Development of California municipal recall law

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DEVELOPMENT OF CALIFORNIA MUNICIPAL RECALL LAW

A Thesis
Presented to
the Faculty of the Department
of Political Science
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In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

by
Jere Wilbur Chapman

Fall 1972
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Dated December 13, 1972
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CHAPTER I

INTENT OF THE STUDY ON RECALL AND A GENERAL SURVEY OF THE LITERATURE

In California municipal politics recall has played a conspicuous role. It has consistently served as a source of controversy whenever it is undertaken. While it is a principle inspired by the direct democracy campaign of the California progressives in the early twentieth century, it remains as an evolving legal process and dynamic political issue within the context of California political history.

I. INTENT OF THE STUDY

In recent literature on American community and national politics the recurring observation is made that members of the electorate feel they are losing control of their political destiny. Such forces that mitigate against accountability and responsiveness by elected officials to their constituency are indeed important and ought to be more fully understood. At the same time there needs to be a conscious effort to revitalize structures available to the electorate which give them control and direction of their political situation.

The author believes that recall, as well as other tools of direct democracy, is an area that holds great promise for scholarly, as well as action-oriented research. The recall process ought to be a more politically potent recourse to entrenched
officials who fail to perceive the proper nature of their accountability.

There is a need to more fully explore those areas which can give back to people some feeling of mastery over their lives. This study is based on the premise that recall is an area which—if more fully understood from a developmental perspective—might continue to serve as a useful tool in the democratic process. The author hopes that the paper will render a context in which California recall will be better understood and in which future changes will be amenable not only to technical requirements, but to relevant social and political needs as well.

II. REVIEW OF THE LITERATURE

The literature on recall in California is not extensive. In 1930 Frederick Bird and Francis Ryan completed the only thorough study of recall in California. A few cursory studies have been compiled since 1930 with almost no attempt to chronicle the legal and historical development of recall.

Literature on the inception and early development of recall. Bird and Ryan have produced the most comprehensive study of recall dealing with the development of the recall concept and its application following adoption in 1911.¹ This study is the basic work from which a research project must begin. Unfortunately, no similar work has

been completed dealing with the period through the thirties to the present.

Valuable background information on the politics surrounding the early recall concept can be found in George Mowry's excellent study, *The California Progressives.* Mowry is particularly useful in his treatment of a pre-1911 discussion of recall as a progressive policy.

Franklin Hichborn is an invaluable source for interpreting legislative intent and tracing the legislative development of recall. Hichborn has focused upon the actual debates and portrays the mood of the legislative proceedings, thus providing important insight into the initial stages of recall development in the state.

The California Constitution Revision Commission in 1968 published an excellent analysis of the State Constitutional amendment dealing with recall. This study provides many useful insights into the rationale of certain provisions in the procedure. It also gives a most adequate treatment of the general scope of recall as a state constitutional principle.

Recent studies focusing on municipal recall in California. Saul Weingarten, former City Attorney of Seaside, in papers prepared

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for the city attorneys of the League of California Cities, reviewed
the technicalities of recall and important recent cases.\(^5\) Graham
Ritchie, City Attorney of the City of Industry, included a section
on recall in his paper entitled "Recent Developments in Initiative,
Referendum and Recall Law," delivered to the same organization in
1967.\(^6\)

F. Armand Magid of Stanford performed an invaluable task in
surveying all school district recall elections between 1945 and
1965.\(^7\) His study provided valuable insights concerning the size
of districts in which recall elections occur and indicated the
types of districts in which they occur. Although this study does
not deal with school district recall law, Magid provided useful
historical data and helpful commentary. He also provided locations
for research for another Stanford doctoral candidate, James A.
Kelly, who studied a sample of recall districts to determine whether

\(^5\)Saul Weingarten, "Recall Elections in General Law Cities,"
Paper read to the City Attorney's Department, League of California
Cities, October 30, 1956.

\(^6\)Graham A. Ritchie, "Recent Developments in Initiative,
Referendum, and Recall Law," Study on file in the City Attorney's
Department, League of California Cities, San Francisco, 1967; See
also Hartley H. Bush, "Initiative, Referendum, and Recall--1970,"

\(^7\)Fay Armand Magid. "The Recall Election of School Board
Members in California 1946-1965." Dissertation presented to the
School of Education, Stanford University, 1967.
recall elections serve as tools of conflict resolution. Both of these studies are sophisticated, quantitative reviews of the recall phenomenon.

III. SIGNIFICANCE AND IDEOLOGICAL ORIENTATION OF THE STUDY

Recall as a subject for debate and research has not been neglected. There has been, since its inception, scholarly attention given to various aspects of the procedure. Most treatments of recall have, however, been rather sketchy and piecemeal—not giving adequate attention to the concurrent historical and legal developments of the concept.

This study attempts to present the legal development of recall within its historical and political framework and to inquire into its uniquely "democratic" character that remains as a vestige of early twentieth century progressive reforms.

The author believes that observations on the development of recall will render important information on the state of direct democracy procedures in one of the nation's largest and most politically conspicuous states. This information will provide

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9The Bird and Ryan study is the outstanding exception to this statement.
political observers with developmental patterns that will contribute to speculations regarding the future and potential of popularly controlled political devices within the conventional political system.

While this project was in the early stages of its preparation the author developed a bias in favor of strong popular checks against elected public officials. This ideological orientation stems partially from the belief that political power elites have for too long -- and have far too easily -- usurped power from the people, thus leading to political hierarchies that sustain themselves in office through means other than responsiveness to needs of the electorate. Thus, the simplistic populist-oriented solutions based upon people-control -- "power to the people" -- of the Progressives appeals to the writer's concept of proper conflict resolution as understood within the contemporary democratic framework.
CHAPTER II

BACKGROUND OF RECALL

The conception of recall as a procedure for dismissing officials from public office has its origin in the Western democratic tradition. Careful study of political history refutes the notion that recall is a radical and irresponsible experiment in democracy. Instead, it is based upon a concept which underlies the Bill of Rights and is built upon an accepted American political tradition, the right of petition.1 While the basic concept of recall has been developed in various political institutions throughout history, the concept of removal from office earlier than the end of the term by popular vote is novel.

Historical Antecedents. The Massachusetts constitution of 1780 was the first American document to contain the recall principle. In Article VIII the constitution stated:

In order to prevent those who are vested with authority from becoming oppressors, the people have the right, at such periods and in such manner as they shall establish by their form of government, to cause their public officers to return to private life, and to fill up vacant places by certain and regular elections and appointments.2

1This observation was first made by H. S. Gilbertson, "The Recall—Its Provisions and Significance," The Annals of the American Academy of Political and Social Science, 43:218, September, 1912.

2Massachusetts Constitution of 1780, Article VIII, Subdivision 1.
The first official provision for recall in America was included in the Articles of Confederation. Each state could recall its delegates from Congress at any time and send others in their places. Recall was proposed to the Federal Convention by Edmund Randolph on May 29, 1787. Randolph and others at the convention maintained a distrust of unchecked power within the government branches. Included in the Randolph Plan, or Virginia Plan, was the provision whereby the first branch of the National Legislature "ought to be subject to recall." On June 12, 1787, it was moved and seconded to strike out the measure.

The actual use of recall dates back to the fifth century B.C. during the Age of Pericles. It was among the great reforms that were introduced into the Athenian government. Recall was a check against the powerful Board of Ten Generals who had risen to an exalted position of leadership within the political hierarchy. It could be used against the Generals at the conclusion of their annual terms in office or they could be indicted and recalled for malfeasance at any time.

3For the more convenient management of the general interest of the United States, delegates shall be annually appointed in such manner as the Legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year. Article V, Articles of Confederation.


Among famous Athenians recalled were Pericles from the office of General in 430 B.C.,\(^6\) and other prominent luminaries such as Thucydides and Alcibiades.\(^7\) It seems fitting that recall originates from a source so rich in the democratic tradition and to which modern government owes so much.

George Kennan indicates that recall operated in Novgorod the Great—the first Russian Republic—eight hundred years ago and under the law even the Prince was not immune from recall.\(^8\)

Perhaps closest to the American version of recall was the Swiss Abberufung—a form of recall which existed in several cantonal institutions. Though seldom used it was initiated any time the proper number of petitioners requested it and a majority at the following election favored it.\(^9\)

In the Second Treatise of Government, John Locke, the English political theorist, defends the right of the people to replace those in whom "trust must...be forfeited."\(^10\) Also in line with the English tradition is the concept underlying the practice of British


\(^8\)Kennan, p. 149.


\(^10\)John Locke. *Second Treatise on Government* (Chapter 13, paragraph 149).
Parliamentary elections. While the specified "term" is five years, an election may be called to express public confidence in the performance of elected members of Parliament.

Similarly, in the early Boston city charter existed a provision illustrating the purpose of recall. Every second year at the general election voters were given an opportunity to express themselves regarding the mayor's performance in office. If a majority felt his four year term should be terminated they would vote to hold a special municipal election that year. If the majority favored a special election, the mayor was required to stand for re-election—automatically cutting his term from four to two years—or retire.\textsuperscript{11}

Recall exemplifies the same pure democratic spirit characterized by the early New England town meetings. This concept of retaining power in the hands of the people characterized the Populist and Progressive reform movements in the late nineteenth and early twentieth centuries.

The Progressive Movement. Recall was ushered into California by the influence of national reform parties intent on changing the condition and structure of government. Bird and Ryan point out that recall was advocated in the national platforms of the Socialist Labor party in 1892 and 1896 and in several of the Populist party state platforms.\textsuperscript{12}


In 1910 there were fourteen major points on which the two major parties in California agreed and "made equally radical demands."

Among the fourteen platform provisions was recall.\(^{13}\)

Progressivism could be found in both the Republican and Democratic parties throughout the country.\(^{14}\) A conviction shared by virtually all Progressives was that the industrial revolution had given rise to various social and economic evils that needed immediate national attention.

California represented a microcosm of the national ills which Progressives were attempting to change. With the entrenched corruption and control of California politics by the Southern Pacific railroad, the state was a central target for "radical" reforms. While big business, such as the Southern Pacific, was the ultimate enemy of Progressives, their proximate enemy was the political machine.\(^{15}\)

Most of the Progressives hoped to restore popular government as they imagined it to have existed in an earlier and purer age. It was believed that this could be done only by revitalizing the morale of the citizens and utilizing the newly aroused populist zeal to push through changes in the mechanics of political life—direct primaries, popular elections of Senators, initiative, referendum, recall, the short ballot, commission government and others.


\(^{14}\)For a discussion of the bi-partisan aspects of Progressivism in certain areas of California politics, see Franklin Hichborn's political editorial, *Sacramento Bee*, October 9, 1910.

\(^{15}\)The corruption and domination of California politics by the Southern Pacific is best portrayed in Samuel G. Blythe, "Putting the Rollers under the S. P.," *Saturday Evening Post*, 187:11-12, January 7, 1911.
Paramount in Progressive philosophy was belief in the people and their ability to use reason and good political judgment. Hiram Johnson reflected this belief in his inaugural speech on January 4, 1911, when he said the "deep-rooted belief in popular government" rested in the peoples' "ability to govern." 16

Also fundamental to progressivism was belief in the right of the people to determine their destiny. Echoing this sentiment, ex-Senator Albert J. Beveridge wrote in Collier's Weekly: "The Progressive party stands for Thomas Jefferson's principle of the rule of the people; and, therefore, for the policy of the right of the people to pass on their own laws and public servants at any time they please." 17

In addition to the positive right of people to govern themselves was the practical matter of establishing a democratic system of checks and balances. Theodore Roosevelt, California's Hiram Johnson, and other Progressive leaders wanted to create a permanent check on public officials who were at the time considered to be in the clutches of big business. The movement sought to divorce the corporation from politics. In Berkeley, Governor Johnson stated that the purpose of the initiative, referendum, and recall was to protect the people "against corporation greed, corporation control or political domination." 18

Recall and the Judiciary. Possibly more than any other factor, disaffection with the judicial branch was the catalyst to recall. Nationally, the Progressives were dismayed with the way in which the

16 Excerpted from the text of Johnson's address, Sacramento Bee, January 4, 1911.


18 Los Angeles Express, October 6, 1911.
courts interpreted social legislation. Decisions in such famous cases as *Lochner v. New York*,\(^{19}\) invalidating the New York ten-hour bakeshop law, and *Adair v. United States*,\(^{20}\) declaring void the federal yellow-dog contract statute, strictly upheld the classic concept of *laissez faire*. Progressives throughout the country denounced the courts as "tools of the trusts, stooges of entrenched corporate interests, enemies of the working man and of the common social welfare."\(^{21}\)

Similarly, in California it was widespread distrust and dissatisfaction with the courts, more specifically the state supreme court, which prompted strong support for the adoption of recall. It was felt the time had come to make the judicial branch more responsible. According to the *Ballot Arguments of 1911* the specific purpose of recall was to provide a check on the powers of the courts and thereby give the people greater control over the judiciary.\(^{22}\)

Displeasure with the judicial branch in California stemmed from several sources. The greatest grievance against the courts was their usurpation of the legislative function. This charge against the judiciary had its origin in the case of *Houghton v. Austin*. The Supreme Court in 1874 had declared unconstitutional the acts of the legislature of California providing for the collection of state taxes.\(^{23}\)

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\(^{22}\) *Ballot Arguments of 1911*, Government Publications Department, California State Library, Sacramento, California. Rare state election document which is a one-page fold-out brochure.

\(^{23}\) *Houghton v. Austin*, 47 Cal. 646.
So strong were the repercussions of this decision it prompted State Senator Lee Gates and Assemblyman William Clark to write 17 years later: "In truth, so overshadowing is the control of the judiciary over legislation that it is almost a misnomer to speak of the legislature as the law-making branch of the government."\(^{24}\) It was also charged on the Senate floor in 1911 that big business had influenced the court's decision.\(^{25}\) This charge linked one of the most highly respected branches of government with machine politics and vested interests. Both were anathema to Progressives.

It was argued by some in California that if the judicial branch encroached upon legislative powers it should also be subject to recall. This concept was presented to the electorate in the *Voters Handbook of 1911*:

> This power to remove dishonest or incapable servants is a power which has not been greatly questioned except as relates to the judiciary. But judges, especially those of the Supreme Court, by construing the acts of the legislature perform acts of legislation as truly as does the legislature.\(^{26}\)

The recall measure was first introduced for consideration into the California Senate on January 20, 1911, by Senator Lee Gates of Los Angeles. It was then referred to the Senate judiciary committee for consideration. Once in the committee a heated debate ensued over the provision of judicial susceptibility to the recall. No single aspect of the initiative, referendum, and recall stirred more controversy than

\(^{24}\)William C. Clark and Lee C. Gates. Proposed Amendments to the Constitution of the State of California with Legislative Reasons for and Against Adoption (October, 1911).

\(^{25}\)The charge was made by Charles S. Wheeler. *Los Angeles Times*, February 4, 1911.

\(^{26}\)M. Fay Coughlin. *California Voters Handbook of 1911*, p. 44.
provisions for recall of the judicial branch. Nationally, Roosevelt had spoken out for its adoption into the Progressive program of reform. President Taft was, however, adamantly opposed to recall of the judiciary. So unpalatable was recall of judges to him that he held up Arizona's statehood until the provision was removed from its Constitution. Taft's sentiment was typical of the faction in California which opposed recall of the judicial branch. Such a position was stated by Taft in *The Outlook*:

...there could not be a system better adopted to deprive the judiciary of that independence without which the liberty and other rights of the individual cannot be maintained against the government and the majority.27

Generally the recurring theme of the opponents of judicial recall was the need for an independent judiciary free from whimsical public pressures. This was echoed by the American Bar Association which in 1911 adopted a resolution condemning the recall of judges and led an active campaign against its adoption.

Locally, Hiram Johnson was adamant about recall of the judiciary. He proclaimed that "so far as the recall is concerned, did the solution of the matter rest with me, I would apply it to every official."28

A typical reaction on the part of those opposed to judicial recall is represented by A. F. Morrison in an essay read before the Chit Chat Club of San Francisco, July 10, 1911. Referring to recall of the judiciary he said:

To my mind the greatest danger in this reform lies in the fact that it is an ill-considered assault upon the most delicate part of our governmental machinery, and tends to destroy the

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27 As cited in *The Outlook* (May 23, 1912), p. 604.

28 *Sacramento Bee*, January 4, 1911.
independence and courage of the judiciary, in whom the quality of independence and fearlessness has been heretofore considered of the most vital necessity in protecting the liberty and security of a free people.29

The recall bill was introduced into the California legislature where debate within the Senate Judiciary Committee was not unlike public reaction toward the measure. The Senate committee represented a microcosm of those opposed and those favoring recall.

Senator Wright led the dissenters in the main committee action over the issue of excluding the judges from the recall bill. The first victory for recall came on February 17, when by a vote of 10 to 3 the committee adopted the Gates recall amendment and moved it onto the Senate floor.

Once on the Senate floor, State Senators Wright and Wolfe immediately initiated the opposition. Wright proposed an amendment which would delete from the Gates measure recall of the judiciary. It was defeated 29 to 11.

