

CALIFORNIA'S RECALL

Adoption of the “Grand Bounce” for Elected Officials

BY JOSHUA SPIVAK

From the completion of the intercontinental railroad system in 1869 until 1910, political life in California was dominated by the railroad industry, and its biggest conglomerate, the Southern Pacific Railroad (popularly known as the “Espee” or “SP”),¹ which was laser-focused on maintaining its profit margin and monopoly on power. One of the leaders of the fight against the railroad, Fremont Older, described the situation in his autobiography:

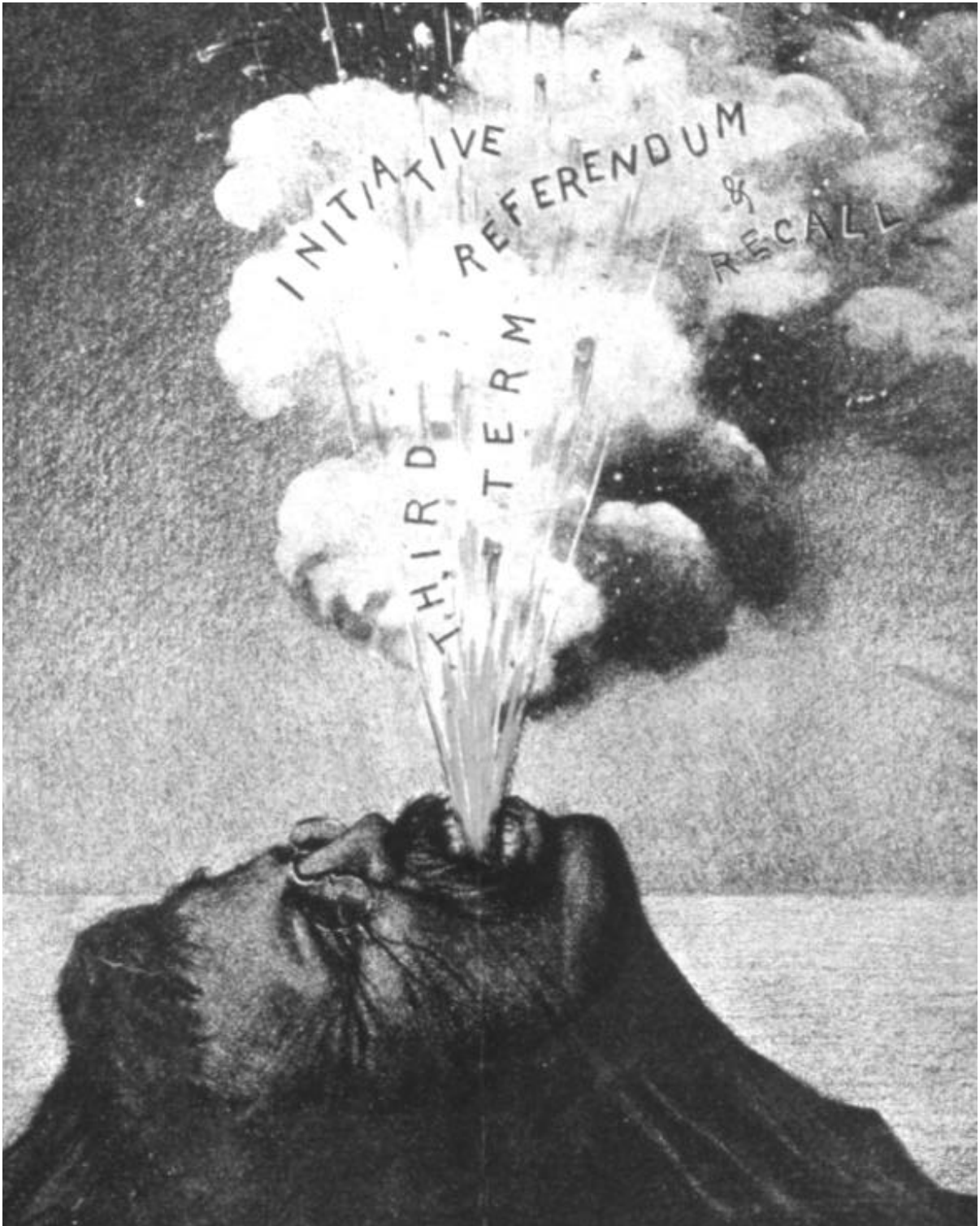
“There was only one kind of politics and that was corrupt politics. It didn’t matter whether a man was a Republican or a Democrat. The Southern Pacific Railroad controlled both parties, and he either had to stay out of the game altogether or play it with the railroad.”²

Other business leaders, labor groups, and good government movements spent years clamoring for change. However, the Southern Pacific, with its massive war chest and because it dominated the primary means of shipping and travel, was able to crush all comers until the Progressive movement swept the country.

