

HIGH CRIMES AND MISDEMEANORS: REMOVING PUBLIC OFFICIALS FROM OFFICE IN UTAH AND THE CASE FOR RECALL

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I. INTRODUCTION

In 1900, the citizens of Utah were granted the direct democracy powers of initiative and referendum by constitutional amendment.¹ However, the third direct democracy power, the recall, was not given to Utah's citizens. During the early twentieth century, many Western states began to implement recall provisions for state or local government officials.² This trend continued throughout the century, and today only thirteen states,³ including Utah, still withhold from their citizens the power of removing public officials at any time by popular vote.⁴

The people of Utah do have methods for removing public officials other than through the usual electoral process. Governors may be impeached for high crimes and misdemeanors,⁵ judges may be removed by the Judicial Conduct Commission,⁶ and city and county officials may be removed for misconduct or malfeasance in office.⁷ But these methods for removing public officials do not seem to be fulfilling the needs and the rights of the people of Utah. The Utah Supreme Court in *State v. Jones* said that "the principle, fundamental in our democracy" is the people's right and privilege to remove public officials at any time, "and that neither the courts nor any other authority should be hasty to encroach upon that right."⁸ Over the past thirty-five years, the people of Utah have attempted on several occasions to implement the recall, but each attempt has been met with resistance and has failed.⁹

This Comment first outlines the different methods for removing public officials in Utah at the state, county, and city levels. Next, the analysis focuses on the problems and inadequacies of the Local Government Removal Statutes, which provide for the removal of county and city officials for malfeasance and misconduct in office.¹⁰ This Comment then traces the history of the recall from its

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¹ See UTAH CONST. art. VI, § 1.

² See *infra* Part IV.C.

³ See *infra* note 132.

⁴ See *infra* notes 122-123 and accompanying text.

⁵ See *infra* Part II.A.

⁶ See *infra* Part II.B.

⁷ See *infra* Part II.C, D.

⁸ 407 P.2d 571, 574 (Utah 1965).

⁹ See *infra* Part V.

¹⁰ The Utah statutes that provide methods for removing local government officials will be referred to in this Comment as the "Local Government Removal Statutes." See UTAH CONST. art. VI, § 21; see also UTAH CODE ANN. §§ 10-3-826, 10-3-1225, 17-16-

origins in the United States to its use in the present day, followed by a comparative analysis of the recall provisions in the various states. Next, it addresses Utah's history with recall and the constitutionality of a recall provision in Utah. Finally, this Comment analyzes the various arguments for and against recall at the state and local levels. This Comment concludes that the arguments for recall in Utah outweigh those against, and that Utah is in need of a recall provision to keep public officials continuously accountable for their actions, and to increase the citizen's participation in the Utah political process.

II. WAYS TO REMOVE PUBLIC OFFICIALS FROM OFFICE IN UTAH

There are various ways to remove public officials in Utah, and the methods for removal largely depend on the rank and position the officer holds in government. Although the grounds for removal are generally similar for state and local officials, the governor and state judges can be removed by impeachment.¹¹ Other officials, such as city and county officers, are subject to removal by judicial proceedings through the Removal Statutes that govern local officials.

A. *Governors and State Legislators*

Impeachment is reserved only for high-ranking state government officials. The governor and judicial officers are the primary state officials who may be removed by impeachment proceedings.¹² They are "liable to impeachment for high crimes, misdemeanors, or malfeasance in office; but judgment in such cases shall extend only to removal from office."¹³ In Utah, the House of Representatives has the sole power of impeachment.¹⁴ Two-thirds of the House votes are required for impeachment.¹⁵ If the House impeaches the officer, the matter is then tried by the Senate.¹⁶ If the Senate convicts a member by a two-thirds majority,¹⁷ "[t]he judgment may be that the officer be suspended, or removed from office and disqualified to hold any office of honor, trust, or profit in the state."¹⁸ Whether or

10.5, 76-8-201, 77-6-1 (2006) [hereinafter Local Government Removal Statutes] (codifying the powers and procedures to remove government officials).

¹¹ UTAH CONST. art. VI, § 19. This provision also states that state officials "shall be liable to impeachment." However, no statutory provision exists which executes this mandate. See also UTAH CODE ANN. § 77-5-1 (stating that "[t]he governor and other state and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors or malfeasance in office").

¹² See UTAH CODE ANN. § 77-5-1.

¹³ UTAH CONST. art. VI, § 19.

¹⁴ UTAH CONST. art. VI, § 17; UTAH CODE ANN. § 77-5-3.

¹⁵ UTAH CODE ANN. § 77-5-3 ("Impeachments shall be by resolution. The resolution shall originate in and be adopted by the House of Representatives.").

¹⁶ *Id.* § 77-5-4.

¹⁷ See UTAH CONST. art. VI, § 18(4); UTAH CODE ANN. §§ 77-5-4 to 8.

¹⁸ UTAH CODE ANN. § 77-5-9.

not the officer is convicted or acquitted, the officer will “nevertheless be liable to prosecution, trial, and punishment according to law for any offense committed that constituted a basis for the impeachment proceedings.”¹⁹

An additional constitutional provision exists expressly for state legislators. It specifies that “[e]ach house shall be the judge of the election and qualifications of its members, and may punish them for disorderly conduct, and with the concurrence of two-thirds of all the members elected, expel a member for cause.”²⁰ Although this provision is curiously similar to the impeachment clause, it only pertains to state legislators. The legislature has never expelled a member for cause and, at present, has no rules enabling it to do so.²¹

Utah Citizens have no means of removing high ranking state officials except through the ballot box. Persons who are elected to the offices of governor or state legislator have the peace of mind that they cannot be easily removed from office. However, as will be discussed, other state and local officials can be removed from office through citizen-initiated efforts.

B. Judges

Since Utah was granted statehood in 1896, only two Utah state court judges have been removed from the bench.²² Utah currently has three alternative methods for the removal of judicial officers. The first is by popular vote under article VIII, section 9 of the Utah Constitution, which states that state judges “shall be subject to an unopposed retention election at the corresponding general election.”²³ Although this citizen-held power of removal has not often been used, it is still favorable because it expands direct democracy in Utah. This method has been in place since 1985 but was not successfully employed to remove a judicial officer until Judge David S. Young lost his retention election by a 53% to 47% vote in 2002.²⁴ A Utah state judge can also be removed by the state’s legislative branch by

¹⁹ *Id.* § 77-5-11.

²⁰ UTAH CONST. art. VI, § 10.

²¹ Utah Constitution article six, section ten does not seem to be self-executing. Therefore, the legislature would need to enact legislation enabling it to remove its members.

²² The most recent is Judge Lewis of the Third District in 2006. See Geoffrey Fattah & Linda Thompson, *Judge Lewis Is Ousted by 54% of Voters*, DESERET MORNING NEWS, Nov. 8, 2006, at A15.

²³ UTAH CONST. art. VIII, § 9 (“Each appointee to a court of record shall be subject to an unopposed retention election at the first general election held more than three years after appointment. Following initial voter approval, each Supreme Court justice every tenth year, and each judge of other courts of record every sixth year, shall be subject to an unopposed retention election at the corresponding general election.”).

²⁴ See Elizabeth Neff, *Judge’s Removal Causes Stir*, SALT LAKE TRIB., Nov. 7, 2002, at B1 (“Judge Young had gained a reputation for being soft on sexual offenders. In one instance, a newspaper reported: The effort to remove the judge has been in the works since he ordered two 21 year-old men to perform 150 hours community service hours for sex acts with a 12-year-old girl. Prosecutors in Tooele had charged the men with sodomy, a first-

impeachment.²⁵ Such an action can only arise when a judge is impeached for “high crimes, misdemeanors, or malfeasance in office,” and has never been employed in Utah.²⁶

The third method involves the state’s Judicial Conduct Commission (JCC) in tandem with the Utah Supreme Court.²⁷ The purpose of the JCC is to “investigate and conduct confidential hearings regarding complaints against any justice or judge.”²⁸ The JCC “may order the reprimand, censure, suspension, removal, or involuntary retirement of any justice or judge.”²⁹

Before implementing any JCC order, the Utah Supreme Court will review the JCC’s “proceedings as to both law and fact.”³⁰ After its review, the Supreme Court will “issue its order implementing, rejecting, or modifying the [JCC’s] order.”³¹ In 2004, Judge Joseph W. Anderson was the first and only judge to be removed from office under article VIII, section 13 of the Utah Constitution.³² In *In re Anderson*,³³ the JCC recommended that Judge Anderson receive a formal reprimand for violating Utah Code sections 78-3a-308(2) and 78-7-25(1) by failing to hold adjudication hearings “no later than 60 calendar days from the date of the shelter hearing” in eleven separate instances and for not deciding “all matters submitted

degree felony. Young reduced those charges to third degree felonies and did not order any jail time. The men said they thought the girl was 17.”) (internal quotation marks and citation omitted); see also Daniel Swinton, Note, *In re Anderson and the Removal of Utah State Court Judges: The Supreme Court of Utah and Its Review of Judicial Conduct Commission Orders*, 19 *BYU J. PUB. L.* 473, 476 & n.31 (2005) (discussing the Utah Supreme Court’s role in removing Utah Judges); Laura Hancock, *Group Steps Up Efforts to Remove Judge Young*, *DESERET NEWS*, Oct. 12, 2002, at B6 (stating that Judge Young was almost successfully removed from the bench in 1996—being retained by a very slim 51% to 49% vote).

²⁵ UTAH CONST. art. IV, § 19.

²⁶ *Id.*

²⁷ UTAH CONST. art. VIII, § 13.

²⁸ *Id.*

²⁹ *Id.* The JCC may discipline a judicial officer for any of the following:

- (1) action which constitutes willful misconduct in office;
- (2) final conviction of a crime punishable as a felony under state or federal law;
- (3) willful and persistent failure to perform judicial duties;
- (4) disability that seriously interferes with the performance of judicial duties; or
- (5) conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

Id.