The debate of recall within the Senate was heated and thorough, but the bill was eventually adopted by a comfortable vote of 36 to four. The California Progressives had won round two.

The Assembly opposition gave recall much the same treatment as Senators Wright and Wolfe, even to the point of using identical arguments and stalling tactics. Defeating the opposition, the Progressives on March 6, maneuvered the amendment out of the Assembly Committee on Direct Legislation with a recommendation that it be adopted.

After the measure was out of committee, Assemblyman M. R. Jones of Contra Costa County introduced a motion that would have excluded

justices of the State Supreme Court, justices of the District Court of Appeal, and Superior Court judges from recall. Support of the Jones Amendment was composed of two factions, those who opposed recall in any form, and those Progressives who opposed recall of the judiciary. After a day of vigorous debate, the Jones Amendment was defeated by 59 to 20.30

Few legislative measures have been given more consideration than the recall amendment. According to Franklin Hichborn, "Never before ... had a measure before the California Legislature been so thoroughly studied and discussed. ..."31 It seems likely that the issues involving the recall concept were completely aired. The opposition was given full opportunity during the Progressive reform campaign to respond and raise considerations they thought were important.

The sentiment in the California State Legislature on the recall amendment of 1911 was overwhelmingly in favor of its adoption. One hundred and six legislators voted for the amendment and fourteen against it.

Legislative Intent and the Campaign of 1911. On the eve of the 1906 election the Fresno Republican stated that "The man to win will be the man who makes his appeal direct to the people."32 This was the

30I am indebted to Franklin Hichborn for the account of the recall measure in its various legislative stages. This discussion was based upon his book, Story of the California Legislature of 1911 (San Francisco: James H. Barry Company, 1911), pp. 123-138.

31Hichborn, p. 137.

32The California state legislature does not publish its debates, keep committee reports, or record legislative hearings. The absence of such information makes the establishment of official meaning, more commonly known as legislative intent, rather difficult. The particular problem of establishing intent with regard to recall in California is especially difficult because its original enactment
theme that four years later dominated the campaign of Hiram Johnson for the office of governor.

During the Johnson campaign of 1910 little was said of direct legislation and almost no mention was made of the recall. Not until the close of the 1910 legislative session did the governor begin his campaign for initiative, referendum, and recall. In his inaugural address Johnson spelled out his stand on direct legislation and introduced certain themes which were to remain consistent throughout public debate by the proponents of recall during the legislative reform campaign of 1911. He proclaimed in the address that those who espoused the measures of direct legislation and recall did so because of a deep rooted belief in popular government and not only in the right of the people to govern but in their ability to govern . . . if the people have the right, the ability and the intelligence to elect, they have, as well, the right, ability and intelligence to reject or to recall; and this applies with equal force to an administrative or a judicial officer.

Pollack's Fundamentals of Legal Research [Erwin H. Pollack, Fundamentals of Legal Research, third edition (Brooklyn: The Foundation Press, Inc., 1967), pp. 341-342] suggests several official as well as unofficial sources by which official intent might properly be determined. These sources include: texts, pamphlets, and periodicals containing discussion of the bill before or after its enactment; newspapers covering the period when the bill was under consideration and debate; where it can be established the state copied another bill; and general events that might shed light upon the bill's original meaning and its author's interpretation.

The attempt by this section to establish official intent of the 1911 recall measure shall be guided by the principles as stated in Pollack's text which is used in most major American schools of law.


34Outlook, February 10, 1912, p. 317.
The Sacramento Bee responded to Johnson's comments by writing that his inaugural message should be regarded as one of the "highest tributes ever paid 'The People of California.'" This was a very popular theme and was not only characteristic of the California Progressives, but was typical of the mood which permeated the national Progressive movement. It seems likely that Johnson and his fellow Progressives were perhaps taking their cues from the national leaders such as Theodore Roosevelt.

There has been some controversy as to the role Johnson played in formulating his platform of direct legislation. Edward Dickson, one of Johnson's intimate political aides and a former newspaper editor, believed that Johnson had little knowledge or understanding of the recall measure until late in his 1910 campaign. In his address at Blanchard Hall in Los Angeles, June 3, 1910, Johnson condemned the evils of the political system and promised to put control of institutions into the hands of the people, but he made no mention of recall. Most of his speeches during the 1910 campaign make no reference to recall. Johnson's inaugural address contains his first public remarks on the recall.

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35 Sacramento Bee, January 4, 1911.


37 Full text of the speech can be found bound in volume 6 of California Speeches (#13, p. 12) at the California State Library.
In the October, 1914, issue of Everybody's Magazine, Denver police commissioner and controversial propagandist, George Creel, suggested that Johnson had only "glib familiarity with the initiative, referendum, and recall." 38

In response to this scathing attack on the progressive credentials of Johnson, Dr. John R. Haynes replied that Johnson had spent "days in assisting in the drafting" of some of the most important reform measures. 39 Haynes, along with Johnson's aide, Edward Dickson, are credited with drafting the democratizing amendments to the state constitution.

It was Dr. Haynes who first introduced to the United States recall in its modern form by way of the Los Angeles City Charter of 1903. Haynes worked incessantly on reform proposals for the city and, subsequently, the state.

According to Bird and Ryan, Haynes had spent several years observing mismanagement and corruption in Philadelphia politics. He concluded from his observations that the "ordinary political panaceas were of no avail, that the election of good men to office was an accomplishment only spasmodically achieved. . . ." 40 It was from his experiences in Philadelphia that led Haynes to search for meaningful political reforms.


39 Sacramento Bee, October 10, 1941.

40 Bird and Ryan, p. 24.
There is no traceable evidence that the existence of recall in Switzerland had any influence on its adoption in California.\textsuperscript{41} In fact, Haynes denied any knowledge of the Swiss model and held that he received the idea from reading \textit{The City for the People}, by Frank Parsons.\textsuperscript{42} The relevant passage which must have influenced Haynes, and thus prompted him to draft California recall measures, deals with democracy and direct controls on the representative system:

\begin{quote}
What we want is not a body of legislators beyond the reach of the people. . ., but a body of legislators subject at all times to the peoples' direction and control. . . .

It is good to choose strong men to manage municipal and state affairs, but it is well too to provide the means to hold them in check or make them move at the peoples' will. . . .

The solution lies in a representative system guarded by constitutional provisions for popular initiative, adoption, veto, and recall.\textsuperscript{43}
\end{quote}

From 1901 to 1911 Haynes lobby ed fervently for concepts of direct democracy and direct legislation at every session of the California legislature.\textsuperscript{44} There was no one in California more dedicated to seeing principles of direct legislation, as proposed by the Progressives, enacted into law than Haynes.

\textsuperscript{41} It should be noted, however, that recall had been in existence at the statewide level in Oregon since 1908. The \textit{Sacramento Bee} on January 4, 1911 reported that Johnson adopted the Oregon Plan. There is, however, little evidence to indicate that the Oregon recall had any appreciable influence in California.

The recall in California developed from its own indigenous political situation and was authored by men who evidently did not consult the Oregon Plan at great length.


\textsuperscript{44} V. O. Key and Winston Crouch. \textit{Initiative and Referendum in California} (Berkeley: University of California, 1939), p. 425.
All evidence points to Edward Dickson as being Haynes' assistant in drafting of the recall measure. Dickson, who was once a prominent political correspondent before becoming editor of the Los Angeles Express, helped launch the reformist Lincoln-Roosevelt League in the spring of 1907. The league represented a movement in the Republican party to cleanse California politics of Southern Pacific domination. Dickson, according to George Mowry, planted the whole idea of initiative, referendum, and recall in the Johnson program. Apparently it was initially Dickson's encouragement in the early part of 1910 that prompted Johnson to include recall in the reformist campaign, and it was mainly Haynes, who, with Dickson, drafted the actual recall amendment. Both claimed Johnson had a hand in the actual drafting of the measure.45

Proponents of recall on the eve of the 1911 special election argued that the purpose of recall was to "introduce into public life what is indispensable in private and business life. . . . the power to remove a dishonest, incapable, or unsatisfactory servant."46 It should be noted that grounds for recall were left quite general and not limited to definite legal qualifications.

Senator Lee Gates, the author of the Senate recall amendment, suggested that the purpose of recall was to make the "creator greater

45Both men came to Johnson's defense following the appearance of George Creel's article in Everybody's Magazine attacking Johnson and inferring that he was a phony Progressive. Haynes and Dickson made statements to the contrary as cited in the Sacramento Bee, October 10, 1914.

46Quoted from "Proposed Amendments to the Constitution of the State of California with Legislative Reasons for and Against Adoption," October, 1911.
than the creature" by "taking back the arbitrary power which the creature had arrogated to itself."47

The major reason given by the opponents of recall, other than objections over recall of judges, was the concern that tyranny would prevail if the majority could control actions of elected officials.48 This argument was ineffectual in the face of grand and eloquent arguments for putting greater faith in the people. It seemed that any opposition effort to recall was innocuous when compared with the Johnson machine that replaced the increasingly vulnerable Southern Pacific.

The people of California responded affirmatively to the Progressive reform measures. Hiram Johnson's campaign efforts had been vigorous and well executed with few serious impediments. Needless to say, recall enjoyed a public, statewide forum where its intent and consequences could be thoroughly considered.

California agreed to reform its government and the people overwhelmingly endorsed the recall amendment.49

Recall as a Panacea. Professor Richard Barnet, writing in his book Intervention and Revolution, states that "every revolutionary movement is based upon the myth that the removal of a man... is all that stands in the way of progress and justice."50 This is a

48Hichborn, p. 131.
49The final statewide vote was 178,115 for recall and 53,755 against it.
poignant expression of the mood which permeated the people of California in the early twentieth century. The Progressives had turned reform of social and political institutions into a moralistic, religious crusade. It became a crusade to end injustice and corruption forever.

Inherent in fervently zealous crusades is often the tendency to over-simplify the problem and thereby overestimate the solution. The reliance upon a cure-all is in itself an example of over-simplistic behavior. Progressive reformism was based upon the political myth of direct democracy. Initiative, referendum, and recall represented the panaceas to prevailing social ills.

Progressives led their followers to the belief that popular rule would correct the corruption, stop the inequities, expose the abuses, and marshal the forces of good in society. This sense of finality was expressed by Johnson's aide upon hearing of the legislature's adoption of recall. He exclaimed, "Popular government in California is at last positively and permanently established."\(^{51}\) Such infectious expressions of hope and optimism were typical.

William Allen White wrote that ". . . when the people know where to strike at an evil, they always hit it."\(^{52}\) For Progressives the evil was represented, in part, by elected officials who were self-serving and who betrayed public trust. The solution was in controlling the scoundrels, thereby preventing the degeneration of society.

\(^{51}\) Quoted in Los Angeles Express, March 8, 1911.

In proposing recall as a panacea the Progressives acknowledged one of the oldest political checks on power known to man, the people. Primacy and ascendancy of the people characterized the period of Progressive reformism in California and throughout the nation.
CHAPTER III

DEVELOPMENT OF THE GENERAL LAW
OF RECALL FOR CITIES

Pursuant to the 1911 constitutional amendment providing for the recall of elective public officers, the California legislature passed acts to provide for direct legislation, including recall, by electors in the counties and cities throughout the state.

Article 23, section 13, of the constitution gives the legislature authority to establish recall procedures for cities, and the establishment of such provisions by legislative enactment is the general law governing the State of California and its various political subdivisions. Paragraph 14 of Article 23 excludes from the general law provisions cities with charters establishing their own procedures for recall.

This chapter will render a general treatment of the substantive statutory developments governing the general law of recall. The provisions chosen for analysis are those which have influenced the nature of the law vis-a-vis its original provisions.

I. COMMENCEMENT OF RECALL PROCEEDINGS

In 1911 under the original municipal recall provisions no public official could be recalled until he held his office for at least four months.¹ Under the 1911 statute this was the only stipulation for the

¹Statutes of California, 1911, Ch. 185, p. 359.
recall of any holder of any elective municipal office. This was changed, however, in 1931 to require that (1) the official sought to be recalled must have held his office at least six months, and (2) no recall petition could be filed against an officer within a six month period of the last filing of such petition. This version of the six-month provision first appeared in 1931—the 1911 law provided no such requirement. Changes were made in the wording of the law during the legislative sessions of 1939, 1959, and 1961, but the provision has remained unchanged in its meaning. No specific intent can be found for the provision.

It can be assumed that the intent of the legislature was to extend the public official's period of grace in which time he could more properly prove himself. It also seems apparent that the new provision was designed to discourage repeated nuisance recall attempts by allowing the official to enjoy a longer period in which he would be immune from external distractions, such as repeated recall attempts.

New provisions to the law in 1931 provided that recall proceedings could only take place after a notice of intention had been filed and published in the local newspaper. Apparently the purpose of this provision was to provide for a greater dissemination of information concerning the issues surrounding the recall attempt and to alert the electorate as to the nature of the petition to be circulated.

2Stats., 1931, Ch. 274, p. 563, Sec. 1.

3The County and City Clerks Association has apparently played a prominent role in reform legislation of the recall. This fact will be brought out more clearly later in the chapter.

4Stats., 1931, Ch. 274, pp. 563-564, Sec. 2.
Need for a more informed public regarding the issues of recall elections had always been one of the demands of those in favor of reforming the law. From its early beginning, recall underwent considerable abuse with regard to the circulation of petitions and fraudulent allegations about the contents and nature of the petitions.

One of the most notorious cases of abuse, for example, was in the Grant recall election in San Francisco where investigations have disclosed that signatures acquired on Grant's recall petitions were achieved by misrepresenting the nature of the petition in order to induce reluctant citizens to sign.  

Outraged by the abuse of recall and misconduct of its proponents, State Senator Chandler during the 1915 legislative session introduced a bill which required that at the top of each recall petition must be printed a title describing the nature of the petition and the name of the officer sought to be recalled. This provision became law and was included in the 1915 statutes as an amendment to the Political Codes relating to all initiative, referendum, and recall petitions.

Chandler also introduced legislation making it a felony for anyone to use a fictitious name on any recall petition, or to subscribe the name of another. The penalty for this felony was imprisonment in the state prison for not less than one, nor more than fourteen years.

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5 Franklin Hichborn, Hichborn's Legislative Bulletin (January 20, 1915), p. 3.
6 Senate Bill No. 725.
7 Stats., 1915, Ch. 42, p. 50, Sec. 2.
8 Senate Bill No. 725.
9 Stats., 1915, Ch. 43, p. 51, Sec. 1.
It is interesting to note that not one vote was cast against any of Chandler's reform measures.\textsuperscript{10} Apparently a strong feeling existed soon after recall's inception that it was in great need of reform and further improvement.

Bird and Ryan report that as late as 1930 solicitors were often guilty of misrepresentation and that due to fees of 10 cents per name which were paid by recall organizers, "few names were acquired in a spirit of good faith and sincerity."\textsuperscript{11}

In the 1931 amendments the notice of intention had to consist of a statement not in excess of five hundred words giving the reasons for the recall. If the city did not have a newspaper of general circulation then the statement was required to be posted in three public places.

The statute also required that one copy of the notice be sent to the officer sought to be recalled and that one be filed with the city clerk.

These provisions have remained to the present. However, while the 1931 codes did not provide that the identity of the proponents necessarily be disclosed, the 1961 amendments to the codes did make such a requirement that at least one proponent must be identified by name and address.\textsuperscript{12} In 1969 this was amended so that while one proponent must

\footnotesize{
\textsuperscript{10}The information regarding the introduction of reform legislation by Senator Chandler is taken from Franklin Hichborn, \textit{Story of the California Legislature of 1915} (San Francisco: James H. Barry Company, 1915), pp. 103-106.


\textsuperscript{12}\textit{Stats.}, 1961, Ch. 23, Div. 14, (Ch. 3), p. 865.
}
identify himself, not more than five names and addresses could appear on the notice.\(^{13}\)

The 1931 statutes allowed fourteen days after publication or posting of intent in which the officer sought to be recalled could himself utilize similar procedures to offer a response to the charges in a statement not exceeding 500 words. The period of time within which the official could answer charges was narrowed to seven days in 1957.\(^{14}\)

According to the 1931 recall law, twenty-one days from the publication or posting of the notice and statement the petition could be circulated for the purpose of gathering signatures. This was also changed in 1957 to seven days after publication,\(^{15}\) thus narrowing the waiting time for the proponents by two-thirds as compared to the 1931 law.

The 1961 statutes provided that the proponents of a recall must publish at least once in a newspaper of general circulation copies of the notice, statement, and answer or else post the same in three public places.\(^{16}\) The newspaper notice is not posted at the expense of the incumbent, but is included in the official legal notices column which most papers run regularly.

The law was simply clarified in the changes from 1931 to 1969 regarding the commencement of recall proceedings. The apparent intent of the changes was to more clearly define special time periods for various stages in the over-all recall procedure. However, by doing so,

\(^{13}\)Stats., 1969, Ch. 774, p. 1552.

\(^{14}\)Stats., 1957, Ch. 1316, pp. 2637-2638.

