Scott Walker that the recall “enhance[s]” democracy and is a “just and proper tool to hold . . . elected officials accountable for their actions.” Mike Tate, *Recall Elections Enhance Democracy*, U.S. NEWS (May 10, 2011, 10:33 AM), <https://www.usnews.com/opinion/articles/2011/05/10/recall-elections-enhance-democracy>. Academics have also praised the recall as the “best possibility . . . to function as a democratic tool against [political] extremism.” Anthoula Malkopoulou, *Flipped elections: can recalls improve democracy?*, CONVERSATION (Oct. 14, 2015, 11:06 PM), <https://theconversation.com/flipped-elections-can-recalls-improve-democracy-46395>.

239. Berkeley Institute of Governmental Studies (IGS) and UC San Diego Yankelovich Center for Social Science Research polled this issue during the 2021 Newsom recall. See MARK DICAMILLO, BERKELEY IGS POLL, WHILE THERE IS BIPARTISAN SUPPORT IN CALIFORNIA TO PRESERVE THE RIGHT TO RECALL ELECTED OFFICIALS, MAJORITIES FAVOR REFORMING THE PROCESS I (2021), <https://escholarship.org/uc/item/6kt7w3ts>; THAD KOUSSER & CASSIDY RELLER, U.C. SAN DIEGO YANKELOVICH CENTER FOR SOCIAL SCIENCE RESEARCH, REFORMING THE RECALL? CALIFORNIA VOTERS’ PERSPECTIVES ON THE PROCESS 9 (2021), [https://yankelovichcenter.ucsd.edu/\\_files/reports/Reforming-The-Recall-California-Voters-Perspectives-On-The-Process-FINAL.pdf](https://yankelovichcenter.ucsd.edu/_files/reports/Reforming-The-Recall-California-Voters-Perspectives-On-The-Process-FINAL.pdf).

generally concern misconduct in office that either constitutes or resembles criminal acts.<sup>240</sup> For example, Alaska requires “lack of fitness, incompetence, neglect of duties or corruption;”<sup>241</sup> Georgia, Minnesota, and Washington require “malfeasance” in office;<sup>242</sup> Kansas requires conviction of a felony, official misconduct, or dereliction of duty;<sup>243</sup> Montana requires unfitness, misconduct, or a felony conviction;<sup>244</sup> and Rhode Island requires a criminal conviction or ethical violation.<sup>245</sup>

A malfeasance requirement makes the recall unusable.<sup>246</sup> The recall’s adopters in the “any reason or no reason” states like California understood and intended that recalls should be used for political reasons and to impact policy.<sup>247</sup> Recalls will become extremely rare if California adopts a malfeasance standard: of the 48 state-level successful recalls in United States history, only one occurred in a malfeasance state.<sup>248</sup> In the past decade, only 7 local recalls have qualified in the most populous malfeasance state (Washington), while 114 have qualified in neighboring Oregon (a smaller “any reasons” state).<sup>249</sup> California has

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240. JOSHUA SPIVAK, RECALL PETITION MAY NOT HOLD UP TO ALASKA LAW (2017), <https://wagner.edu/newsroom/files/2017/09/170518-Homer-AK-Tribune-Recall-petition-may-not-hold-up-to-Alaska-law-Spivak-op-ed.pdf> [hereinafter SPIVAK, ALASKA LAW RECALL PETITION].

241. ALASKA STAT. § 15.45.510 (2021). A recent decision in Alaska may have paved the way for it to effectively become a political recall state. *See State v. Recall Dunleavy*, 491 P.3d 343 (Alaska 2021).

242. GA. CODE ANN. §§ 21-4-3(7), 21-4-4(c) (2021); MINN. CONST. art. VIII, § 6; WASH. CONST. art. I, § 33.

243. KAN. STAT. ANN. § 25-4302 (West 2021). This malfeasance requirement may lack teeth. Section 25-4302 states that “No recall submitted to the voters shall be held void because of the insufficiency of the grounds, application, or petition by which the submission was procured.” *Id.*

244. MONT. CODE ANN. § 2-16-603 (2021).

245. R.I. CONST. art. IV, § 1.

246. ZIMMERMAN, *supra* note 7, at 57. “[V]oters typically experience greater difficulty” in removing officials in malfeasance states. *Id.*

247. *See GATES & CLARK, supra* note 12. The ballot argument in favor of California’s 1911 Senate Constitutional Amendment no. 23 described the recall as a means:

[T]o require a public servant . . . whose stewardship is questioned by [the proponents] to submit the question of his continuance in office to a vote of the electors.

If a majority of all voting at the election say that their servant is unfit to serve them longer, he is thereby retired.

*Id.* And it similarly framed the recall as “[t]he power to remove a dishonest, incapable, or unsatisfactory servant.” *Id.* (emphasis added).

248. *See Spivak, Recall Elections in the US, supra* note 146, at 80; Washington, 1981. At the time, Washington’s Supreme Court had opened up the recall to a more political version. The 1984 Supreme Court seemed to have shifted the state permanently into the malfeasance standard column. *See Cole v. Webster*, 692 P.2d 799 (Wash. 1984).

249. *See Recall data archive, supra* note 192 for supporting data and calculations.

seen 5 successful state legislator recalls, but as discussed above only one (Marshall Black) concerned actual corruption.<sup>250</sup> This difference shows that a malfeasance standard is very effective at achieving its design purpose of barring recalls for reasons other than malfeasance and suggests that recalls would be rare if California became a malfeasance state.

The qualifying disparity exists because malfeasance thresholds are inherently more difficult to satisfy. Proof of actual malfeasance is less available than mere public disapproval, and courts can (and have) intervened to halt recalls that they viewed as showing insufficient malfeasance grounds.<sup>251</sup> Malfeasance short of charged criminal conduct is particularly difficult, and arguably more prevalent: “stupid bunglers” are more common than “shrewd corruptionists” and the inherent difficulty of proving non-criminal misconduct “is in itself sufficient reason for a remedy which, while perhaps assuming some form of malfeasance, does not involve the necessity of proving it.”<sup>252</sup> A malfeasance requirement may also make signature gathering more difficult if voters, guided by specific grounds for a recall, refuse to sign petitions that in their mind fall short of the required malfeasance threshold.

Requiring cause for a recall will reduce the electorate’s recall power by making it far more difficult to exercise. Requiring reasons will make recall campaigns more expensive and difficult even in cases of clear misconduct, because proponents will be forced to litigate expensive court battles over sufficiency before beginning the signature process. Adjudicating sufficiency will force courts into the political thicket as arbiters of what qualifies as appropriate grounds.<sup>253</sup> A malfeasance requirement is antithetical to the recall’s original intent, which was to

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250. See COMPLETE LIST OF RECALL ATTEMPTS, *supra* note 1; BIRD & RYAN, *supra* note 9, at 271-72.

251. Courts in Kansas, Minnesota, Montana, and Washington have quashed recall attempts for insufficient grounds. See ZIMMERMAN, *supra* note 7, at 32-36.

252. BIRD & RYAN, *supra* note 9, at 348; *cf.* Hanlon’s razor: “Never attribute to malice that which is adequately explained by stupidity.”

253. For example, a Washington state court recently quashed a recall petition against Governor Jay Inslee after a costly court battle. See Kyle Lamb, *Inslee Warns of ‘Relitigating Elections’ After Recall Dismissal*, KPQ (June 19, 2021), <https://www.kpq.com/inslee-warns-of-relitigating-elections-after-recall-dismissal/>. Washington’s constitution (article I, § 33) limits recalls to public officials who have “committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office.” WASH. CONST. art. I, § 33. According to the Washington Attorney General, the court dismissed the recall petition on the grounds that the 5 allegations were “legally and factually insufficient.” *Judge dismisses Washington state governor recall petition*, AP NEWS (June 17, 2021), <https://apnews.com/article/washington-coronavirus-pandemic-business-government-and-politics-health-baaac44648aeb9b3dcb850b20eb447a9>.