³⁰ *Id.*

³¹ *Id.*

³² See Swinton, *supra* note 24, at 476–77.

³³ 2004 UT 7, ¶ 63, 82 P.3d 1134, 1148.

for final determination within two months of submission.”³⁴ However, it has been argued that in that instance, the Supreme Court of Utah exceeded its power under article VIII, section 13, by removing Judge Anderson when it did not have the power to do so because the JCC did not order any such disciplinary action.³⁵

The JCC’s disciplinary power is a valuable tool to keep the judiciary in check, but only one judge has ever been removed by the JCC and the Supreme Court. However, article VIII, section 13 allows anyone to file a complaint with the JCC, thereby increasing the people’s role in democracy more so than by the retention election or impeachment. Article VIII, section 13 is an important provision for the citizen’s of Utah because it gives them a limited role in policing the judiciary, despite the fact that a complaint rarely results in a judge being removed from the bench.³⁶

C. Appointed State and Local Officials

It is generally assumed that the power to appoint carries with it the power to remove.³⁷ In Utah, the governor “may remove any gubernatorial appointee for official misconduct, habitual or willful neglect of duty, or for other good and sufficient cause.”³⁸ This removal method falls under the governor’s executive power, but a citizen can attempt to remove any appointed local official by judicial proceedings.³⁹

D. County and Municipal Officers

Unlike state officials, local government officers do not enjoy the same protection when being removed from office. There are two primary methods that citizens can utilize to initiate actions to remove county and municipal officers. Local government officials may be removed from office through judicial proceedings if they commit high crimes and misdemeanors or malfeasance in

³⁴ *Id.* ¶¶ 39, 63 (citing UTAH CODE ANN. §§ 78-3a-308, 78-7-25 (2002)).

³⁵ See Swinton, *supra* note 24, at 474.

³⁶ The JCC regularly investigates dozens of complaints. See Elizabeth Neff, *Discipline Records Opened*, SALT LAKE TRIB., Jan. 2, 2003, at B1. (“Auditors found Utah’s conduct commission dismisses 82 percent of all complaints. . . . Between fiscal years 1996 and 2002, judges were privately sanctioned in 34 cases, while public sanctions were issued in 14 cases.”).

³⁷ See *Bogges v. Hous. Auth. of Charleston*, 273 F. Supp. 2d 729, 736–37 (S.D.W. Va. 2003).

³⁸ UTAH CODE ANN. § 67-1-3.

³⁹ See UTAH CONST. art. VI, § 21; see also UTAH CODE ANN. § 77-6-2 (“The accusation may be initiated by any taxpayer, grand jury, county attorney, or district attorney for the county in which the officer was elected or appointed, or by the attorney general.”).

office,⁴⁰ or commit an ethics violation.⁴¹ Although it may be easier to bring a removal action against a local government official, it is still very difficult to actually remove the person from office.

1. Municipal Officers and Employees Ethics Act

The Municipal Officers and Employees Ethics Act only applies to city officials and was enacted to "establish standards of conduct for municipal officers and employees."⁴² The Act provides for prosecution of officials for improperly using their public offices for personal financial gain and for failing to disclose actual or potential conflicts of interest between their public duties and their personal interests.⁴³ It prohibits the receiving of gifts or compensation that would most likely improperly "influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties."⁴⁴ An official who violates the Act may be guilty of a second or third degree felony and will be removed from office.⁴⁵ Unlike impeachment, any citizen within the municipality may file a complaint against the city officer.⁴⁶ The mayor or city manager has the responsibility to investigate a complaint.⁴⁷ However, there is no provision in the Act which names an alternative officer when the mayor or city manager is accused. Furthermore, it is unclear how many officers have been removed under the Act, if any, since there is no case law on the subject, and county and municipal attorney's offices in Utah tend to not keep records of such instances.

2. Removal by Judicial Proceedings

Basically, all justices of the peace, and city and county officers who are "not liable to impeachment," may be removed from office "for high crimes and misdemeanors or malfeasance in office" by judicial proceedings.⁴⁸ Officials cannot be removed from office simply because they have committed misdemeanors or malfeasance. The wrongful act must have occurred while the official was in

⁴⁰ See UTAH CONST. art. VI, § 21; see also UTAH CODE ANN. §§ 10-3-826, 10-3-1225, 17-16-10.5, 76-8-201, 77-6-1 (codifying the powers and procedures to remove elected officials in Utah).

⁴¹ See UTAH CODE ANN. §§ 10-3-1301 to -1312.

⁴² *Id.* § 10-3-1302.

⁴³ See *id.* §§ 10-3-1304 to -1305.

⁴⁴ *Id.* at § 10-3-1304.

⁴⁵ See *id.* § 10-3-1310.

⁴⁶ See *id.* § 10-3-1311.

⁴⁷ See *id.*

⁴⁸ *Id.* § 77-6-1; see also UTAH CONST. art. VI, § 21 (enabling the Utah Legislature to provide the manner for removal of government officers).

office⁴⁹ and must relate to the official's duties, that is, the official must be acting under color of office.⁵⁰

Although the body of case law dealing with malfeasance in office is very limited and quite outdated, there are cases that provide some guidance in identifying the misconduct. For example, in *Madsen v. Brown*, the mayor of the city of Grantsville was convicted of malfeasance in office and was found to have acted under color of office when he participated in the killing of the city's stray dogs.⁵¹ In an earlier Utah case, *State v. Geurts*, a city commissioner of Salt Lake City was found guilty of granting favors to certain city employees by giving them overtime pay for time not actually worked.⁵² A later court stated that if public officials offend the accepted standards of honesty and integrity of their offices, or if they show themselves to be "unfit steward[s] of the public trust," they will most likely be found to have committed malfeasance in office.⁵³

The advantage of the Local Government Removal Statutes is that any taxpayer in the jurisdiction can bring an action against a county or municipal officer.⁵⁴ Just as the people have the power to bring complaints against state judges through the Judicial Conduct Commission, the people of a county or city can directly participate in the removal of officers.⁵⁵ After the plaintiffs file their complaint, whether against a city or county official, the county attorney has the responsibility to investigate the claim and has a discretionary right to prosecute the accused.⁵⁶

⁴⁹ See, e.g., *State v. Bowen*, 620 P.2d 72, 73-74 (Utah 1980) (holding that County commissioner was not subject to removal from office for criminal conviction for having obtained unemployment insurance benefits by means of false representations prior to taking office).

⁵⁰ See *Madsen v. Brown*, 701 P.2d 1086, 1090 (Utah 1985) ("'[M]alfeasance in office' has acquired a commonly understood meaning: it requires an intentional act or omission relating to the duties of a public office, which amounts to a crime, or which involves a substantial breach of the trust imposed upon the official by the nature of his office, and which conduct is of such a character as to offend against the commonly accepted standards of honesty and morality." (quoting *State v. Guerts*, 359 P.2d 12, 14 (Utah 1961))).

⁵¹ 701 P.2d 1086, 1087, 1094-95 (Utah 1985).

⁵² 359 P.2d 12, 14-17 (Utah 1961).

⁵³ *Madsen*, 701 P.2d at 1094 (Stewart, J., dissenting).

⁵⁴ See UTAH CODE ANN. § 77-6-2 (2004).

⁵⁵ "The accusation may be initiated by any taxpayer, grand jury, county attorney, or district attorney for the county in which the officer was elected or appointed, or by the attorney general." *Id.*

⁵⁶ See *id.* § 77-6-4(2)(a). "If the accusation is against the county or district attorney, the court shall furnish a copy of the accusation to the Office of the Attorney General, who shall investigate and may prosecute the accusation." *Id.* § 77-6-4(2)(b).

III. PROBLEMS WITH THE LOCAL GOVERNMENT REMOVAL STATUTES

The purpose of an action to remove an officer for malfeasance or misconduct in office is "to provide a method of removing from office a public official, even though duly elected, who betrays his trust in office, i.e., is guilty of malfeasance, or who commits a crime of such nature as to demonstrate that he is unfit to hold public office."⁵⁷ The objective of removing an official from public office "is not to punish the offending incumbent, but to protect and preserve the office, and to free the public of an unfit officer."⁵⁸ The court in *State v. Jones* cogently stated why removal provisions are necessary and important to society: "[T]he principle, fundamental in our democracy, [is] that the privilege of choosing and electing public officials, and repudiating them if and when they so desire, belongs exclusively to the people; and that neither the courts nor any other authority should be hasty to encroach upon that right."⁵⁹ From this language, it seems clear that a Utah citizen's right to remove an elected official, "when they so desire," is a very important, if not a fundamental right. Why then is it so hard to remove officials through the removal statutes?

A. *The High Common Law Standard*

Although it is relatively easy to initiate a misconduct or malfeasance action, it is not easy ultimately to remove the accused official because the courts in Utah have set a high bar to clear. One standard articulated by the *Jones* court is that the "statute [authorizing removal of officers] should be strictly construed against the authority invoking it and liberally in favor of the one against whom it is asserted."⁶⁰ The *Madsen* dissent also noted that "[r]emoval is intended for those rare occasions when an official, because he has committed an act so morally reprehensible or offensive to accepted standards of honesty and integrity, shows himself to be an unfit steward of the public trust."⁶¹

The *Madsen* dissent continued by remarking that "[t]he purpose of the removal statutes is not to authorize judicial removal of unpopular, disliked, or thoughtless public officials," and that "[t]he election process is a sufficient remedy in such cases."⁶² But why should the citizens put up with disliked and thoughtless public officials? If the Local Government Removal Statutes are the only avenue to remove local officials, should not the courts liberally construe the statutes in favor of the citizen bringing the action? The dissent also noted that "[i]f the rule were otherwise, disgruntled citizens could use the courts to nullify the results of an election, interfere in the administration of governmental affairs to an intolerable

⁵⁷ *State v. Jones*, 407 P.2d 571, 572 (Utah 1965).