\(^{15}\)Stats., 1957, Ch. 1316, p. 2638.

\(^{16}\)Stats., 1961, Ch. 23, Div. (Ch. 3), p. 866.
the overall effect was to shorten the running time for the proponents, thereby making recall somewhat more difficult.

As previously mentioned, the legislature has shown considerable concern that the issues of a recall attempt be made public and full information regarding the recall be available prior to the circulation of any petition.

The 1931, 1939, 1957, and 1961 changes have consistently shown an interest toward making the election laws more specific and less ambiguous procedurally.

II. SIGNATURE REQUIREMENT

The language of the 1911 recall law for municipalities provided that 25% of the entire vote cast at the last preceding general municipal election be the required amount of signatures on a petition.17

This particular provision was poorly worded and left the law vague as to its true meaning. The provision could have been construed to mean that twenty-five percent of the entire vote cast within the city, rather than the vote cast for the specific office from which the officer was sought to be recalled.

Proper clarification of this statute exists in the State Constitution where it requires that until otherwise provided by law no city could require a recall petition to be signed by "electors more in number than 25% of the entire vote cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies."18

17Stats., 1911, Ch. 185, pp. 359-360, Sec. 10.
18See the California State Constitution, Article XXIII, Sec. 14.
It is inconceivable that the 1911 act providing for recall of municipal corporations would have a different percentage requirement for the recall petition than the requirement in the constitutional amendment of the same year.

It is significant to note that this is the only provision which the constitution specifically makes for general law cities. It is also noteworthy that the signature requirement for elective public officers of the state is 12%-13% less than for municipal offices. It has been suggested that the criteria for higher signature requirements for recall from non-statewide offices was the fear that local officers would be subjected to a greater number of recall attempts because relatively few signatures would be required in sparsely populated areas to satisfy more lenient state-wide requirements.\textsuperscript{19}

Apparently the drafters of the constitutional amendment providing for recall had enough insight into the patterns of local recall behavior to make the distinction between municipal and statewide elections a substantive part of the constitutional provision. The opportunity for making such observations was available in those cities prior to 1911 which incorporated recall into their election procedures. According to Bird and Ryan, between the introduction of recall in the 1903 Los Angeles City Charter and the enactment of the State Law of 1911, 25 out of the 31 cities\textsuperscript{20} under freighthouse charters adopted recall procedures.\textsuperscript{21}

\textsuperscript{19}Article XXIII: Recall Background Study, California Constitution Revision Commission (San Francisco, California, 1968), p. 21.

\textsuperscript{20}Home rule cities that did not adopt recall during this period were: Grass Valley, Napa, Salinas, San Jose, Santa Rosa, and Watsonville.

\textsuperscript{21}Bird and Ryan, p. 58.
The widespread popularity of recall in cities prior to its state-wide acceptance in 1911 was due, in part, to the successful outcome of the 1904 Davenport recall held in Los Angeles. The removal of the city's mayor by recall methods employed in the 1903 Los Angeles charter was hailed with general satisfaction throughout the state.22

Another reason has been given for the considerable difference in signature requirements for state and city officials. Apparently, in spite of the reformist Progressive zeal in the early 20th century, recall attempts for trivial reasons were frowned upon by most of the people. It was recognized, state Bird and Ryan, that "recall was to be invoked only in extreme cases"—as a last resort.23 It was felt that any recall movement had to be supported by a sizable body of responsible citizens in order for recall to be successful.

Not all were satisfied with the recall operation. An attack was launched by the 1917 legislature against recall, composed of those responding to its abuses as well as those who were probably just antagonistic to the concept of recall itself.

Assemblyman Friedman, from San Francisco, proposed a constitutional amendment24 which would have allowed for counter-petitions in the event of a recall attempt. If, for example, a recall petition was certified as sufficient, Friedman's bill would have allowed a counter-petition signed by 10% of the electors to nullify the original petition by the proponents, thus blocking the recall election.25

22Bird and Ryan, p. 230.
23Bird and Ryan, p. 231.
24Assembly Constitutional Amendment No. 78.
# TABLE I

EVALUATION OF THE SIGNATURE REQUIREMENT ACROSS THE GENERAL LAW OF RECALL FOR CITIES

<table>
<thead>
<tr>
<th>Date</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1911</td>
<td>25% of the entire vote cast at the last preceding general municipal election**</td>
</tr>
<tr>
<td>1931</td>
<td>25% entire number of votes cast for the office which the incumbent sought to be removed occupies at the last preceding regular municipal election*</td>
</tr>
<tr>
<td>1933</td>
<td>25% of the entire number of votes cast for all candidates for the office held by the incumbent at the last preceding regular municipal election</td>
</tr>
<tr>
<td>1939</td>
<td>Same</td>
</tr>
<tr>
<td>1953</td>
<td>12% of the voters of the city</td>
</tr>
<tr>
<td>1957</td>
<td>25% of the voters of the city</td>
</tr>
<tr>
<td>1961</td>
<td>25% of the voters of the city on the day the petition is filed</td>
</tr>
<tr>
<td>1969</td>
<td>25% of the voters of the city according to the county clerk's last official report of registration to the Secretary of State</td>
</tr>
</tbody>
</table>

**The language of the Statute providing for municipal recall was unclear as to its intent. As stated it appears to require 25% of all votes cast for all elective offices in the last preceding municipal election. This provision is in conflict with section 14 of Article XXIII which states that the general law for cities and counties shall never exceed 25% "of the entire vote cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies." The wording in the general law was evidently an oversight on the part of the drafters of the legislation proposing the statute.**

*Here the language and meaning was brought in accordance with the constitutional stipulation.
### TABLE II

**BREAKDOWN OF RECALL PERCENTAGE REQUIREMENT INTO NUMERICAL UNITS FOR ILLUSTRATIVE PURPOSES**

<table>
<thead>
<tr>
<th>Number of Registered Voters</th>
<th>Dates</th>
<th>Percentage of Signature Requirements</th>
<th>Based on</th>
<th>No. Signature Required on Petition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Based on 100,000</td>
<td></td>
<td>*30% voting of 100,000 registered to vote.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1911-1935</td>
<td></td>
<td>25% entire vote cast for office which incumbent sought to be removed occupies at last preceding regular municipal election.</td>
<td></td>
<td>7,500</td>
</tr>
<tr>
<td>1953-1957</td>
<td></td>
<td>12% of the voters of the city.</td>
<td></td>
<td>12,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Increase 4,500</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1957-1971</td>
<td></td>
<td>25% registered voters of the city.</td>
<td></td>
<td>25,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Increase 13,000</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Though the 30% figure is somewhat arbitrary, it is based upon the median voting turnout in non-partisan American cities as reported by Robert Alford and Eugene Lee in "Voting Turnout in American Cities," American Political Science Review, Vol. 62, September, 1968, p. 796.*
The effect of such a measure would have rendered the recall provision virtually inoperative. While the measure did not pass the assembly, it is perhaps significant of mounting displeasure, as well as the recall opponent's ability to rally over some aspects of the recall. The measure was approved by the Assembly Committee on Constitutional Amendments.26

The 1931 amendment to the Political Codes clarified the poorly worded 1911 law providing for the signature requirement and brought the general law in accord with the proper constitutional construction.

In order to avoid further possibility for misunderstanding—so it seems, anyway—the wording in the 1931 statute relating to the signature requirement for petitions was almost identical to the Constitution:

... which petition shall be signed by qualified voters equal in number to at least twenty-five per cent of the entire number of votes cast for the office which the incumbent sought to be removed occupies, at the last preceding regular municipal election at which such office was filled by election.27

The State Constitution reads:

... shall not require any such recall petition to be signed by electors more in number than twenty-five per cent of the entire vote cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies.28

26Hichborn, p. 1.

27Stats., 1931, Ch. 274, p. 563, Sec. 2.

28California State Constitution, Article XXIII, Sec. 14.
The signature requirement remained at the original 25 per cent level until 1953. In 1953 the general law was changed to read "not less than 12 per cent of the voters of the city." 29

It was Assemblyman William C. Berry who authored the bill which led to the 1953 change in the petition requirement. Theoretically, the 1953 requirement made recall more difficult to achieve by an increased signature requirement for recall petitions. 30

While it appears that the 12 per cent provision should have tempered recall attempts, this was apparently not the case. Former chairman of the Assembly Elections and Reapportionment Committee, Charles Conrad, reports that in 1956 and 1957 he was besieged by county and city clerks requesting to have the signature requirement raised from 12 per cent of the registered voters to 25 per cent of the registered voters. They claimed that recall attempts had gotten out of hand and had become a definite nuisance rather than a responsible exercise in the democratic process. 32

During the period when the 12 per cent signature requirement was in effect, recall became a nuisance in a California city where political factionalism is uncommonly extreme. While the city, Seaside, is a rare case, it serves as an example for those critical of the 12 per cent provision.

29Stats., 1953, Ch. 1658, p. 3386, Sec. 1.

30See Chart B.


32Interview with Assemblyman Charles J. Conrad (R-56th District), June 30, 1971.
The city attorney of Seaside, Saul Weingarten, reported that the 12 percent requirement did not create a responsible framework for recall. He cites examples of nuisance "out" factions who were numerous enough to obtain the required 12 percent on the petition, yet lacked considerably the 51 percent needed to carry a recall election. It was the policy of these groups to hinder and harass the city council by seeking recall elections as often as possible until they received favored treatment or gained control of municipal government.33

The above illustration, though not a typical example, points to a legitimate criticism against general law signature requirements for recall petitions. For example, the 12 percent provision which was the general law from 1953 to 1957 was politically acceptable and made poor law. The 12 percent requirement enabled recall to be initiated too easily giving no substantive indication that it could actually be achieved.

The 1957 legislature amended the election code to provide that a petition demanding the recall of an official "shall be signed by not less than 25 percent of the voters of the city.34

As previously mentioned, Assemblyman Charles Conrad was pressed by county and city clerk's associations to have the signature requirement changed from 12 percent to 25 percent in order that recall would


34Stats., 1957, Ch. 1316, p. 2637.
become a more "sincere endeavor." Conrad believes that it was an incident in Seaside which prompted the campaign to have recall harder to achieve. The incident, according to Conrad, was one in which proponents of a recall were in the streets gathering signatures and making a "nuisance" of themselves only a few days after a recall election had failed. This does not seem likely—or, at least it was not a substantial political threat (admittedly a nuisance) for the law did not allow recall proceedings to take place until six months after filing of the last petition.

The 1957 law made the signature requirement considerably more stringent—by 13 percent—than the 1953 requirement. This represented a drastic turn in the law because of the increased difficulty in obtaining a validated petition.

Conrad's amendment to the 1953 signature requirement did not represent a reversion to the original general law. Rather, the new 25 percent provision was based upon 25 percent of the voters of the city, while the original 25 percent was based upon votes cast for the office at the last election.

The 1957 law has remained basically unchanged. In 1961, the law was clarified narrowing down the definition of the electoral body upon which the 25 percent was based. The law read "... 25 per cent of the voters of the city on the day the petition is filed."

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36 Interview by Dr. J. B. Briscoe with Mr. Saul Weingarten, former City Attorney of Seaside, March 17, 1971. Weingarten alleged that in Seaside, the loser of a recall election threatened to bankrupt the city by circulating petitions until the continued cost of elections would exhaust its funds.

37 Stats., 1961, Ch. 23, Div. 14 (Ch. 3), p. 864.
it was amended to read, 25 percent of the voters of the city "according to the county clerk's last official report of registration to the Secretary of State." 38

III. CIRCULATION OF THE RECALL PETITION

Neither the State Constitution nor the 1911 municipal election law made any provision for setting a specified time limit in which signatures had to be gathered. The law in both cases was silent on the matter.

In 1931, however, a provision was added to the general law which provided that the proponents of recall had sixty days from the first date of publication or posting of the notice of intention before their petitions were required to be filed. 39

This did not mean that there was a sixty-day period in which to gather signatures. Rather, it was actually thirty-nine days because of a prior passage which stated: "After the expiration of twenty-one days after the publication or posting of the notice and statement...the petitions...may be circulated..." 40 Thus, for twenty-one days within the sixty day period the proponents were unable to gather signatures.

In 1957 an amendment was added to the above section clarifying it somewhat and making the law easier to understand. The new amendment provided that the recall petition could be circulated and signed

38 Stats., 1969, Ch. 940, Sec. 18, p. 1882.
39 Stats., 1931, Ch. 274, p. 564.
40 Stats., 1931, Ch. 274, p. 564.
seven days after the initial publication or posting of the notice, statement and answer. The officer sought to be recalled had 7 days after being notified of the intention of recall, to file an answer to the charges.41

These new provisions theoretically added seven days to the 1931 provision. Thus, while the 1939 law provided for thirty-nine days, the 1957 provision allowed forty-six days in which proponents could gather signatures. For the large municipalities the task of gathering the requisite number of signatures in the time required seems an impossible feat. A wide variance exists in the general law on this point compared with such home-rule cities as Stockton, for example, which does not have a clear-cut deadline for termination, or Palo Alto, which allows ninety days from the filing of the notice of intention.

An additional provision was added in 1967 stipulating that the petition would become void for all purposes if it was not filed within the time permitted by law.42

IV. BALLOT AND NOMINEES

The 1911 municipal law on recall elections provided that electors could vote first, on the issue of the recall itself by placing an X after the words "yes" or "no". If the elector wished the officer recalled, and so designated on his ballot by the X (as required by the statute), he then would vote for one of the candidates whose name appeared on the ballot and who would assume the office vacated

41Stats., 1957, Ch. 1316, p. 2638.
42Stats., 1967, Ch. 1148, p. 2828.
for the remainder of the regular term, should the recall take place.43

The 1931 Amendments to the statutes changed this portion of recall law substantially. The procedure for designating whether an officer ought to be recalled remained the same. The following section, however, read:

If the recall prevails shall the council fill the vacancy or vacancies by appointment or call a special election for that purpose? Following the question shall be the words 'By appointment' and 'By special election' on separate lines, with a blank space at the right of each in which the elector shall indicate by stamping a cross (X), his vote for appointment or election.44

If the recall prevailed and a majority favored the special election, it would be held not less than thirty-five nor more than forty days after the date of the order. If, however, the special election procedure was not voted in, then the council would forthwith fill the vacancy or vacancies by special appointment.

Under the 1931 law, if electors desired a more direct say in government and thereby voted to have a special election for the filling of a vacancy, then (1) an additional election was required—adding to the inconvenience of the voters and stronger susceptibility to voter apathy; and (2) such an election would add a discouraging extra cost to the city and tax payers.

The principle of two elections, one to determine the actual recall and the second to elect a successor, if the electorate so desired, was not new to the 1931 legislature who made the two-election principle part of the general law. The concept was first introduced into the

43 Stats., 1911, Ch. 185, p. 361.
44 Stats., 1931, Ch. 274, p. 566.
1915 legislature in the form of Senate Constitutional Amendment No. 21. Like the 1931 statute, the proposed amendment provided that in recall, two elections would be held rather than one. The first election would determine the matter of the recall itself. If the incumbent was recalled, a second election would determine the successor.45

Dr. Haynes and his associates objected strongly to the bill, contending that the direct legislation measures were not in need of change, rather greater enforcement of the law was needed in order to prevent abuse.46

Haynes suggested that the legislature should alter the constitutional provision, defining more clearly the crimes of abuse and making penalties for such abuse more stringent.47

Haynes was evidently convincing for the Senate Constitutional Amendment No. 21 failed to get beyond committee consideration. It was, however, passed in statute form in 1931 and made part of the general election law for cities.

When the election laws were codified, for the first time, in 1939, the section relating to the "two elections" principle was amended to provide for the identical procedure as required in 1911—-a single recall election, where official is recalled and nominee is elected.

One difference in the law from the original 1911 provision was the clarification that "if a majority or exactly half of those voting on the question of the recall of any incumbent from office vote 'No',

45Franklin Hichborn, Story of the California Legislature of 1915, pp. 103-106.

46Hichborn, pp. 103-106.

47Hichborn, pp. 103-106.
the incumbent shall continue in office."48 This one election concept has remained unchanged to the present.

V. SUFFICIENCY AND VALIDITY OF CHARGES

It was not merely corruption that prompted the movement for recall; rather the major catalyst was a desire to put political matters in the hands of the people rather than the courts and legislature. This sentiment is reflected in the 1911 law regarding the sufficiency of form or substance in the statement on the grounds for recall: "Any insufficiency of form or substance in such statement shall in no wise affect the validity of the election and proceedings held thereunder."49

The revised passage in the 1961 statutes covering the same section reads: "The statement and answer are intended solely for the information of the voters and no sufficiency in the form or substance thereof shall affect the validity of the election or proceedings."50

The provision regarding the nature and validity of grounds for recall has consistently remained in a liberal, nonrestrictive form and has not been redirected from its original intent.

