

Maryland Municipal Recall Elections: Direct Democracy or Political Guerilla Tactics?

By Kevin J. Best, Director, Legal & Information Resources



Recall is a democratic procedure allowing voters to remove and replace a public official, usually through a referendum election process called by a certain percentage of voters. Recently our nation witnessed a rare occasion when only the second governor in our republic's 215-year history was recalled from office. This event has drawn attention to the status of recall provisions in Maryland and amongst its municipal corporations.

Approximately 2,000 county and municipal elected officials have been discharged across the nation since Los Angeles became the first local government to adopt the recall in 1903. Unlike 15 states of the Union, Maryland law does not permit recall of elected officials at the state or county level; however, 31 or 20 percent of the Free State's municipal corporations do in fact have laws permitting their elected officials to be recalled from office.

The History of Recall in Maryland

In October 1990, the residents of the City of Brunswick ousted their one-term mayor in what the *Washington Post* described as "the first-ever successful recall election in the state's history." The election attracted a record 65 percent of the City's voters, which removed the incumbent mayor by a two to one margin. The same news article also cited two other unsuccessful recall attempts in Prince George's County that occurred prior to Maryland's first successful recall election in Brunswick.

In the Brunswick recall, Mayor Susan Fauntleroy's administration reportedly came under attack because it desired to upgrade the municipal water system and increase user fees to accommodate the municipality's growing population. A group of life-long, working-class residents concerned with the influx of affluent commuters moving to the City, led by Mayor Fauntleroy's successor, desired to move the City in a different direction. It took the group three attempts to produce a legally sufficient petition to force the recall election, but it finally prevailed.

The Town of Fairmount Heights recalled Councilwoman Nancy Saxon in May of 1997, soon after the town charter had been amended the previous December to permit the recall of elected officials. Ironically, in the very next year, the voters of Fairmount Heights recalled Mayor Kathleen Scott, who had sponsored the charter amendment permitting recall in the first place. The *Washington Post* cited the basis for the special recall election of Mayor Scott as "spending public money without approval, unilaterally hiring a police chief and changing the locks at Town Hall so other elected officials could not get in."

On February 10, 1998 the registered voters of Snow Hill voted to recall Mayor Craig Johnson, who had become embroiled in an Internet pornography scandal. Mayor Johnson had also served as a deputy sheriff and was accused of allowing his patrol car to be used for a sexually oriented photo shoot. About 40 percent of the Town's registered voters turned out to recall the Mayor by a four to one margin.

Most recently, this past summer a petition drive to recall the entire Mayor and Council of Salisbury was withdrawn. The recall effort was the first ever attempted in Salisbury's history, where laws allowing recall of elected

officials were passed in the early 1990s. Under the charter, if 30 percent of registered voters sign petitions to recall a candidate, a special election is to be held to decide whether the individual remains in office. The petition drive lasted about 10 months and was abandoned a few weeks before the regular primary election scheduled for this past October. Due to the indefinite and exhausting petitioning period permitted under the charter, the Salisbury City Council briefly considered limiting the time permitted for circulators to collect signatures for recall petitions; however, no time constraints for collecting signatures have yet to be passed into law. (None of the remaining 30 municipal recall charter provisions contained a deadline for the submission of petitions, which may be a subject of consideration for those municipal governing bodies permitting recall.)

Two other failed municipal recall attempts in Maryland include an effort to recall the entire Mayor and Council of Snow Hill in 1995 and a failed recall election of Mayor James Britt of Landover Hills in 1984. The Snow Hill recall attempt focused on a controversial low-income housing project favored by the Town's elected officials. This recall effort failed because the Snow Hill petition could not be properly certified in that the applicable charter provision conditioned any recall upon a showing of misconduct in office, instead of allowing recall to be based on a mere political question. Similarly, Landover Hills' attempted ouster of Mayor Britt in 1984 failed at the ballot box, but was significant because it was possibly the first recall election conducted in Maryland history.