⁵⁸ *Kansas v. Schroeder*, 430 P.2d 304, 315 (Kan. 1967).

⁵⁹ *Jones*, 407 P.2d at 574.

⁶⁰ *Id.* at 572.

⁶¹ *Madsen v. Brown*, 701 P.2d 1086, 1094 (Utah 1985) (Stewart, J., dissenting).

⁶² *Id.*

extent, and otherwise interfere with the political process.”⁶³ It continued, noting that “reputable, civic-minded persons will be deterred from agreeing to serve the public if their names can be so easily blackened.”⁶⁴ The *Jones* court stated that repudiating officials is a fundamental principle.⁶⁵ However, in Utah, this right is being stifled because of the unnecessarily strict standard the courts place on the removal statutes.

B. The Removal Statutes Can Be Easily Abused

Unlike other methods of removal, the Local Government Removal Statutes allow only a handful of taxpayers to remove an official from office.⁶⁶ Actions under the Removal Statutes are relatively easy and inexpensive to initiate when compared to impeachment or removal by the JCC.⁶⁷ Because of this ease and low cost to the initiating taxpayer, people may file accusations against public officials because they dislike them or because they wish to tarnish their name or image. Even if the accuser is not successful in removing the official, the news of the attempted removal will most likely reach the press, resulting in negative publicity for the official. This tactic could be used just before elections as a cheap smear campaign.⁶⁸ The dissent in *Madsen* argued that the malfeasance statute “permit[s] a handful of citizens to override the voice of the majority” and annul an election on “frivolous grounds,” such as shooting a dog that was running loose.⁶⁹ Whether killing dogs is sufficient grounds to remove an official from public office is surely debatable, but *Madsen* is a clear example of how the minority can overrule the majority.

C. The Confusing Standards of Review

There is much confusion as to whether to apply a civil or criminal standard of review when trying an official for high crimes, misdemeanors or malfeasance in office. The new removal statute deleted, inter alia, the old statute in 1980, which provided that a trial “must be by jury, and shall be conducted in all respect in the same manner as the trial of an indictment or information for a felony.”⁷⁰ Pre-1980

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See *Jones*, 407 P.2d at 574.

⁶⁶ UTAH CODE ANN. § 77-6-1 (2004).

⁶⁷ See *supra* Part II.B.

⁶⁸ See Mark Eddington, *Recall Law on Agenda*, SALT LAKE TRIB., May 16, 2003, at B1 (Utah Association of Counties then Executive Director Brent Gardner commenting on the Grand County recall stated that “there was concern that recall elections could not only be used as a tool to remove someone who might have a problem, but also as a political weapon to remove an officeholder who was very conscientious in making a tough or unpopular decision”).

⁶⁹ *Madsen*, 701 P.2d at 1093.

⁷⁰ See UTAH CODE ANN 77-7-11 (1953) (repealed 1980).

cases, such as *State v. Guerts*, emphasize that removal proceedings "can properly be regarded as quasi-criminal."⁷¹

Under the new removal statute, the Utah Code states that "[i]f the defendant denies the accusation or refuses to answer or appear, the court shall proceed to try the accusation. The rights of the parties and procedures used shall be the same as in any *civil* proceeding."⁷² Although this seems to clearly indicate that a removal action should implement the standards of a civil proceeding, section 77-6-8 of the Utah Code states that "[i]f the defendant admits the accusation or is *convicted*, the court shall enter judgment against him directing the defendant be removed from office and setting forth the causes of removal."⁷³ The term "convicted" in section 77-6-8 is the main cause of the confusion because it can be interpreted to require the application of a criminal standard that carries with it the "beyond-a-reasonable-doubt standard," as opposed to the preponderance-of-the-evidence standard in a civil proceeding.⁷⁴

The court in *Madsen* attempted to reconcile the conflict by reasoning that the "term 'convicted' . . . considered in context, could reasonably be interpreted to mean a determination by the court that the accusations constituting the basis for removal were true, as opposed to the alternative basis for judgment of removal . . ."⁷⁵ The court held that removal by judicial proceedings is a civil proceeding, but in light of the repealed statutes and pre-1980 case law, confusion still exists.⁷⁶

Furthermore, if the standards of review are unclear, then the county attorneys responsible for investigating and prosecuting the accused officials will be less likely to take the case to trial.

D. Conflicts of Interest

Inherent conflicts of interest arise when an organization has the responsibility of policing itself. Because city and county governments are relatively small, most officials work closely with one another. In Utah, it is the county attorney's duty to investigate all claims against city and county officials.⁷⁷ Therefore, if the accused official is a county or city officer, the county attorney will be forced to investigate a fellow local government employee. Most county officials would hopefully not let local politics stand in the way of their official duties. But the procedural system of

⁷¹ 359 P.2d 12, 16 (Utah 1961) ("[I]t appears that the legislature thought the interests of the public in combating corruption in public office require an expeditious procedure for the removal of public officers who betray their trusts. Quite likely this is the reason why no provision is made therein for a preliminary hearing as is done for felonies in the criminal code.").

⁷² UTAH CODE ANN. § 77-6-7 (emphasis added).

⁷³ *Id.* § 77-6-8 (emphasis added).

⁷⁴ See *Madsen*, 701 P.2d at 1089-90.

⁷⁵ *Id.* at 1090.

⁷⁶ *Id.*

⁷⁷ See UTAH CODE ANN. § 77-6-4(2)(a).

the Local Government Removal Statutes creates inherent conflicts of interest, and the county attorney likely would find it hard to be impartial. If this occurs, the county attorney will be less likely to prosecute the offending official, and thus, the Removal Statutes will be ineffective because of their own procedural requirements.

E. The "Acting Under the Color of Office" Requirement

The last problem with the Local Government Removal Statutes is that public officials are immune from removal if their actions do not relate to the duties of their offices.⁷⁸ Officials who commit misdemeanors or who embarrass their jurisdiction through scandalous acts can only be removed if they were acting under color of office.⁷⁹ For instance, Utah County Commissioner David Gardner was arrested twice for driving while intoxicated.⁸⁰ He was also charged with disorderly conduct for allegedly "roughing up" a nine-year-old boy in a squabble over a flashlight.⁸¹ Utah County constituents did not have the power to remove Gardner because his acts did not relate to his office.⁸² Gardner also "ignored repeated calls from his Utah County Republican colleagues to step down . . ."⁸³ In another recent example in 2003, Eagle Mountain Mayor Kelvin Bailey lied to the FBI and the Utah County Sheriff's investigators by "concocting a tale about being kidnapped" by a hitchhiker and taken to California.⁸⁴ Despite these events, Mayor Bailey did not resign until a year later.⁸⁵ In both instances, the citizens of Utah County and Eagle Mountain respectively had no recourse to remove officials who were clearly unfit to hold public office.

IV. THE HISTORY OF RECALL

Of the *triple threat* of direct democracy tools (initiative, referendum, and recall), the citizens of Utah only enjoy the powers of initiative and referendum.⁸⁶ Recall is a direct democracy device that gives voters the opportunity to remove elected officials from office at any time through a popular vote.⁸⁷ Recall is similar to initiative in that both require petitions containing a specific number of signatures requesting a vote. Yet recall typically requires a higher minimum percentage of signatures than citizen initiatives (usually thirty percent of those voting in the last election for the position of the official being recalled), and almost always requires

⁷⁸ *Madsen*, 701 P.2d at 1091.

⁷⁹ *See id.*

⁸⁰ *See Eddington*, *supra* note 68.

⁸¹ *Id.*

⁸² *See id.*

⁸³ *Id.*

⁸⁴ *Eddington*, *supra* note 68.

⁸⁵ *Id.*

⁸⁶ UTAH CODE ANN. § 20A-7-102 (2004).

⁸⁷ THOMAS E. CRONIN, DIRECT DEMOCRACY: THE POLITICS OF INITIATIVE, REFERENDUM, AND RECALL 125, 127-28 (1989).

a special election.⁸⁸ Like initiative and referendum, the use of recall is more common at the local level.⁸⁹ It is similar to the function of the Utah Judicial Conduct Commission and the Local Government Removal Statutes because the citizens, not the legislature, initiate the action. Recall is not as popular as initiative and referendum at the state level, and has not found total acceptance in the United States.

A. *Origins of Recall*

Recall first appeared in Athenian democracy as a tool to expel “overly ambitious” politicians by banishing them “from the city-state for ten years.”⁹⁰ In the United States, recall was introduced “in the laws of the General Court of the Massachusetts Bay Colony in 1631.”⁹¹ One draft of the Articles of Confederation also included a recall provision for the replacement of delegates appointed by the states.⁹² During the ratifying conventions, recall received “some attention” from the states, but the idea was ultimately rejected from inclusion in the U.S. Constitution because it was viewed as an “excess of democracy.”⁹³ Patrick Henry of Virginia “praised the recall,” arguing that one of the shortcomings of the proposed constitution was that it did not require senators to follow the instructions of their states.⁹⁴ Opponents of recall, such as Alexander Hamilton, stressed that “far from being the servant delegates of a particular state, members of the newly proposed national senate should be in some measure a check upon the state governments”⁹⁵

At the beginning of the twentieth century, the Progressive movement revived the notions of direct democracy, including recall, as a means to combat political

⁸⁸ See *infra* app. 1.

⁸⁹ Rachel Weinstein, Note, *You're Fired!, The Voters' Version of 'The Apprentice': An Analysis of Local Recall Elections in California*, 15 S. CAL. INTERDISC. L.J. 131, 133 (2005).

⁹⁰ CRONIN, *supra* note 87, at 128.

