

## [Alameda County's bait-and-switch on the local recall](#)

Joshua Spivak and David A. Carrillo | November 20, 2023

With Alameda County District Attorney facing a serious recall effort, the county Board of Supervisors is seizing the opportunity to weaken the county's recall law. The proposal is deceptively simple: "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers." Making this change and linking Alameda County's recall procedure to state law may create rather than solve problems, dilute the local electorate's direct democracy powers, and cede local control to the state.

The background here is a wily move by the state legislature. After Gavin Newsom easily won his recall vote in 2022, legislators went on the attack against the century-old direct democracy device. They passed a law to "reform" the recall on the local level with several changes, many of which help delay recalls from moving to the ballot. And one major change abolished the replacement race for recalled local officials. Under the new law, affected localities must use the "automatic replacement" or "by law" model, where the official is replaced by succession or by appointment. This means that the affected local voters may no longer choose the new official who will replace the recalled officer.

There's a reason that this new recall procedure only affects general law cities and counties — those are the only parts of California government that the legislature has direct and sole control over. It does not affect state officials, because that would require statewide voter approval for a constitutional change. Rather than explain to the state electorate why they were being stripped of the power to choose their own replacement officials, legislators chose discretion over valor and instead targeted local governments. And charter cities are unaffected because they control their own destiny on direct democracy. So only general law cities and counties must now use automatic replacement.

Alameda is a charter county, so it is not subject to the legislature's gambit. The pitch for this charter amendment is that the county's recall law is quite old (adopted in 1927) and it sounds reasonable to upgrade to the latest-version state law. But even with age and limited use, Alameda County's recall procedure has evolved over time. The California Supreme Court invalidated the requirement that voters cast a ballot on the recall portion before voting for a replacement, and the U.S. Supreme Court struck down a county residence requirement to collect signatures. Thus, some of the issues the supervisors claim need fixing have already been fixed.

The law focused on replacing candidates does need to be changed, because it references a statute that no longer exists. Voters throughout the state have been the late to the game to discover that this change was made; for example, Shasta County voters woke up to this disappointment and [have petitioned](#) Governor Newsom to allow the voters to choose their own replacement. In this case, Alameda voters may be similarly surprised. It would be simple to write a law that copies the state law or use the one that operates in Berkeley, whereby voters retain the power to select the replacement candidate.

Another important benefit from changing to state law is giving the county officials more time to count ballots. Alameda County's current law only grants the registrar of voters 10 days to verify signatures. The state gives 30 days, which is probably needed for the 100,000 signatures likely to be handed in. The state law also provides for a statistical sampling method to be used, which would certainly cut the verification cost. Alameda County would benefit from that too.

Yet rather than applying surgical fixes to the issues in existing county recall law, the supervisors want to cast aside existing procedure and adopt the new state law wholesale. Why? One would expect an explanation — since Alameda is a charter county, doing this requires a charter amendment approved by voters. That should force the supervisors to explain to the voters why they should approve a new law that removes their ability to select a replacement candidate. Instead, the county counsel's analysis of the proposed change omits this important bit, perhaps in hopes that no one notices.

Another thing the supervisors are hoping no one notices is the fact that adopting their charter amendment will increase the number of signatures needed to get a recall on the ballot. Anything that makes the recall less available benefits elected officials and reduces voter power, so naturally the supervisors don't highlight this feature. Currently Alameda County requires the valid signatures of 15% of voter turnout from the last election for the position. The state law would require 10% percent of *registered* voters. If that applies to the ongoing Price recall effort it will result in an increase of 20,000 signatures. There are positives and negatives of switching the signature requirements, but the fact that it can make the recall harder to use is something voters should know upfront.

Pushing a deceptively simple charter amendment, that actually makes major changes, while hiding the ball of the critical replacement question, is playing with fire. Everyone hates being duped, and voters often smell a fix and reject self-dealing ballot measures. As a rule California voters are very skeptical of ballot measures, rejecting about two-thirds of all proposed statewide initiatives. And it's well-known that the voters rightly keep their direct democracy powers close, something the legislature doubtless considered in limiting their recall reform to general law local governments. What will happen when Alameda County voters figure out the ruse?

They'll learn that they are in a pickle, with two bad choices. If they adopt the charter amendment, a charter county will give up the independent control over local affairs that local governments struggled for years to gain. The main beneficiaries will be the local officials, because the local electorate's direct democracy powers will shrink. But if the county electorate rejects this proposal, chaos could result in the Price recall because the reference to nonexistent state law will mean that there is no clear replacement procedure to follow. Alameda County voters deserve a smarter charter amendment.

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Joshua Spivak is a senior fellow at the Hugh L. Carey Institute for Government Reform at Wagner College and a senior research fellow at Berkeley Law's California Constitution Center. David A. Carrillo is the executive director of the [California Constitution Center](#) at Berkeley Law.

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