“give to the electorate the power of action when desired.”<sup>254</sup> Adopting a malfeasance standard is likely to neuter California’s recall.

## 2. Automatic replacement

To the extent that a “most common” system for replacing a recalled official exists it is some form of automatic replacement, which is the case in 11 of the 19 recall states.<sup>255</sup> Automatically replacing a recalled official with the order of succession method has some benefits: it can reduce costs and possibly prevent recalls that are merely attempts to reverse the past election. Yet this feature has serious drawbacks. It would “solve” a problem with direct democracy by instituting the least democratic option available: where the system designates the replacement, not the voters. It would transform the recall into another impeachment process.<sup>256</sup> And the argument that it prevents relitigating the past election is suspect. The experience of other recall states shows that automatic replacement does not lessen recall attempts; instead, it may *increase* recall attempts against other state officials in the line of succession.

California’s two gubernatorial recall elections targeted the governor alone because the existing simultaneous replacement system removes incentives to target officials in the line of succession. But in past gubernatorial recalls in other states with automatic replacement systems the proponents simply targeted the replacement officials. For example, in 1921, the North Dakota electorate removed the governor, the attorney general, and the agriculture-and-labor commissioner.<sup>257</sup> In 2012, gubernatorial recall proponents in Wisconsin gathered an additional 900,000 signatures to also successfully qualify a recall against the lieutenant governor.<sup>258</sup> Indeed, historically multi-candidate recall attempts are the rule, not the exception. There have been 116 recall votes in California in the last 11 years; in 32 of those elections more than 1 official was on the ballot, compared to 27 times when only 1 official saw

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254. Hiram W. Johnson, Governor of Cal., First Inaugural Address (Jan. 3, 1911), <https://governors.library.ca.gov/addresses/23-hjohnson01.html>.

255. See LITTLE HOOVER COMM’N, *supra* note 152, at 38 app. 2, tbl.1.

256. When a statewide officer is impeached and removed, the governor appoints a replacement. CAL. GOV. CODE § 3038 (Deering 2021). When a governor is impeached and removed, the lieutenant governor automatically becomes governor. CAL. CONST. art. V, § 10.

257. Those 3 officials made up the Industrial Commission and were in charge of several state-sponsored entities. See ZIMMERMAN, *supra* note 7, at 61.

258. See MJ Lee, *Wis. Dems tout 1M recall signatures*, POLITICO (Jan. 17, 2012, 7:16 AM), <https://www.politico.com/story/2012/01/wisconsin-dems-tout-1-million-recall-signatures-071548>. Joshua Spivak & David A. Carrillo, *Don’t break California’s Recall by ‘fixing’ it*, HILL (Oct. 15, 2021, 3:00 PM), <https://thehill.com/opinion/campaign/576936-dont-break-californias-recall-by-fixing-it/>.

a vote. Automatic replacement will not guarantee an orderly succession; instead, it more likely will increase the number of targeted officials. Automatic replacement also exacerbates the conflict potential between a governor and the potential replacement official (commonly the lieutenant governor). Fifteen states saw recall attempts against governors between 2019 and 2021.<sup>259</sup> The two most serious attempts were in Oregon and Alaska—both of which use the automatic replacement model.<sup>260</sup> Due to a quirk in Oregon’s law, its automatic replacement process nearly caused a constitutional crisis.<sup>261</sup>

Rather than removing politics from the recall process, automatic replacement systems eliminate voter choice, encourage tactical partisan behavior, and potentially increase the likelihood of a multi-candidate recall effort. Concerns about automatic replacements are particularly acute in California, which has a separately-elected executive branch and often elects governors and lieutenant governors from different parties: it was so from 1979 to 1999. An automatic replacement system in California could cause more frequent politically motivated recalls.

### 3. Increasing the qualifying signature requirement

The signature gathering phase is perhaps the most critical phase of the recall campaign.<sup>262</sup> Qualifying a recall petition requires significant financial resources to gather signatures, and consequently most recall attempts fold when proponents fail to gather enough signatures to meet the requirement.<sup>263</sup> This shows that signature requirements are an effective filter and proxy for voter interest: the frequent inability to

259. Spivak & Carrillo, *supra* note 258.

260. *Id.*

261. *Id.* Oregon does not have a lieutenant governor; its secretary of state is next in line. The secretary of state was a Republican, but that official died in office. *Id.* Under Oregon law, a non-elected replacement was not eligible to succeed to the governor’s office—but the recall petitioners challenged this and were prepared to fight any effort to bypass the Republican in court. *Id.*

262. ZIMMERMAN, *supra* note 7, at 57 (noting that a recall campaign’s success “is influenced heavily by the threshold petition signature requirement”).

263. *Recall of State Officials*, *supra* note 3 (click “History” tab) (“Many more recall efforts are started and never make it to the election stage; either they are abandoned by their sponsors, or they fail to gather enough valid petition signatures to trigger an election.”). Newsom recall proponent, Orrin Heatlie, said of the California recall election:

“It’s a very difficult process as it is,” noting that his petition drive was the only one of several efforts to recall Newsom to go forward. “If they were that easily done, then it would be something that people did all the time,” he said. “Very few of them get as far as this one did, for good reason. It’s a very difficult process as it stands.”

Eric Bradner & Dan Merica, ‘A \$276 million waste’: California Democrats seek changes to recall process after Newsom’s landslide, CNN (Sept. 16, 2021, 3:33 PM), <https://www.cnn.com/2021/09/16/politics/california-recall-waste-of-time-and-money/index.html>.

garner initial support from even a small percentage of likely voters suggests the absence of deep untapped wells of voter interest in recalls.

This makes the signature requirement critical to the balance between accessibility and abuse because a low signature requirement “obviously encourages” recalls.<sup>264</sup> There are two common standards for calculating signature requirements: either a percentage of registered voters in the jurisdiction, or of turnout in the past election.<sup>265</sup> Local governments in California historically experimented with signature requirements that range from 10 to 55% of the total vote in the last election for the office.<sup>266</sup> The most common modern signature requirement is 25%; Kansas has the highest requirement and, as discussed above, California arguably has the lowest.<sup>267</sup>

California's 12% signature requirement may be on the low end of the metrics, but the real number is much higher because California is the most populous state.<sup>268</sup> This partly explains why, despite California's seemingly low signature requirement, it has proved quite difficult to meet. For example, the qualifying rate for California gubernatorial recall attempts is under 4% (2 of 55), and just 6% (11 of 179) of recall attempts of any California state official collected enough signatures to qualify for the ballot.<sup>269</sup> And both California gubernatorial recalls that qualified did so in unusual circumstances. The 2002 gubernatorial election saw the lowest voter turnout in California history, making the 2003 Davis recall effort relatively easy to qualify.<sup>270</sup> The 2021 Newsom recall campaign proponents benefited from additional time to gather signatures during the COVID-19 pandemic; absent that extra time, it is unlikely the Newsom recall would have qualified.<sup>271</sup>

Increasing the requirement would make it harder for recalls to qualify. Given the already-high bar to qualifying statewide officer recalls in California and the low qualifying rate of past recall attempts,

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264. See BIRD & RYAN, *supra* note 9, at 61-62.

265. The signature threshold usually is based on turnout in the last election for that office. In some jurisdictions, the number is calculated based on turnout in the governor's race in that jurisdiction (which is invariably a higher bar). See *supra* notes 153-62 and accompanying text (discussing different jurisdiction signature threshold requirements) and Tables 5 and 6 (showing recall qualification signature requirements by state, population, and rule).