⁹¹ Weinstein, *supra* note 89, at 134 (quoting Joshua Spivak, *California's Recall: Adoption of the "Grand Bounce" for Elected Officials*, 81 CAL. HIST. 20, 22 (2004)).

⁹² Elizabeth E. Mack, Comment, *The Use and Abuse of Recall: A Proposal for Legislative Recall Reform*, 67 NEB. L. REV. 617, 620–21 (1988).

[The] proposed Article V of the Articles of Confederation stated: For the more convenient management of the general interests 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 of November in every year with a power reserved in 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.

Id. at 621 n.24.

⁹³ See CRONIN, *supra* note 87, at 129.

⁹⁴ *Id.*

⁹⁵ *Id.*

corruption.⁹⁶ The idea of recall took particular hold in the Western states as the Progressives “sought to divest their legislatures of their monopoly on policy-making authority.”⁹⁷ The Western Progressives viewed the recall as a means to intimidate state and local officials who bowed to the “powerful Western interest groups.”⁹⁸ They believed the existing impeachment process was “inadequate [and] useless,” and that recall was superior because removal by impeachment required that an official be convicted of a crime.⁹⁹ These early advocates of recall did not intend to supplant representative democracy with direct democracy, but only to use it as a device “to remedy the worst possible side effects of a representative democracy”¹⁰⁰

Implementation of the recall started within small communities, but gained national recognition when Los Angeles voters approved the recall by a four-to-one margin in 1903.¹⁰¹ Soon after, many other California cities followed suit, and voters implemented the recall in their city charters by similar margins.¹⁰² In 1908, Oregon was the first state to adopt a recall provision for state officials followed by California in 1911.¹⁰³ The drafters of the Arizona constitution also “adopted the initiative, the referendum and the recall” in 1910.¹⁰⁴ The Arizona recall provision included provisions that subjected all state officers and judges to removal from office.¹⁰⁵ But President Taft soon after “threatened to veto Arizona’s admission to the United States unless the judicial recall provision was removed”¹⁰⁶ Arizona omitted the provision and was admitted as a state.¹⁰⁷ However, the Arizona Legislature soon after passed a constitutional amendment allowing the recall of judges.¹⁰⁸ Since then, thirty seven¹⁰⁹ states adopted the recall for state or local officials with Minnesota being the most recent state to do so in 1996.¹¹⁰

⁹⁶ See *id.* at 130–31.

⁹⁷ Nathaniel A. Persily, *The Peculiar Geography of Direct Democracy: Why the Initiative, Referendum and Recall Developed in the American West*, 2 MICH. L. & POL’Y REV. 11, 27 (1997).

⁹⁸ See *id.*

⁹⁹ See CRONIN, *supra* note 87, at 130.

¹⁰⁰ *Id.* at 131.

¹⁰¹ See *id.* at 130–31. Los Angeles party leaders were understood to be under the control of business interest, namely the Southern Pacific Railroad. See *id.*

¹⁰² *Id.* at 131.

¹⁰³ *Id.* at 126, tbl. 6.1.

¹⁰⁴ Mack, *supra* note 92, at 620.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 625.

¹⁰⁸ *Id.*

¹⁰⁹ See *infra* notes 122–123 and accompanying text.

¹¹⁰ See MINN. STAT. ANN. §§ 211C.01 to 211C.09, 351.14 to 351.16 (West Supp. 2008).

B. Recall in Action

The recall has not been widely used in the United States and is rarely successful.¹¹¹ The first successful recall of a governor took place in 1921 when North Dakota recalled Governor Lynn J. Frazier from office.¹¹² The second and last instance occurred in 2003 when Californians ousted Governor Gray Davis and elected Arnold Schwarzenegger.¹¹³ However, voters in California have used the recall often, attempting thirty-two gubernatorial recalls since 1911.¹¹⁴ In 1988, Arizona voters almost removed Governor Evan Mecham by recall but the Arizona House of Representatives impeached him first.¹¹⁵

The removal of state legislators has also occurred but is still rare. In California, 107 recall efforts were initiated from 1911 to 1994, which resulted in only two legislators removed from office.¹¹⁶ Michigan voters recalled two state senators in 1983, and Oregon recalled a legislator in 1988.¹¹⁷

The recall of city and county officials occurs much more frequently than the recall of state officers.¹¹⁸ “According to the National Civic League and the 2001 ICMA Municipal Form of Government Survey . . . [i]n the five years starting January 1996 and ending 2001, recall initiatives were filed against the mayor in 4.1% of U.S. cities and against a council member in 5.3% of U.S. cities.”¹¹⁹ Out of all those U.S. cities, “the mayor was recalled in 17.6% of the elections, and the council member in 29.2% of the elections.”¹²⁰ Although recall is considered the more controversial direct democracy tool, “60.9% of U.S. cities have recall provisions, exceeding the percentages for initiative (57.8%) and popular referendum (46.7%).”¹²¹

C. State and Local Recall Provisions

Recall provisions for state officials exist in nineteen states,¹²² while provisions for local government officers exist in thirty-six states.¹²³ The recall process works

¹¹¹ See National Conference of State Legislatures, Recall of State Officials, (Mar. 21, 2006), <http://www.ncsl.org/programs/legismgt/elect/recallprovision.htm> [hereinafter Nat'l Conf. of State Legislatures].

¹¹² *Id.*

¹¹³ *See id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *See id.*

¹¹⁷ *See id.*

¹¹⁸ *See id.*

¹¹⁹ Kurt A. Gardinier, Recall in the United States, <http://www.iandrinstitute.org/Recall.htm> (last visited May 30, 2008) [hereinafter Gardinier, Recall in the United States].

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² ARIZ. CONST. art. VIII, §§ 1–5; NEV. CONST. art. II, § 9; N.J. CONST. art. I, § 2(b); N.D. CONST. art. III, § 10; R.I. CONST. art. IV, § 1; ALASKA STAT. §§ 29.26.240, 29.26.280

virtually the same in every state regardless of the position of the officer.¹²⁴ However, each state's provision is unique in its procedural requirements. For instance, states like Arizona, Georgia, Montana, and Nevada permit the recall of every public official, while states like Alaska and Washington only prohibit the recall of judges.¹²⁵ Still others, such as California, specify the individual offices that are subject to recall.¹²⁶

Another important requirement for recall is the number of recall petition signatures needed to put the recall to a popular vote. The majority of states and jurisdictions place the signature requirement at twenty-five to thirty percent of the total registered voters in the jurisdiction.¹²⁷ However, some jurisdictions, such as

(2006); CAL. ELEC. CODE §§ 11100 to 11386 (West 2003); COLO. REV. STAT. §§ 1-12-101 to -123, 31-4-501 to -505 (2007); GA. CODE ANN. §§ 21-4-4 to -13 (2003); IDAHO CODE ANN. §§ 34-1701 to -1715 (2001 & Supp. 2007); KAN. STAT. ANN. §§ 25-4301 to -4331 (2000 & Supp. 2006); LA. REV. STAT. ANN. §§ 18:1300.1 to :1300.17 (2004 & Supp. 2008); MICH. COMP. LAWS SERV. §§ 168.951-.955 (LexisNexis 2004); MINN. STAT. ANN. §§ 211C.01 to .09 (West Supp. 2008); MONT. CODE ANN. §§ 2-16-603 to -616 (2007); NEB. REV. STAT. §§ 32-1302 to -1309 (2005); OR. REV. STAT. §§ 249.865 to .877 (2007); WASH. REV. CODE ANN. §§ 29A.56.110 to .260 (West 2005 & Supp. 2008); WIS. STAT. ANN. § 9.10 (West Supp. 2007).

¹²³ ARIZ. CONST. art. VIII, §§ 1-5; NEV. CONST. art. II, § 9; N.J. CONST. art. I, § 2(b); N.M. CONST. art. X, § 9; N.D. CONST. art. III, § 10; ALA. CODE § 11-44E-168 (LexisNexis 1989); ALASKA STAT. §§ 29.26.240, 29.26.280 (2006); ARK. CODE ANN. §§ 14-47-112, 14-48-114, 14-61-119, 14-92-209 (Supp. 2007); CAL. ELEC. CODE §§ 11200 to 11242 (West 2003); COLO. REV. STAT. § 31-4-501 (2007); FLA. STAT. ANN. § 100.361 (West Supp. 2007); GA. CODE ANN. §§ 21-4-4, 21-4-8 (2008); IDAHO CODE ANN. §§ 34-1701 to -1710 (2001 & Supp. 2007); 65 ILL. COMP. STAT. ANN. 20/21-24 (West 2005); KAN. STAT. ANN. §§ 25-4301 to -4331 (2000 & Supp. 2006); LA. REV. STAT. ANN. §§ 18:1300.1 to :1300.17 (2004 & Supp. 2008); ME. REV. STAT. ANN. tit. 38, § 1104(2) (2001); MICH. COMP. LAWS SERV. §§ 168.951 to .955 (LexisNexis 2004); MINN. STAT. ANN. §§ 351.14 to .16 (West 2004); MO. ANN. STAT. §§ 77.650, 78.260 (West Supp. 2007); MONT. CODE ANN. §§ 2-16-603 to -616 (2007); NEB. REV. STAT. §§ 32-1302 to -1303 (2005); N.H. REV. STAT. ANN. § 49-D:3(I)(e) (LexisNexis Supp. 2007); OHIO REV. CODE ANN. § 705.92 (LexisNexis 2000); OR. REV. STAT. §§ 249.865 to .877 (2007); S.D. CODIFIED LAWS §§ 9-13-29 to -32 (2007); TENN. CODE ANN. §§ 6-31-301 to -307 (2005); TEX. LOC. GOV'T CODE ANN. § 43.130(a) (Vernon 2007); VA. CODE ANN. § 24.2-684.1 (2006); WASH. REV. CODE ANN. §§ 29A.56.110 to .260 (West 2005 & Supp. 2008); W. VA. CODE ANN. § 8-12-4(3) (LexisNexis 2007) (West Virginia); WIS. STAT. ANN. § 9.10 (West Supp. 2007); WYO. STAT. ANN. § 15-4-110 (2007); *see* Attorney Gen. v. Town Clerk of Hudson, 562 N.E.2d 1346, 1347 (Mass. 1990) (holding city's recall provisions not properly met by voters); *Moreland v. Wamboldt*, 179 S.E. 9, 10-11 (N.C. 1935) (cities may include recall provisions in their city charters); *Clapsaddle v. Blevins*, 1998 OK 5, ¶ 13, 66 P.3d 352, 357 (stating "recall elections . . . constitute [a] constitutionally sanctioned method for popular intervention in the affairs of government").

