

## **We don't need another California clown-car recall election**

By Brandon V. Stracener and Bob Wu | March 29, 2021

You might be looking forward to a 2021 repeat of California's 2003 gubernatorial recall spectacle as a welcome break from pandemic monotony. A rerun of the 2003 recall might be fun to watch, but California politics isn't a reality show — it's real life. That election was a slow-moving train wreck, with over 130 thrill-seekers and hardly any serious candidates. Many observers ([Politico](#), for example) assume that will happen again this year and that a low bar to qualify will lead to hundreds of candidates. Maybe, but it doesn't have to. California law gives its secretary of state and lieutenant governor broad discretionary powers to make two key decisions in a gubernatorial recall: replacement candidate procedures, and when the election happens. Combined, those decisions will determine how difficult it is to qualify, which means that Lieutenant Governor Eleni Kounalakis and Secretary of State Shirley Weber will play key roles in this recall election. Their decisions could either usher in another chaotic scramble or prevent that from happening.

Secretary Weber has this discretion because the usual statutory procedures for primary elections don't apply to recall elections — the secretary of state needs to conduct a recall in only “substantially” the same way as regular elections. That gives Secretary Weber broad discretion over what procedures will apply. (There are a few hard rules; for example, a governor cannot qualify as a replacement candidate for his own recall election.) If Secretary Weber borrows procedures directly from the Elections Code, she has two alternative qualifying procedures: for primary party candidates, or for independent candidates.

In the 2003 Gray Davis recall election, Secretary of State Kevin Shelley used the primary party procedure, which at the time required just sixty-five signatures and a \$3,500 filing fee (and the option to scale back the fee with more signatures). That decision permitted a clown car's worth of candidates to qualify. But Shelley instead could have applied the procedure for independent candidates. That would have forced replacement candidates to submit the signatures of one percent of all registered California voters. In 2003, that was around 149,956 signatures; as of February 2021, it's 221,544 signatures.

Had Shelley chosen the independent candidate procedure, he probably would have precluded the silly candidates from qualifying on a lark. That decision likely would have withstood a court challenge: in the 2003 recall, the California Supreme Court held that the secretary of state's interpretation of California's election laws is entitled to substantial judicial deference. Thus, Secretary Weber has wide leeway in choosing replacement candidate procedures. She might out of caution simply repeat the 2003 primary candidate procedures. Or she could prioritize sparing California another circus and apply the independent candidate procedures.

Just like Secretary Weber's decision on procedures, the lieutenant governor's decision on timing could either guarantee a free-for-all or bar any non-serious candidates. In a gubernatorial recall, the state's lieutenant governor sets the election date. Because there's no regularly scheduled election this fall, the state constitution requires Lieutenant Governor Kounalakis to order the election held within 60–80 days after Secretary Weber certifies the recall. If everything happens on schedule, the election likely will fall sometime between Thanksgiving and Christmas.

The 20-day window seems like it wouldn't make much difference, but it can force would-be replacement candidates to move at hyperspeed. State law requires replacement candidates to file a declaration of candidacy and nomination papers within 59 days of the recall election — and not before certification. That marks the timeframe to file papers between as little as one day (if the election is held 60 days after certification) and 21 days (if the election is held 80 days after certification). Either way, the secretary of state must certify the names of the candidates to be placed on the ballot by the 55th day before the election. If the election is set on the 60th day after certification, candidates would have just one day to do everything: declare candidacy, get nomination papers, and gather and submit all their signatures. Setting the election on the earliest lawful date would give replacement candidates an extremely tight window to qualify.

These decisions on procedures and timing affect each other: the sooner within the 60–80 day window the election is set, the more it magnifies the effect of Secretary Weber's decision on qualifying procedures. If Lieutenant Governor Kounalakis schedules the election as soon as possible (60 days after certification) and Secretary Weber requires that replacement candidates comply with the more-onerous independent candidate procedure, potential candidates would need to gather and submit over 200,000 signatures in one day. Gathering that many signatures so quickly would require using a professional signature gathering firm; at around \$3 per signature, candidates would need at least \$600,000 to qualify. Only serious political professionals could afford that, and even they might struggle to do it that fast. That scenario could exclude any replacement candidates, leaving just a write-in line for voters. The reverse scenario is equally concerning. If Lieutenant Governor Kounalakis schedules the election as late as possible (80 days after certification) and Secretary Weber issues minimal qualification standards, prospective candidates would have three weeks to gather just a few thousand (or fewer) signatures. That invites another fool's gallery to the ballot.

The good news is that, even with their wide latitude here, there's no way for these officials to game the timing to help insiders with an early heads-up, because you can't start gathering signatures before declaring candidacy. Since political chicanery is off the table, the focus should be on how to prevent another list of gonzo candidates. That requires balancing competing considerations about maximizing ballot access while protecting the ballot (and voters). Maximizing access requires setting a low bar and a long schedule to qualify, but that encourages another parade of jokers. Protecting ballot integrity requires setting a high bar and a short schedule to qualify, but that could result in practical impossibility.

The best way to prevent a repeat of 2003's 135-candidate sideshow is to explore third-way options — remember, Secretary Weber is not limited to just the two options for primary and independent candidates in regular elections. Instead, she can choose a reasonable signature number, with a reasonable fee, in a reasonable amount of time. For example, in 2003 two California Supreme Court justices suggested requiring 1% of the total number of votes cast for the office at the preceding election. In 2021 that's around 125,000; still significant, but less so than 200,000. That balances access to candidacy against concerns about vanity candidates and overwhelming voters with nonsense options. The lieutenant governor can amplify that decision's effect by setting the election at a sensible point within the range: neither the earliest nor the latest possible day. The

earliest day will jam the candidates; the latest day puts the election close to the winter holiday season, which is never a good time to demand public focus on policy matters.

Californians might be in for another wild recall rollercoaster, but don't fasten your seatbelt yet. California's secretary of state and lieutenant governor both have a chance to exercise their discretionary powers over the recall process in a way that gives the voters their say while preventing another absurd spectacle. Challenging the chief executive of the world's fifth-largest economy shouldn't be political theater.

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