266. See BIRD & RYAN, *supra* note 9, at 17. “The recall laws of California illustrate almost every conceivable variation in recall procedure.” *Id.* at 17 n.31.

267. ZIMMERMAN, *supra* note 7, at 39.

268. Carrillo, Spivak & Stracener, *supra* note 73. For example, Montana's far lower population makes its real signatures number far lower than California's. *Id.*

269. See *Recall History in California (1913 to Present)*, *supra* note 63.

270. See *supra* note 131 and accompanying text.

271. Korte, *supra* note 144.

this proposal seems like a solution to a nonexistent problem.<sup>272</sup> As Table 6 shows, California has the lowest signature requirement as a percentage of population regardless of the qualifying rule (it ties with Montana if the rule is eligible voters). But due to its largest-in-the-nation population California has the highest real signatures number regardless of rule. Montana has the lowest real signatures number regardless of rule. California has by far the largest upward deviation from the median real number, regardless of rule: over triple if by eligible, nearly triple if by registered or by turnout. As Table 6 shows, moving California close to the median as percent of population would require doubling the signature requirement to 25% regardless of rule. That would make our percent-of-population metric similar to Kansas, which currently has the highest signature requirement as a percentage of population regardless of rule. And doing so would make California deviate even farther upward from the median real number.

Making statewide officer recalls more difficult to qualify by increasing the signature requirement seems unnecessary because past attempts show that the existing standard is already difficult to satisfy.<sup>273</sup> Other solutions here are similarly problematic. For example, one proposal would progressively increase the signature requirements for successive recalls attempts.<sup>274</sup> But that would only further hinder recall qualifications. A progressive increase in the signature requirement would have made it almost impossible to qualify the 2021 Newsom recall election, because it was the sixth attempt against that officer. An alternative solution would require recall proponents to reimburse the state for unsuccessful recall attempts by requiring them to post a bond. For example, Pomona's original recall system required proponents to deposit a certified check "for an amount equal to the cost of the last recall election" against the targeted official.<sup>275</sup> Both of these ideas have negative consequences. If signature requirements progressively increase with repeated attempts, the targeted candidate's supporters can start fake recall attempts to raise the signature requirements, which has happened

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272. For a contrary view, see Siegel, *supra* note 68, at 337-39 (arguing that increasing the currently low signature requirements for recall petitions would force organizers of politically-motivated recalls to find a wider support base, ensure that the political motivation for the recall was one of the constituents' "sacred cows," and slow the recall process, with the overall result of making recalls a "last resort" for political activists "rather than the modus operandi").

273. BIRD & RYAN, *supra* note 9, at 20 ("[W]hen the large number of officials which have fallen within the jurisdiction of the recall is borne in mind, the number of those who have fallen victims to its operation is still comparatively insignificant.").

274. For example, the original San Francisco recall system started at 10% then doubled for a second attempt and tripled for a third try; Berkeley required 15% for a first attempt and 30% for a second attempt. See *id.* at 66-67.

275. *Id.* at 70.

in other states.<sup>276</sup> And requiring recall proponents to pay the cost of an election takes the device out of the hands of the voters and makes using the recall a punitive undertaking.<sup>277</sup>

The better reform idea is to adopt the standard used by California's largest cities: a registered voter requirement with a 10% threshold.<sup>278</sup> Doing so would primarily provide clarity, with a secondary effect of modestly increasing the signature requirement. The registered voter requirement reduces the variability of tying the recall to turnout in the last election and sets a more consistent standard. That consistency would reduce tactical calendaring incentives for recalls following unusually low-turnout elections. It also addresses calls to raise the signature requirement: if applied to the 2021 Newsom recall, a 10% of registration standard would have modestly raised the required signatures to over 2.2 million, versus the 1.5 million required by the current 12% of turnout standard.<sup>279</sup>

Our analysis shows that a clear majority (94% of state petitions, 75% of local petitions) of recall attempts fail to qualify. And overall, just a few recall petitions (3.4% of state petitions, 15.5% of local petitions) will succeed at the ballot. Those high failure and low success margins show that the existing signature requirements are an effective filter. Because most recall attempts fail to qualify, the few attempts that do qualify command strong voter interest on the question of whether to

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276. Supporters of Wisconsin Governor Scott Walker filed the first recall petitions in 2011, a week before the Democratic effort against Walker began. See Jason Stein & Lee Bergquist, *First recall effort launched against Walker, triggering unlimited fundraising*, MILWAUKEE J. SENTINEL (Nov. 4, 2011), <https://archive.jsonline.com/news/statepolitics/first-recall-effort-against-gov-scott-walker-formally-launched-friday-e22u587-133257928.html>. The reason appeared to be to give Walker extra time to raise funds for his recall defense (somewhat like California, there are no limits for donations in a recall). See *id.*

277. Keyser City, West Virginia appears to shift liability for the cost of the election to everyone who signed the petition. See Elaine Blaisdell, *Petition for Keyser recall election given to city official*, CUMBERLAND TIMES-NEWS (May 17, 2012), [https://www.times-news.com/news/local\\_news/petition-for-keyser-recall-election-given-to-city-official/article\\_269ca806-beb2-573e-bc51-7c0fdbe879bc.html](https://www.times-news.com/news/local_news/petition-for-keyser-recall-election-given-to-city-official/article_269ca806-beb2-573e-bc51-7c0fdbe879bc.html).

278. See ELECTION COORDINATION UNIT, L.A. CTY. REGISTRAR-RECORDER/CTY. CLERK, A GUIDE TO RECALL FOR COUNTY, SCHOOL, SPECIAL DISTRICT AND LOCAL OFFICES 8 (2022), <https://www.lavote.gov/docs/rcc/documents/guide-to-recall.pdf?v=6>.

279. Note that this change requires a constitutional amendment. The California constitution states that:

A petition to recall a statewide officer must be signed by electors 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. Signatures to recall Senators, members of the Assembly, members of the Board of Equalization, and judges of courts of appeal and trial courts must equal in number 20 percent of the last vote for the office.

CAL. CONST. art. II, § 14(b). And it would unhitch the recall from the initiative and referendum, which would still be tied to gubernatorial turnout. See *id.*

remove the target. Rather than making the recall too easy to use and flooding ballots with spurious challenges, the existing qualifying requirements eliminate the weak campaigns and focus voter attention on potentially meritorious questions.

#### 4. Clarifying the replacement candidate procedure

California law is vague on two key issues in a gubernatorial recall: the qualifying requirements for replacement candidates, and the time window for qualifying. In recall elections for California governors, the secretary of state sets the procedures, and the lieutenant governor sets the date.<sup>280</sup> Those discretionary powers have significant individual consequences and combine to have major impacts on the replacement field. We suggest focusing reform efforts on clarifying those points.

California's procedures for primary elections do not apply to recalls.<sup>281</sup> This statutory silence effectively grants the secretary of state discretion to impose any set of reasonable requirements on the replacement candidates.<sup>282</sup> In both the 2003 Davis and the 2021 Newsom recalls, California's secretaries of state chose to use the party primary procedure, which requires just 65 signatures to qualify as a replacement candidate.<sup>283</sup> The other option was to apply the requirements for independent candidates, which would have required 221,544 signatures to qualify for the 2021 Gavin Newsom recall ballot.<sup>284</sup> This decision has ballot integrity consequences. In 2003, the recall ballot featured 135 names, many of which were not serious candidates.<sup>285</sup> In

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280. *California Gubernatorial Recall Election – Frequently Asked Questions*, CAL. SECRETARY ST., <https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/2021-ca-gov-recall/newsom-recall-faqs> (last visited Sept. 23, 2022) [hereinafter *California Gubernatorial Recall Election*].

281. See CAL. ELEC. CODE § 8000(a) (Deering 2021).

282. The California Supreme Court interpreted California Election Code section 11328 to give the secretary of state great deference in her decision. See *Burton v. Shelley*, No. S117834, 2003 WL 21962000, at \*1 (Cal. Aug. 7, 2003).