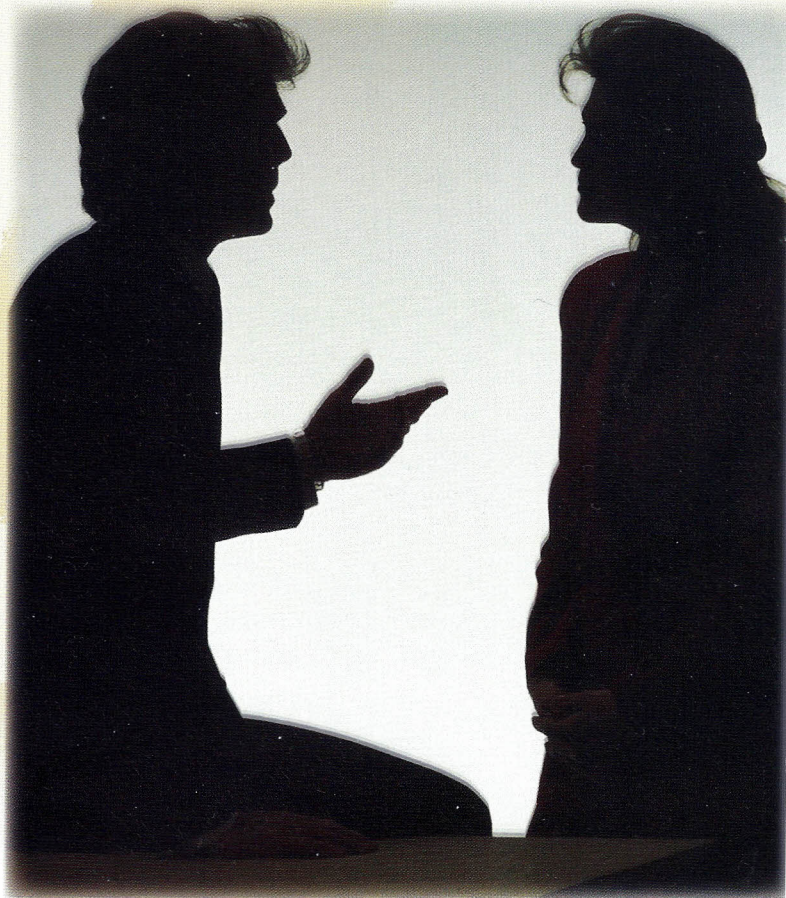
The Legality of Recall Elections

The question of whether municipalities may constitutionally provide for recall provisions in their charters has been raised in a previous decision but not yet decided by the Court of Appeals of Maryland. However, prior to the previously mentioned 1984 attempted recall election that took place in Landover Hills, the Town Attorney there sought a letter of advice from the Office of the Attorney General of Maryland concerning the constitutionality of the recall provisions found in the Charter. Then Chief Counsel Aisenstark concluded that under Article XI-E (The Municipal Home Rule Amendment) of the Constitution of Maryland:

[A] municipal charter may provide for the manner of removing town officials during their terms of office whether by recall or as also provided in [the charter], on conviction of a felony or for unexcused absence from Council meetings — no less than that same charter may provide for the manner of electing those town officials in the first instance....

As for the State and counties, the Constitution of Maryland prevents them from permitting a recall election. The Quadrennial Elections Amendment, which is inapplicable to municipalities, requires definite four-year terms with the exception of removal for cause.

Recall is to be distinguished from removal for cause as the result of legal proceedings. Regardless of the local charter, the Constitution of Maryland (Art. XV, §2) requires the automatic suspension of an elected official who is convicted or pleads *nolo contendere* (i.e. no contest) to a felony or to a misdemeanor that is related to his or her public duties, involves moral-turpitude (i.e. morally corrupt conduct), and includes



Recall promotes instability and divisiveness between constantly competing factions.

Contrasting Recall Provisions

Just as no two Maryland municipal charters are exactly alike, so too is it that each of those charters that contain a recall provision share some dissimilarities. However, a typical charter recall provision in Maryland usually calls for a petition signed by a certain percentage normally about 25 percent, of the

imprisonment. The governing body may temporarily appoint a successor to fill the vacancy, but must reinstate the elected official if the conviction is overturned on appeal. If the conviction is upheld, the suspended official is terminated from the public office.

Nonetheless, a municipality is free to dictate by charter whether it wishes to provide the option of a recall election or to simply permit the governing body to remove an elected official and declare a vacancy for any reasonable basis enumerated in the charter. For example, the Cambridge City Charter provides the elected commissioners with the right to remove from office any elected or appointed officer "for neglect of duty, for incompetence, or for any other misconduct, which, in the judgment of the commissioners, constitute[s] reasonable and sufficient ground for removing him from office." However, the Cambridge charter requires that a formal charge must be presented to the accused and a hearing provided if requested.

registered or qualified voters of a city or town in order to trigger the process. Several municipal charters provide details as to the necessary style and sufficiency of the petition including a statement of allegations against the named elected official; the form of signatures, and an affidavit set forth on each page of the petition by the circulator(s). All applicable charters permit only one official to be named per petition or are silent on the matter.