¹²⁴ *See infra* app. 1.

¹²⁵ *See id.*

¹²⁶ *See id.*

¹²⁷ *See id.*

California and Florida, have signature requirements as low as ten percent of the registered voting population.¹²⁸ Still others, like Tennessee, have relatively high requirements (66%).¹²⁹ In addition, most states include other procedural requirements such as restrictions on when a recall petition may be commenced, specific grounds for removal, and time limits for gathering signatures. For instance, while Nevada does not require any grounds to recall an official, the petition may not commence during the official's first six months in office.¹³⁰ By contrast, in Washington, officials can only be removed for malfeasance or misfeasance while in office, or for violating their oath of office.¹³¹

Only thirteen states in the Union do not offer the recall to their citizens, and Utah is one of them.¹³² It is curious then, why Utah, at the peak of the Progressive movement did not include a recall provision in its constitution in 1896, or in 1900 when the initiative and referendum were adopted.¹³³ Furthermore, why has Utah not codified a state or local government recall provision for its citizens when every other Western state has done so?

V. THE RECALL IN UTAH

A. Utah's History with Recall

When the Utah Constitution was drafted, no direct democracy powers were given to the citizens of Utah.¹³⁴ Only by amendment to the Utah Constitution were initiative and referendum given to the people, but recall was left out.¹³⁵ Furthermore, the recall has never been codified at the state level, and other than two minor exceptions, counties and municipalities have not adopted it.¹³⁶ The debate on recall began in full force in 1974 when the Salt Lake County Government Study Commission provided for the "recall of elected city and county

¹²⁸ See *id.*; FLA. STAT. ANN. § 100.361(1)(a) (West 2002).

¹²⁹ See *infra* app. 1.

¹³⁰ NEV. CONST. art. II, § 9

¹³¹ WASH. REV. CODE ANN. § 29A.56.110 (West 2005).

¹³² The other states are: Connecticut, Delaware, Hawaii, Indiana, Iowa, Kentucky, Maryland, Mississippi, New York, Pennsylvania, South Carolina, and Vermont. Two counties in Utah have recall provisions. See *supra* notes 122–123.

¹³³ One reason could be that there was simply no room for any other political party in Utah other than the Democratic and Republican Parties. The citizens of Utah left their old parties behind, the People's Party and the Liberal Party of Utah, in favor of the two dominant parties to increase Utah's chances of admittance into the Union. See generally EDWARD LEO LYMAN, *THE MORMON QUEST FOR STATEHOOD* (1986) (discussing Utah's efforts to gain statehood).

¹³⁴ STATE OF UTAH OFFICE OF LEGIS. RESEARCH., *RECALL: AT ISSUE IN UTAH: A REPORT TO THE 41ST LEGISLATURE*, Leg. 41-3, Gen. Sess., at 25 (1976) [hereinafter *RECALL: AT ISSUE IN UTAH*].

¹³⁵ *Id.*

¹³⁶ A small exception in Utah exists. See *infra* Part V.B.1.

officials in its proposed consolidation charter for Salt Lake City and County.”¹³⁷ Specifically, “[t]he charter provided for the recall of the mayor of the city and county council members.”¹³⁸ No grounds for removal were required and the minimum signature requirement was equal to fifteen percent of all votes cast in that community in the last election at which the governor was elected.¹³⁹ The provision “did not receive a great deal of attention during the campaign to pass the [consolidation] charter,”¹⁴⁰ and went on to be “defeat[ed] along with the charter in March 1975.”¹⁴¹

In 1974, a group of citizens named the “Friends of the Utah Constitution” recommended adopting a constitutional amendment authorizing recall to the Utah Constitutional Revision Commission (UCRC).¹⁴² The UCRC ultimately voted unanimously not to recommend such an amendment because of the clouded issue of whether the legislature had plenary power to implement such an amendment.¹⁴³ Recall legislation was soon after introduced by Representative T. Quentin Cannon as H.B. 71 at the 1975 General Session of the Utah Legislature.¹⁴⁴ The provision would have made all officers at the state and local level subject to recall, with a minimum signature requirement of twenty-percent of all votes for governor in the district involved.¹⁴⁵ The bill was ultimately defeated in the House.¹⁴⁶

Following this defeat, an attempt was made to pass recall legislation through initiative by an organization named “Concerned Citizens for Recall.”¹⁴⁷ The petitioners gathered over 33,000 signatures (about 10,000 more than needed) and submitted them to the Secretary of State in December 1975.¹⁴⁸ The initiative was named the Utah Recall and Advisory Recall Act.¹⁴⁹ Although there was a great deal of support from the citizens of Utah for a recall provision, legislators, as well as the two major newspapers in Utah, ardently opposed the initiative.¹⁵⁰ The reasoning for the resistance was not the idea of recall itself, but the actual provisions proposed in the initiative.¹⁵¹ The ten percent minimum signature requirement and the fact that both elected and appointed officials were subject to

¹³⁷ See RECALL: AT ISSUE IN UTAH, *supra* note 135, at 25.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 26–27.

¹⁴¹ *Id.* at 27.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 28.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Results of Utah Initiatives and Referendums, 1960–2000, <http://elections.utah.gov/ResultsofUtahInitiativesandReferendums.htm> (last visited May 30, 2008).

¹⁵⁰ See *infra* note 156. In a poll taken by the Salt Lake Tribune, 74% of the citizens of Utah approved of recall. Editorial, *Most Utahns Favor Recall Election Law*, SALT LAKE TRIB., Sept. 16, 1975, at 12 [hereinafter Editorial, *Utahns Favor Recall*].

¹⁵¹ RECALL: AT ISSUE IN UTAH, *supra* note 134, at 34.

recall were most troubling to the newspapers.¹⁵² Consequently, both the *Salt Lake Tribune* and the *Deseret News* warned its readers not to vote for the proposed recall initiative.¹⁵³ In the end, the voters defeated the Utah Recall and Advisory Recall Act in 1976.¹⁵⁴

In general, Utah does not allow the recall at the state or local level.¹⁵⁵ But in the 1990s, two counties, Grand and Morgan, departed from this trend, and enacted recall provisions when they changed their forms of government, thereby giving them a fresh slate on which to include recall in their county charters.¹⁵⁶ Grand County included a recall provision in its 1993 city charter and held Utah's first ever recall election.¹⁵⁷ The recall election was "unsuccessful" when the people voted to keep the five county council members who were threatened with removal in office.¹⁵⁸ The Grand County recall election turned out to be a debacle, and left a bad taste in the mouths of Utah voters.¹⁵⁹ The event was controversial because the Grand County recall provision only required minimum signatures of fifteen percent, and the grounds for removal were based on trivial disputes.¹⁶⁰

Morgan County also slipped in a recall provision when it changed its form of government in 1997.¹⁶¹ In Utah's second and last recall election to date in 2004, Morgan County voters ousted a county councilman.¹⁶² Curiously, it appears no one challenged the constitutionality or the validity of either counties' recall provision.

¹⁵² *Id.* at 33 (citing Editorial, *Utahns Favor Recall*, *supra* note 150, at 12); RECALL: AT ISSUE IN UTAH, *supra* note 134, at 34 (citing Editorial, *A Recall Law for Utah? Yes—But Do It Right*, *DESERET NEWS*, Sept. 27, 1975, at A5).

¹⁵³ "A petition is currently being circulated in the state which would ask the Legislature to enact a particular recall law. The law being proposed is not so much recall as it is a license to harass and intimidate." Editorial, *Utahns Favor Recall*, *supra* note 150, at 12.

¹⁵⁴ Results of Utah Initiatives and Referendums, 1960–2000, <http://elections.utah.gov/ResultsofUtahInitiativesandReferendums.htm> (last visited May 30, 2008).

¹⁵⁵ See *supra* Part V.A.

¹⁵⁶ The optional county council form of government allowed counties to include a recall provision in their charter upon the change. See UTAH CODE ANN. §§ 17-35a-1 to 17-35a-12.5 (repealed 1998).

¹⁵⁷ Dan Harrie, *Revolt Brews at Polls in Grand County: First Utah Recall Vote May Oust 6 Council Members*, *SALT LAKE TRIB.*, Oct. 7, 1993, at D1.

¹⁵⁸ See Eddington, *supra* note 68.

¹⁵⁹ See Editorial-Commentary, *Turning Elections into Political Comedy, Grand County Proves Recall's Futility*, *SALT LAKE TRIB.*, Oct. 12, 1993, at A8.

¹⁶⁰ "[U]tah is . . . [a] state[] with no provisions for recall elections. There's a good reason for that: It's a terrible idea. Just look at Grand County, home of quarterly democratic expression and quicksand government." *Id.* The Grand County recall election was initiated by "[a] property owner irate over being told to remove junk cars from his property . . ." Eddington, *supra* note 68, at B6.

¹⁶¹ Morgan County also has a minimum fifteen percent signature requirement. Eddington, *supra* note 68, at B6.