283. ELEC. §§ 8062(a)(1).

284. See *id.* §§ 8300, 8400; see also CAL. SEC'Y OF STATE, ODD-NUMBERED YEAR REPORT OF REGISTRATION 1 (2021), <https://elections.cdn.sos.ca.gov/ror/ror-odd-year-2021/historical-reg-stats.pdf> [hereinafter ODD-NUMBERED YEAR REPORT]; CAL. SEC'Y OF STATE, REPORT OF REGISTRATION 1 (2003), <https://elections.cdn.sos.ca.gov/ror/ror-pages/60day-stwdsp-03/hist-reg-stats.pdf> [hereinafter REPORT OF REGISTRATION].

285. See Rick Lyman, *The California Recall: The Candidates; California Voters Wonder: Is Anyone Not Running?*, N.Y. TIMES (Aug. 16, 2003), <https://www.nytimes.com/2003/08/16/us/california-recall-candidates-california-voters-wonder-anyone-not-running.html>; *Calif. Recall Ballot Will Have 135 Names*, AP NEWS (Aug. 14, 2003), <https://apnews.com/article/4444330e8adfdca56ebcd6578a2de9c0>.

2021, 46 people filed to run as a replacement candidate.<sup>286</sup> Having a parade of jokers on the ballot has obvious negative effects on the public's ability to take the matter seriously.

The lieutenant governor has a 20-day window within which to set the election.<sup>287</sup> Her choice affects how long potential replacement candidates have to qualify for the recall ballot. Depending on when the lieutenant governor sets the election, potential replacement candidates could have anywhere from 1 to 21 days to qualify for the ballot.<sup>288</sup> The secretary of state's broad discretion interacts with the lieutenant governor's discretion to set the date of the recall election. A large signature requirement and a short time frame to qualify could result in very few candidates making it onto the recall ballot.

In both of California's gubernatorial recalls the secretary of state considered only two possible qualifying procedures: the easier party primary standard, or the harder independent candidate standard.<sup>289</sup> Both chose the easier primary candidate procedure.<sup>290</sup> The result is a bare-minimum 65 signatures requirement, compared with the independent standard's requirement of 1% of all registered California voters.<sup>291</sup> In the 2003 Gray Davis recall, the independent standard would have required 149,956 valid signatures.<sup>292</sup> In the 2021 Gavin Newsom recall, the independent standard would have required 221,544 signatures.<sup>293</sup>

A more onerous replacement candidate procedure is beneficial because it makes the process sufficiently difficult to qualify that only serious candidates could quickly fund a signature drive. The constitutional and statutory provisions combine to create a narrow time window for replacement candidates to gather signatures because prospective candidates cannot declare candidacy before the election is

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286. Laurel Rosenhall & Sameea Kamal, *Who's running in the Newsom recall? Politicians, activists, Californians of all stripes*, CALMATTERS (July 21, 2021), <https://calmatters.org/explainers/newsom-recall-candidates/>.

287. See CAL. CONST. art. II, § 15; ELEC. § 11100.

288. See CAL. CONST. art. II, § 15(a) (requiring an election to be scheduled within 60-80 days after a recall petition is certified); ELEC. § 11381(a) (requiring nominating petitions to be filed with the Secretary of State no later than the 59th day before the election).

289. See Bob Wu & Brandon V. Stracener, *Two state officials will shape the recall election*, SCOCABLOG (Mar. 26, 2021), <http://scocablog.com/two-state-officials-will-shape-the-recall-election/>.

290. *Id.*

291. ELEC. §§ 8300, 8400.

292. See REPORT OF REGISTRATION, *supra* note 284, at 1. See generally ELEC. § 8062(a)(1) (requiring candidates to collect "not fewer than 65 nor more than 100" signatures to appear on the ballot); *Statewide Special Election — FAQs About Recalls, October 7, 2003*, CAL. SECRETARY ST., <https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/statewide-special-election-october-7-2003/frequently-asked-questions#14>.

293. See ODD-NUMBERED YEAR REPORT, *supra* note 284, at 1.

certified.<sup>294</sup> But they must file the required paperwork no less than 59 days before the scheduled recall election,<sup>295</sup> which must be held 60 to 80 days after certification.<sup>296</sup> The result is a 1–3 week window to gather signatures. For example, in both the 2003 and 2021 recalls, the replacement candidates had about 16 days of signature gathering time.<sup>297</sup> Professional signature gatherers typically charge approximately \$1 to \$3 per signature, and that price increases in statewide recalls because timing is compressed and there are competing players.<sup>298</sup> Thus, the independent candidate procedure likely requires at least \$1,000,000 to qualify, which would bar most frivolous candidates.

The potential downside of a more rigorous replacement candidate standard (like the 1% requirement for independent candidates) is that it could unduly burden genuine prospects. The compressed timeframe to collect signatures is more burdensome than the funding requirement—even a well-funded candidate might struggle to gather several hundred thousand signatures in a matter of weeks. The solution here is to consider a third path: the options are *presently* limited to the primary and independent procedures, but not *necessarily* so. For example, rather than tying the window to the variable election date, the window could be set to coincide with another specified time period.<sup>299</sup> Doing so would

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294. In a regular primary election, California Elections Code section 8020(b) requires that the declaration of candidacy forms “shall first be available on the 113th day prior to the direct primary election”—but the election date is unknown until the Lieutenant Governor sets the election date, which happens only after the Secretary of State certifies the election. ELEC. § 8120.

295. *Id.* § 11381(a) (“For recalls of state officers, the nomination papers and the declaration of candidacy shall, in each case, be filed no less than 59 days prior to the date of the election and not before the day the order of the election is issued. The Secretary of State shall certify the names of the candidates to be placed on the ballot by the 55th day prior to the election.”).

296. CAL. CONST. art. II, § 15.

297. Wu & Stracener, *supra* note 289; See Press Release, Shirley N. Weber, Secretary of State, California gubernatorial Recall Candidate Filing Deadline Announced (July 21, 2021), <https://www.sos.ca.gov/administration/news-releases-and-advisories/2021-news-releases-and-advisories/sw21033-california-gubernatorial-recall-candidate-filing-deadline-announced>.

298. See John Wildermuth, *Qualifying a California ballot measure to become a ‘playground of billionaires.’* S.F. CHRON. (Jan. 2, 2019), <https://www.sfchronicle.com/politics/article/Qualifying-a-California-ballot-measure-to-become-13501800.php>; Carrillo, Duvernay, Gevercer & Fenzel, *supra* note 6, at 597-98.

299. For example, California already requires a 30-day signature withdrawal period. See ELEC. § 11108(b) (“Notwithstanding any other law, any voter who has signed a recall petition under this chapter shall have the voter’s signature withdrawn from the petition upon the voter filing a written request that includes the voter’s name, residence address, and signature with the elections official within 30 business days of the Secretary of State’s notice provided by subdivision (a).”).

balance replacement candidates' interests in qualifying for the ballot with the state's interest in efficient election administration.

Clarifying the replacement candidate qualifying procedure with a higher signature requirement and a set time window will provide clarity and simplify the process. Because this reform can be accomplished solely through the statutory process, it is the easiest reform proposal to enact.