The political reforms, known collectively as the Progressive Movement, encompassed a complex and diffused set of principles, which some historians believe lacked a clearly defined focus.³

Generally, the Progressives attempted to clean up the moral and political health of the country. Their record, and a list of the reforms they supported, is too long to elaborate here, but in politics, they were strident opponents of big city bosses and powerful interest groups, especially business monopolies. They stressed the delegation of power to the populace, which they believed would prevent corrupt influences from maintaining their hold on power. In order to achieve this goal, the Progressives backed a series of procedural changes to the political system on the national level that included women’s suffrage, the primary election, and direct election of senators. The Progressive movement also promoted a three-part state-level reform referred to as “direct legislation” or “direct democracy,” which is comprised of the initiative, the referendum, and the recall.

Considered “the chief political legacy of state progressivism,”⁴ direct democracy has been adopted in a majority of American states. Twenty-seven states provide for the initiative or popular referendum⁵ and thirty-six allow the recall of some officials.⁶ The initiative, which allows voters to propose a legislative measure or a constitutional amendment by filing a petition bearing a required number of valid citizen signatures, has had the most widely felt impact among the direct democracy provisions. Since Proposition 13 rolled back property taxes after its passage in 1978, the initiative has been recognized as the major player in determining California’s state budget allocation.⁷ The referendum, which



California's recall of officeholders was an outgrowth of Progressive reform efforts sweeping the nation in the first decades of the twentieth century. Former president Theodore Roosevelt was one of the most visible and controversial national figures to support reform. The recall was part of his platform as a Progressive ("Bull Moose") Party candidate for president in 1912.

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allows a legislature to refer a proposed or existing law or statute to the voters for their approval or rejection, also has had an impact on politics throughout the country. However the recall, which allows voters to remove an elected official before his or her term is up, has until recently been neglected. When Governor Gray Davis faced a recall in October 2003, at first many were shocked by its use.⁸ But at the time of its adoption it was considered of equal importance by its proponents, and of greater danger by some of its opponents.⁹

Even with its relative lack of use, the recall has been an inherently controversial device in this country, and it has been utilized to validate different beliefs on representation in government. Its backers have argued that it has remained true to its restorative purpose of expanding democracy by focusing power into the majority's hand. These contentions have failed to dislodge the opposition view that the device is both unnecessary and potentially detrimental to responsible government. Opponents continue to echo President William Howard Taft's denunciation of the device as the "hair trigger" form of government."¹⁰ With the recall shooting to new prominence, debates surrounding its value and wisdom are once again receiving a public hearing. Examination of the California's major recall elections shows that some were launched for reasons that proponents might agree with, while others were more clearly abuses and therefore provides justification for opponents' arguments.

ORIGINS

The recall's origins are uncertain. Some look to ancient times and claim it was "derived historically from Greek and Latin sources. . . ."¹¹ Modern interpretations focus on Switzerland as the inspiration for the recall, along with the initiative and referendum,¹² though others deny that Switzerland was the basis for America's recall.¹³ Almost all writers duly note that the recall was present in the Articles of Confederation government, but the fact is that the device goes back much further.

The recall first appeared in this country in the laws of the General Court of the Massachusetts Bay Colony, starting in 1631, and continuing in the Colony's Charter in 1691.¹⁴ Most recall commentators do not mention its colonial history, instead focusing on state constitutions in the Revolutionary War¹⁵ and its presence in the Articles of Confederation government.¹⁶ At the Constitutional Convention in 1787, there was at least one proposal to allow for a recall in the new constitution,¹⁷ and in the ensuing ratifying-conventions, there was significant debate as to whether it should be adopted for U.S. Senators. The New York State Convention spent several days debating the recall with Federalist Alexander Hamilton leading the opposition, saying the recall "will render the senator a slave to all the capricious humors among the people."¹⁸ Many states listed it as a recommendation for amendment to the constitution, but it was never adopted.¹⁹

Unlike the current recall, many of the seventeenth and eighteenth-century versions involved the removal of an official by another elected body, such as a state legislature recalling its United States Representative in the Articles of Confederation government. While this form of the recall provides a different relationship between the elected official and the general population, the principles and debates remain the same.