¹⁶² Leigh Dethman, *Morgan Councilman Recalled*, *DESERET NEWS*, Feb. 4, 2004, at B3.

In 2000, the Utah Legislature effectively prevented any other county from enacting a recall provision.¹⁶³

The Utah Legislature has not swept aside the idea of recall and has even tried to pass statutes authorizing recall in 1992, 2003, and 2005.¹⁶⁴ In addition, in 2004, the Constitutional Revision Commission considered whether to pass a recall amendment to Utah's constitution.¹⁶⁵ Like all the other attempts to enact a recall provision, this attempt also failed.¹⁶⁶ The commission considered all the worst possible scenarios and questioned if recall was even needed.¹⁶⁷ Commission member Utah Chief Justice Christine Durham stated she was "very skeptical about its usefulness."¹⁶⁸

B. Constitutionality and Legality of a Recall Provision in Utah

Even if recall legislation were to be passed in Utah, there would remain a looming question of whether a recall provision is constitutional given that the Utah constitution already provides a means for removing public officials from office. A constitutional amendment authorizing recall would, of course, be constitutional because it would amend previous provisions, and therefore, would control. The plenary power principle provides the analytical structure for considering whether actions of local or state governments are lawful and constitutional.¹⁶⁹ The analysis proceeds as follows: "(1) does the actor have the *power* to act? (2) If so, is there a limitation on such power, whether imposed by the terms of the grant of the power, because of the restrictions imposed on such power by the authority of other governmental entities, or by the rights of individuals."¹⁷⁰

1. Recall Provision at the Local Level

In 1993, then Assistant Utah Attorney General Rick Wyss advised Grand County that "the recall election would be valid and that they ought to go ahead

¹⁶³ UTAH CODE ANN. § 17-52-402(1)(b) (2006). "An optional plan adopted after May 1, 2000 may not . . . provide for elected officers to be subject to a recall election." *Id.*

¹⁶⁴ See Editorial, *Recall by Ballot: Angry Kanab Residents Should Vote Officials Out*, SALT LAKE TRIB., April 25, 2006; Bob Bernick, Jr., *New Legislator Calls for Recall Elections*, DESERET NEWS, Dec. 14, 1992, at B4.

¹⁶⁵ See Lucinda Dillon Kinkead, *Utah Is Unlikely to Get a Recall Provision*, DESERET NEWS, May 7, 2004, at B2.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ See JOHN MARTINEZ & MICHAEL E. LIBONATI, STATE AND LOCAL GOVERNMENT LAW: A TRANSACTIONAL APPROACH 6 (2000).

¹⁷⁰ *Id.* at 6; see, e.g., *Hospitality Ass'n of South Carolina, Inc. v. County of Charleston*, 464 S.E.2d 113, 116-17 (S.C. 1995) (describing two-step process of judicial review of local government conduct).

and do it.”¹⁷¹ However, local governments are not like state legislatures, in that they do not have plenary power, but must look to a specific grant of power before acting.¹⁷² Local governments can only derive their powers from state constitutions and statutes.¹⁷³ Therefore, because there is no grant of power to counties or cities to provide additional means of removing public officials, Grand and Morgan Counties did not possess the power to enact the recall provisions that they adopted. Consequently, we do not get past the first step of the plenary power analysis.

2. Recall Provision at the State Level

State governments can skip the first step of the analysis because they enjoy plenary power. “States are unique in our local-state-federal system because only states have inherent sovereign power to act; they need not look to positive sources, such as state or federal statutes or constitutions.”¹⁷⁴ As to the second step, state constitutions are limitations on the state legislature’s plenary power.¹⁷⁵

There are three Utah constitutional provisions that provide for the removal of public officials. The first is article VI, section 19, which states, “The Governor and other State and Judicial officers shall be liable to impeachment for high crimes, misdemeanors, or malfeasance in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust or profit in the State.”¹⁷⁶ Second, article VI, section 10 states, “Each house shall be the judge of the election and qualifications of its members, and may punish them for disorderly conduct, and with the concurrence of two-thirds of all the members elected, expel a member for cause.”¹⁷⁷ The last provision, article VI, section 21, is under the heading, “Removal of officers,” and reads, “All officers not liable to impeachment shall be removed for any of the offenses specified in this article, in such manner as may be provided by law.”¹⁷⁸

In 1975, at the height of the recall debate in Utah, the Assistant Legislative Attorney General, George M. Mecham, issued an opinion stating that “the Constitution [of Utah] prohibits the recall of elected state and local officials,”¹⁷⁹ as well as “the recall of lesser elected county, local, and municipal officers.”¹⁸⁰ Mecham reasoned that recall is constitutionally unavailable as an option for the removal of elected officials both because Article I, section 26 of the Utah Constitution provides that “[t]he provisions of this Constitution are mandatory and

¹⁷¹ Harrie, *supra* note 157.

¹⁷² See MARTINEZ & LIBONATI, *supra* note 169, at 68.

¹⁷³ *Id.* at 69.

¹⁷⁴ *Id.* at 6.

¹⁷⁵ *Id.*

¹⁷⁶ UTAH CONST. art. VI, § 19.

¹⁷⁷ UTAH CONST. art. VI, § 10.

¹⁷⁸ UTAH CONST. art. VI, § 21.

¹⁷⁹ Op. Utah Leg. Gen. Counsel No. 75-026, 7 (June 18, 1975).

¹⁸⁰ *Id.* at 6.

prohibitory,"¹⁸¹ and because the Utah Constitution does not explicitly contemplate recall.¹⁸²

Constitutional provisions that use the word "shall" are "mandatory, rather than permissive,"¹⁸³ and ordinarily express a mandate.¹⁸⁴ In this way, prohibitory "provision[s] [may] effectively nullif[y] existing [legislative] acts" that conflict with the prohibitory provisions.¹⁸⁵ In other words, if a legislative act is not contrary to or limited by a particular prohibitory constitutional provision, then it will be considered constitutional. Mecham reasoned that because removal procedures are already specified in the constitution, the mandatory and prohibitory clause controls, and therefore, the Utah Legislature is prohibited from providing additional removal methods.¹⁸⁶ Mecham continued, stating that

where the Constitution creates an office, fixes its term, and provides upon what condition the incumbent may be removed before the expiration of such incumbent's term, it is beyond the authority of the legislature or any other authority to remove or suspend such officer in any manner other than that provided by the Constitution.¹⁸⁷

To support this argument, Mecham cited *Wigley v. South San Joaquin Irrigation District*,¹⁸⁸ a relevant California appellate court decision.¹⁸⁹ In *Wigley*, the court decided the issue of whether the California Legislature's actions were contrary to the California Constitution when it provided for the recall of elected officers of irrigation districts.¹⁹⁰

The South San Joaquin Irrigation District challenged the legislature's plenary power and argued that

[s]ince the Constitution does not provide for the recall of district officers, but does provide that they may be removed from office after a trial and conviction of misdemeanor in office, it follows that the latter provision is exclusive, and the Legislature has no power to pass any act for their removal other than an act to provide for their removal for cause.¹⁹¹

¹⁸¹ See *id.* at 5 (quoting UTAH CONST. art. VI, § 26).

¹⁸² See *id.*

¹⁸³ *Montco v. Simonich*, 947 P.2d 1047, 1051 (Mont. 1997).

¹⁸⁴ *Doe v. Statewide Grievance Comm.*, 694 A.2d 1218, 1223 (Conn. 1997).

¹⁸⁵ José L. Fernandez, *State Constitutions, Environmental Rights Provisions, and the Doctrine of Self-Execution: A Political Question?*, 17 HARV. ENVTL. L. REV. 333, 350 (1993); see also *Washingtonian Home of Chicago v. City of Chicago*, 41 N.E. 893, 896 (Ill. 1895) (holding that negative or prohibitory provisions are self-executing).

¹⁸⁶ See Op. Utah Leg. Gen. Counsel No. 75-026, 4-5 (1975).

¹⁸⁷ *Id.* at 4.

¹⁸⁸ 159 P. 985 (Cal. Ct. App. 1916).

¹⁸⁹ Op. Utah Leg. Gen. Counsel No. 75-026, 4.

¹⁹⁰ 159 P. at 985-86.

¹⁹¹ *Id.* at 985.

In citing this language as support for his position, Mecham made an egregious error in his understanding of *Wigley* and of the powers of the state legislature. The *Wigley* court in that case actually held that the constitutional provision

providing that officers may be tried for misdemeanors in office in such manner as the Legislature may prescribe, does not deprive the Legislature of power to provide for the recall of public officers by the electorate, . . . unless such intent clearly appears and is the reasonable conclusion to be drawn from the language used.¹⁹²

The court stated that because the constitution contains no language prohibiting the legislature from passing a recall provision, it is within the legislature's power.¹⁹³ The *Wigley* court concluded by stating that "whoever would claim that the power does not exist in any particular case . . . must point out the provision of the Constitution which has taken it away or forbidden its exercise."¹⁹⁴

Applying the same analysis to the three provisions of the Utah Constitution, there is no language prohibiting the legislature from enacting additional removal legislation. That the constitution already provides methods for removing state and local officials from office is not enough to establish clear intent that the three Utah constitutional provisions were meant to be exhaustive; nor is it reasonable to conclude that the legislature may not provide for additional removal methods.¹⁹⁵ Recall legislation at the state or local level would not conflict with the impeachment process, nor would it conflict with the Local Government Removal Statutes. Such recall legislation would therefore be valid and constitutional because it would only expand the methods available to remove public officials in Utah.

VI. THE CASE FOR AND AGAINST RECALL

Like any removal method, the recall is not perfect. A recall election can have devastating effects on a community's resources, but the result might also be worth the effort if politicians are failing their constituency.

¹⁹² *Id.* at 986.