### 5. *The plurality replacement problem*

California's recall procedure requires an "election to determine whether to recall an officer and, if appropriate, to elect a successor."<sup>300</sup> If an officer is removed and "there is a [replacement] candidate, the [replacement] candidate who receives a plurality is the successor."<sup>301</sup> Thus, California state officer recalls present voters with a combined ballot that asks two questions: whether to recall the officer and who will succeed them.<sup>302</sup> Because California law treats the recall as a ballot measure and the replacement race as a plurality election, a replacement candidate who receives under 50% of the vote could win. For example, a recall could result in a replacement candidate being elected even if a near-majority of 49.9% of voters oppose the recall and the highest-placed replacement candidate receives 40% of the replacement votes. As long as enough voters support the recall, and the replacement candidate receives the highest tally relative to other replacement candidates, a replacement candidate with little voter support could take office.<sup>303</sup> This has happened in at least 5 recalls in the past 10 years, including in California state Senator Josh Newman's recall in 2018.<sup>304</sup>

Although a plurality voting rule sounds unusual, there is no consensus system in the 19 recall states. And all 8 states with a replacement election use a plurality voting requirement:

- California and Colorado have a yes-or-no vote on the recall question followed by a same day replacement.<sup>305</sup>

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300. CAL. CONST. art. II, § 15(a).

301. CAL. CONST. art. II, § 15(c).

302. BIRD & RYAN, *supra* note 9, at 18.

303. Compare ELEC. §§ 11383-84, with *id.* § 11385.

304. See *Recall History in California (1913 to Present)*, *supra* note 63. Newman was recalled even though he received 15,982 more votes than his replacement. *Josh Newman recall, California State Senate (2017-2018)*, Ballopedia, [https://ballotpedia.org/Josh\\_Newman\\_recall\\_California\\_State\\_Senate\\_\(2017-2018\)](https://ballotpedia.org/Josh_Newman_recall_California_State_Senate_(2017-2018)) (last visited Oct. 25, 2022).

305. See CAL. CONST., art. II, § 15; see also ELEC. § 11320 (using yes-or-no ballot language); ELEC. §§ 11381(c), 11384, 11385 (discussing same-day replacement); COLO. REV. STAT. § 1-12-116 (2021) (yes-or-no recall question); § 1-12-118 (same-day replacement); LITTLE HOOVER COMM'N, *supra* note 152, at 38 app. 2, tbl.1.

- Illinois and Georgia have a yes-or-no vote on the recall followed by a replacement vote on a later date.<sup>306</sup>
- Arizona, Nevada, North Dakota, and Wisconsin have a new election.<sup>307</sup>
- 11 states (Alaska, Idaho, Kansas, Louisiana, Michigan, Minnesota, Montana, New Jersey, Oregon, Rhode Island, Washington) appear to have a yes-or-no vote with an automatic replacement: the lieutenant governor or secretary of state replaces a recalled governor.<sup>308</sup> Other recalled officials generally are also replaced by an appointment.<sup>309</sup>

Changing the plurality vote rule would require a constitutional amendment. The current system of a same-day replacement plurality election is lawful, but it seems unfair due to the possibility that the winning replacement candidate may have fewer votes than those who voted to retain a recalled official.<sup>310</sup> Replacing the plurality with a majority vote rule seems like the simplest solution: it arguably fits with the common understanding of how an election should work.<sup>311</sup> The problem with adopting a majority vote replacement rule is that failing to change the replacement election to accommodate the new voting rule will create other problems. In a crowded same-day field election it may be impossible for one candidate to muster a majority, leaving the office vacant. Solving that issue would require changing the new election model. One common proposal is to hold a separate runoff election

306. ILL. CONST. art III, § 7 (b)-(c); GA. CODE ANN. § 21-4-13 (e)-(g) (2010); *see also* LITTLE HOOVER COMM'N, *supra* note 152, at 38 app. 2, tbl.1.

307. Arizona does the replacement on the same day as the recall election, as do Nevada and North Dakota. *Compare* ARIZ. REV. STAT. ANN. § 19-212 (2021), *with* NEV. REV. STAT. § 306.070 (2021), *and* N.D. CENT. CODE § 44-08-21 (2019). Wisconsin law provides for recall primary elections before the main recall election if more than two persons compete for the office that the targeted official holds. WIS. STAT. § 9.10 (3)(c)-(f) (2019-20); *see also* LITTLE HOOVER COMM'N, *supra* note 152, at 38 app. 2, tbl.1.

308. *See* LITTLE HOOVER COMM'N, *supra* note 152, at 38 app. 3, tbl.1. Only 3 of these states (Idaho, Oregon, and Washington) have had a recall of a state legislator. *Sych*, *supra* note 217, at 20-21. The laws in some of the other states may allow for the replacement by an election model, though the language appears to favor the automatic replacement method.

309. Michigan has the automatic replacement model solely for governors and uses a new election for other officials. *See* LITTLE HOOVER COMM'N, *supra* note 152, at 38-40 app. 2, tbls.1, 2 & 3. New Jersey uses the automatic replacement for state-level officials and a later-date replacement race for local officials. *See id.*

310. *See id.* at 19-20.

311. For a contrary view, see Michael B. Salerno & Mark Paul, *The replacement election in the recall is unnecessary; here's why*, CALMATTERS (Sept. 1, 2021), <https://calmatters.org/commentary/2021/09/the-replacement-election-in-the-recall-is-unnecessary-heres-why/> (arguing that it is inappropriate for the legislature to provide by statute for a replacement election system at all, and that existing constitutional succession-in-vacancy provisions should apply instead).

between the top-two field finishers, a proposal that has the purported benefit of maximizing voter choice.<sup>312</sup> But a separate election is costly and burdensome. Unless the recall coincides with a regular election, it requires two separate elections and doubles a recall's cost.<sup>313</sup> Having a separate day for a replacement vote also potentially drives down voter turnout. And the new separate replacement election arguably converts the recall into a special election rerun of the gubernatorial contest.

The better choice is a same-day replacement question with ranked-choice voting. Rather than selecting one replacement candidate, voters would rank the replacement candidates in order of preference. The candidate with the lowest vote total is eliminated in successive rounds, and their votes transfer to other candidates until one candidate has a majority. That permits California to keep its current system of a two-part ballot with a simultaneous replacement. It resolves concerns about plurality replacements and avoids the increased costs of a separate replacement contest. Therefore, ranked-choice voting is well-suited to recall elections where support can be divided between dozens of candidates.

## VI. CONCLUSION

The power to recall elected officials in California is a net benefit to democracy and civil society. The recall is a feedback mechanism on official policy. It can strengthen the democratic process by checking elected officials' power, removing officials who fail to govern in satisfactory ways, and ensuring that officials stay accountable to the electorate. Despite its relative ease of qualification and approval, the California recall has been a historical rarity, a fact that undercuts concerns about the state's recall process being overpowered and claims that it is prone to overuse. Instead, California's existing recall system strikes a good balance in the value set tradeoff between protecting the ballot by preventing abuse, while preserving voter power and access to the ballot.<sup>314</sup> There are some meritorious reform proposals for the California recall that focus on fixing its unclear procedures rather than attempting to restrict ballot access. A powerful tool like the recall should have clear and fair rules that promote ballot integrity. Yet making the recall too difficult to use also risks making it unavailable for the

