

Sucks to be you, general law cities!

Stephen M. Duvernay and Joshua Spivak | September 2, 2022

The legislature recently adopted Assembly Bill 2582. If the governor signs it, this law will remove the replacement election for many local recall elections — the city would replace the recalled official with the “automatic replacement” or “replaced by law” model. This is an obvious political ploy: unable to coalesce around statewide recall reforms, the legislature has given itself an excuse to claim that it did something on recall reform. But the legislature’s face-saving gambit is not an empty gesture. Instead, it will weaken the direct democracy powers currently held by California cities by removing the local electorate’s ability to choose their own officials. And because voters are unlikely to approve of a change that strips them of the power to select their own leaders, AB 2582 avoids the risk of asking the statewide electorate’s approval by targeting only local elections. Fortunately, the voters affected by this law can reverse this decision with a countermove: by adopting a charter and reinstalling the replacement election.

Removing the replacement election dilutes local voter power. Currently, the local and statewide recall procedures are the same: under Elections Code section 11381(b) a local recall election includes a question about who will replace a recalled official. In AB 2582’s new procedure a local official would face the same yes/no recall vote, but there would be no race for the replacement — the empty office would be filled by whatever method the city uses to fill other vacancies (such as succession or mayoral appointment).

The legislature did not try this “fix” on the state level because the two-part statewide recall law is guaranteed by the California constitution, and changing the state constitution requires consent from the statewide electorate — and that’s unlikely. During the San Francisco District Attorney recall, voters rejected a change to the law by an even greater margin than the vote to remove District Attorney Chesa Boudin. But the legislature can act on the local level without voter consent. Recall procedures for general law cities are controlled by statutes, and the legislature can change those laws at will without asking for consent from local voters.

Not every city is affected. California cities come in two flavors: general law and chartered. AB 2582 only applies to general law cities, not charter cities. A general law city is created by and operates under statutes passed by the legislature, and such cities are always under threat of legislative preemption. But any California city can invoke the power under article XI, section 3(a) of the state constitution to adopt a charter, after which the city’s mini-constitution “has the force and effect of legislative enactments” and supersedes “all laws inconsistent therewith” on matters concerning municipal affairs. A charter can adopt any recall provision the city wishes: under article XI, section 5(b) the “conduct of city elections” and the “manner,” “method,” and “removal” for electing the city’s officials are specific constitutional examples of municipal affairs a city may regulate by charter.

Local politicians may not want to adopt a charter. Nearly all of California’s largest cities have charters, but there are practical reasons (such as cost) that have led most California cities to remain general law cities. According to the [League of California Cities](#), of California’s 482 incorporated cities 361 are general law and 121 are charter cities. The same preference is true for counties,

which can also adopt charters under article XI, section 3(a): according to the [Association of Counties](#), of California’s 58 counties, 44 are general law counties and 14 are charter counties. If a local electorate wants to reclaim its recall power, and its city government balks, there are two paths for the voters.

One solution is to circulate a petition calling for an election under Government Code section 34452: “An election for choosing charter commissioners may be called by a majority vote of the governing body of a city or city and county, or on presentation of a petition signed by not less than 15 percent of the registered voters of the city or city and county.” Local voters can use that petition process to establish a charter commission, which ends with a charter going on the city ballot under Government Code section 9255. The other solution is for the local voters to use the local initiative to create a charter commission: article XI, section 3(c) provides that an election “to determine whether to draft or revise a charter and elect a charter commission may be required by initiative” Other than establishing itself as a charter city by invoking article XI, sections 3 and 5, that charter only needs to contain one provision: “Recall elections in this city are in two parts, one on the question whether to recall the targeted official, the second on the question of who will fill the vacated seat.”

The legislature’s attempt with AB 2582 to look like it’s doing something on recall reform both avoids conflict with the state electorate and removes power from the vulnerable local electorate. And the legislature’s “reform” is the single worst idea of all the possible changes floated last year in the legislative and Little Hoover Commission hearings. “Worst” in that automatic replacement is the greatest assault on voter power: it revokes direct election power from local voters, the only constituency the legislature can regulate without approval from the statewide electorate. The legislature is trying to say “look, we did reform the recall,” but what this really means is “sucks to be you, general law cities.” Local voters can use their initiative power adopt a charter that reclaims their recall power, and send a similar message right back to Sacramento.

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