¹⁹³ *Id.*

¹⁹⁴ *Id.* (quoting *Sheehan v. Scott*, 79 P. 350, 351 (Cal. 1905)).

¹⁹⁵ California's and Utah's mandatory and prohibitory clauses are identical. "The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise." *Compare* CAL. CONST. art. I, § 26, *with* UTAH CONST. art. I, § 26.

A. Arguments in Support of Recall

1. Constant Accountability

In Utah, removal of local government officials is only available if they have committed a crime that pertains to their official duties.¹⁹⁶ Recall is a broader solution when an official, state or local, is irresponsible, apathetic to public needs or demands, dishonest, or just plain incompetent. Recall would also be a constant threat to public officials, making them continuously accountable for their actions. An important tool for citizens when other removal methods are inadequate, recall is the ultimate demonstration of a representative democracy. “Whereas the initiative and referendum are mere modifications of representative government, recall is plainly an attempt to make government more representative in a more dramatic way by increasing the responsiveness of elected officials to the will of the majority.”¹⁹⁷ Leaders of corporations are fired from their jobs all the time for not performing up to expectations. Citizens should have this same power over their government leaders, because a public official’s duties are to serve the public.

2. Recall is a Better Alternative to Impeachment

Officials are usually impeached because they have been accused of political corruption.¹⁹⁸ However, political incumbents can often easily foil efforts to impeach them, thereby diminishing the effectiveness of impeachment.¹⁹⁹ Recall not only protects the public by removing officials who have escaped impeachment, but also protects the officials themselves. “A prudent use of the recall requires that the number of signatures be sufficiently high to protect elected officials” from mobs calling for their impeachment and from partisan opposition.²⁰⁰

3. Recall is Reasonable and Democratic

Recall is superior to other removal methods for three reasons. First, recall bestows on the people of the jurisdiction the power to remove government officials, instead of allowing the government bureaucracy to have a monopoly of that power. Recall also vests the power of democracy in the people to decide who should lead them. Second, the recall process is slow and difficult. The time consuming and costly process of gathering signatures, campaigning, and holding a special election assure that irrational feelings and false accusations toward an official will subside during the recall process. The long procedure of recall will help the people to make the rational and informed decision of whether to remove

¹⁹⁶ See UTAH CODE ANN. §§ 76-8-201, 17-16-10.5, 10-3-82 (2004 & Supp. 2007).

¹⁹⁷ See CRONIN, *supra* note 87, at 133.

¹⁹⁸ See *e.g.*, *id.* at 135 (discussing Nixon’s impeachment).

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

the officer. Third, political conflicts can inflame emotions and divide communities.²⁰¹ The recall can act as “a safety-valve mechanism for intense feelings.”²⁰² Although recall can generate political conflict, its ultimate purpose is to resolve larger disputes. Recall can be an outlet for the people’s frustrations with their government, and it can help to prevent potential large and unmanageable political conflicts.

4. *Inadequacy of the Local Government Removal Statutes*

Perhaps the strongest argument in favor of recall in Utah is that although Utah has multiple methods for removing state and local officials through statutory provisions,²⁰³ they are inadequate to fulfill the needs and the rights of the citizens of Utah. A recall provision is needed at the local government level.

First, Utah case law demands that the prosecuting attorney demonstrate that the accused official committed a reprehensible moral violation, which is a difficult standard to overcome.²⁰⁴ Second, the Local Government Removal Statutes are open for abuse because taxpayers have the ability to create negative press by simply filing an accusation.²⁰⁵ Third, the standards of review for the Local Government Removal Statutes are confusing,²⁰⁶ thereby making county attorneys less likely to prosecute offending officials. Finally, inherent conflicts of interest arise when the county attorney must investigate and prosecute fellow local government officials.²⁰⁷ Consequently, the county attorney will be less likely to prosecute the offending official, making the Local Government Removal Statutes less effective.

B. *Arguments Against Recall*

1. *Recall is “Antagonistic to Republican Principles”*²⁰⁸

For the most part, public officials are elected to office for their experience, skills, and vision. Government officials need the freedom to make the best decisions for their constituency, even if the people do not see or understand the wisdom of the officials’ choices. In addition, “a responsive and responsible government is not a government of a majority, by a majority, for a majority, but a government of the whole people elected by a majority under such rules and checks

²⁰¹ See, e.g., *supra* Part V.A (discussing the Morgan and Grand County recall elections).

²⁰² CRONIN, *supra* note 87, at 134.

²⁰³ See *supra* note 10.

²⁰⁴ See *State v. Jones*, 407 P.2d 571, 573 (Utah 1965).

²⁰⁵ See *supra* Part III.B.

²⁰⁶ See *supra* Part III.C.

²⁰⁷ UTAH CODE ANN. § 77-6-4(2)(a) (2004).

²⁰⁸ CRONIN, *supra* note 87, at 135.

as will secure a wise, prudent, and just government for all the people.”²⁰⁹ Officials could be prevented from making honest and progressive decisions for their jurisdiction with the threat of recall hanging over their heads. The threatened officials may not strive to make the best choices for their people, but only to preserve their time in office.

2. Recall Discourages Qualified Individuals from Pursuing Public Office

It has also been argued that the existence of recall provisions discourages qualified individuals from taking public office.²¹⁰ Opponents of recall argue that public officials should not be subject to the constant threat of intimidation, embarrassment, and political conflict.²¹¹ Although recall elections are rare and seldom successful, a person contemplating political office might be deterred from spending the time, money, and effort it takes to become elected, only to be removed by recall.

3. Recall Elections Create Conflicts and Divide Communities

Finally, “[r]ecall elections [can be] divisive, disruptive, polarizing, and subject to . . . abuses and unintended consequences.”²¹² As the country witnessed in the recent recall election of Governor Grey Davis in California in 2003, recall elections can be a three-ring circus of emotional, bitter, and controversial events. “Rather than solving problems, they increase tensions, dividing communities along lines of old versus new, north versus south, one ethnic group versus another, and so on.”²¹³ Recall elections do not always solve the problems that a corrupt politician creates, but only escalate the conflicts and turmoil within a community. Recall elections can also be very expensive and time consuming, depending on the size of the jurisdiction.²¹⁴ Voters are already expected to vote in numerous elections, and the costs of the elections may not always outweigh the benefits of removing officials.

Moreover, recall is “subject to a myriad of abuses.”²¹⁵ For instance, in 1987, a “recall frenzy” ensued in Nebraska when “recall efforts were mounted against almost forty public officials.”²¹⁶ Mayors in Nebraska cities were recalled for conduct such as outbursts of temper, firing police officers, and misusing city stationery.²¹⁷ More recently, in Barron, Wisconsin, a recall effort was initiated against the mayor for firing a local police officer after misdemeanor charges were

²⁰⁹ *Id.* at 135–36.

²¹⁰ *Id.* at 136.

²¹¹ *Id.*

²¹² *Id.* at 137.

²¹³ *Id.*

²¹⁴ *Id.* at 138–39.

²¹⁵ *Id.* at 137.

²¹⁶ See Mack, *supra* note 92, at 619.

²¹⁷ *Id.* at 618–19.

filed against the chief.²¹⁸ In San Francisco's Richmond district, a district supervisor is facing recall because of his "mistreatment of speakers at public hearings, [and] his rambling discourse that delays committee hearings."²¹⁹ These grounds for removal illustrate how recall can be abused, and how intensely a community can become divided. If stringent grounds for removal are not required, recall can be used to facilitate political grudges or to retry previous unsuccessful elections.

C. Utah Should Implement Recall

1. State-Level Officials

It is true that recall is subject to many potential abuses, and that in some instances it might only be used to wield a political sword against an incumbent officer. It is also true that the recall process can be costly and time consuming. However, use of recall is rare and removal of an officer by recall is even rarer. Recall is important because it gives the people a clear and powerful voice, even if it is sometimes misguided. The ability and "privilege" to elect public officials and to "repudiat[e] them . . . belongs exclusively to the people."²²⁰ In Utah, this so-called ability and privilege has not been given fully to its citizens. For state-level officers, such as the governor, the only method for removal is impeachment by the legislature.²²¹ The citizens lack any ability to remove these elected officials from office.

This is especially unfortunate when Utah Legislators embarrass their constituents, political parties, and the State of Utah with their conduct. For example, in February 2008, Senator Chris Buttars of West Jordan was accused of racial bigotry when he referred to a bill to equalize school construction funds as an ugly black baby: "This baby is black, I'll tell you. This is a dark and ugly thing."²²² Many Utahns and the NAACP called for Buttars' resignation, and many believed that the voters should decide at the next election.²²³

State Legislators, such as Chris Buttars, have a tremendous impact on Utah's public image, and recall would serve as an avenue in which to prevent national embarrassment. If officials prove themselves unfit to hold public office, and impeachment proceedings are not successful, it is the people of Utah who suffer.

²¹⁸ See Barry Hoff, *Recall Election June 26 for Bloomer Mayor*, BARRON NEWS-SHIELD, May 28, 2007, http://www.zwire.com/site/news.cfm?newsid=18395629&BRD=1132&PAG=461&dept_id=157660&rft=8 (last visited May 30, 2008).

²¹⁹ See Randy Shaw, *McGoldrick Recall a Bad Idea*, BEYOND CHRON, May 30, 2007, <http://www.beyondchron.org/news/index.php?itemid=4560> (last visited May 30, 2008).

²²⁰ *State v. Jones*, 407 P.2d 571, 574 (Utah 1965).

²²¹ UTAH CODE ANN. § 77-5-1 (2004).

²²² Lisa Riley Roche & Deborah Bulkeley, *Buttars Says Issue Is Closed*, DESERET NEWS, Feb. 15, 2008, at A1.