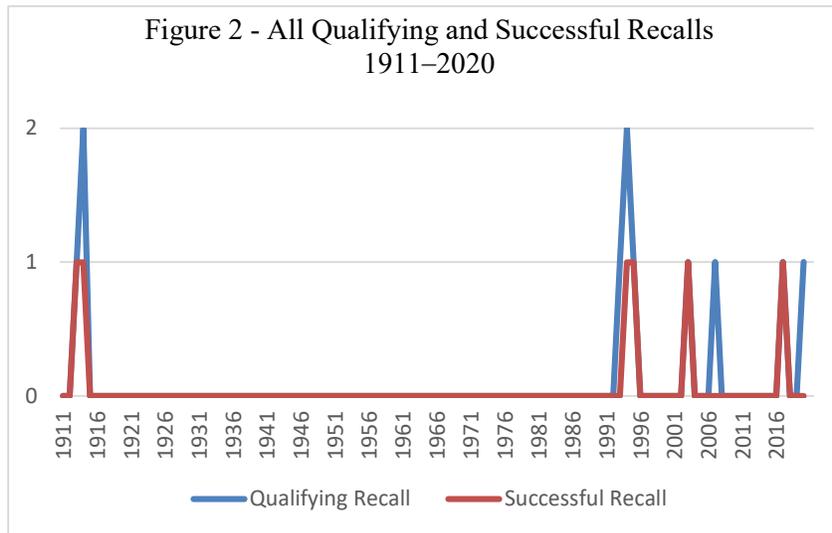
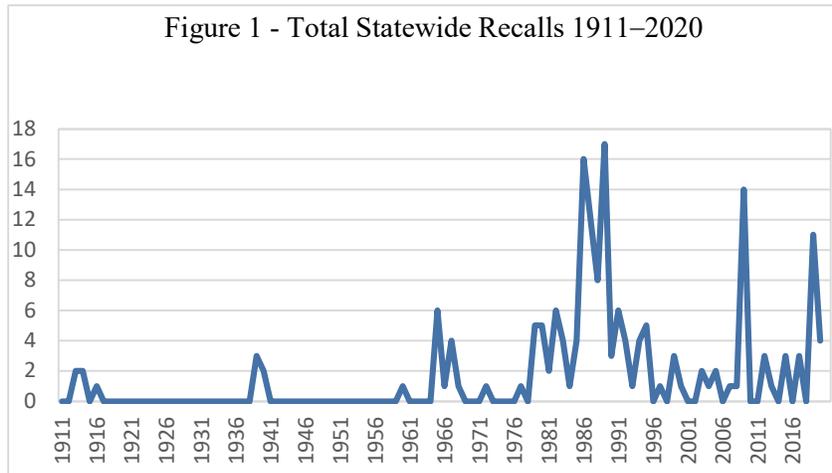
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312. Note that the legislature considered and rejected switching to this system in 1915. BIRD & RYAN, *supra* note 9, at 76.

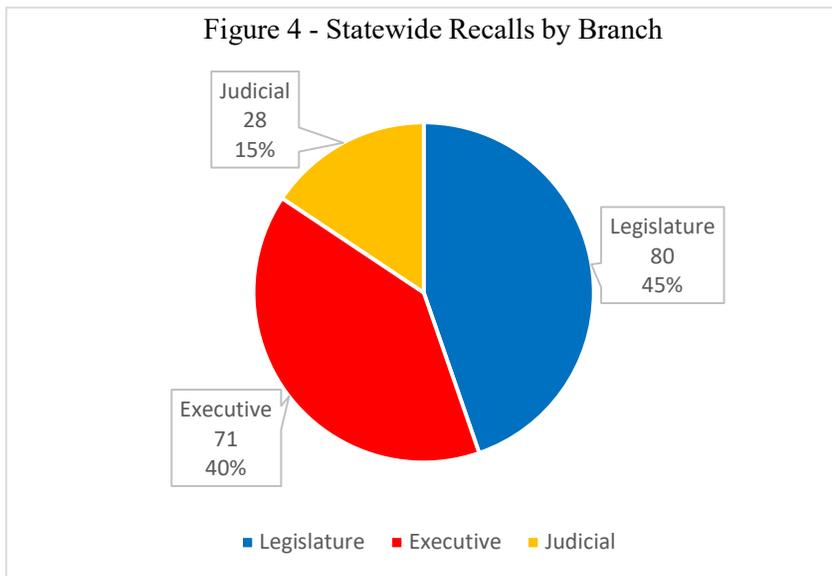
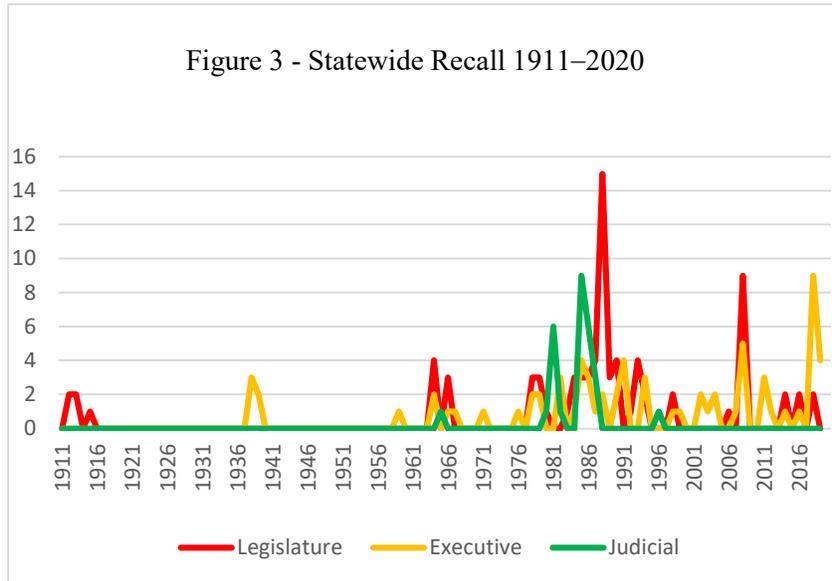
313. ZIMMERMAN, *supra* note 7, at 48. Still, Zimmerman notes that “[d]emocracy costs the taxpayers money, yet no one objects to the cost of regular elections.” *Id.* at 130.

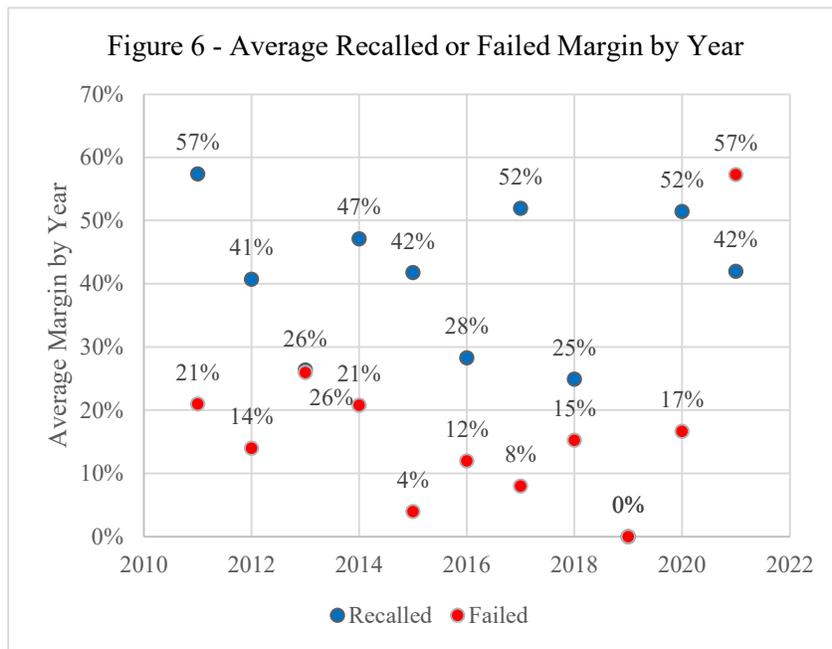
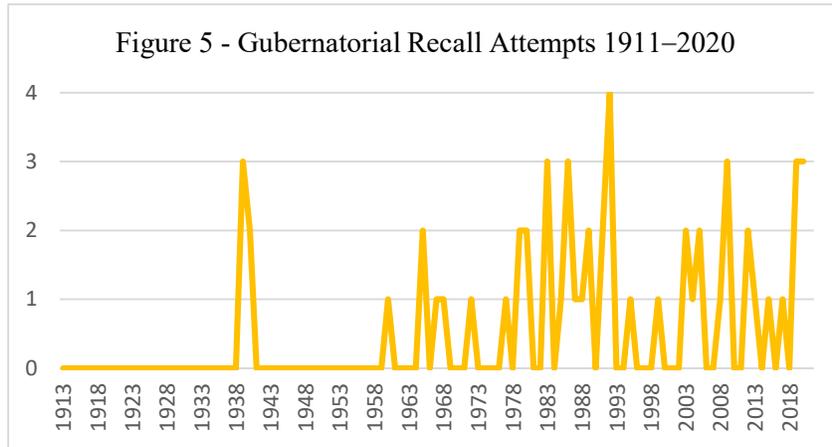
314. See BIRD & RYAN, *supra* note 9, at 61-62.