The theoretical latitude of the law has consistently been a major point of contention in the continuing dispute over recall. In 1911 the main criticism expressed by the opponents of recall, other than the issue of damaging the judiciary, was the absence of specific grounds for recall. It was felt by those who led the fight against

48Stats., 1939, Ch. 26, Div. 13 (Ch. 3), p. 30.
49Stats., 1911, Ch. 185, p. 360.
50Stats., 1961, Ch. 23, p. 866.
recall in 1911 that it was a dangerous and radical tool which lacked specific charges of misconduct, malfeasance, or corruption.\textsuperscript{51}

Bird and Ryan report that criticism against the "inadequate and meaningless" charges often used in recall petitions prompted a growing sentiment that charges should be made more specific and substantial.\textsuperscript{52}

The current debate on this matter is similar in nature, emphasizing the need for specifically defined charges as grounds for recall in the hope that this would make recall a more "responsible" procedure. A strong proponent for incorporating specific charges of misfeasance, malfeasance, and non-feasance in recall law is Assemblyman James Hayes from Long Beach. Hayes contends that the section on recall was the most crudely drawn part of the state constitution and should be revised.\textsuperscript{53}

One is impressed with the notion that the framers of the recall amendment had intended that grounds for recall be left open for liberal construction. The constitutional version of this section reads:

\begin{quote}
Such petition shall contain a general statement of the grounds on which the removal is sought, which statement is intended solely for the information of the electors and the sufficiency of which shall not be open to review.\textsuperscript{54}
\end{quote}

The last six words of the above passage are the key to a proper understanding of the original intent. Recall was originally enacted primarily out of displeasure over the judiciary. Progressives

\textsuperscript{51}Ballot Argument for and Against Recall, October, 1911 (On file in the California State Library, Documents and Government Publication).

\textsuperscript{52}Bird and Ryan, p. 325.

\textsuperscript{53}Interview with Assemblyman James Hayes, January 19, 1971.

\textsuperscript{54}California State Constitution, Amendment 23, Sec. 2.
hoped that the threat of recall would exercise some control over its actions which had, prior to 1911, been considered highly improper and beyond bounds of judicial discretion and restraint. The progressives and fellow reformers believed that the validity and sufficiency of grounds for recall should be left to the people and not open to review by the courts. In order that court battles not develop over this area of recall, the grounds and sufficiency of charges against an official were to be political, as the revised Michigan constitution so eloquently states, rather than of a judicial nature.

It has also been suggested that the prohibition against judicial review expedites action on the petition without the delay that court involvement would necessarily cause.

The liberal nature of this section also points to an inherent distrust of government on the part of the reform-minded Progressives who introduced the recall concept into California government. A consequence of this distrust of government was a rekindled faith in the judgment and ability of the people. Thus, the question of the grounds for recall was left solely in the hands of the people who were the supreme and final judges.

VI. SUBMISSION TO LEGISLATIVE BODY; ORDER FOR SPECIAL ELECTION

The original 1911 provisions for municipal recall stipulated that upon determining sufficiency of the petition, the clerk must


submit it to the government body without delay. The government body was to call a special election for the purpose of recall within not less than thirty-five nor more than forty days after the date for calling the election. However, if a general municipal election was to occur within sixty days, the city council, for example, could in its discretion postpone the special recall election to the general election or any general election occurring less than thirty-five days after the order for the recall to be held.57

The law was amended substantially in 1957 to provide that the municipal legislative body order the special recall election to occur not less than sixty nor more than seventy-five days after the date of the initial order. Also included in the amendment was the provision that the legislative body could have the recall election held on the day of the regular municipal election if it was to fall within not more than ninety and no less than sixty days from the date of the order.58

The amendment of 1957 increased the discretionary powers of the municipal governing body by giving them a newly expanded time limit in which they had to call the special election and an increased time period in which a general election might occur, in which case the recall could then be deferred.

The section was again amended in 1970 extending the period in which the legislative council of a city was required to call a special recall election to no less than seventy-four nor more than eighty-nine days after the date of the order.

57Stats. 1911, Ch. 185, p. 360.
58Stats. 1957, Ch. 1316, p. 2638.
If the regular election is scheduled not more than 104 nor less than seventy-four days from the date of the order, then the body has the discretion to defer the recall until the regular election.59 This amendment extended by fourteen days the beginning and ending of periods for conduct of a special election or consolidation with a regular election.

The 1970 amendment remains in the spirit of the 1957 amendment in that it gives more discretionary power to municipal legislative bodies than the original law had provided. Pressure from city registrars and clerks was the major catalyst for the procedure changes.

State Senator Whetmore who introduced Senate Bill 1421 calling for the election reform stated that city registrar's and clerks complained that they needed more time for the performance of clerical duties.60

The purpose of this recent change in the general election law was to make election procedures more efficient, less costly, and give more time to city officials in the execution of their administrative functions. This action was prompted by the 1970 June primary "fiasco" where many voters in the Los Angeles area and throughout the state failed to receive their sample ballots.61 Whetmore's legislation was not aimed specifically at recall, but to elections in general whereby cities were accorded ten additional days of discretion in

60Information gathered from an interview with Blanche Flanner, administrative assistant to Senator Whetmore, June 30, 1971.
61Interview with Blanche Flanner, June 30, 1971.
calling special elections. The intent of the bill was nothing more than a hope for more efficient, effective, and economical procedures.

Some observations are essential to properly understand why such discretionary power to municipal governing bodies can be a substantial issue and may represent an alteration of original intent. Just as grounds for recall were not to be judged by a court, so too, perhaps, such discretion of when an election is to be held—especially if it favors those sought to be recalled—was not meant to be given to a municipal governing body.

Municipal recall attempts usually involve members of city councils. These same "municipal legislative bodies" have been given increased discretionary authority to postpone an election that might appear inimical to the councils' best interests or a council member's interest. Implied in such a situation is an obvious conflict of interest.

Postponement of a special election might very well be in the best interest of the officer whose recall is sought. He could count on the extension of time to erase memories of the charges and launch an all-out public relations campaign to rectify his image. He would have a distinct advantage in his access to the media and other public relations channels due to his position as office holder and public servant.

Recall movements are generally not tightly or well organized and tend to dissipate through time. Most proponents of recall are average citizens with jobs and responsibilities that must be given their greatest attention. Having to extend their recall campaign for several more weeks in order to keep pace with the public relations campaign
of the person sought to be recalled would work an unfair bias and hardship upon common proponents of recall.

In cases of recall with a member of their body, councils and boards of trustees often are in sympathy with the member sought to be recalled and will stall by the use of various legal tactics in order to subvert recall proceedings.

Ample opportunity exists for councils to delay or obstruct recall proceedings in desperate bids for either more time or dismissal of the charges. Bird and Ryan point out that in the early days following the passage of recall many attempts were terminated by litigation. They suggested that the means by which recall could be thwarted was so easy that anyone not taking advantage of them was simply ignorant of the history of recall procedures.

While the legislature has taken note of recall abuses by the "out" factions, it has taken little note of abuses by municipal political elites which hold greater leverage and have more effective resources at their disposal. The trend—though perhaps not aimed at recall elections per se—added discretionary powers for the calling of special elections by city councils, does not fit the spirit of recall's original intent. It does, however, reflect the needs and demands of a political system whose complexities have virtually required the primacy of efficiency. Original intent, it seems, has been sacrificed for the current pressures of thrift and effectiveness—qualities essential to contemporary democratic politics.

62Bird and Ryan, p. 313.
CHAPTER IV

DEVELOPMENT OF RECALL IN THE COURTS

This chapter will examine the development of the general aspects of recall within the context of case law and judicial interpretation. The constitutional validity of recall will be discussed within a historical framework emphasizing its various legal ramifications.

The legal development as presented through the use of court decisions and judicial interpretation is included for the areas covering validity for grounds of recall, the signature requirement for recall petitions, general procedural technicalities, certain restrictions in the recall law, and the various clerical duties and responsibilities under the jurisdiction of the city clerk and municipal legislative council.

I. BACKGROUND TO THE DEVELOPMENT OF RECALL IN THE COURTS

In any field as politically explosive as recall, it is difficult to legislate clearly. This has been particularly true in California. Confusion was created by the multiplicity of laws dealing with the procedures of recall in charter cities, counties, and districts. The law lacked uniformity and was not clearly understood by the average layman.

Reflecting the difficult task that faced the courts over interpretation of the law, the supreme court in the early twentieth century warned:
Our complicated system of city government, which gives each city above a certain size power to adopt a charter for its own government, and our numerous statutes relating to and providing for the recall of elective officers, tend to create a great confusion on the subject, and when a decision of the court is resorted to the particular city and particular law on which the decision is predicated; Otherwise the legal profession is likely to be misled in regard to the construction of the particular law in controversy.  

Because litigation was relatively easy there was plenty of opportunity for the courts to give it an adequate hearing. According to Bird and Ryan litigation so frequently accompanied recall movements that resort to the courts became one of the unique features of the process.  

Recourse through the courts by an officer whose recall was being sought became a natural and understandable tactic. Any delay in the proceedings is certainly to the incumbent's advantage. Temporary suspension of the momentum in a recall drive exploits one of the inherent weaknesses of popular government--public apathy. Any delay due to litigation proceedings usually blunts the issues of political conflict.  

The most common procedures for obstructing recall proceedings are, according to former Secretary of State Pat Sullivan, fairly simple. The incumbent or incumbents, if such are on the city council for example, may influence a majority of the body to refuse action

1Wright v. Engram, 186 C. 659 (1921).
3Bird and Ryan, p. 314.
on the special election. Often council members simply ignore the petition calling for a special recall election. When such situations exist, the proponents of recall file a writ of mandate to compel the municipal legislative body to call a special election for the purpose of recalling a public official. The respondent—which is the city council—then will often file a demurrer to the recall petition taking exception to the sufficiency of some point in law in the recall procedure, e.g., insufficient signatures on the petition. The writ of mandate is issued by a court of law commanding the performance of some specific duty, e.g., calling for the special election.

It appears that the legislature's intent was to keep matters of direct legislation out of the courts as much as possible. Suspicion and distrust of the courts was one of the primary catalysts for the recall plan, yet in the actual practice of affairs, the courts have been called in to obstruct or to order recall elections.

Direct legislation was also inaugurated because the state legislature was not properly fulfilling its function as a legislative body. To make up for this deficiency it was hoped that the initiative, referendum, and recall would give the people a greater voice in the affairs of government. Ironically, within two decades, recall became controlled by the very political agencies it was created to check.

While the early trend in recall decisions at the appeals level started out quite liberal, there has been a recent trend turning

5It was felt that courts were usurping this function.

6The 1931 legislature passed considerable amounts of legislation dealing with recall and was subsequently to continue making changes and additions to the law.
toward a strict construction of the law. This will be dealt with more specifically later in the chapter.

II. CONSTITUTIONAL VALIDITY OF RECALL

The first case involving recall in an American court received a favorable ruling. Judge Frank D. Oster of the Los Angeles Superior Court stated in his 1904 opinion that recall is "entitled to receive a liberal construction" and that the recall scheme was fully constitutional.7

Three years later the court in Good v. Common Council 5 C. A. 265 (1907) upheld the constitutionally of recall and introduced an interesting concept to the interpretation of recall. The court in justifying its conclusions regarding the constitutional validity of recall introduced into its decision the well recognized rule that the "agency may be terminated at any time by the sovereign power without reason given."8

This subscribed to the progressive principle of "people as sovereign" and contributed to a liberal construction of recall and its relationship to concepts of direct democracy. The principle of agency--"may be terminated... without reason given"--also provides considerable insight into the philosophy providing a general and liberal construction for the grounds of recall.9

7Quoted in the Los Angeles Express, August 29, 1904. Cited in Bird and Ryan, pp. 315-316.


9Further mention relating to the grounds for recall will be made in another section of the chapter.
The court in Good v. Common Council supra, engaged in some philosophising in their opinion, contributing early to an interpretation that was to be relied upon by the courts following the 1911 addition of recall to the general law.

The fixing of the tenure of office of the officers of a municipality subject to removal by the body that elected them is comparatively new in our system of government, and the interpretive branch of the law is in rather an undeveloped state on the subject. A responsible government, however, is the very foundation of the republican system, and there appears no reason why a representative should not be made to retire at any time at the request of the people. . . .

The court was clearly expressing sentiments which were soon to become the political maxims of progressives throughout the state and nation. No more clear expression, however, of progressive sentiment could be found than in this sentence of the court's decision:

Offices are created by the people for administration of public affairs and not for the benefit of the office-holder, and revocable at the pleasure of the authority creating them, unless such authority is limited by the power which conferred it. 11

It can be seen that even before its statewide adoption recall was deemed to be in accord with the constitution and established legal principles. As innovative 12 a procedure as it apparently was, recall met with little opposition with respect to its constitutional validity.

Los Angeles Councilman J. P. Davenport, in the first case of recall to reach an American court, contended that the recall concept was in violation of the U. S. Constitution regarding due process of

10Good v. Common Council, supra, 267, 268.


12Critics of recall would have said radical.
law. As Bird and Ryan point out, Davenport maintained that an officeholder held property in his office and it could therefore not be taken without due process of law. The court declared Davenport's argument to be inaccurate in that a public office is not property, but a mere agency.

Recall of elective state officers derived its authority directly from the organic law. Recall in cities was provided for by a grant of authority included in the provision providing for recall of state officials.

The express provision providing for the recall of city officials is found in Article 23, of the state constitution where it states that recall shall be exercised by the electors of each city of the state under the procedure required by law. In the case of charter cities, the article provided that in such cases legislative bodies of the respective cities could establish their own procedures or could, as unchartered cities were required, subscribe to the general law of recall as adopted by statutes passed by the legislature to facilitate its operation.

The new amendment of 1911 was fully in line with Article 4 of the State Constitution which provides for direct legislation powers of cities that come under the authority of the state legislature, unless the city has a charter.

13Bird and Ryan, p. 315.
14California State Constitution, Article 23, Sec. 13.
15California State Constitution, Article 23, Sec. 14.
16California State Constitution, Article 23, Sec. 16.
17California State Constitution, Article 4, Sec. 25.
This relationship with the organic law was held to be valid. In the important 1911 decision, the court held that the method of removing an elected city official was purely a municipal affair "which in no way conflicted" with the State Constitution.\(^{18}\)

*Hill v. Board of Supervisors*, 176 C. 84, held constitutional in accordance with the California Constitution, the act providing for recall in municipal corporations,\(^{19}\) which received the major grants of authority providing for recall in California cities.\(^{20}\)

Reaffirming the *Hill* decision, the California Supreme Court in *Lindsey v. Dominguez*, 217 C. 533 (1955), confirmed that election of municipal officers is exclusively a municipal affair and added that no court could determine otherwise.

The power to cut short an elective official's term was unquestionably given to the people by the constitutional amendment of 1911 and subsequent statutes enacted pursuant to that power.\(^{21}\) The courts and body of legal thought overwhelmingly held that recall was completely valid and did not violate the provision of the California Constitution.

In the late thirties the City Council of El Monte challenged the state constitutional validity of the 1931 Municipal Elective Officers Recall Law. The criticisms rendered by the Council dealt with matters of policy, wisdom, and technique for recalling elective

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\(^{18}\)Conn *v. City Council*, p. 717.

\(^{19}\)Stats., 1911, Ch. 185, p. 359.

\(^{20}\)The act of 1911 providing for recall in municipal corporations amended the March 13, 1883 "Act to Provide for the Organization, Incorporation, and Government of Municipal Corporations."

officers as provided for in the act. The Council claimed that these were matters of a legislative nature for which the courts had little concern.

The court in this case, Baertschiger v. Leffler, 36 C. A. 2d 208 (1959), did, however, hold that the Municipal Elective Officers Recall Law was not violative of any part of the California Constitution. The case is significant because it held that statutory provisions for recall could be codified into a body of general law dealing specifically with the procedures and provisions of recall. Further codifications were made in 1939 and 1961.

III. RECALL'S LIBERAL CONSTRUCTION

A statute, where it is fairly susceptible to a construction that is in harmony with the California Constitution, is to be liberally construed and made to comport with legislative intent. This principle was enunciated by the Supreme Court in Chesebrough v. San Francisco, 153 C. 559 (1926), and was more specifically stated in Cohn v. Isensee, 45 C. A. 531 (1920), where the court held that in interpretation, legislative intent is the controlling factor: "The purpose of all rules of construction is to ascertain, if possible the intention of the legislature. For it is the legislative intent that must control."24

22Stats., 1931, p. 563.

231931 was the first year recall was codified into the Political Codes. In 1939 a general recodification of the political codes took place and in 1961 election provisions were codified into the present form of Election Codes.

24Cohn v. Isensee, p. 538.
Initially the courts received recall quite favorably and applied to it the liberal interpretation that appeared in keeping with the intent of the progressive-minded legislature.

The decision in Conn v. City Council, supra, stated that a city charter should receive a liberal construction "with a view to promoting the purpose for which it was enacted by the people. . . ."25 This interpretation by the 1911 court has affected subsequent decisions relating to recall and is often cited.