Following its failure to get into the U.S. Constitution, the recall went into eclipse for a century. It reappeared on the scene in the 1892 and 1896 platforms of the Socialist-Labor Party and the Populist Party, where it was sometimes called the "imperative mandate."²⁰ However, mainstream backers of the direct democracy movement did not support the recall. Eltwed Pomeroy, President of the National Direct Legislation League, argued against the recall because it "involves the personal element in a manner allowing for reprisals and political revenge." The recall was not part of the platform at the 1896 Convention of the Direct Legislation League.²¹ In 1898, when

South Dakota became the first state to adopt the initiative and referendum, the recall was nowhere to be found, and it was also absent from other states that subsequently adopted direct democracy.²² It took a Philadelphia-born Los Angeles physician and philanthropist to bring the recall back to life.

REVITALIZATION

Among the leaders of the California branch of the Progressives was Dr. John Randolph Haynes who formed the Direct Legislation League of Los Angeles in 1900. Haynes is widely credited with the recall's resurrection. He first set his sights on Los Angeles, which had spent several years attempting to draft a new charter. Los Angeles had a history with direct democracy provisions. In 1898, in an earlier attempt to revise the charter, the Board of Freeholders accepted the initiative and referendum, but rejected the recall.²³ In 1900, Haynes was elected to the fifteen-member committee for the revision of the Los Angeles charter. As a remedy for the "[i]nefficiency, extravagance and corruption [which] characterise the management of city affairs,"²⁴ Haynes proposed the initiative, referendum and recall. Though the recall met with some opposition, the Board of Freeholders approved all three provisions.²⁵ Due to Haynes's stature, the recall received the cautious support of the *Los Angeles Times*. At the time, Haynes was a friend and personal physician to publisher Harrison Gray Otis, though the two would later break off both relationships. The paper nicknamed the recall "The Grand Bounce."²⁶

When the voters of Los Angeles finally approved its new charter in 1903 by a four to one vote, the recall made its reappearance on the American scene.²⁷ It was used several times in the ensuing years, resulting in the removal of Councilman James Davenport and, in 1909, Mayor Arthur "A.C." Harper.²⁸ Spreading from Los Angeles, about twenty-five other California localities adopted the device. Nationwide, with Progressive champion Theodore Roosevelt in the White House, the direct democracy movement began



A leading California Progressive, Dr. John Randolph Haynes formed the Direct Legislation League of Los Angeles in 1900. As a remedy for what he saw as corruption in L.A. city affairs, Haynes proposed the initiative, referendum, and recall as part of the city charter.

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to blossom. The first state to take up the cause of the recall was Oregon, which had adopted the initiative and referendum several years before the 1908 vote placed the recall as the "final crowning act to complete the temple of popular government. . . ." ²⁹ However, in California, the battle against the railroad for control over the state was still being fought.

The railroads that eventually were combined under the umbrella of the Southern Pacific were formed starting in June 1862, after the passage of a bill that would pay for the construction of the intercontinental railroad. The new constitu-

Mayor A. C. Harper was one of the first officeholders to be recalled after the passage of the Los Angeles city charter in 1903. He left office in 1909 after being accused of encouraging vice and corruption in city hall.

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tion of 1879 enabled the Southern Pacific to firmly establish itself as the major player in the political scene, an “octopus” in the words of a best-selling novel, able to penetrate its tentacles everywhere.³⁰ Many commentators, including turn-of-the-century Progressives, have echoed George Mowry’s pithy pronouncement: “To a degree perhaps unparalleled in the nation, the Southern Pacific and a web of associated economic interests ruled the state.”³¹ Other, more recent historians have made a more nuanced assessment of the railroad’s power, noting that the Southern Pacific was not as monolithic an entity as portrayed by its opponents and that it was defeated on many different occasions, while still acknowledging its control. For example, historian William Deverell writes: “Although the Southern Pacific Railroad did not control events and individuals to the

degree that older and newer commentaries have charged, it *was* an extremely powerful entity nonetheless.”³² The Southern Pacific’s reach extended from the governor’s office down, and included political parties and the judiciary. However, their use of power created a backlash.

Other business interests argued that the oppressive hand of the Southern Pacific caused the state’s economic position to stagnate. These business interests, in conjunction with the nascent Progressive movement, provided the thrust for opposition to the political leadership in California. In order to provide an organization to wage the battle, leaders of the reform movement founded the Lincoln-Roosevelt League in Los Angeles in 1907.³³ Despite victories, such as the conviction of San Francisco boss Abraham Ruef

in corruption trials,³⁴ the reformers were not able to make great progress.³⁵ Historian Spencer Olin explained their dilemma: “The Lincoln-Roosevelt League would remain but a potentially dangerous irritant to the Southern Pacific machine unless it could place its own candidate in the governor’s chair.”³⁶

The gubernatorial election in 1910 provided just such an opportunity. The Democratic Party had fielded Theodore Bell as a reform candidate for governor in 1906, and he had run a strong race in losing to James Gillett, the Southern Pacific choice. Bell based his 1906 campaign around the railroad’s domination of California.³⁷ Aware of California’s Republican leanings, reformers looked for an impressive candidate to win the 1910 Republican primary. After some searching, they finally convinced Hiram Johnson, the second prosecutor in the San Francisco graft trials that convicted Boss Ruef,³⁸ to accept the position. While at first extremely reluctant to be the League’s standard bearer,³⁹ Johnson proved to be an excellent choice, running his campaign like a single-issue crusade, with the message that he was going to “kick the Southern Pacific out of politics.”