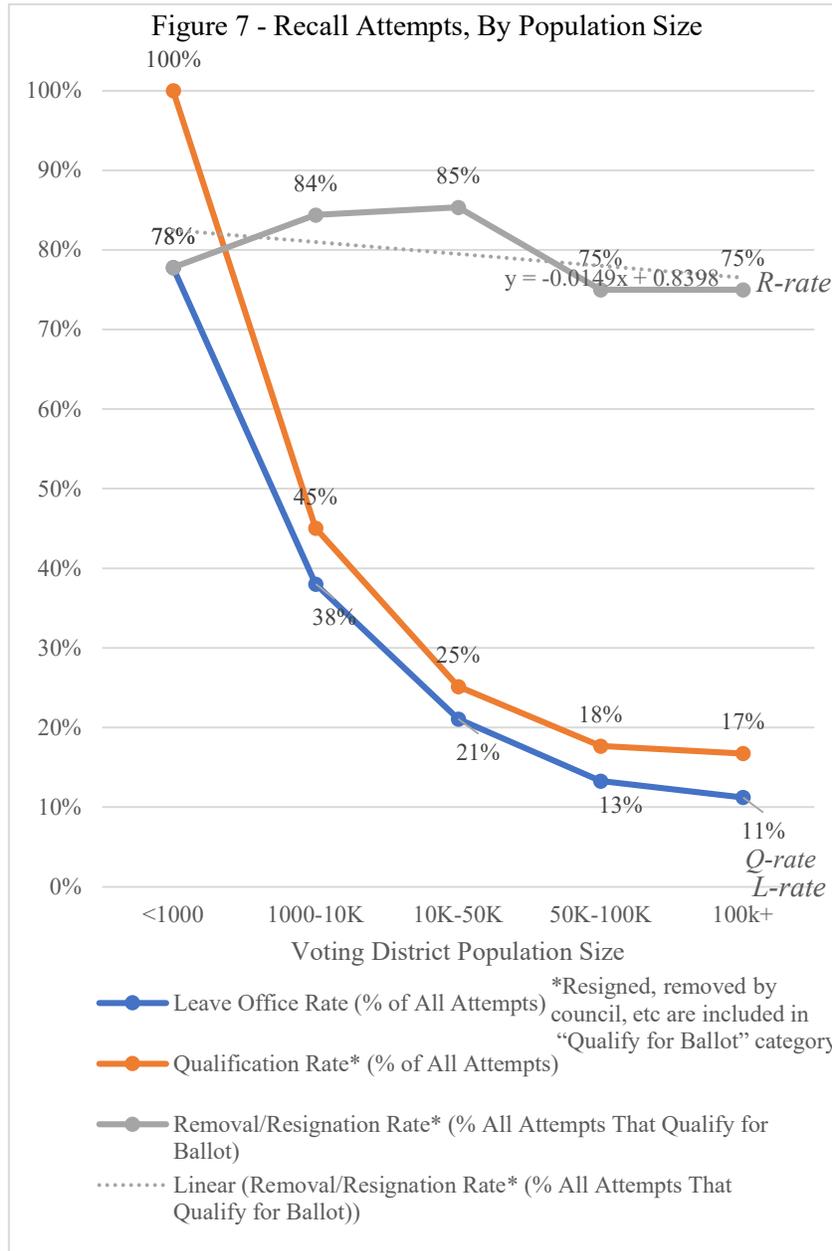
electorate to remove bad actors.<sup>315</sup> And raising the qualifying signature requirement more than a modest amount would make the recall inaccessible to all but the wealthiest interests—the same actors the Progressives intended to combat with the recall. Accordingly, any reforms should keep the recall accessible to average voters.

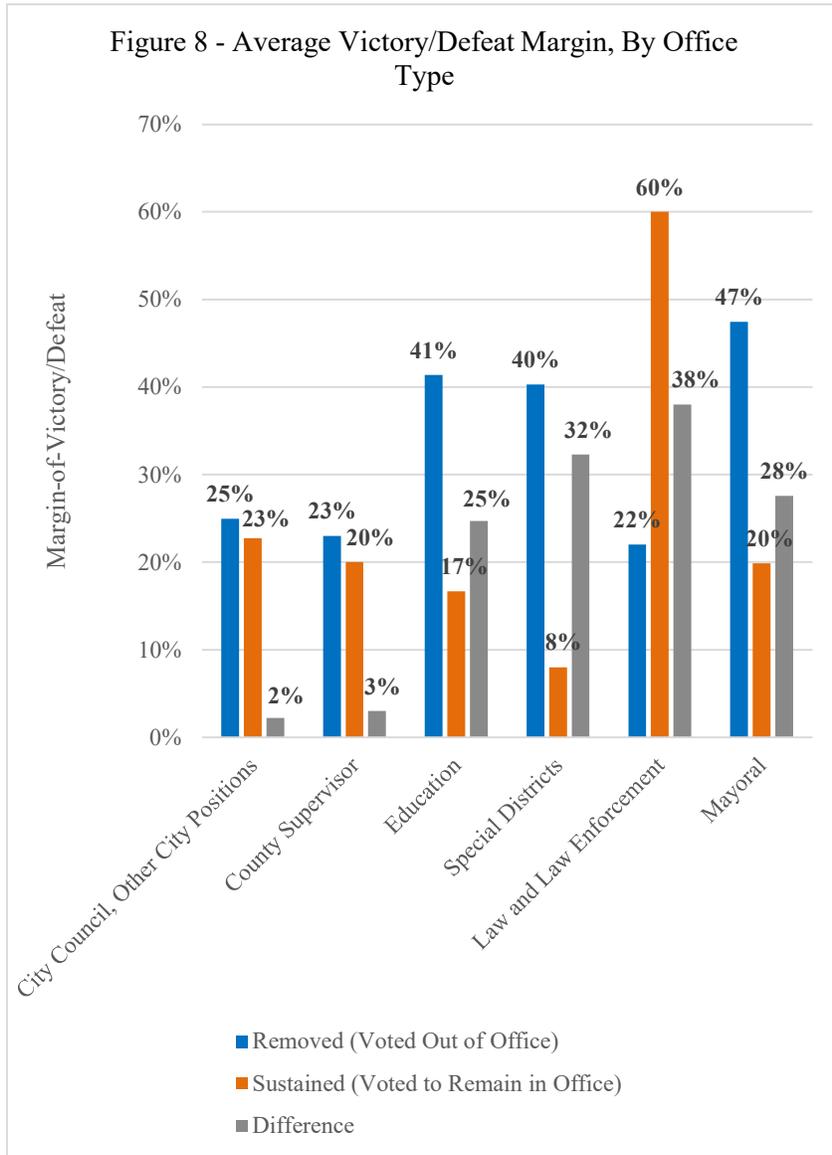


315. CRONIN, *supra* note 18, at 135.









<b>Table 1 – Recalls by Governor</b>		
<b>Governor</b>	<b>Years in Office</b>	<b>Number of Recalls</b>
Culbert Olson (D)	1939–1943	5
Pat Brown (D)	1959–1967	3
Ronald Reagan (R)	1967–1975	3
Jerry Brown (D)	1975–1983	5
George Deukmejian (R)	1983–1991	11
Pete Wilson (R)	1991–1999	6
Gray Davis (D)	1999–2003	3
Arnold Schwarzenegger (R)	2003–2011	7
Jerry Brown (D)	2011–2019	5
Gavin Newsom (D)	2019–Present	6