Laam v. McLaren, 28 C. A. 632 (1915), provided another important statement on the application and philosophy of recall maintaining that statutes enacted aiding the organic provisions of recall should be construed liberally and should not be interfered with by the courts "except upon a clear showing that the law is being violated."26

Further comment is rendered on the philosophical and legal definition of recall in the case of Robinson v. Anderson, 26 C. A., 644 (1915). By implication the court broadened the legal construction of recall provisions to ensure that original intent is always guarded. The words of the court suggested a precedent-setting principle that was to be applied in future cases: "The statute must be given effect rather than have applied to it a construction which will nullify the apparent intent of the legislature. . . ."27 Subsequent cases which proceeded in the same interpretive vein regarding the liberal construction are Worth v. Downey, 74 C. A. 436 (1925); Magoon v. Heath, 79 C. A.

27Robinson v. Anderson, p. 646.
632 (1926); and Othmer v. City Council of Long Beach, 207 C. 263 (1929), "Statutes should be liberally construed so as to promote the purpose for which they were enacted." 28

No complete records of the cases going only to superior court, or county courts of the state are available, but according to Bird and Ryan the county courts were inclined to observe a conservative construction of the law. 29 Higher courts on appeal were, in the twenties, liberal in their interpretation of the intent and law of recall.

The courts have been reluctant, generally, to defeat fair expressions of popular will as exhibited in elections and will not do so unless the law permits no other alternative. 30

IV. OFFICERS SUBJECT TO RECALL

That general law cities were to abide by the statutes and codes passed by the legislature, as granted by Article XXIII, for recall was expressly stated in the court's decisions of Rutledge v. Domíquez, 122 C. A. 680 (1932) and Goodman v. Domíquez, 122 C. A. 784 (1932).

In the decisions of Rutledge and Goodman the court commented upon the constitutional source which gave cities express authority to enact their own recall procedures. In their ruling the court held that cities were legitimately granted such express authority in

28 Othmer v. City Council of Long Beach, p. 275.
29 Bird and Ryan, p. 341.
30 Law v. San Francisco, 144 C. 384 (1904); See also Jennings v. Brown, 114 C. 307 (1896); and Packwood v. Brownell, 121 C. 478 (1898).
Article XI of the California Constitution which provides for the organization of cities under a freeholder's charter. The provision states:

It shall be competent in any charter framed under the authority of this section to provide that the municipality governed thereunder may make and enforce all laws and regulations in respect to municipal affairs. . . .

In 1916 it was held in the decision of Shaefer v. Herman, 172 C. 338 (1916), that the removal of officers by recall in cities having charters providing for the procedure was a municipal affair and not controlled by general laws inconsistent with charter provisions. The Shaefer case involved the attempted recall of San Francisco's city attorney Percy V. Long. Failure on the part of the board of election commissioners to call for the special election was due to the absence of properly dated signatures on the petition.

The respondents, wishing to prevent the recall election, claimed that the above-mentioned petition was void due to its failure to conform to the provisions of section 1083a of the Political Code, as amended in 1915. The particular provision in the general law that the respondents referred to was the section requiring an affixed date next to the signer's name on a recall petition.

The San Francisco charter, however, had no such provision, requiring only a signer's address. The court, citing Coffey v. Superior Court, 147 C. 525 (1905), reiterated the rule that where a freeholder's charter has provided a mode of removal of officers, the general law cannot control the exercise of the power in that manner, or change the procedure required by the charter.

31Article XI, Section 8.
The principle that municipal charters were controlling in municipal affairs was firmly expressed in Betkouski v. Superior Court, 34 C. A. 117 (1917). In their ruling the court said that in acts of the legislature regarding recall which are inconsistent with charters—the charter will control.32

If a municipal charter does not provide for recall, the courts have ruled that such power, by a court of law, may be read into the charter and permit the electors to exercise direct legislation procedures, including recall, in accord with general law provision.33 This principle expands considerably the opportunity for recall to be used anywhere. It appears that the courts have provided recall with the broadest application possible and have followed the tradition of liberal construction in this respect.

V. GROUNDS FOR RECALL

As Bird and Ryan suggest, the question of the sufficiency of grounds for recall was a subject of considerable litigation in the early years of recall history.34 The result of such notable litigation regarding the sufficiency of grounds has led to the incorporation into almost all the recall laws of California the provision that the statement of grounds "is intended solely for the information of the voters

32See also Ackerman v. Moody, 38 C. A. 461; Baines v. Zemansky, 176 C. 369; Conn v. City Council, 17 C. A. 705; Schaefer v. Herman, 172 C. 338; and Sidler v. City Council of Bakersfield, 43 C. A. 349.


34Bird and Ryan, p. 321.
and no insufficiency in the form or substance thereof shall affect the validity of the election or proceedings.\textsuperscript{35}

The first major case dealing with recall in a charter city touched on the issues of proper grounds for recall. Certain citizens of San Diego were seeking to recall City Councilman Jay N. Reynolds due to the alleged charges that his performance and discharge of duties while in office were in opposition to the will and preferences of his constituents.

Reynolds had incurred the wrath of citizens apparently because of his vote in favor of an ordinance regulating the licensing of liquors within the city. This along with the charge that he had on several occasions obstructed referenda and other expressions of the people's will brought about the campaign for his removal.

The city council refused to act upon the recall petition and voted to "table and file the same without action."

In this case, \textit{Good v. Common Council}, 5 C. A. 265 (1907), the appellate court stated that while charges of malfeasance, misfeasance, or nonfeasance were certainly applicable, the principle involving the grounds for recall should be liberally construed to go beyond such "specific" charges to more enlarged issues of answerable or responsible tenure.

In the matter of grounds for recall the most significant case in this area is \textit{Conn v. City Council}, \textsuperscript{supra}, in which the court firmly

\textsuperscript{35}Out of the nine charter cities adhering to their own recall procedures, three differ from the general statement on grounds as stated by the general law. These three cities are Long Beach, San Bernardino, and Stockton; all three omit general law guidance in making a statement of grounds for the recall.
enunciated the principle that the statement and reasons given for recall were only for furnishing information to the electors. In this respect the court declared:

Petitions are only required to state generally their grounds or reasons for demanding the removal of the obnoxious officer, for the obvious and only purpose, it seems to us furnishing information to the people of the community, upon which a political issue rather than an issue at law may be raised and determined.\(^{36}\)

The principle that grounds for recall were matters of a political nature is very significant. The court in this area seems to be in full accord with legislative intent which in part sought to keep the substantive determinations of recall out of judicial jurisdiction and into the hands of the people.

If grounds were held to be an issue at law, specific charges would have been required—such as malfeasance, misfeasance, or nonfeasance—and the traditionally held liberal construction of the recall could have very well been abandoned.\(^{37}\)

The court also held true to Progressive principles and legislative intent when it stated that:

... it is clearly the privilege of the people at the polls, rather than the province of the courts, to pass upon the sufficiency of the grounds stated for the removal of an elected officer by the modern method of a recall election.\(^{38}\)

This statement in the decision affirmed the point which Progressives, and especially Hiram Johnson, made with regard to the right of

\(^{36}\)Conn v. City Council, supra, p. 712.

\(^{37}\)Recent attempts have been made to incorporate the malfeasance, misfeasance, or nonfeasance requirement into the law governing recall. If this were done, judicial interpretation over these charges would almost likely be so ambiguous and multifarious that the purpose for the new standards would be defeated.

\(^{38}\)Conn, supra, pp. 712–713.
an intelligent, reasoned electorate to determine its political destiny.

In the case Good v. Common Council, supra, a legal principle was stated which has always been an inherent political principle with regard to the recall. The Good, supra, court cited Croly v. Sacramento, 119 C. 234 (1897) out of which the well recognized rule that the agency may be terminated at any time by the sovereign power without reason given. This then, more or less, captures Progressive philosophy and aids in better understanding principles of legislative intent.

Several attempts have been made, by officers whose recall was sought, to challenge the sufficiency of the grounds for recall. Most notable among the cases is Laam v. McLaren, 28 C. A. 632 (1915) which the court refused to uphold a challenge against the validity of a recall petition containing what the officer thought were insufficient grounds. The court was emphatic in its ruling by stating:

... the statement of grounds is intended solely for the information of the electors, and whether the plaintiff or the court to which he appeals regards them as sufficient grounds for the plaintiff's removal is immaterial, as is also whether the grounds are true or false. The voters to whom the question of recall or removal is submitted are the judges of the sufficiency of the grounds.39

Here again the court reflects a theme inherent in the Progressive philosophy and in accord with legislative intent. The voters--the people--and not the courts nor the legislature were to be the sole judges of the grounds for recall. It was, after all, a political and not a legal question.

In another case, Ratlo v. Board of Trustees of the City of South San Francisco, 75 C. A. 724 (1925), a group of trustees demurred to a

petition on the grounds that the charges were insufficient of facts, ambiguous, unintelligible, and uncertain. The court in its ruling stated, as it had in *Laam v. McLaren*, *supra*, that the grounds were solely for the sake of information, and the sufficiency was not a question for the courts or trustees to decide.40

VI. RECALL AND CRIMINAL RESPONSIBILITY

The first case in recall history that dealt with the issue of libel was in 1925, *State of Washington v. Wilson*, 241 Pac. 970.41 The proponents of recall in the case argued that the truth or falsity of statements made in charges are absolutely qualified and can only be determined at the recall election for such election and exercise is political.

In response the court stated: "Voters are not to be given carte blanche the privilege of making any allegations or statements concerning any officer sought to be recalled regardless of the truth or probable truth thereof. . . ."42

Thus the court denied that the matter of the petition is absolutely privileged, but may be qualifiedly privileged. This case along with the California cases to be presented here makes it fairly clear that great latitude is allowed in the matter of statements relating to grounds for recall, but can be actionable when malice is proven.

In California the important and inevitable question of criminal responsibility for statements made in recall charges came up in *Gunsul*  

40See also *Martin v. Board of Trustees*, 96 C. A. 705 (1929).
41See also 43 *American Law Reports* 1263, 1267, 1268.
Myrtle Gunsul, auditor for the city of Long Beach, was charged by recall proponents of taking unauthorized funds from the city. Gunsul charged libel after the accusation was included in the recall statement and published.

Ray, the defendant, held that the statement was absolutely privileged under section 47 of the Civil Code where it states a privileged publication or broadcast is one made, "In any (1) legislative or (2) judicial proceeding, or (3) in any other official proceeding authorized by law." The court ruled that recall is neither a legislative or judicial proceeding. It stated, in apparent cognizance of the Conn decision, that recall is political rather than official in nature. Therefore, the court held that communications in recall proceedings are qualifiedly privileged where no malice is apparent.

Under a qualified privilege, or conditional privilege, the party communicating is protected by law from libel and slander action unless actual malice and prior knowledge of falsity of the statement is known.

In cases of recall, qualified privilege can usually be relied upon for legal shelter because the communication, or charges against

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43 In the study of recall published in 1930 by Bird and Ryan, neither appellate nor supreme court had yet passed judgment on a case involving the issue of libel in statements appearing on the petitions.

44 "Official proceeding" is defined in 46 Corpus Juris 1085, as a "term denoting action taken by an officer." An "official act" is defined in 46 Corpus Juris 1084, as "any act done by the officer in his official capacity under color and by virtue of his office." Neither is true in the case of recall.

45 "Qualified privilege" comprehends communications that are made without apparent malice upon a matter in which the author has an interest. See Swift and Co. v. Gray, 101 F2d 976: and also California Civil Codes, Section 47, part 6.
a public official, may be held as a matter of public interest. Usually in any matter of "public interest"—and recall would certainly fit here—qualified privilege may be claimed.

In the Gunsul case, however, the court ascertained that malice was present and held that the case was therefore actionable.

While malice was proven to the satisfaction of the court, it declared that complaints charging libel based upon communications in the recall proceedings "must contain a proper allegation of malice...." Thus, the burden of proof for libel rests upon the plaintiff.

In 1964 the appeals court acted upon a similar case involving recall and libel in Kramer v. Ferguson, 230 C. A. 2d 237.47

In the Kramer case a particularly "aggressive" recall campaign was carried on in Seaside against two members of the city council, Bessie W. Kramer and Thomas A. Dorney. The proponents of the recall charged Kramer and Dorney with conflict of interest in several official dealings and with failure to properly represent the voters of Seaside.

During the recall campaign, the proponents displayed posters throughout the city depicting Kramer and Dorney as puppets on strings, being controlled by the hand of an unidentified puppeteer. The poster urged the recall of "Dorney and Kramer" and asked the question, "Tired of puppets in your City Government?"

A letter was also circulated by the proponents charging that "Mrs. Kramer and Mr. Dorney are not masters of their own fate—that they are, in fact, the dupes of a most undesirable element in Seaside."

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The court charged that the publications mentioned above imputed dishonesty and corruption to the council members and were libelous per se. Yet, libel was not actionable unless charges were made with malice.

In the trial proceedings, the court awarded punitive damages in both actions against the proponents of recall, thus implying that malice was present in the actions of the defendants. Such malice, as the court pointed out, destroys the qualified privilege.

The Kramer case is important because it represents a fairly recent interpretation by the courts that statements made in connection with the recall proceedings are not absolutely privileged but may be libelous if malice can be proven.

VII. SIGNATURE REQUIREMENTS

Apparently the established signature requirement for recall petitions is arbitrary with no compelling reasons for the specific percentage demanded by law.

The courts have adhered to legislative intent in making the requirement what it is. In their ruling in Magoon v. Heath, 27 C. A. 632 (1926), the court said:

48Kramer v. Ferguson, supra, 242.

49A privileged communication with regard to the law of defamation is a communication "which would be defamatory and actionable, except for the occasion on which, or the circumstances under which, it was made." See James A. Ballentine, Ballentine's Law Dictionary, ed. William S. Anderson (third edition; San Francisco: Bancroft-Whitney Company, 1969).

50The California Constitution Revision Commission has found no reason for the percent of electors required to sign petitions and sees no reason for its change in either direction. California Constitution Revision Commission, Article XXIII: Recall Background Study, May, 1968, p. 21.
We think it is clear that the intent of the legislature in providing for twenty-five percent of the entire vote cast was to give some assurance that there was a substantial demand for the removal of an elective officer before the recall might be invoked. . . ."51

While the twenty-five percent signature requirement is an arbitrary figure, in most cases,52 it is a reasonable provision capable of dealing with the political situation of municipal government. When the signature requirement was lowered to twelve percent of the voters of the city, problems developed that had not existed when the requirement was at the twenty-five percent (of the votes cast in the last preceding municipal election) level.53

In overturning a previous 1915 decision, Robinson v. Anderson, 26 C. A. 644 (in which the court declared that the signature requirement should be based upon the "vote cast at the regular election at which the officer was elected, rather than a subsequent election for other trustee offices not including that which the officer in question occupies."), The Magoon, supra, court held that the basis for the percentage of signatures required should be based on the last general municipal election rather than a special election at which the office might have been filled. The court's reasoning for this ruling54 was

51Magoon v. Heath, 79 C. A. 632, 635.
52 Further comment will be made regarding the percent requirement and municipal political realities in the next chapter.
53 This was discussed in the preceding chapter.
54 Court ruled that the signature requirement should be based upon the "vote cast at the regular election at which the officer was elected, rather than a subsequent election for other trustee offices not including that which the officer in question occupies." This ruling permitted the signature requirement to be based on special elections, if the officer was elected to said office in such an election, at which the voter turnout is considerably less.
based on what they believed to have been the intent of the legislature.

This is expressed in the court's opinion which states:

We think it is clear that the intent of the legislature in providing for twenty-five percent of the entire vote cast was to give some assurance that there was a substantial demand for the removal of an elective officer before the recall might be invoked, and in providing that it should be the last general municipal election we think it is apparent that they had in mind the rapidly growing incorporated cities and towns where the vote cast at the last regular municipal election might be considerably larger than at previous regular municipal elections. . . .

This seems to be the clearest statement explaining the rationale behind the original provision for the signature percentage requirement. The criteria upon which the twenty-five percent requirement was based changed in 1957, accompanied by statutory amendments making easier the clerk's duties in processing recall petitions. The 1926 Magoon case was the last major case involving the signature requirement to reach the appellate courts.

VIII. PROCEDURAL TECHNICALITIES

The appellate courts in most areas of recall generally took a liberal view of the technical requirements and ruled in favor of recall proponents wherever possible.

Such is the tradition of Worth v. Downey, supra, where the Board of Supervisors for the City of Lynwood refused to call a special election for the recall of one of their members, Frank M. Downey, on the grounds that the petition did not contain a specific statement

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55 Magoon, supra, 636.

56 Stats., 1957, Ch. 1316, p. 2636.

57 This principle was established in Rakow v. Swain, 178 C. A. 2d 895 (1960).
demanding the election of a successor. The court held that petitions need only be in language which meets the statutory requirements.\textsuperscript{58} It was the final opinion of the court that the petitions complied with the state statute's implied meaning.

The Conn \textit{v.} City Council, \textsuperscript{58} supra, decision declared that if every technicality was adhered to regarding recall proceedings "it would be practically impossible to invoke a recall election."\textsuperscript{59} The ruling was in response to the Richmond city council's failure to call a special recall election because some signers of the petitions did not sign their full names but gave only initials. In \textit{Chester v. Hall,} \textsuperscript{55} C. A. 611 (1921), the court stated that the law of recall is to be liberally construed, taking into account the particular set of circumstances in each situation.