Once the appropriate election official certifies the signatures and passes on the sufficiency of the petition, it is normally submitted to the municipal governing body which then passes a resolution declaring that a special election will occur in normally 30 to 60 days, which poses a ballot question to the voters of whether the named official should be removed from office. In most cases, a public hearing is scheduled to take place approximately 15 days prior to the election, which occurs despite the outcome of the hearing. Usually the recall election only asks the voter to decide the

question of whether the officeholder should be allowed to remain in office and not whether a successor should also be chosen from a list of candidates. In all but one municipality, a successful recall election of an official simply causes a vacancy in office, which is filled in accordance with the city or town's charter vacancy procedures.

The range of the percentage of signatures generally required for a municipal recall petition in Maryland varies from 20 to as high as 35 percent. Eleven cities or towns call for 20 percent, 10 municipalities require 25 percent, seven towns specify 30 percent in their charters and two municipalities mandate 35 percent as the minimum number of voter signatures needed to initiate a recall election.

A very significant issue involving recall is whether the process requires some finding of wrongdoing on the part of the named official before an election can proceed. The vast majority of municipalities having recall (24 of the 31) require that some cause for removal be shown or alleged, such as misconduct in office (malfeasance, misfeasance, or nonfeasance), failure to uphold the oath, breach of fiduciary duty or failure to act (e.g. chronic absences). A few municipalities requiring that some cause be given as a condition to recall expressly state in their charters that the alleged misconduct does not have to rise to the level of criminal misconduct. Criminal misconduct in office may be prosecuted separately under the State criminal code by way of a judicial

proceeding. However, some municipal charters permit recall to go forward simply when the conduct is such that it brings the city or town into disrepute.


Furthermore, seven municipalities do not require any showing whatsoever of misconduct or inappropriate behavior as a basis of recall. Therefore, for some of our cities and towns, the question of recall is strictly a political question to be determined by the electorate. Even in those municipalities that do require a basis of wrongdoing for recall, several do not require any findings of fact or a hearing to prove by some set standard of the law that the official to be recalled is in fact guilty of some legally defined misconduct. Therefore, in several cities or towns, the voters serve as the judge and jury with no right of appeal afforded the recalled official.

Several charter recall provisions include some noteworthy elements. In Annapolis, if the mayor or council fails to execute a resolution declaring the



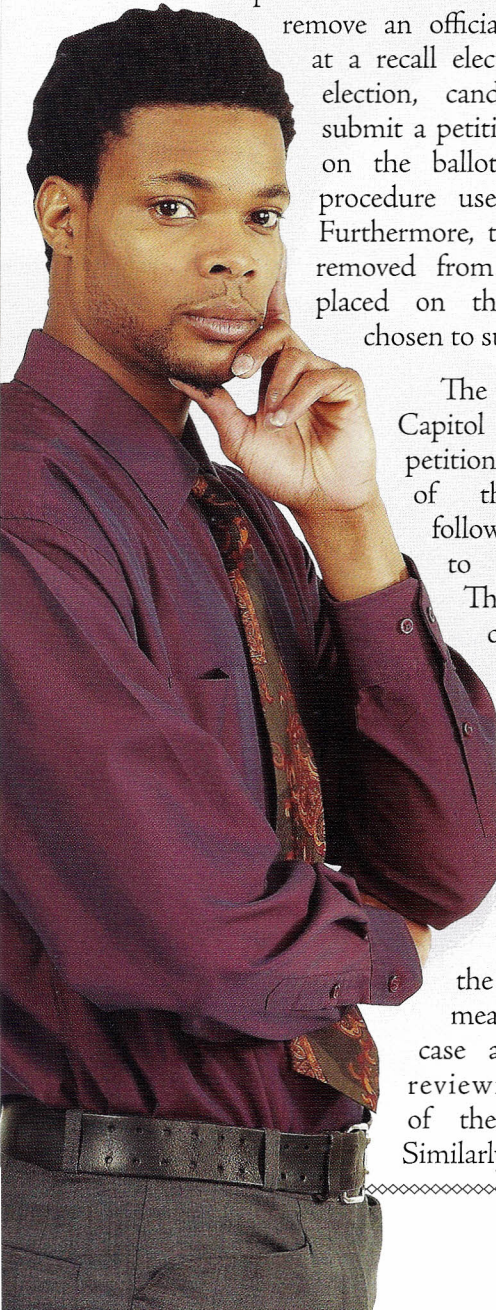
Recall allows for continuous accountability to the voters, which keeps elected officials more alert, honest and responsive.





Recall motivates citizens to stay informed of issues and to actively monitor the conduct of officeholders since they may feel more empowered to act by using their right to recall.

special election, the city clerk may do so. In the Town of Brentwood, the recall is known as an impeachment and is initiated by the council who introduces charges, followed by a petition signed by 25 percent of the registered voters. The council then formally charges the official by resolution and holds a hearing. In order to convict, the council requires a three-fourths majority, instead of a special election by the voters.



