

2009

**Marks the 101st Anniversary
of Recall in Michigan**

Michigan and Oregon

**First two States to
provide for recall
of public officials
in their Constitutions
in 1908**

Earlier in 1903

Los Angeles, CA

Became the first city to

provide for

recall in their

City Charter

**16 States provide for
recall of state officials**

**36 states provide for
recall of local officials**

Since 1908

Nationally only

2 Governors have

been recalled

Lynn Frazier, North Dakota in 1921

Gray Davis, California in 2003

Since 1908

**only 9 state legislators have
been recalled**

CA – 1913, 1914, 1995 (2)

MI – 1983 (2)

OR –1988

WI – 1996, 2003

**Recall is much more common
at the local level
than at the state level**

In 1926 in
Newberg v. Donnelly
Michigan Supreme Court
Required a showing of
Malfeasance, Misfeasance
or Nonfeasance before
Recall could be commenced

**That standard lasted 34 years when
Michigan Supreme Court
in 1960 reversed *Newberg* precedent
and held that recall was a political
not a
judicial question
(*Wallace v. Tripp*)**

**In 1961-62 delegates
to Constitutional Convention
were well aware of
the *Wallace Case*
reversing *Newberg***

1963 Constitution

Specifically provided:

**“...the reasons or grounds
shall be a political rather than a
judicial question”**

**In 1979 in an Attorney General Opinion,
Frank Kelley opined that
pending legislation to
limit recall to malfeasance, misfeasance
or nonfeasance would be
unconstitutional in violation of the
express terms of Article II, Section 8**

**Recall is not a self executing provision
in the state Constitution**

**It requires the legislature to enact
laws regarding recall**

**Michigan Recall Law
consists of 26 Sections
of the Election Code**

**The problem with recall is a little like
Michigan's problem with term limits:**

Not all Term Limits are created equal

Not all Recall Laws are created equal

Michigan adopted the wrong model for both

15 States have Legislative Term Limits

Michigan followed a model adopted by

only 3 states (MI, CA and AR)

3 (2yr) terms – State House

2 (4yr) terms – State Senate

Lifetime ban

12 States have more flexible Term Limits

Ohio Model

4 (2 yr) terms – State House

2 (4yr) terms – State Senate

Can come back and serve again

**Restriction only on consecutive terms, not a
lifetime ban**

Three Models for Recall:

Michigan

California

Wisconsin

Michigan Model:

- **Clarity Hearing on reasons for recall**
- **90 Day Petition Drive**
- **Signature requirements equal to 25% of the total vote cast for Governor in that jurisdiction (Constitutional Requirement)**
- **Determination of signature sufficiency**
- **Special Recall Election**
- **Special Election to fill vacancy if Public Official is recalled. Recalled official cannot run in this Election**

Process can last 10 – 11 months or more

**Keeps a community in turmoil
for far too long**

California Model:

- 120 day petition drive
- Signature requirement equal to 12% of the total vote cast for Governor in that jurisdiction (Constitutional Requirement)
- Two part recall election

– First question:

Shall Gray Davis be recalled (removed)

from the office of Governor?

___ Yes

___ No

– Second question:

**Candidates listed to succeed Gray Davis
as Governor, if he is recalled**

Vote for one:

**In 2003 Arnold Schwarzenegger was one
of 135 candidates**

**If recall against Davis had failed,
a lot of wasted effort**

**CA Model provides a greater incentive to
toss the incumbent out**

Wisconsin Model:

- **Recall Committee simply registers (no need to state reasons for recall of state officials) and has 60 days to complete the petition drive**
- **Signature requirement equal to 25% of the total vote cast for Governor in that jurisdiction (Constitutional Requirement)**
- **Special Recall Election – Incumbent is automatically placed on the ballot. Other candidates can file to be on the ballot**
- **The highest vote getter finishes out the remainder of the term**

Advantages of Wisconsin Model over Michigan's Recall Process

- 1) Limit petition drive to 60 days not 90 days**
- 2) Allow incumbent's name to automatically appear on ballot – gives public official more of a fighting chance to keep his/her office by running against other candidates**

- 3) Michigan's Recall Election: Public Official is measured against some imaginary ideal. Don't know who is likely to be the potential successor if the public official is recalled.**
- 4) Recall in Michigan has become a public humiliation. In Wisconsin it is more a political contest between competing candidates.**

**The Michigan Legislature can adopt the
Wisconsin Model
by statute without the need to amend the
State Constitution**