In the \textit{Chester} case, for example, the court held that while some signatures on a recall petition did not have dates affixed to them, enough signatures were dated in order that the clerk could adequately determine if the signers were qualified electors at the time of signing. The purpose for such a requirement, said the court, was simply to guard against signatures by persons who at the time of signing were not qualified electors.

This spirit of liberal interpretation was reversed somewhat in \textit{Chambers v. Glenn Colusa,} \textsuperscript{57} 57 C. A. 155, (1922), declaring, with regard to the requirement on affixed dates, that the law is unequivical and should be made mandatory in all cases.

\textsuperscript{58}Downey, \textit{supra}, 713.

\textsuperscript{59}Conn \textit{v.} City Council, 17 C. A. 705, 713.
This principle was upheld in Maycock v. Kerr, 216 C. 171 (1932), when the supreme court upheld the refusal of the registrar to accept for filing and certification on initiative petition which was required to have precinct numbers but did not. The court rendered an authoritative interpretation:

... the constitution itself provides that the precinct numbers must appear on the petition, and this must necessarily mean that such precinct numbers must appear on the petition at the time the petition is presented to the registrar of voters.60

The trend of liberal construction by the courts regarding the procedural technicalities of recall may be in eclipse. Appellate courts have become less inclined to rule in favor of recall proponents even though the procedural oversights may be relatively minimal.

Beginning with the 1960 case, Rakow v. Swain, 178 C. A. 2d 895, the courts have tended to place the full burden for technical execution upon the proponents. For example, in the Rakow case the court ruled, contrary to its tradition of liberal construction, that while the clerk could assist proponents in execution of routine duties, the burden to ascertain the number of registered voters rests upon the circulators and not the city.

Though somewhat obliquely applicable to municipal recall, a case involving the attempted recall of California Governor Ronald Reagan gives some indication of the court's direction on the matter of technical requirements.

In Lee v. Superior Court, 265 C. A. 2d 49 (1968), the court held against the Recall Reagan Committee which on July 31, 1968 , filed

with the Registrar of Voters a petition to recall Governor Ronald
Reagan. Some precinct numbers had been omitted and the Committee
requested of Registrar Lee permission to add the numbers after the
filing date of July 31. Lee refused, claiming that the law did not
authorize him to allow such remedial activity after the filing date.

The committee took their grievance to the Superior Court of
Los Angeles requesting a court order allowing the proponents of
Reagan's recall to add the missing precinct numbers.

On August 12, the court issued a preemtory writ of mandamus
directing Lee to permit at least 50 volunteers in the Registrar of
Voters office to work on correcting and adding precinct numbers to
the petitions. Lee was also directed to give his fullest possible
cooperation.

The decision of the Superior Court was an exceptionally magnan-
imous one, and went far beyond its scope of authority. The appellate
court in Lee v. Superior Court, supra, struck down the ruling declaring
Superior Court's lack of jurisdiction.

In recent years the court has refused to bend the statutory
requirements and technical procedures must usually be met by the
proponents of a recall.

Fraud and dis-assembled petitions. There has been some question
as to the form of the petition and its relationship to the number of
officials sought to be recalled. The procedure can be executed in two
ways. A joint petition may be circulated to remove officials en bloc.
In this case the voter signs to recall all against whom the petition is
directed. If, however, an elector favors recalling only one of the group he must sign a separate petition.61

Petitions may be circulated in sections to facilitate the procedure, but are held to be void if circulated in separate sections where it is disassembled and the signature sheets are removed from the notice, statement, and answer, and then filed as a reassembled unit. The ruling on this matter is found in the case of Cunningham v. City Council of the City of Stanton, 200 C. A. 340 (1962), where the court declared that each petition shall bear a copy of the notice, statement, and answer on the face of each and every section.62

In the Cunningham, supra, case the City Council of Stanton refused to call for a special recall election intended for two of their members of the grounds that the proponents had circulated a fraudulent petition.

The proponents had circulated a face--or fact--sheet containing in proper form the notice, statement, and answer with blank sheets of paper underneath containing numbered lines intended for signatures. These blank sheets were separated from the face sheet and circulated for signatures.

The court held with the council in this case, stating that when the signed signature sheets were removed from the face sheet they lost their identity as a section of the recall petition. "Such a situation," the court stated, "is contrary to the apparent intent of

61Lynn v. City Council of Culver City, 105 C. A. 182 (1930); see also re "singular" petitions, Bricker v. Banks, 98 C. A. 87.

the statute which attempts to relegate city council action in the
premises to the performance of a ministerial duty.63

The decision apparently was based on the intention of discouraging
cases of fraud and keeping all possibilities of misunderstanding at
a minimum.

In the case of fraud the courts have required substantial evidence
to back up such charges.64 The burden of proof is upon the appellants
and they must, to the satisfaction of the courts, show evidence of
wrongdoing. An allegation of fraud must show the ultimate facts which
amount to fraud or it is insufficient.65 Otherwise, it is presumed
that the law is obeyed and will be liberally construed.66 If fraud
has been committed, a court of equity may be resorted to as the proper
forum to determine such questions under appropriate proceedings.67

If an elector feels that a case of fraud has been committed or
that his signature was acquired by misrepresentation and is dissatis-
fied, he may withdraw his signature by submitting a request for with-
drawal to the clerk and such a request will be honored. However, once
the petition is filed, names may not be withdrawn.68

63 Ibid.

64 Brown v. City Council of the City of Hawthorne, 103 C. A. 113 (1930).

65 Baroldi v. Denni, 197 C. A. 2d 472, 477; Lavine v. Jessup, 161
C. A. 2d 59, 69; Richardson v. City of Redondo Beach, 132 C. A. 426,
433; Peckham v. City of Watsonville, 138 C. 242, 244; Scafidi v. Western
Loan and Building Company, 72 C. A. 2d 550, 553.

66 Laam v. McLaren, supra.

67 Williams v. Gill, 65 C. A. 129.

68 Beecham v. Burns, 34 C. A. 759; Covell v. Lee 71 C. A. 361;
Knowlton v. Hezmalhalch, 32 C. A. 2d 419; Uhl v. Collins 271 C. 1;
McAulay v. Board of Supervisors, 178 C. 628; however, once the paper is
IX. RESTRICTIONS ON THE FREQUENCY OF RECALL

One of the most significant and recent cases dealing with recall is Moore v. City Council of Maywood, 244 C. A. 2d 892 (1966), in which the court ruled on the frequency of filing consecutive petitions.

The case in Maywood involved an attempted recall of Councilman John Kearny and Councilwoman Maymie Anderson. The first recall attempt of these council members was voided because the city clerk discovered the dates added by some of the signers were prior to December 17, 1965, the day upon which the petitions were legally eligible for circulation and signing.

The petitions were returned to the proponents without any certification attached to those advising the party that the eligible signatures did not amount to twenty-five percent of the total registered voters.

The petitioners made a second attempt to recall Kearney and Anderson on February 16, 1966. The petitions were circulated and filed with the City Clerk of Maywood on March 29, 1966. The petitions were found to be sufficient and were promptly submitted to the Maywood City Council for the ordering of a special election. The council declined to call a special election for recall purposes asserting that within six months preceding March 29, the recall petitions had been filed, thus precluding a legal filing for failure to wait the six month period as required by law (Election Code, section 27500).

The court was given the task of determining, (1) the definition of "filing" of a recall petition—that is, what constitutes a "filing" within the meaning of Elections Code, section 27500; and most importantly the court attempted to resolve what was thought to be a conflict in the Elections Code between sections 27500 and 27511.

Section 27511 reads: "... the failure to secure sufficient names shall not prejudice the filing later of an entirely new petition to the same effect." Section 27500 reads: "Proceedings may not be commenced against the holder of an office who has had a recall petition filed against him within a period of six months." The court rose to this difficult occasion and ruled:

In our opinion any filed recall petition bearing the clerk's certificate of sufficiency does not prohibit the filing of a new petition to the same effect for six months or any other particular time interval.69

The court interpreted the words "filing later" of section 27511 as being vague in meaning, not denoting any specific interval of time. It was the belief of the court that the legislature intended to prevent the costly holding of frequent special elections rather than the mere filing of successive recall petitions that may be found to be insufficient.

The court based the justification of its ruling upon the rationale of practical behavior. It said:

A petition certified as insufficient would exclude the recall of an unfaithful or unscrupulous municipal officer for a period of 10 to 12 months; and a confederate of such an officer could prevent a recall indefinitely by seriatim recall findings of invalid or insufficient petitions.70

70 Ibid.
While the court's bold ruling may have been a wise one, the author doubts whether the interpretation rendered was consistent with the legislature's original meaning of the provision. The law states that six months is the waiting period from the last date of filing, while the Moore court determined the waiting period to be following the last recall election.

Regardless of the question involved, the decision of Moore, supra, stands and represents current interpretation by the courts.

X. DUTIES OF CLERK AND MUNICIPAL LEGISLATIVE COUNCILS

Filing. In the Moore case the court handed down another major clarification in 1966 regarding the legal definition of a "filed" recall petition. The court declared that acceptable filing contemplated more than a "document, which on its face, purports to be a recall petition and to have appended to it signatures of voters in the required number."72

The court went on to maintain that before a city clerk can file a petition, there must necessarily be a "petition" within the legally defined meaning of Elections Code, section 27510. The conclusion of the court on this matter was that a "petition" constituted, (1) compliance in form with all statutory provisions, and (2) a determination on the part of the clerk that all such statutory conditions have been satisfactorily met.73 Only after such judgments and requirements

71Elections Code, section 27500.
72Moore, supra, 897.
73Ibid., 899.
have been met can a clerk properly and legally file a recall petition.

Ministerial duties. The Elections Code requires that the clerk must, after the recall petition has been filed, "examine and from the records of registration ascertain whether or not the petition is signed by the requisite number of voters." The courts have determined that such duties are ministerial in function and not judicial. All that the law requires the clerk to do is identify persons who have signed petitions and compare the names with the records of registration. The certification process must comply with the provisions of the city charter or the courts will nullify the recall. Such was the case in Davenport v. City of Los Angeles, 146 C. 508 (1905), where the supreme court, in one of its first decisions on recall, held that improper procedural action on the part of the clerk could invalidate the whole proceedings. In Koehler v. Board of Trustees of the City of Coronado, 53 C. A. 155 (1921), the court held that the clerk's failure to perform his duties properly were grounds for judicial review.

74California Codes, Section 27510.


76Conn v. City Council, supra.
In a recent decision the court has clarified the principle "ministerial" function. The critical question in determining if an act required by law is ministerial in character is whether it involves the exercise of judgment and discretion. This decision reaffirms previous decisions that clerks are not clothed with authority to receive extraneous evidence of the contents of a petition, nor do they have power to purge the petition of signatures secured by real or alleged fraud. The clerk's duty under the law is to do:

no more than verify the purported signatures appearing on the petition with the great register and certify the result of that examination.

The word "purport," as used in the above decision and in the statutes, simply refers to an instrument in writing, signifying "on its face" its sufficiency.

In cases of more complex and elaborate provisions of recall under home-rule charters, the courts have determined that the action of a clerk in determining whether or not a recall petition is sufficient under the provision of such a charter, and not general law, may be

77Jenkins v. Knight, 46 C. 2d 220 (1956).
78Jenkins, p. 224.
82Stats., 1961, Ch. 23; California Codes, Section 27510.
judicial in character. Thus in situations where applicable, the clerk may be clothed with greater authority to make his determination of signature petition compliance with charity law.

In cases where fraud has been committed, a court of equity is the proper forum for recourse and such allegations must show ultimate and substantial evidence. However, while "it is the clerk and not the court which must determine whether the certificates substantially comply" with the law, such cases may arise where judicial discernment is necessary.

Insufficiency of petition. If the petition is found to be insufficient, the clerk must so state and return to its proponents, who then have an additional 15 days to file a supplemental petition. The courts have ruled that, unless a charter specifically prohibited, proponents may make advance preparation for contingency of insufficiency on the first petition by commencing the circulation of supplemental petitions immediately after they have filed the original petition.

Council demurrers. Upon certification of the petition, the clerk must then notify the city council.

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84Baines v. Zemansky, 176 C. 376 (1917); and Ficker v. Zemansky, 176 C. 443 (1917).
86Fraser v. Cummings, 48 C. A. 504, 508 (1920).
87Stats., 1961, Ch. 23; California Codes, Section 27510.
recall, and still to some extent, city councils have demurred to petitions claiming such petitions were insufficient, ambiguous, or fraudulent. Such has been the case when officials sought to be recalled were council members. The courts have consequently ruled that no discretion is vested in trustees in the calling of recall elections, and that no power of determination as to the sufficiency of petition rests with municipal legislative bodies. The duties of municipal councils with regard to recall are merely ministerial and upon the filing of certified petitions, councils must at once order a special election for the question of recall. No power is given by the statutes to legislative municipal bodies to determine the sufficiency of petitions.

The courts have indicated in two cases that if the petition is obviously lacking in the legal requirements of form and substance, the council may refuse to proceed with its ministerial duties and its demurrer will be upheld by the court. Otherwise, trustees have no discretion pursuant to a petition that conforms substantially to the law.

90 Martin v. Board of Trustees, 96 C. A. 705 (1929).
91 Ralto v. Board of Trustees of the City of South San Francisco, 75 C. A. 724 (1925).
92 Baertschiger v. Leffler, 36 C. A. 2d 208, 212; Ralto v. Board of Trustees, supra; Williams v. Gill, supra, 132; Jenkins v. Knight, supra, 224; Truman v. Royer, 189 C. A. 2d 109, 115.
93 Locher v. Walsh, 17 C. A. 727 (1911).
94 Conn v. City Council, supra, 350; and Sidler v. City Council of Bakersfield, 43 C. A. 349, 350.
95 Hodges v. Kauffman, 95 C. A. 598 (1928).
From a brief review of recent court rulings on recall there appears to be no question that appellate courts have taken a more "restrictive" view toward the compliance of recall procedural requirements. There is no discernible rationale for this trend, though speculation might suggest that the courts now feel with the greater dissemination of information through improved communication no one should be naive regarding legal procedures. The courts might have also taken this restrictive attitude due to what they considered to be abuses in recall. Therefore, strict adherence must now be attended to by all engaged in using the popularly-initiated political alternatives of direct democracy.
CHAPTER V
RECALL IN HOME-RULE CITIES

In connection with this study a postcard survey was conducted in the spring of 1971 asking either the City Manager or the City Attorney of each city of California to indicate whether or not any of the following had occurred between January, 1966 and September, 1971:

a. A recall election had been held in his city.
b. A recall petition had been taken out but not filed.
c. A recall petition had been filed, but had been found to be inadequate.
d. A recall movement caused litigation.

Results of the survey in terms of response were surprisingly successful, yielding a return total of 350 postcards from more than the 410 cities in California, nearly an 88 percent response.

The following is a brief synopsis of the findings from the survey:

a. Only 26 recall elections took place in the period between January, 1966 and September, 1971. Three of those were in districts of the same city and two were in Cabazon.
b. Only eighteen petitions have been taken out, but not filed for verification.
c. Eleven petitions have been filed with signatures, but have been found to be insufficient for calling an election.
d. In twelve attempts, some litigation has taken place.

85
The number of recall elections in relation to the number of cities is not high, and appears to be on a downward swing from the period of the twenties and thirties.

In the period 1924-1938, out of 270 cities there were 53 municipal recall elections held.¹ From 1966 to 1971 there were 26 recalls in 21 different California cities out of a total of 410 cities.

From California's 410 cities, 330 are under the general law status and 75 are chartered. Of the 75 chartered cities, all but 9 have chosen to be governed concerning recall by the general laws of the state. These nine² abide by their own recall provisions. The remaining chartered cities are directed into two categories, cities that are governed solely by the general law (56) and those governed by general law, but subject to certain provisions (10).³

I. OCCURRENCE OF RECALL IN CHARTERED CITIES

This study will illustrate how the difference in signature requirements is a significant factor in the number of recall elections which are launched.

There is unmistakable evidence that suggests the presence of a discernible pattern in this respect, especially when the occurrence of recall in particular population categories with varying signature requirements is compared.


²Alameda, Alhambra, Berkeley, Long Beach, Los Angeles, Palo Alto, Richmond, San Bernardino, Stockton.

³See table.
## TABLE III

CITIES OF CALIFORNIA USING GENERAL LAW REQUIREMENTS FOR
RECALL, AND CITIES USING THEIR OWN RECALL PROVISIONS

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number Cities</td>
<td>Number Recalls</td>
</tr>
<tr>
<td>500,000 up</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>250,000-500,000</td>
<td>1#</td>
<td>1#</td>
</tr>
<tr>
<td>100,000-250,000</td>
<td>2@</td>
<td>2@</td>
</tr>
<tr>
<td>50,000-100,000</td>
<td>1@</td>
<td>1@</td>
</tr>
<tr>
<td>25,000-50,000</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>10,000-25,000</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>5,000-10,000</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Under 5,000</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

# Long Beach  
@ Stockton, San Bernardino  
& Palo Alto  

**Note:** The 26 recall elections here include all recall elections through September, 1971. Data on number of cities is from the League of California Cities.