²²³ See *id.* Before these controversial remarks, in a radio show in August 2006, Buttars explained that the 1954 landmark Supreme Court decisions in *Brown v. Board of Education* was "wrong to begin with." *Id.*

The recall should be given to the people to remove state-level officials as a safety net for the integrity of democracy in Utah. Even if recall is used only once every century, it is still valuable to have it available to the people as a last resort to remove officials who tarnish their public offices.

2. *Local Government Officials.*

Recall is needed most at the local-level in Utah. Although the decisions of state-level officials affect the state as a whole, it is the choices of city and county officials that have the most impact on the day-to-day aspects of Utah life. Around the country, the recall of city and county officials occurs much more frequently than the recall of state officers.²²⁴ Utah is the only Western state besides Hawaii without the recall at the state or local government level,²²⁵ and the Local Government Removal Statutes are the citizen's only avenue for removing their unfit public officers.²²⁶ But the Local Government Removal Statutes are inadequate because of the inherent conflicts of interest that arise when local government officials are charged with policing themselves.²²⁷ The power that the county attorney holds, to decide whether to prosecute the official or not, is too important not to share with the people. The citizens of each city and county should have the power to remove a person who has so much power and influence to make decisions that affect them.

3. *A Recall Proposal for Utah*

If Utah is to implement recall at the state level, or allow local governments to institute their own provisions, the procedural requirements should benefit both politicians and the people. Moreover, a recall provision needs to be lenient enough so that citizens may successfully remove an official, but strict enough to prevent potential abuse. A good provision should balance the minimum signature requirement, the types of officers than may be removed, and the grounds for removal. Some states such as Washington, Montana, and Florida, allow a recall election to proceed only if malfeasance or misconduct in office can be proven.²²⁸ This is a very difficult threshold for voters to overcome, and therefore defeats the purpose of recall. As was demonstrated in this Comment, use of recall is a rare occurrence, and the recall process is difficult to carry out. Requiring Utah voters to demonstrate malfeasance or misconduct in office is antithetical to the essence of recall.

²²⁴ See Gardinier, Recall in the United States, *supra* note 119.

²²⁵ See *supra* Part IV.C.

²²⁶ See *supra* note 10.

²²⁷ See *supra* Part III.D.

²²⁸ WASH CONST. art. I, § 33; FLA. STAT. ANN. § 100.361(1)(b) (West 2002); MONT. CODE ANN. § 2-16-603 (2007).

Abuses can, however, be prevented with a higher minimum signature requirement. Although California's ten percent requirement²²⁹ might be too low, Nebraska's thirty-five percent requirement²³⁰ might be perfect for Utah. A thirty-five percent minimum signature requirement will sufficiently decrease abuses by increasing the difficulty of recalling officials, but will be low enough so as to not diminish the people's right to remove unwanted officials.

Utah should also include a requirement that sets limits on when a recall petition may be commenced and how much time petitioners have to gather signatures. Many states, such as Arizona, mandate that a recall petition may not be commenced during the first six months of the official's term in office.²³¹ This helps protect against the desire by some who supported the losing candidate to retry the election. A one-year requirement before filing a recall petition which allows the official time to carry her duties might be appropriate. Hopefully, after more than half a year has passed, political conflicts and passions will have subsided.

As to the amount of time petitioners have to gather signatures, this requirement varies among the states from thirty days to no time limit at all.²³² In some states, such as Georgia, the time limit increases as the size of the jurisdiction increases.²³³ However, Utah should require petitioners to gather signatures within ninety days, which is the average around the country.

VII. CONCLUSION

The recall was born in an era of public distrust of elected officials when corruption was feared by many.²³⁴ Today, many Americans continue to distrust their politicians. Even though there are methods for removing public officials at the state and local levels, those methods are inadequate to fulfill the needs of the people of Utah. Although it is not used frequently, it is important that recall exists as a method for removing public officials when other methods are inadequate. Recall represents the people's only alternative when the impeachment process or the Local Government Removal Statutes fail. Recall does have its defects, but they can be mitigated by instituting appropriate procedural requirements to decrease polarization and abuses, to thereby ensure the integrity of the recall.

Recall is a powerful tool in the arsenal of direct democracy. However, it is also capable of dividing communities and disrupting the political system. Utah Supreme Court Chief Justice Christine Durham "expressed grave concern about

²²⁹ CAL. ELEC. CODE § 1121(a)(5) (West 2003) (requiring "[t]en percent if the registration is 100,000 or above.").

²³⁰ NEB. REV. STAT. ANN. § 32-1303(1)(a) (LexisNexis 2005).

²³¹ ARIZ. CONST. art. VIII, § 2.

²³² Florida only allows petitioners thirty days to gather signatures. FLA. STAT. ANN. § 100.361(1)(a)(6) (West 2002).

²³³ Time for gathering signatures is forty-five days for a petition requiring 5,000 signatures or more; thirty days for a petition requiring fewer than 5,000 signatures. GA. CODE ANN. § 21-4-11 (2000).

²³⁴ See *supra* Part V.A.

the chaos a recall election can cause.”²³⁵ Recall can generate political conflict and burden the functions of government, but this is not necessarily a bad thing. In fact, political conflict can cause people to show an interest in their community and its future. Conflict stimulates discussion about important issues that a community faces and acts as a catalyst for change. People will begin to participate in the political process, creating a democracy that is for the people and by the people. The recall will most likely cause temporary conflict and discord among voters and politicians. But from the conflict will rise a better, stronger, and more representative democracy.

²³⁵ Dan Harrie, *Constitutional Panel: 1 Yea, 1 Nay*, SALT LAKE TRIB., Feb. 3, 2004, at A8.

APPENDIX: SAMPLE OF RECALL PROVISIONS BY STATE

State	Officers Subject to Recall	Signature Requirement
Alabama ALA. CODE § 11-44E-168 (LexisNexis 1989).	Municipal commissioners and mayors.	30% of those who voted in the last election.
Alaska ALASKA STAT. §§ 29.26.240, 280 (2006).	All elected public officials in the state, except judicial officers.	25% of the votes cast for that office in the last regular election.
Arizona ARIZ. CONST. art. VIII., §§ 1-5.	Every public officer.	25% of the votes cast for that office in the last election.
Arkansas ARK. CODE ANN. §§ 14-47-112(b)(1)(A)(i), 14-48-114(b)(1), 14-61-119(b)(1), 14-92-209(a)(3) (1998&Supp. 2007).	Mayor and other city officials.	35% of all votes cast for the office at the preceding primary at which the officials were nominated or elected (except 14-92-209 which requires 25% for commissioners).
California CAL. ELEC. CODE §§ 11100 to 11107 (West 2003).	Elected officers of a city, county, school district, community college district, or special district, or a judge of a trial court.	Varies according to the number of registered voters in the jurisdiction: 10%–30% of registered voters.
Colorado COLO. REV. STAT. §§ 31-4-501, 31-4-502(a) (2007).	Elective officers municipality.	Varies by jurisdiction but cannot exceed 25% of the entire vote in the last election for the office subject to recall.
Georgia GA. CODE ANN. §21-4-4 (2000).	Every elected public officer.	15%–30% of the registered electors depending on size of electoral district.

<p>Idaho IDAHO CODE ANN. §§ 34-1701, 34-1702 (2001 & Supp. 2007).</p>	<p>Governors, state legislators, mayors, and other elected and unelected state, county, and city officials.</p>	<p>20% of electors registered to vote at the last regular election at which the officer was elected or appointed (except § 34-1702-4 requires 50% for special officials).</p>
<p>Kansas KAN. STAT. ANN. §§ 25-4301, 25-4325 (2001 & Supp. 2006).</p>	<p>All elected public officials, except judicial officers.</p>	<p>40% of the votes cast for the office in the last election.</p>
<p>Minnesota MINN. STAT. ANN. §§351.14 to 351.16 (West 2004).</p>	<p>Any public official who is elected to county office or appointed to an elective county office.</p>	<p>25% of the number of persons who voted in the preceding election for the office which is held by the county official.</p>
<p>Montana MONT. CODE ANN. §§ 2-16-603, 2-16-614 (2007).</p>	<p>Every person holding a public office.</p>	<p>10%–20% of the persons registered to vote at the last county general election depending on the office.</p>
<p>Nebraska NEB. REV. STAT. ANN. §§ 32-1302, 32-1303 (LexisNexis 2007).</p>	<p>Any elected officials of a political subdivision.</p>	<p>35% of the total vote cast for that office in the last election. 45% for a village officer. 25% for school district officials.</p>
<p>Nevada NEV. CONST. art. II, § 9.</p>	<p>Every public officer.</p>	<p>25% of the persons voting in the last election.</p>
<p>New Mexico N.M. CONST. art. X, § 9.</p>	<p>Elected county officials.</p>	<p>33 1/3% of persons who voted in the last election for the office.</p>
<p>Oregon OR. REV. STAT. §§ 249.865, 249.870 (2007).</p>	<p>Every public officer.</p>	<p>15% of all votes cast in the electoral district for governor at the last election.</p>

<p>Tennessee TENN. CODE ANN. §§ 6-31-301 to 6-31-307 (2005).</p>	<p>Members of boards of education, city council members.</p>	<p>66% of the total vote cast for the candidate receiving the highest number of votes at the last election.</p>
<p>Washington WASH REV. CODE ANN. §§ 29A.56.110, 29A.56.180 (West 2005).</p>	<p>Every elective public officer except judges of courts of record.</p>	<p>25%–35% of total votes cast for the office at the last election depending on class size of city.</p>
<p>Wisconsin WIS. STAT. ANN. § 9.10 (West 2004).</p>	<p>Any elected official.</p>	<p>25% of the votes cast for governor or president in the jurisdiction, depending on county or city status.</p>
<p>Wyoming WYO. STAT. ANN. § 15-4-110 (2007).</p>	<p>Any elected officer of a city or town under the commission form of government.</p>	<p>25% of all registered electors in the city or town.</p>