Johnson ran on the Lincoln-Roosevelt platform, which included adoption of the direct democracy provisions. In California’s first direct primary, the Southern Pacific’s hegemony cracked, as Johnson defeated four candidates to take the Republican nomination, and carried many Progressives to victory on his coattails. Johnson then faced off against Bell, once again the Democratic nominee. The candidates shared views on the railroad and on Progressivism. While Bell had the advantage of previous experience, “Johnson was conducting a more flamboyant campaign than Bell and had a more disciplined party apparatus, thoroughly under the control of the Lincoln-Roosevelt League.”⁴⁰ Johnson was also more than willing to accuse fellow Progressive Bell of accepting the support of the Southern Pacific,⁴¹ a strategy that helped him win the election 177,000 to 155,000.



Hiram Johnson ran for governor of California in 1910 on a strong reform platform. Johnson, in his inaugural speech, set the tone for the state legislature by asking: “How best can we arm the people to protect themselves hereafter?”

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One of the most noteworthy sessions in the history of the California state legislature followed the 1910 election. According to Franklin Hichborn, one of the leading Progressive journalists covering the California Legislature, Johnson wiped out partisan politics: “There was to be no Republican policies nor Democratic policies, only administration policies.”⁴² Hiram Johnson, in his inaugural speech, set the tone for the legislature by asking: “How best can we arm the people to protect themselves hereafter?”⁴³ The legislature answered with the direct democracy provisions. The initiative and referendum were easily approved. The recall, however, ran into some trouble.

JUDICIAL RECALL CONTROVERSY

While there was general agreement to adopt the recall for use against executive and legislative elective officials, there was bitter debate about its use in the judicial branch. Most Progressives considered it critical to extend the recall to judges, since abuses of judicial power helped maintain the success of the Southern Pacific machine. Mowry wrote: “As for the state judiciary, it was the considered opinion of Dr. John R. Haynes that the Southern Pacific’s domination of no other arm of government was as complete or pernicious.”⁴⁴ This anti-judicial bent was also the position of many Progressives nation-wide.⁴⁵ The actions of the United States’ Supreme Court inflamed the Progressives, as one history of the Supreme Court said of the Court’s actions of the time: “Instead of confining itself to the question of whether a legislative power was constitutional, the Supreme Court increasingly concerned itself with the wisdom of legislation.”⁴⁶

Unless they could eliminate what they saw as judicial arrogance in the face of the will of the people, Progressive leaders thought their reforms would be neither safe nor complete. The anti-court argument also fit right into the Progressive philosophy of devolving power to the public. Governor Johnson said that: “Under an elective system the Recall should be applied to all officers.

It will make no judge weaker, nor a strong judge less strong. It will be a warning and a menace to the corrupt only.”⁴⁷

However, by attacking the court, the Progressives ran right up against a cherished American political doctrine, namely judicial independence. Many politicians, both conservative and progressive, felt that the country must have “judges with courage to decide against the majority. . . .”⁴⁸ Opponents of the recall, sensing the futility of opposing the adoption of the device as a whole, realized that judicial recall offered the best target. Hichborn noted “no sooner had the administration taken up recall legislation, then strong opposition to the recall of the Judiciary developed in the ranks of the progressives themselves.”⁴⁹ Charles Wheller, a leading Progressive Republican, described the recall of the judiciary as a “strike at the very foundation of the government in which I live. . . .”⁵⁰

The furor over this issue led the Committee on Direct Legislation, which framed the constitutional amendments for the Republican State Central Committee, to leave judicial recall out of the original draft.⁵¹ The fight heartened the conservative opposition, as the *Los Angeles Times* said, “the sentiment here is strongly against going to that extreme (the inclusion of the recall of judges). . . .”⁵²