* Bell Gardens, Fountain Valley, Elsinore, San Bruno  
** Banning, Imperial Beach, Lompoc, Sierra Madre, 3 in Seal Beach  
*** Anderson, Fillmore, Los Altos Hills  
**** Avalon, Brisbane, 2 in Cabazon, Cloverdale, Emeryville, Farmersville, Sand City
# TABLE IV

**SIGNATURE PERCENTAGE REQUIREMENTS AND FILING DEADLINES FOR CALIFORNIA HOME-RULE CITIES**

<table>
<thead>
<tr>
<th>CITIES</th>
<th>POP. (1970)</th>
<th>SIGNATURE REQUIREMENT</th>
<th>DEADLINE FOR FILING</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Elections Code</td>
<td></td>
<td>25% of registered voters at last report to Secretary of State.</td>
<td>60 days after filing notice of intent with City Clerk.</td>
</tr>
<tr>
<td>Alameda</td>
<td>79,600</td>
<td>30% of the total number of persons voting at last general municipal election.</td>
<td>45 days after the date of filing of the notice of intention.</td>
</tr>
<tr>
<td>Alhambra</td>
<td>64,500</td>
<td>25% of the total vote cast at the last preceding general municipal election.</td>
<td>40 days after the filing of the affidavit.</td>
</tr>
<tr>
<td>Berkeley</td>
<td>120,300</td>
<td>25% of the registered electors of the city on the day the petition is filed with the city clerk.</td>
<td>75 days from the filing of the notice of intention.</td>
</tr>
<tr>
<td>Long Beach</td>
<td>389,028</td>
<td>25% of the entire vote cast at the last preceding general municipal election.</td>
<td>State Election Codes.</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>2,948,800</td>
<td>20% of votes cast for all candidates for the office in the last regular district election.</td>
<td>6 months.</td>
</tr>
<tr>
<td>Palo Alto</td>
<td>56,000</td>
<td>12% of number of registered voters at last general municipal election.</td>
<td>90 days from filing of notice of intention.</td>
</tr>
</tbody>
</table>
TABLE IV
SIGNATURE PERCENTAGE REQUIREMENTS AND FILING DEADLINES FOR CALIFORNIA HOME-RULE CITIES

<table>
<thead>
<tr>
<th>CITIES</th>
<th>POP. (1970)</th>
<th>SIGNATURE REQUIREMENT</th>
<th>DEADLINE FOR FILING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Richmond</td>
<td>81,900</td>
<td>25% of the entire vote cast at the last preceding general municipal election.</td>
<td>None given.</td>
</tr>
<tr>
<td>San Bernardino</td>
<td>107,172</td>
<td>30% of entire vote for all candidates for the office cast at the last preceding general municipal election.</td>
<td>10 days after date of filing petition.</td>
</tr>
<tr>
<td>Stockton</td>
<td>112,400</td>
<td>20% of the entire votes cast at the last preceding general municipal election.</td>
<td>None given.</td>
</tr>
</tbody>
</table>

As Table III indicates, recall has occurred more frequently in cities governed by specific charter provisions than cities under the more strict provisions of the state's general law. In cities which exceed a population of 50,000, four recalls have taken place where indigenous charter provisions were used as opposed to no recalls in cities where the recall process is governed by general law. The strictness of the general law provisions, especially in terms of signature requirement, might well be a factor in the pattern of recall incidence. The recall index for cities using their own recall provisions is 1.92 while in general law cities the recall index is .255. (See Table III)
As previously mentioned, 21 different cities have experienced recall between 1966 and 1971. In dividing up the 21 recall cities into categories of general law and charter status, a definite pattern begins to take shape. Of the 21 cities, four are chartered and have their own recall procedures. The remaining 17 are of general law classification, or at least adhere to general law procedure.

A rough percentage index of these statistics yields the following:

21 Recall Cities from 1966-1970 Period

1. Nine cities in the state have their own recall provisions.
2. 396 cities either have general law provisions or are general law cities.

<table>
<thead>
<tr>
<th>Cities</th>
<th>Recalls</th>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of the 9 charter:</td>
<td>4</td>
<td>.44%</td>
</tr>
<tr>
<td>Of the 396 general law:</td>
<td>17</td>
<td>.04%</td>
</tr>
</tbody>
</table>

As it can be seen from the information above, there is a considerably higher percentage of recall incidence in chartered cities with indigenous procedures than in cities that comply with general law provisions.

Before any valid determination or conclusion can be reached from these statistics, a comparative evaluation must be made of those nine charter cities in relation to the remaining cities of a general law orientation.

II. BREAKDOWN OF THE NINE CHARTER
CITIES HAVING INDIGENOUS RECALL PROCEDURE

Of the nine chartered cities, four have had recalls within the 1966-1970 period. The breakdown appears in Table V.
TABLE V
INCIDENCE OF RECALL IN RELATIONSHIP TO POPULATION
OF CALIFORNIA HOME-RULE CITIES

<table>
<thead>
<tr>
<th>Population</th>
<th>No. Cities</th>
<th>Cities</th>
<th>Recalls</th>
</tr>
</thead>
<tbody>
<tr>
<td>50,000-100,000</td>
<td>4</td>
<td>Alameda, Alhambra, Palo Alto, Richmond</td>
<td>1</td>
</tr>
<tr>
<td>100,000-200,000</td>
<td>3</td>
<td>Berkeley, San Bernardino, Stockton</td>
<td>1</td>
</tr>
<tr>
<td>200,000-400,000+</td>
<td>2</td>
<td>Long Beach, Los Angeles</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
</tbody>
</table>
The chartered cities have an index of .44 in recall incidence as compared with .04 in general law cities. Statistically, this suggests that recall is easier to achieve procedurally in the above nine cities. A close comparative examination of their major recall features will shed further understanding on the index reading.

Here it can be argued that the general law regarding recall signature requirements may no longer be wise within the context of present political realities. Initially, the law, prior to 1953 and 1957, was founded on a politically realistic rationale. It sought to base the recall petition requirement on actual voting turnout rather than a potential electorate. Every student of voting behavior knows that in American politics—especially municipal politics—electoral participation is minimal compared to the registered potential. This point is brought out in a study by Robert Alford and Eugene Lee on voting turnout in American cities. The study reports that the median turnout in partisan elections is approximately 50 percent compared to only 30 percent in non-partisan cities.

In 1953 the California legislature changed the percentage requirement to 12 percent of the voters of the city. This means that the difficulty of securing signatures was raised in most instances. The fact that the unit upon which the percentage is based was completely altered has a bearing on the politics as well as the legal evolution of the recall concept.

With the 1953 and 1957 changes—basing the signature requirement percentage on registered voters—the original progressive intent

regarding recall as a tool of participatory democracy has become a partial misnomer. This observation is founded on the legal reality that the most important recall provision is no longer based upon participation in the democratic process, but rather potential statistical participation as seen in voter registration records.

There is, however, a practical side to the requirement. The 1953 and 1957 changes made the signature figure less varied from one election to the next, thus making it easier for the proponents of recall to determine in advance the number of signatures needed on a petition. It should be obvious that clerical procedures are simplified by the more stable figure. With this in mind one can see that while the legislature may not have openly gone back on the principles of the Progressives, it has, however, clearly made it more difficult to use the right of recall.

Professor Jerry Briscoe, who has made a careful study of the 1967 Stockton recall, observes that in a small town where entrenched incumbents seem to control the city council, and where there is little electoral competition, there tends to be contested elections only occasionally. When this happens, through no fault of democracy, there is a low turnout.5

If the legislature left the recall provision as it stood originally in the 1939 law, there would always be the chance that after one of these quiet elections, a recall could be roused with practically no support at all.

5Jerry B. Briscoe, Department of Political Science, University of the Pacific, Stockton, California.
The importance of electoral politics is voter participation that is demonstrated, not by registration lists, but by actual votes cast. This is the line of reasoning, it seems, upon which the original signature requirement was founded and upon which the above-mentioned eight charter cities operate.

The impression of this author from interviews and conversations held with California state officials is that the present basis for signature requirement exists in part for reasons of efficiency, economy, simplicity, and expediency. Due to the increased complexity of modern state and local politics it becomes a burden to exercise even the slightest clerical function, such as determining proper signature percentages for zealous petition carriers intent upon recall.

The evidence points to the conclusion that decline in recalls in recent years is due to the insurmountable task of acquiring the required number of signatures in order to validate a recall petition. The present 25 percent general law provision seems to be a fair requirement for cities with populations anywhere from 5,000 to 10,000, but is virtually impossible in the large metropolitan centers of California. For example, no recall elections since 1950 have taken place in either Los Angeles or San Francisco. Any successful recall movement in the larger metropolitan centers would require an issue of tremendous proportions or a very large and highly structured interest group.

E. g. Former Secretary of State, Pat Sullivan, State Assemblyman James Hayes, Legislative Assistant, Robert Stern, State Senator James Whetmore, and Assemblyman Charles Conrad.
III. PALO ALTO: A CASE STUDY

In December of 1967 Palo Alto experienced a rather bitter recall contest which left acute impressions upon its citizens who challenged the old charter provisions. Consequently, in 1968 a Citizens Charter Review Committee was formed to discuss possible reforms of the charter's recall provisions. Several salient points on the recall concept came from the Palo Alto discussion.

Debate over Palo Alto's unique recall ballot. The charter under which the 1967 recall—and Palo Alto's only recent recall—took place was unique from the general law in that the name of the recallee was placed on a ballot containing an alphabetical list of those running for the office in question. There is not the usual question of whether X officer should be recalled, rather the winner is determined on the basis of a plurality vote. This method is similar, in principle, to the British system of a "vote of no confidence."

The citizens of Palo Alto favoring this unique ballot form did so because it was more likely to "play down" sharp conflict and avoid the harsh imputations that often accompany recall.7 In contrast to the more widely used form found in general law provisions, the Citizens Charter Review Committee argued—almost unanimously—that the Palo Alto method was fair. Incumbents and challengers were pitted against each other on an equal footing. To win, a challenger had to receive more votes than the incumbent.

7Citizens Charter Review Committee, City of Palo Alto, Minutes of the Meeting of March 6, 1968, p. 6.
A faction in Palo Alto opposing the Citizens Committee endorsement of the old ballot form was spearheaded by the local League of Women Voters. The League argued on February 12, 1968, before the Charter Review Committee that general law provisions regarding the ballot form were fairer to the public and should be adopted. Their position was that the essential question placed before the voters in a recall election is to decide whether the person should be removed from office, and if so, who shall succeed him. Under the old ballot, they claimed, the question before the voter was "Who shall best represent me?" The League of Women Voters felt that the charter of Palo Alto was not clear about whether any particular councilman was being taken off the council, or whether there was simply being a vote of confidence. The league held that they wished to make recall as difficult as possible, therefore, they wished each specific councilman to be recalled listed, and the "yes" and "no" on his particular recall be voted upon.

In response, the Charter Review Committee objected principally to the general law ballot on the basis that the incumbent must receive a majority of the vote (over 50 percent) in order to remain in office, whereas the candidate elected to replace him must receive only a plurality vote, e. g. 40 percent. It was felt, in the committee's majority report, that the Palo Alto ballot avoids the paradox where the person whose recall is sought might place his name on the list of candidates, lose the recall vote, but win the election to fill his own vacancy.8

The debate regarding an incumbent's dismissal on a majority vote, as compared to the election of his successor on a plurality, also appeared in a recent litigation initiated by Seaside Councilwoman Pearl Carey. Carey argued that recall elections were unfair in that a candidate running for a recallee's position is given the advantage of running for office by winning only a plurality. For example, if a recallee receives only 49.9 percent of the vote on the recall question he loses his seat while the candidate receiving a plurality may succeed to the office with only 32 percent of the vote. Carey's attorneys took the position that "the idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government. Such a situation lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment."

The Carey case, similar to the Palo Alto debate on this issue, points out a criticism of the recall provision which has recently been voiced by its critics. The superior court has, however, stated that Carey's arguments were constitutionally insubstantial.9

Palo Alto's changes in signature requirement. In 1968 while Palo Alto's Charter Review Committee was actively considering reforms, the issue of signature requirement was raised. The Palo Alto League of Women Voters apparently came into this discussion with bitter memories of the recall which took place during 1967. The League apparently wanted recall to become as difficult as possible to achieve and therefore organized a force to accomplish just that.10 Members of the com-

9More will be said on this case in Chapter VI.

10Interview held with Mrs. Mason Myers, member of the Palo Alto League of Women Voters, June 28, 1970.
munity, who were also on the Charter Review Committee, were more sympa-
thetic to recall and sought to preserve its essential character.

The Charter Review Committee proposed that the recall petition
signature requirement be changed from 20 percent of the vote cast in
the last preceding municipal election to 12 percent of the registered
voters. The purpose was to avoid the wide fluctuation from year to
year in the number of signatures required for petitions under the
old charter. The Committee offered the following statistics as
evidence that little numerical change would occur (Table VI).

As Table VI indicates, the number of required signatures remains,
under normal circumstances, approximately the same as under the old
charter 20 percent requirement. The change was brought about more
for the sake of convenience than anything else.

Though the local League of Women Voters urged adoption of the
general law provisions, those who had run the previous 1961 recall
were still very much in evidence in the Charter Revision Commission
and managed to have the signature percentage requirement reduced.

Had Palo Alto revised this charter to adapt general law signature
requirements the figures would have looked like those in Table VII.

Table VII clearly indicates that recall would be much more
difficult to achieve under the general law provisions. In the writer's
opinion, had the city adapted the 25 percent requirement under general
law, given the voting information above, the situation would be absurd
and a flagrant disregard of fairness for proponents of recall.

Palo Alto is illustrative of the need for specific charter recall
provisions that coincide more with discoverable patterns of local
electoral politics than with an arbitrary blanket provision as found
in the state's general law requirements.
### TABLE VI

**THE NUMBER OF SIGNATURES NEEDED FOR RECALL UNDER PRESENT AND PROPOSED SYSTEMS FOR PALO ALTO**

<table>
<thead>
<tr>
<th>Election Date</th>
<th>Registered Voters</th>
<th>Voted</th>
<th>20% Voting</th>
<th>12% Registered Voters</th>
</tr>
</thead>
<tbody>
<tr>
<td>1967</td>
<td>25,747</td>
<td>14,889</td>
<td>2,978</td>
<td>3,090</td>
</tr>
<tr>
<td>1965</td>
<td>27,377</td>
<td>9,779</td>
<td>1,956</td>
<td>3,288</td>
</tr>
<tr>
<td>1963</td>
<td>23,891</td>
<td>13,936</td>
<td>2,788</td>
<td>2,868</td>
</tr>
</tbody>
</table>

### TABLE VII

**THE NUMBER OF SIGNATURES NEEDED FOR RECALL IN PALO ALTO UNDER GENERAL LAW PROVISIONS**

<table>
<thead>
<tr>
<th>Election Date</th>
<th>Registered Voters</th>
<th>Voted</th>
<th>Recall (25%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1967</td>
<td>25,747</td>
<td>14,889</td>
<td>6,437</td>
</tr>
<tr>
<td>1965</td>
<td>27,377</td>
<td>9,779</td>
<td>6,845</td>
</tr>
<tr>
<td>1963</td>
<td>23,891</td>
<td>13,936</td>
<td>5,976</td>
</tr>
</tbody>
</table>

11 Source of Tables VI and VII is from a study prepared by the Citizens Charter Review Committee, 1968.
IV. RECENT SIGNIFICANT TRENDS OF RECALL IN HOME-RULE CITIES

There have been some important trends in home-rule municipal recall. These have usually been outgrowths of bitter community conflict in which a recall effort was the primary cause. Reforms that have come about recently in cities regarding recall were usually prompted by heated contests and enacted soon after the resulting recall election. Before considering case studies, a word must be said about the state district recall politics such as found in Los Angeles and Stockton.

Los Angeles and district recall. The Los Angeles recall provisions for City Councilman are based upon districts where 20 percent of the total vote cast for all candidates in the last district election is necessary to validate a recall petition. According to the elections office, this would average out for each district to be anywhere from 5,000 to 11,000 signatures. Collecting these signatures is not an insurmountable task considering proponents have six months for the collection of signatures.

Recall in Los Angeles appears to be a dormant issue. The last councilman recalled was in 1945 and the last filing for the recall of a councilman was in 1962 where the petition never met specifications of law. Even rumblings and threats of recall have not been extensive.

The city's present procedures for the recall come from the charter which was revised in 1951 following the recall attempt on Mayor Fletcher Bowron, who himself had come into office as a result of the 1938 Frank Shaw recall. The Bowron recall attempt brought much litigation which prompted revision of the charter.
Los Angeles is a semi-partisan city, therefore, the scarcity of recall might be the hesitancy of parties to engage in an otherwise non-partisan effort which could quickly become partisan. Parties generally conceive recall efforts as being out of their role. Since, after all, they are habitual opponents of the office holders of the other party, they would find it unseemly to attack an office holder without waiting for an election.

