

RECALL CAUSE REQUIREMENTS

JOINT INFORMATIONAL HEARING OF THE ASSEMBLY ELECTIONS COMMITTEE
AND SENATE COMMITTEE ON ELECTIONS & CONSTITUTIONAL AMENDMENTS

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AGENDA

- Brief Overview of California Law
- Other States with Cause Requirements
- Interpretations of Cause Requirements by Courts
- Suggested Standards for Judicial Review



BRIEF OVERVIEW OF EXISTING CALIFORNIA CONSTITUTION RECALL POWER

“Sufficiency of reason is not reviewable.”

Cal. Const. Art. II sec. 14(a)

Exceptions to recall: (1) in office for less than 90 days,
(2) failed attempt to recall in last 6 months, (3) end of
term within 6 months.

Cal. Elections Code § 11007



“EIGHT” STATES WITH A CAUSE REQUIREMENT

Alaska: AS § 15.45.510

Georgia: Ga. Code Ann. §§ 21-4-3 and 21-4-6

Kansas: K.S.A. §§ 25-4301 and 25-4302

Minnesota: M.S.A. Const. Art 8, § 6, and M.S.A. §§ 211C.01-211C.05

Montana: MCA §§ 2-16-603 and 2-16-615

Rhode Island: RI Const. Art. 4, §1

Virginia: VA Code Ann. §§ 24.2-231 and 24.2-233

Washington: WA Const. Art 1, § 33



RANGE OF CAUSE REQUIREMENTS

- “In the various states with a right of recall, the people’s power spans a spectrum. ‘At one end of the spectrum is the view that recall is ‘special, extraordinary, and unusual,’ and produces the ‘harsh’ result of removing an official prior to the expiration of the fixed term to which he was elected.’ Under this view, statutory grounds are construed narrowly in favor of the officeholder, and any violation of the prescribed procedures may invalidate the recall effort. ‘At the other end of the spectrum’ is the view that recall is essentially a political process and ‘all doubts are resolved in favor of placing the recall question before the voters.’ Under this view, disagreement with the officeholder’s position on policy questions is sufficient ground for recall.”
- “Alaska appears to follow a middle ground between these two positions.”

State v. Recall Dunleavy, 491 P.3d 343, 352-353 (AK 2021)



SUGGESTED STANDARDS FOR JUDICIAL REVIEW

- Standard of Review Similar to a Motion to Dismiss –
 - Are there specific or particular facts asserted to state a legally sufficient claim? See Alaska Attorney General Opinion to Fenumiai, 2013 WL 6593253 (Dec. 6, 2013).
 - In determining legal sufficiency, facts alleged should be taken as true and only need to be specific enough to put the public and the subject of the recall on notice of the substance of the complaint. See *Phillips v. Hawthorne*, 269 Ga. 9, 12 (1998).
 - Grounds stated in a recall petition must be specific enough to allow for the subject of the recall to prepare a statement justifying the conduct in office. See *Reynolds v. Figge*, 28 Kan.App.2d 635, 642 (2001); *Foster v. Kovich*, 207 Mont. 139, 149 (1983).
- Probable Cause Standard –
 - Determination that facts alleged in recall petition were true based on a reasonable grounds after proper inquiry including the provision of evidence by the subject of the recall. See *DeLong v. Welch*, 272 Ga. 730 (2000)(noting a change in the standard of proof in Georgia to probable cause in 1998).
- Burden of Proof –
 - Burden is on the petitioner and courts vary on whether preponderance of the evidence or clear and convincing is the proper standard. *Townes v. Virginia State Board of Elections*, 299 Va.34 (2020)(clear and convincing).



CONVERSATION

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