The topic of judicial recall led to an “oratorical duel” in a hearing with nearly all the members of the legislature present. Wheller squared off against Progressive hero and original San Francisco graft prosecutor, Francis Heney, in a widely reported exchange. Wheller painted the issue in the strongest terms, saying that the acceptance of the judicial recall “will mean the last of the republic of our fathers when you pass this bill, for we will pass from a constitutional democracy built by them, to a pure democracy and all its dangers.”⁵³ Heney’s speech was heavily quoted by the anti-Progressive *Los Angeles Times*, which titled its front-page story “Heney Violently Assails the United States Constitution.” According to the *Times*, Heney spent his time questioning the basis of the constitution, with such argu-

ments as: “The right of the Supreme Court to pass on the constitutionality of the acts of Congress was a stolen right.”⁵⁴ Other observers described Heney as citing the Supreme Court’s repeal of the income tax, a highly controversial decision, as a prime example of the need for judicial recall. This decision in *Pollock v. Farmers’ Loan and Trust Company* (1895) was a direct challenge to one of the central tenets of Progressivism, the redistribution of wealth.⁵⁵ In the eyes of many Progressives, the court had proved itself the tool of moneyed interests. While Progressive opponents of the judicial recall acknowledged the ignominy of the income tax decision, it did not justify subjecting judges to such an extreme remedy. Wheeler called the income tax decision the beginning of the loss of confidence in the judiciary, but stressed that there already existed sufficient methods to remove judges.⁵⁶

Judicial recall appeared to be in trouble. In a January 17, 1911 letter to Dr. Haynes, Governor Johnson expressed “grave doubts” on the likelihood of the judicial recall being adopted.⁵⁷ Despite all of these problems, the judicial provisions survived. The tide was turned by the actions of the state’s Supreme Court itself. Four members of the court signed an order granting a rehearing of prison sentences in the San Francisco graft trials. Details of the court’s decision started coming to light while the recall was being debated. Justice Henshaw, already infamous for his closeness to the Southern Pacific, had signed the order and went on vacation “without considering the briefs which had been filed in the case.”⁵⁸ This led to an uproar against the court and spurred the legislature into action. “[Assemblyman] John C. March, Sacramento, declared that until the last ten days he was against the recall of the judiciary, but the events of the last two weeks have changed his mind. . . .”⁵⁹ The legislature quickly began investigating impeachment charges against the justices,⁶⁰ and adopted the recall, including the judicial aspect. In the Senate and the Assembly combined, 106 legislators voted for the recall and fourteen members against. Hichborn cited the vote for the recall as “unique.”



Los Angeles Mayor Frank Shaw was removed from office by recall in 1938. His administration was considered by some to be the most corrupt in the city’s history. Shaw, at left, shakes hands with his successor, Chester Bowron, as he leaves office.

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“Every member of both houses voted for or against the judicial recall measure. Seldom, if ever, has the entire vote of the California legislature been cast for a measure . . . Never before, probably, had a measure before the California legislature been so thoroughly argued and discussed.”⁶¹

The direct democracy provisions still had to be approved by the voters. In the ensuing campaign, many conservatives were unwavering in their opposition to the recall. Leading the charge in California was the *Los Angeles Times*, which repeatedly referred to the direct democracy provisions as “freak legislation.”⁶² According to the *Times*, the passage of the recall “show[ed] the remarkable caprice of ballot wielders.”⁶³ Interestingly enough, despite its hatred for Progressivism, the newspaper was a leading opponent of the Southern Pacific.⁶⁴

The Progressive reforms were brought to the people to approve in October 1911, with twenty-three amendments on the ballot, including such notables as women’s suffrage and all three direct democracy provisions.⁶⁵ Twenty-two of the amendments passed, with the recall garnering the second largest vote total.

In the following years, the recall received several tests. While Haynes felt that “the only fault that can be charged against it (direct legislation) is a somewhat excessive conservatism,”⁶⁶ three recall elections took place against state legislators within the first three years of its adoption. However, the recall of Senator Edwin E. Grant showed the Progressives that the device was a double-edged sword.

THE RECALL IN ACTION

Since its inception, there have been thousands of recalls attempted, nearly all on the local level. Two of the most noteworthy have involved leading California political figures. San Francisco Mayor Diane Feinstein triumphed in a recall vote in 1983, using the argument that the device should not be used for simple policy disagreements and that her recall was a waste of money.⁶⁷ In the

early 1980s, four attempts were made to recall Rose Bird, Chief Justice of the California Supreme Court, and two other justices. While none of the petitions succeed in forcing a vote, Bird was eventually ousted from office by other electoral means that many commentators since have erroneously assumed was a recall.⁶⁸ Despite the intense debate over extending the recall to the judiciary, no judge has been removed since 1932, and very few were removed before then.⁶⁹ In Los Angeles, the largest municipality in the country to have the recall, four mayors have faced recall elections, and two were removed.⁷⁰ However, very few recalls have taken place against state officials.