Due to the lack of recall reform activity, Los Angeles apparently is satisfied with its recall plan. However, it must not be overlooked that Los Angeles has not had extensive recall activity. It is quite possible that the city would seek immediate revision to enact more stringent procedures, as did Palo Alto, following an especially heated recall effort. This has been the pattern of home-rule cities and the charter revision of recall in 1951 fits into this increasingly popular trend.

**Drift toward general law provisions of recall in home-rule municipalities.** In the few remaining cities where recall is controlled by special charter provisions there is an attempt to have recall come under the general law as provided in the State Election Codes. Such a trend is significant in that it would make recall considerably more difficult and pose, in most large cities, an insurmountable task to prospective recall proponents.

Berkeley presents a prime example of this trend toward making recall more difficult. In October, 1964, the city of Berkeley experienced a bitter recall contest against several school board officials. Following the divisive event, a campaign based on the belief that recall was too easily achieved, attempted to have the twenty percent
Berkeley requirement\textsuperscript{12} raised to twenty-five percent of the registered electors which is the same as in the general law.

The signature requirement change was accomplished in April of 1965, when memories were still smarting from the recall a year before.

In an interview, Edith Campbell, City Clerk of Berkeley, stated that most city clerks probably favored the general law because it made recall more difficult. Campbell also expressed a point that has been consistently held to by most city officials interviewed\textsuperscript{13}. This is the practical argument that a city charter is much harder to change than a general law code to which a charter might refer. This is desired by city officials according to Edith Campbell and was reiterated by Ann Tanner, the City Clerk of Palo Alto. Miss Tanner also expressed the belief that recall was much too easy and should be made more difficult\textsuperscript{14}.

The City of Long Beach has a rather vague recall section in its charter. Many of its provisions are similar to the general law, yet it remains silent on strategic procedures that should be made known to recall proponents. Where the charter is silent on important rules for recall, the State Election Code is employed. This makes the charter seem confusing and forces anyone ignorant of the law to refer also to the State Codes besides the city charter.

\textsuperscript{12}Twenty percent of the entire vote case for mayor at the last preceding municipal election.

\textsuperscript{13}Interview with Edith Campbell, City Clerk of Berkeley, February 23, 1972.

\textsuperscript{14}Interview with Ann Tanner, City Clerk of Palo Alto, February 23, 1972.
The present signature requirement for Long Beach is twenty-five percent of the vote cast in the last general municipal election. City officials are, however, displeased with the present requirements and are attempting to have the charter recall provisions changed over to the State Election Codes. Their express purpose for this change, according to the city's election attorney, Ed Bennet, is to make recall harder to achieve. He said that the state law was a strict law and would therefore discourage recall attempts within the city.¹⁵

Bennet said that he did not believe in recall because it "does not serve any useful purpose," is a lot of work, and "wrecks the whole election process." He bases his dislike for recall on the belief that it is too costly and is not fair to a politician who gets "jittery" with the recall threat. Bennet also held that since a recall election brings out "unstable guys" who would vote against anything, it is unfair to the incumbent who could just as well get voted out at the regular election rather than a bothersome special one.

There was also a genuine fear on Bennet's part that he would come under too much criticism because of the lack of completeness in the city's provisions. He said that following a 1970 Long Beach recall he received a great deal of criticism and was afraid of being taken to court, therefore he wanted to shift the responsibility to the State Codes.

Bennet believed, as did other city officials, that the general election law could be changed very easily and should at some point

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in the near future. He maintained that the state provision of twenty-five percent (registered electors) was still too low. He seemed to think that it would be much easier to change the general law rather than the charter if ever a change was needed. "All I've got to do is just talk to my State Senator--boom! You got it changed."

The hostility some Long Beach officials have against recall is perhaps acute and not consistent with a majority viewpoint. However, these opinions are in keeping with the general view toward recall which is at present a subdued disdain. On May 9, 1972 the people of Long Beach will vote on whether or not to change their recall to general law provisions.
CHAPTER VI
CONCLUSION: RECALL IN PERSPECTIVE

Recall is but one facet of the political tradition in California. It reflects the historical background of the state, and more broadly is characteristic of the principles of responsive government which have become salient ideals of this country's political heritage.

The nature and course of its development as a democratic principle once considered "radical" is important and adds further insight to the assessment of future experiments in the democratic process.

I. OVERVIEW OF THE STATUTORY DEVELOPMENT OF RECALL

The statutory law of recall has not been difficult to amend. Major changes as well as small technical amendments have been carried out with relative ease. In 1953, for example, the 12 percent signature requirement passed in the California Assembly by a vote of 49 to 2, with little debate.

A pattern of increased complexity can be observed in the law. Numerous amendments to the original provisions have taken place, most of which have been technical, thus affecting the law substantially. Yet, it is significant that the legislature has not greatly disturbed the basic principles and reserved powers of the recall concept. It has taken note, evidently, of the sacrosanct nature of reserved
powers. These powers, of which recall is a part, are inherent in the people and are protected by the government, as provided in the state constitution.¹

The procedure of recall, as first laid down in the organic law and in the act dealing with municipal governments, was simple and without complex technical measures. Through its simplicity, however, certain areas of the original provisions were left ambiguous. While remedial legislation was certainly expected and needed, the author questions the justification for making recall more difficult while trying to reform it.

The conceptual and legal framework for recall was established in 1911 with its incorporation into the state constitution. Considerable debate on its early abuses and weaknesses took place in the early years following its adoption. The 1915 and 1917 legislatures were most active in the discussion of remedial legislation.

The period of major significance, however, was in the 1930's when the general law of recall underwent major revisions. Legislation in 1931 established numerous basic procedural requirements in recall such as pertains to circulation of the petition, major petition requirements, and provisions for notification, response, and publication of the charges.

In 1939 the Political Statutes were codified for the first time and incorporated into the State's Election Codes. The codification indexed the law, but did not substantially alter any of the provisions.

¹California State Constitution, Article I, Section 2.
Again in 1961 the election laws were recodified without substantive revision to the content.

During the period 1967 to 1970, amendments to the law of recall were considerable. The nature of the changes was remedial and most often not aimed at recall specifically, but accompanied corrective legislation in the whole body of election laws for the promotion of greater efficiency, uniformity, and economy. Yet, technical complexity in any procedure performed by laymen has a hampering effect which can easily induce discouragement.

It would seem sensible and more in keeping with the spirit of direct democracy if in the near future the general law of recall might be made simpler, less restrictive in its maze of rigid technical requirements, and more uniform. Former Secretary of State, Pat Sullivan, suggested a logical course when he observed that uniformity should prevail in the procedural requirements for counties, cities, and districts.

While there appears to be no conscious effort on the part of the legislature and its members to subvert recall, there is a danger that it could become a victim of more protective requirements which complicate the law and detract from procedural simplicity.

II. OVERVIEW OF THE JUDICIAL INTERPRETATION OF RECALL

Early in recall history the courts established a very liberal attitude toward recall and consistently ruled in favor of letting the

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2 During this period, 17 revisions of a technical nature were made.

3 Interview with Pat Sullivan, January 14, 1971.
issue go before the people whenever possible. Yet, the relative ease of litigation and stalling tactics in the courts often have defeated the purpose of a liberal recall law. Early established principles which have guided the courts in their rulings on recall have consistently involved liberal construction with a view to promoting the purpose for which the charters have been enacted by the people.4

With the increasing amount of mandatory, self-executing provisions that the legislature has enacted in recent years, the courts have gradually reversed the liberal tradition in its recall decisions.5 This trend toward reinterpretation is not yet crucial, and is in many cases proper, guarding against indiscriminate and irresponsible execution of the general law provisions.

A significant decision was rendered in 1966 by the court in Moore v. City Council of Maywood, 244 C. A. 2d 892. The ruling is important because the court far exceeded the established tradition of judicial interpretation in the matter of recall. While the interpretation rendered by the Moore court was far more liberal in substance than granted by legislative intent, it established what the author believes could become an unfortunate precedent of transcending original meaning and eventually restricting recall.

A criticism pertaining to a highly significant question of law has developed recently dealing with the principle of equal protection

4Conn v. City Council, 17 C. A. 705 (1912).

5This is most noticeable in Chambers v. Glenn Colusa, 57 C. A. 155; Maycock v. Kerr, 216 C. 171; and Lee v. Superior Court 265 C. A. 2d 49. Contrast with Conn v. City Council, 17 C. A. 705; Worth v. Downey, 74 C. A. 632; Magoon v. Heath, 79 C. A. 632; and Chester v. Hall, 55 C. A. 611 in which the courts have taken a more liberal view to the execution by proponents of technical requirements.
under the law as provided in Amendments I and XIV of the United States Constitution.

The issue of the case⁶ was argued by city council members whose recall had been sought and consequently responded with a challenge to the constitutionality of certain provisions in the recall procedure. The respondents held that an incumbent in a recall proceeding must poll at least 50 percent of the votes on the recall question (Election Code, Section 27516), while the candidate to succeed to the office must only win a plurality of votes cast (Section 27518). In addition to these alleged inequities, the incumbent is prohibited from being a candidate to succeed himself (Section 27516).

It was held in the argument that interjection of a slate of candidates on the same ballot at the same election "materially subverts the recall question,"⁷ by the introduction of an "extraneous issue."⁸ The principle raised here is one of fairness to the incumbent who, it is argued, is being subjected to two different standards of election procedure. The Superior Court of California in the County of Monterey refused to issue a decision on the case due to insubstantial constitutional grounds.

There has been a noticeable lack of significant cases within the last five years which prevents any determination of a pattern in cases.


⁷In Petition for Writ of Mandate, Carey v. City of Seaside, June 18, 1971, p. 12.

⁸See above, p. 10.
It does appear, however, that the courts will become as restrictive as the increasing legislation imposing stricter requirements on the procedure.

III. SOME CRITICAL OBSERVATIONS ON RECALL

Recall is a reserved power of the people who have the authority to exercise their judgments in matters of a political nature regarding an official's behavior in office. The recall is unique in that it allows for an official's dismissal on purely political grounds. As Bird and Ryan observed, when an official is guilty of corruption, clearly proven, his removal from office is not the proper function of recall. Recall was not intended as recourse for criminal behavior. Rather, its use is to be a form of last resort where citizens can make judgments upon the performance of officials, based solely on political considerations.

In their study Bird and Ryan noted that one of the major criticisms of recall was its tendency to place the incumbent at a disadvantage with his opponents. The official originally elected in an open-field election where only a plurality is needed to win must stand election in a bi-partisan contest, in which he must win a majority of the vote. They also point out that the form of ballot presently used forces an official to win not only against his record but against a field of candidates. It obscures the main issue "by injecting into the controversy an election campaign for a successor."

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9 Bird and Ryan, p. 347.
10 Bird and Ryan, p. 81.
11 Bird and Ryan, p. 361.
A more common criticism of recall in California is expressed by Assemblyman James Hayes who believes that too often recall is used as an irresponsible weapon to harass and intimidate incumbents. Hayes contends that it is usually the disgruntled minority who initiates the nuisance recall.12

Critics of recall charge that too often recall movements are prompted by differences in political ideology which should have no valid basis for grounds of recall, but should instead be aired at the regular general election.

Some suggest that the solution to the above problem is to require that grounds for recall be made more specific and legally definitive. Assemblyman Hayes and former Secretary of State Pat Sullivan believe that the charges for recall should be misfeasance, malfeasance, and non-feasance.13

Generally, the grounds given for recall of an official are shallow and usually amount to some general expression of disapproval stated generically as incompetence or insufficiency. To some this is inappropriate and leads to irresponsibility. Yet, because recall is a political process, its grounds were intended to be based on political considerations. In providing for specific, legally defined grounds for recall, there would be a danger, in effect, of destroying the original recall concept.

12Assembly Interim Committee Report on Constitutional Amendments, October 9, 1968, p. 25.

13These views were expressed in separate interviews with Hayes and Sullivan on January 19, 1971 and August 17, 1971 respectively.
Bird and Ryan observed in their study that recall is applied almost entirely to political (or quasi-political) officials--seldom to technical officials, such as a city clerk. The same pattern has held true to the present and is significant in that while technical officials have the same opportunity to be subject to recall, the more mechanical nature of their duties decreases the chances for politically based charges against their performance.

Bird and Ryan observed a correlation between the incidence of recall and the size of the political unit in their study. They maintained that the difficulty in using the recall is "somewhat in proportion to the size of the population." 14

This situation is no less a problem today and has in fact increased. The achievement of a recall in one of California's large urban centers, especially under the general law requirements, is a most difficult task. In view of the considerable metropolitan growth since the early twentieth century, it would seem more politically correct--and more in keeping with the progressive spirit of direct democracy--to amend the general law, basing petition signature requirements upon various population categories. Perhaps a better general law regarding signature requirements for municipal recall petitions might be as in Table VIII.

Basing the signature requirement on a sliding population scale would contribute an element of fairness to recall law that is needed in this age when the gulf between popular control and bureaucratic self-perpetuation is an ever widening phenomenon. It would also represent a much needed move to achieve electoral reform.

14 Bird and Ryan, pp. 190-191.
TABLE VIII
PROPOSED SIGNATURE REQUIREMENT

<table>
<thead>
<tr>
<th>Population</th>
<th>Percent of Registered Voters of the City</th>
</tr>
</thead>
<tbody>
<tr>
<td>500,000+</td>
<td>12%</td>
</tr>
<tr>
<td>100,000–500,000</td>
<td>15%</td>
</tr>
<tr>
<td>10,000–100,000</td>
<td>20%</td>
</tr>
<tr>
<td>5,000–10,000</td>
<td>25%</td>
</tr>
</tbody>
</table>
IV. RECALL AND ELECTORAL ACCOUNTABILITY

Professor John Vieg has suggested an appropriate context within which recall might be considered:

This game of democratic politics... is the greatest game men have ever devised, its purpose being nothing less than the taming of power, the civilizing of it by making it responsible.\footnote{Quoted from testimony given by Professor Vieg before the California State Legislature's Commission on Constitutional Amendments, mimeograph entitled "Revision of the California Constitution, Phase III: Article XXIII--Recall of Public Officers." October 9, 1968, p. 80.}

Recall is a legitimate tool for taming the power of political elites. It brings into play the effective ability of electoral "checks and balances" and encourages greater discretion upon the part of political leaders. Its execution, and the mere threat alone, should serve as a substantial deterrent against political leadership that has become entrenched and oligarchial.\footnote{See Kenneth Prewitt's study, "Political Ambitions, Volunteerism, and Electoral Accountability," \textit{American Political Science Review}, 64:14, March, 1970.}

One of the possible benefits to accrue from the recall is a sharpening of electoral accountability where an official has exhibited only minimal concern for his constituency.

Use, or threat of recall, if it is credible, tends to increase a public servant's political self-consciousness. It is through recall that electors may force their officials to face up to the reality of their future success in office. Joseph A. Schlesinger points to the importance of this function when he states: "No more irresponsible government is imaginable than one of high-minded men unconcerned for their political futures."\footnote{Joseph A. Schlesinger, \textit{Ambition and Politics} (Chicago: Rand McNally and Company, 1966), p. 2.}
In a recall effort, officials are made more fully aware of the people's power, and it creates dialogue where the official must justify his performance in office and scrutinize more judiciously his future behavior in relationship to the community.

V. THE RECALL CONCEPT AFTER 50 YEARS

In his biennial message to the 1915 Legislature, Hiram Johnson conceded that recall had been subject to wide abuse and that defects existed in his program of direct legislation. It was widely recognized in the early days of recall history that the law and its application often did not measure up to popular expectations.¹⁸

Recall has not become the panacea to the ills of democracy as the California progressives had hoped. Yet, as an experiment in democracy, it has fared remarkably well, withstanding abuse, vilification, and perennial revision. While it is being made harder to achieve, recall has remained consistent in principle to its basic tenets of reserved powers to the people. There appears no threat to the existence of recall, however, constant vigilance must assure that its functional application not become eroded.

Like any democratic concept, recall has been, and will continue to be, susceptible to abuse. Democratic principles which reserve political authority to citizens will not be without those weaknesses inherent in human nature itself.

VI. CONCLUSION

The author in this study has attempted to illustrate the difficulties and restrictions which have gradually been placed in the way of the recall process. Much emphasis has been made of original intent throughout the paper because the writer is convinced that the proposals put forth by the early California Progressives, such as recall, were politically poignant measures, aimed at opening channels of the political process in order that the electorate might be allowed more direct control of their political situation. These measures of direct democracy--initiative, referendum, and recall--were in their original form somewhat crude, not fully developed and often ambiguous, yet the spirit--the original intent--was one of simplicity and cogency which could be comprehended by those unaccustomed to an otherwise sophisticated political process.

While recall is not a perfect answer to the problems of local politics, it has served as a useful tool where people may initiate their own political action in an attempt to penetrate problems derived from improper or inadequate representation.

In the hope that recall will provide an open and healthy channel for conflict resolution--without further restrictions and obstacles placed in its path--the author urges retention of recall in a form that best serves popular control over political incumbents.
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