Brunswick is the only municipality that permits the voters to simultaneously remove an official and elect a successor at a recall election. Prior to the recall election, candidate successors must submit a petition in order to be placed on the ballot; similar to the same procedure used in general elections. Furthermore, the person sought to be removed from office is automatically placed on the ballot and can be chosen to succeed him or herself.

The recall procedure in Capitol Heights consists of a petition signed by 25 percent of the registered voters, followed by a resolution to conduct a hearing. The public hearing is conducted similar to a court proceeding. Instead of an election, a simple majority of the mayor and council may vote to remove the elected official. The charter further permits a *de novo* appeal to the circuit court, which means the court hears the case all over again without reviewing the findings of the mayor and council. Similarly, Cottage City does not

require a ballot election to recall an official, just a unanimous vote by the council once a petition signed by 30 percent of the registered voters is certified.

As with a few other cities and towns, District Heights requires that an official proposed to be recalled have served in office at least six months before a petition may be submitted. Several towns such as Fairmount Heights allow a recall petition to be amended for a short period after submittal if initially found to be deficient or having a defect in the submitted signatures. If the deficiency is not cured within the prescribed timeframe, the petition is returned to the circulators without prejudice with the condition that any resubmitted petition must include a greater percentage of registered voters such as 35 percent.

Once a petition is approved, Glen Echo requires at least two-thirds of those voting at the special election to affirm the removal of an official from office. New Carrollton's charter states that a minimum of at least 20 percent of the City's registered voters must cast a vote at the special election; otherwise, the recall is considered to have no effect. Similarly, in Sykesville, the charter requires that the total number of votes cast at the recall election must equal at least 25 percent of the votes cast at the previous regular election; otherwise, the recall must fail.

Finally, if the next regular town meeting is more than 15 days after the submission of a recall petition, the Town of Somerset's charter requires the calling of a special town meeting to accept a recall petition. The council then has the discretion of calling a hearing on the petition prior to the special election or going forward without one.

The Merits of Recall

Every political device invented by man has its pros and cons. The primary purpose of recall is to cure the side effects of representative democracy, which occurs when elected officials bow to the influences of special or privileged interests to the detriment of the public. Critics of recall state that it gives the voters too much power and weakens the elected official's individual discretion. A few of the arguments for and against recall are as follows:

Arguments For Recall

- ◆ Recall allows for continuous accountability to the voters, which keeps elected officials more alert, honest and responsive.
- ◆ For those municipalities considering extending the term of office for elected officials, recall serves as a check that makes longer terms more acceptable.
- ◆ Recall motivates citizens to stay informed of issues and to actively monitor the conduct of officeholders since they may feel more empowered to act by using their right to recall.
- ◆ Recall serves as a safety-valve to permit a city or town to constructively focus political conflict towards quickly changing the government in a peaceful manner when necessary.
- ◆ Recall allows the same results as impeachment but without all the legal work. (A sufficiently high number of signatures protects the elected officials from threats by fringe groups or mere partisan opposition.)

Arguments Against Recall

- ◆ Recall hinders an honest and able official from acting with principle and from making unpopular or long-term decisions (e.g. passing a civil rights ordinance).
- ◆ Recall reduces an official to becoming a mere puppet of public opinion instead of a decision maker with character and conviction.
- ◆ Recall promotes instability and divisiveness between constantly competing factions.
- ◆ Recall places too much burden on the voters to stay informed and to judge an elected official's performance between elections.
- ◆ Recall elections are too costly and have less utility since the Constitution of Maryland already provides for forfeiture of office by certain convicted officials.

Conclusion

At least 36 states permit recall of all or some of their local elected officials. Of the 36, about 15 states limit recall to mayors alone or to only those municipalities having home rule powers. Meanwhile, the Attorney General of Maryland states that every single municipality in Maryland is presently able to permit recall by charter if it so chooses.

The Constitution of Maryland mandates that certain kinds of criminal conduct must automatically result in an elected official losing his or her office. However a municipal charter may further provide for either, (1) removal from or forfeiture of office by resolution of the governing body based on criminal or noncriminal grounds, (2) recall from office by the voters based on certain wrongful conduct defined in the charter, or (3) recall from office by the voters based on no stated grounds whatsoever. The variety of recall procedures existing amongst Maryland's cities and towns is just another good example of the beauty of municipal home rule. ■



Recall hinders an honest and able official from acting with principle and from making unpopular or long-term decisions (e.g. passing a civil rights ordinance).