Before the recall of Gray Davis, there were thirty-one attempted recalls of California governors, none of which made the ballot.⁷¹ There have been at least 117 recall attempts of state legislators, of which sixty-five have been undertaken since 1986.⁷² However, only seven of those endeavors succeeded in actually forcing a vote. The first three took place in the three years immediately after the adoption of the recall. The last four have occurred within the last decade.

The recall’s first use on the state level was in reaction to corruption. In 1912, Senator Marshall Black, a progressive Republican from Santa Clara, was indicted for embezzling funds from the Palo Alto Mutual Building and Loan Association.⁷³ After the Republican County Central Committee’s resolution calling on Marshall to resign was disregarded,⁷⁴ the committee launched a successful recall. According to reports, “an unusually small vote was cast”⁷⁵ at the January 2, 1913 election. Histories of the recall do not delve further into the matter.

A second recall, later in the same year, was somewhat more interesting, as it was not against a corrupt politician, but, according to recall historians Fredrick Bird and Frances Ryan, it was launched by labor groups as a “test of the effectiveness of the recall against an unfaithful legislator who fails to live up to pre-election promises and platform pledges.”⁷⁶ Senator James Owens, a Democrat, had made pledges to

support certain labor positions, which labor believed he violated. Bird and Ryan referred to Owens as “one of the weakest and most recalcitrant members of either house.” This was not the first recall Owens had faced, as he had successfully fended off a recall when he served as a Councilman.⁷⁷

The campaign showed the danger of interest groups using the recall as a disciplinary tool. The Democratic Party backed Owens. Rather than proving labor’s strength, “(t)he alignment of forces in the recall campaign was conclusive proof that labor planks in a party platform are not always to be taken too seriously. . . .”⁷⁸ Senator Owens managed to fight off the recall by the comfortable margin of 6,749 to 5,177.

The third recall, against progressive Democrat Senator Edwin E. Grant, was more complex than the other two, as several motives may have been at work. The stated reason for the recall was failure to represent the views of the district. But the desire by a political machine to punish an errant senator is viewed as the real motivation, although another motive, a desire by a losing candidate to reverse an election, might have had a part in this recall as well.

In the 1912 Senate election, Grant defeated incumbent Eddie Wolfe, one of the leaders of the San Francisco conservatives, by ninety-five votes. Not long afterwards, recall petitions began to circulate. According to Progressive writers and newspapers, the recall was started due to Grant’s opposition to “vice conditions” with his sponsoring of the Redlight Abatement Act.⁷⁹ This earned him the enmity of the still potent political machine in San Francisco. The petition circulated against Grant did not cite the Redlight Abatement Act, because, according to Bird and Ryan, “to recall a state senator for having opposed vice conditions did not seem possible even in San Francisco. . . .”⁸⁰ Rather it emphasized his votes on three bills: one prohibited the sale of liquor at the Panama-Pacific Exposition (votes in favor of prohibition could be considered an act of political suicide in wet San Francisco); a second, which he opposed,



San Francisco Mayor Dianne Feinstein triumphed in a recall vote in 1983, using the argument that the device should not be used for simple policy disagreements and that her recall was a waste of money.

COURTESY SENATOR DIANNE FEINSTEIN.

would have prevented most marriages from being solemnized until five days after the issuance of a license; the third, which he also opposed, would have given California authors and publishers preference over those from other states in the preparation and publication of school books.

The recall process was clouded with controversy. Twice, the recall petitions failed, once because the signatures burned, the other time because of forged or irregular signatures. On the third petition the anti-Grant group was finally able to get the recall on the ballot. This petition was also contested, though through a variety of questionable means that later lead to a Senate investigation, the recall election was certified and went forward.

The man who declared his candidacy for the seat was former Senator Eddie Wolfe. Progressive reporter Franklin Hichborn claimed “some of those who were circulating petitions against Grant had stated the petition ‘was to put Wolfe back in the Senate in place of Grant.’”⁸¹ This aspect of the recall, the reversal of an election verdict, is not discussed in depth in the writings on the Grant election. The infrequency of the procedure’s use in California leads to the understanding that attempts to remove an official for the solitary reason of overturning an election would not succeed. The Grant recall was tied into the Progressive politics of the state. The *Los Angeles Times* denounced Grant as “one of Gov. Johnson’s subservient henchmen”⁸² Grant’s supporters argued that the recall would decide whether “forces of vice” would regain control and also cited the cost of the “unnecessary expense” of the recall as a reason to vote for Grant.⁸³ On October 8, 1914, by a 531-vote margin, Grant was recalled and Wolfe elected in his place. A little over fifty percent of the district voted in the election. Progressives denounced the vote, but the *Los Angeles Times*, committed opponent to the Progressive cause, rejoiced in Grant’s defeat and wrongly predicted problems for the Progressives and Governor Hiram Johnson in the upcoming election.⁸⁴ Grant protested the election based on

irregularities in the petitions. Progressives like Hichborn scorned the Senate committee that investigated and dismissed the matter, and argued that the investigation was incomplete.

