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RECALL OF ELECTED OFFICIALS

INTRODUCTION

Recall is the procedure by which electors may submit petitions to require a special election to remove an incumbent elected official from office. If an incumbent loses a recall election, the successful challenger serves the remainder of the current term of office. A recall petition may be filed after the completion of the first year of office, but an elected official may be subject to only one recall election during any particular term of office.

Recalls are authorized in Article XIII, Section 12, Wisconsin Constitution, and Section 9.10, Wisconsin Statutes. This brief summarizes the history and procedures of the recall.

WHO MAY BE RECALLED

A recall may be held for statewide constitutional officers (governor, lieutenant governor, secretary of state, state treasurer, attorney general, and superintendent of public instruction); state legislators; district attorneys; members of the United States Congress; members of the judiciary (circuit courts, court of appeals, supreme court); and elective officials of counties, cities, villages, towns, town sanitary districts, and school districts. However, it is not clear if the U.S. Constitution permits the state recall of a member of Congress.

Reasons for Recalls. The recall has often been used to remove from office those accused or convicted of official misconduct or criminal behavior, but recall efforts arising from dissatisfaction over public policy choices have become increasingly common. A recall petition for a city, village, town, town sanitary district, or school district officer must contain a reason which is related to the official responsibilities of the official for whom removal is sought. No

reason need be provided for other offices. Chapter 44, Laws of 1933, contained a requirement that a statement of the reason for the recall of constitutional officers, judicial, legislative, or county officials be provided. In 1948, however, this provision was ruled invalid by the Wisconsin Attorney General (37 OAG 91), who stated that a later law could not impose an obligation on the electorate which had been expressly omitted in the constitutional provision.

Reasons for Recalls in Other States. In contrast, Minnesota's constitution generally requires that statewide officeholders may be recalled only for serious malfeasance in their performance of official duties or conviction of a serious crime during the term of office. In addition, the supreme court must certify that the facts alleged are true and constitute sufficient grounds to warrant recall. Specific reasons for recall of statewide officers are required in eight states.

PROCEDURAL REQUIREMENTS

Initiation. Electors must, before circulating recall petitions, register with the appropriate filing officer, such as the municipal, county, or district clerk, or the Government Accountability Board in the case of statewide offices or legislators. There are no campaign contribution limits on petition circulators, but such limits are applicable to recall election candidates.

Signatures. In general, petitions must contain valid signatures of electors equal to at least 25% of the total votes cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled. Only qualified resident electors of that district or territory may sign, and they

must indicate the date and provide their address.

Petition Time Limit. The last date that a petition for recall of an officer may be filed is 5:00 p.m. on the 60th day commencing after registration. All signatures must have been dated within the petition gathering period.

Review of Petitions. The statutes provide time frames for the filing officer to review the petitions for sufficiency, and for challenges, rebuttals, and court reviews.

Setting the Election Date(s). When two or more persons compete for a nonpartisan office, a recall primary is held. The two persons receiving the highest number of votes in the primary appear on the recall ballot, except that if any candidate receives a majority of votes in the primary, he or she automatically assumes office for the remainder of the term. For any partisan office, a primary is held for each political party that is by law entitled to a separate ballot and from which more than one candidate files for the party's nomination. Unless he or she resigns, the incumbent's name automatically appears on the ballot. If there is a primary, the recall election is held on the Tuesday of the 4th week commencing after the primary. The incumbent continues to perform the duties of the office until the recall results are certified, after which the winner of the election serves in the office for the remainder of the term.

HISTORY

Like the initiative and referendum, the recall is a product of the progressive movement of the early 20th century. The recall was first authorized in the U.S. in 1903 in Los Angeles, California. In 1908, Oregon became the first state to apply the recall to elected state officials. Nineteen states and the District of Columbia now provide for the recall of state-level officials. Recalls may be held in local jurisdictions in at least 29 states.

The recall of city officials in Wisconsin was suggested in the message of Governor Robert M. La Follette to the Legislature in 1905, and

was authorized by Chapter 635, Laws of 1911. The authorization to recall state, congressional, judicial, legislative, and county officials was created by an amendment to the Wisconsin Constitution ratified in 1926. The ability to recall officials of villages, towns, and school districts was created by Chapter 403, Laws of 1977; district attorneys by 1989 Wisconsin Act 31; and officials of town sanitary districts by 2007 Wisconsin Act 56.

Numerous local government officials have been recalled through the years. A noteworthy example was the unseating of seven members of the Milwaukee County Board of Supervisors in 2002 due to controversy over costly changes to the county employee pension system. No statewide elected officials have ever faced a recall, and only one member of the judiciary, Dane County Judge Archie Simonson, has been recalled (1977).

Four Wisconsin state legislators have been subject to recall elections:

- Senator Otto Mueller (R-Wausau) won a recall election in 1932. This effort was part of a Progressive Republican plan to recall state legislators who opposed the tax bill submitted by Governor Philip La Follette.
- Representative James Holperin (D-Eagle River) won a recall election in 1990. He had angered some constituents by his support of a proposed 10-year state settlement of Chippewa tribal hunting and spearfishing rights.
- Senator George Petak (R-Racine) lost his seat in a 1996 recall election after he had cast the deciding vote for a regional sales tax to pay for the Milwaukee Brewers' Miller Park professional baseball stadium. Democrat Kim Plache won the election, which shifted control of the state senate to the Democrats.
- Senator Gary George (D-Milwaukee) lost in a Democratic Party recall primary election in 2003 to Spencer Coggs, who ran unopposed in the recall election. Senator George had upset constituents in his heavily Democratic-leaning district by siding with Republicans on several issues.