<b>Table 2 – Signature requirement by population size</b>	
<b>Number of Registered Voters in District</b>	<b>Signature Requirement (% of Registered Voters)</b>
> 1,000	30%
1,000 – 10,000	25%
10,000 – 50,000	20%
50,000 – 100,000	15%
100,000 +	10%

<b>Table 3 – Summary of 2010–21 Local Recall Attempts by Result</b>		
Grand total past and pending local recalls	560	
Total past local recall petitions	555	
Underway	40	
Scheduled	5	
Result of past recall attempt	<b>Total</b>	
Did not qualify	416	75% of all past recalls
Qualified for the ballot	139	25% of all past recalls
Qualified that succeeded	86	62% of qualified recalls
Resigned	23	17% of qualified recalls
Resigned to take another office	1	0.7% of qualified recalls
Council voted to remove official	2	1% of qualified recalls
Total vacated offices by any means	110	79% of qualified recalls

Office Type	Total Attempts	Leave Rate	Qualification Rate	Removal Rate
City Council, Other City Positions	191	20%	26%	78%
Law, Law Enforcement	15	20%	29%	75%
Mayoral	70	16%	26%	61%
County Supervisor	33	6%	9%	67%
Education	190	19%	22%	86%
Special District w/o Water	51	33%	33%	100%

Signature requirement:	States using threshold:
40% of turnout in the last election	Kansas
25% of registered voters	New Jersey
25% of turnout	Alaska, Arizona, Colorado, Michigan, Minnesota, Nevada, North Dakota, Washington, Wisconsin
20% of eligible voters	Idaho, Louisiana
15% of eligible voters	Georgia
15% of turnout	Oregon, Rhode Island
15% of turnout and the support of a bipartisan grouping of legislators	Illinois
12% of turnout for the office	California (12% of the 12,464,235 votes cast for Governor in 2018 is 1,495,709)
10% of registered voters	Montana (10% of the 752,538 registered voters in 2020 is 75,253)
10% of turnout	Virginia (which may not have a recall law impacting state officials or specifically Governors; it also uses a procedure called recall trials, where if enough signatures are gathered a judge holds a trial rather than an election).

**Table 6 – Qualifying Signature Requirements by State, Population, and Rule<sup>316</sup>**

State	Population	eligible	registered	turnout	qualifying rule	IF by eligible	as % of pop	IF by registered	as % of pop	IF by turnout	as % of pop	eligible voters as % of pop
CA	39,512,223	25,962,648	18,001,000	17,785,151	12% of last vote for office	3,115,518	8%	2,160,120	5%	2,134,219	5%	65.71%
MI	9,986,857	7,550,147	5,513,000	5,579,317	25% of last vote for office	1,887,537	19%	1,378,250	14%	1,394,830	14%	75.60%
NJ	8,882,190	6,158,999	5,008,000	4,635,585	25% of registered voters for office	1,539,750	17%	1,252,000	14%	1,158,897	13%	69.34%
WA	7,614,893	5,437,844	4,029,000	4,116,894	15% of last vote for office	1,359,461	18%	1,007,250	13%	1,029,224	14%	71.41%
IL	12,671,821	9,027,082	6,590,000	6,050,000	25% of last vote for office	1,354,063	11%	988,500	8%	907,500	7%	71.24%
AZ	7,278,717	5,189,000	3,878,000	3,420,585	15% of registered voters	1,297,250	18%	969,500	13%	855,147	12%	71.29%
GA	10,617,423	7,383,562	5,233,000	5,023,159	25% of gubernatorial vote in district	1,107,535	10%	784,950	7%	753,474	7%	69.54%
WI	5,822,434	4,368,530	3,391,000	3,310,000	25% of last vote for office	1,092,433	19%	847,750	15%	827,500	14%	75.03%
CO	5,738,736	4,313,054	2,993,000	3,295,666	25% of last vote for office	1,078,264	19%	748,250	13%	823,917	14%	74.90%
MN	5,639,632	4,118,462	3,436,000	3,292,997	40% of last vote for office	1,029,616	18%	859,000	15%	823,250	15%	73.03%
KS	2,913,314	2,087,946	1,398,000	1,375,125	20% of registered voters	835,179	29%	559,200	19%	550,050	19%	71.67%
LA	4,648,794	3,373,932	2,286,000	2,169,401	25% of last vote for office	674,787	15%	457,200	10%	433,881	9%	72.58%
NV	3,080,156	2,153,915	1,455,000	1,407,754	15% of gubernatorial vote in district	538,479	17%	363,750	12%	351,939	11%	69.93%
OR	4,217,737	3,196,425	2,590,000	2,413,890	20% of registered voters	479,464	11%	388,500	9%	362,084	9%	75.79%
ID	1,787,065	1,292,701	900,000	878,527	25% of gubernatorial vote in district	258,541	14%	180,000	10%	175,706	10%	72.34%
ND	762,062	565,143	429,000	364,251	25% of last vote for office	141,286	19%	107,250	14%	91,063	12%	74.16%
AK	731,545	525,568	383,000	361,400	15% of last vote for office	131,392	18%	95,750	13%	90,350	12%	71.84%
RI	1,059,361	799,642	575,000	522,488	10% of eligible voters	119,947	11%	86,250	8%	78,374	7%	75.48%
MT	1,068,778	837,298	641,000	612,075		83,730	8%	64,100	6%	61,208	6%	78.34%
					<b>MEDIAN</b>	<b>1,029,616</b>	<b>17%</b>	<b>748,250</b>	<b>13%</b>	<b>753,474</b>	<b>12%</b>	
					If CA went to 20%:	5,192,530	13%	3,600,200	9%	3,557,031	9%	
					If CA went to 25%:	6,490,662	16%	4,500,250	11%	4,446,288	11%	

**Sources**

Population and registered voters: US Census (November 2020 presidential election) Table 4a

Eligible voters and turnout (total ballots counted): US Elections Project (2020 November General Election Turnout Rates)

California Little Hoover Commission, Reforming the Recall Report #266, Appendix1 February 2022.

**Assumptions**

Assume Governor targeted in each state.

Partial results rounded up to nearest whole number.

316. See U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2020: TABLE 4A (2021), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html> (click “Table 4a” to download) (population and registered voters data); LITTLE HOOVER COMM’N, *supra* note 152, at 33 app. 1; Michael P. McDonald, *2020g: 2020 November General Election Turnout Rates*, U.S. ELECTIONS PROJECT (Dec. 7, 2020), <https://www.electproject.org/2020g> (eligible voters and turnout data). The following assumptions were made for the data in this table: assume the governor is targeted in each state, partial results are rounded up to the nearest whole number, and “vote in the district” provisions translate to “state” for statewide officers such as the governor.

“Vote in the district” provisions translate to “state” for statewide officers such as the Governor.

\*Louisiana requires 20% of “qualified electors” (registered voters) for a statewide office. RS 18:1300.2(d) “If one hundred thousand or more qualified electors reside within the voting area, the petition shall be signed by at least twenty percent of the electors.”

**Data key**

Sheet is sorted high to low by column G “IF by eligible”

<b>Table 7 – Total Recall Attempts, by Population Size</b>						
	<1000	1000–10K	10K–50K	50K–100K	100k+	Total
Did Not Qualify	0	39	125	93	159	416
Qualified for Ballot	18	29	31	16	24	118
Resigned, etc.	0	3	11	4	8	26
<b>Total</b>	18	71	167	113	191	560
% That qualified for ballot (out of all attempts in that population size)	100%	45%	25%	18%	17%	