The recall of Grant and other uses of direct democracy provisions by opponents of the Progressives brought calls for changes in the procedure. In his message to the legislature, Johnson called for action saying: “It would be idle to deny . . . that certain abuses have arisen It is our duty to remedy those abuses. . . .”⁸⁵ Without specific guidelines on how to revise the recall, the legislature stumbled to a solution. The first idea was to split the recall and the selection of a new officer into two separate elections. Haynes strenuously objected to this change and claimed that the problems lay in the failure of local officials to enforce the law.⁸⁶ Eventually, the legislature settled for a token change of increasing the penalty for forging a name on a petition.

The recall against Grant was the last recall to get on the ballot against a state official for generations. This drought of recalls also existed on a nation-wide level. From 1922 till 1971, only one state official was recalled throughout the country.⁸⁷ The more partisan nature of the state-level recall is explained by one political scientist as the reason for its lack of use: “Signing a petition for recall is often more than repudiating a single state official—it is also a rejection of his or her party.”⁸⁸

LEGISLATIVE RECALL BATTLES OF 1994–1995

After a nearly eighty-year absence from state-level political battles, the recall came back with a vengeance during the legislative sessions of 1994–95. Three assembly members and one senator faced recall elections in this period and two were removed. The surge of recalls was in part due to the historic election results of 1994. For the first time since 1954, the Republican Party managed to capture control of both houses of the United States Congress. The party also won a majority of the gubernatorial elections throughout the country. In California, in addi-

tion to reelecting Pete Wilson as governor, the Republican Party had managed to obtain a majority in the Assembly. The parliamentary maneuvering that ruled the new Assembly led to the recall gaining an important role in the political process.

The fourth recall took place in the heightened political climate just before the 1994 election. It was launched against Senate President Pro Tempore and Democratic leader David Roberti who was finishing up his last term in the Senate, and running for state treasurer. Roberti was a leader in passing a ban on semiautomatic assault weapons in 1989, and was a major supporter of gun control initiatives. This angered anti-gun control forces, which decided to make a test case of Roberti. Despite the fact that he was being “termed out” as Senator, the gun lobby felt it would be able to send a message with a recall campaign before the 1994 elections. The Roberti recall drew national attention as a test of the strength of the gun lobby.⁸⁹ As the turnout for a recall or other special election was expected to be low, the anti-Roberti forces looked to have a good chance at success if they could mobilize their constituency.⁹⁰ Despite the fact that the first condition was met with only a twenty-five percent turnout, Roberti easily defeated the recall on April 12, 1994, garnering fifty-nine percent of the vote.

Commentators had a mixed impression of the recall’s impact. While Roberti failed in his bid for the Democratic nomination for State Treasurer in June, the recall’s effect on this race was uncertain. Roberti argued that the recall was a major factor in his loss, as he had to spend \$800,000 to keep his position, and the recall was blamed for draining his campaign funds.⁹¹ Furthermore, Roberti said: “It tied me down to the valley. Normally you don’t work your district in a statewide race. You’ve got to make friends in other parts of the state.”⁹² However, other observers saw the issue differently. Prior to the recall, Roberti was thought to be a “tired commodity,” running against a deep-pocketed candidate who won the support of both of Cali-

fornia’s U.S. Senators.⁹³ According to this view, the recall gave his campaign new life, albeit one that did not last long.

As an attempt by an interest group to punish an opponent, the recall did not succeed. A National Rifle Association lobbyist argued that the recall attempt had helped weaken support for gun control bills.⁹⁴ However, later successes of anti-gun control forces probably had more to do with Republican victories in the November election than with any fear the Roberti recall instilled in legislators.

There were two postscripts to this recall. First, in November, California voters approved a proposition slightly revising the recall law.⁹⁵ Second, the organization that waged the campaign against Roberti, Californians Against Corruption, was charged with hiding the sources of donations, and was fined by the State Fair Political Practices Commission a record-breaking \$800,000 for the violations.⁹⁶

The Roberti recall was but a prelude to one of the most bizarre sessions of the California legislature, one in which the long-time Democratic leader of the Assembly proved his final mastery over his Republican adversaries, and one in which the recall became a partisan tool to maintain party loyalty and seek control over the state government.

The “mania for recall elections,”⁹⁷ as the *California Journal* put it, began with a political earthquake: the election of 1994. The Republican Party scored across-the-board victories, the likes of which they had not seen in a generation. In addition to their national successes, the Republican Party retained the California governorship and succeeded in gaining a razor-thin forty-one to thirty-nine seat majority in the California Assembly, their first majority in twenty-five years. The Republicans expected to be able to elect their own leader as speaker, an enormously powerful position in the Assembly.⁹⁸ They would finally be able to topple their Democratic nemesis, Speaker Willie Brown, who had served in that

position for the previous fourteen years. The Democrats were focused on stopping Jim Brulte, the Republican leader, whom they considered an extremely effective leader, from gaining the speakership.⁹⁹ However, due to the casting of one Republican vote for the Democratic candidate for speaker, the Assembly was tied and eventually, through further political maneuvers,¹⁰⁰ re-elected Willie Brown to the speakership.

Infuriated Republicans looked to the recall as a way to revitalize their political fortunes. They immediately filed several recall attempts, and were able to place two recalls on the ballots: one against the renegade Republican Assemblyman, Paul Horcher, who voted for the Democratic candidate for Speaker and declared himself an independent, and the other against a Democrat, Michael Machado, who promised to be “an independent voice”¹⁰¹ in the Assembly during his campaign.

The Republicans quickly focused their fire on Horcher. Governor Pete Wilson, a long time opponent of Brown, said, “voters will not stand for politicians who seek to maintain the status quo at the expense of working Californians’ desire for change.”¹⁰² The Democrats attempted to portray Horcher as an independent-minded reformer, with little success. Horcher, who had turned his back on his party and whose recall was essentially viewed as an attempt to enforce party discipline, was defeated on May 16, 1995, by a margin of sixty-three to thirty-seven percent. Voter turnout was thirty-three percent, a significant amount for any special election; absentee ballots totaled fifty-three percent of the vote cast, sixty-nine percent of which went against Horcher.¹⁰³

The second recall was against conservative Democratic Assemblyman Mike Machado, who held a marginal seat, and whom Republicans said “lied to his constituents by telling them he would not vote for Brown.”¹⁰⁴ The *San Francisco Chronicle*, in denouncing the attempt, described the rationale for the recall by saying: “he actually voted for the leader of his own party to be speaker of the Assembly.”¹⁰⁵ This was also a prime example of an attempt to rerun the last election, as

the person who finished first in the balloting to replace Machado if the recall was successful was the same person Machado beat in the previous election.¹⁰⁶ Republican Assemblyman Bernie Richter, criticizing the recall attempt against Machado as “banana republic,” said: “It was an attack on the validity of the election results.”¹⁰⁷ Helped by the fact that Brown had already left the speakership by the time of the recall vote, the voters rejected the logic behind Machado’s recall on August 22, 1995, choosing to retain him 31,209 to 18,068. In his previous election, Machado won by 1,764 votes.¹⁰⁸

After Horcher was recalled and replaced, though before the Machado recall, an increasingly embittered and divided Republican caucus looked as if the party finally had a lock on gaining control over the Assembly. In June, however, in what was referred to as “a stunning farewell display of political power,”¹⁰⁹ Brown once again proved his mastery over the Republicans, as he maneuvered to elect Doris Allen, an embittered Republican backbencher, to the Speakership and had himself named to the newly created position of Speaker Emeritus.¹¹⁰

Allen, who was considered “woefully inadequate”¹¹¹ by opinion writers, and compared to the “Vichy French”¹¹² by Republicans for collaborating with Democrats, was immediately threatened with a recall. As in the Horcher recall, the strategy quickly paid dividends. Her few Republican supporters in the Assembly began to desert her. “The more that the GOP can show Allen siding with Democrats, the more ammunition they hope to accumulate for a recall effort. . . .”¹¹³

Before the recall of Allen took place, Allen gave up the speakership in favor of another Republican, Brian Setencich. In the campaign that followed, Allen was quickly painted into a corner by her betrayal of the Republicans. On November 28, 1995, Allen was handily defeated, sixty-five to thirty-five percent, with a turnout around twenty-six percent of registered voters. The Republicans then managed to oust Setencich through parliamentary means and finally elect their new party leader, Curt Pringle, as Speaker.

The Republican participants of the legislative battles faced negative repercussions. They lost control over the Assembly in the 1996 elections and have not regained it since; Assemblyman Setencich lost a primary election;¹¹⁴ aides to the Republican Speaker Pringle were indicted for misuse of offices in the Allen and Horcher recall;¹¹⁵ Governor Pete Wilson was threatened with a recall campaign by Jesse Jackson that was referred to as a “caricature . . . of the populist nuttiness in which California’s government . . . has become stuck.”¹¹⁶ Wilson embarked upon a failed presidential run in 1996. Former Assembly Speaker Willie Brown, however, escaped unscathed from the recall problems and won election as Mayor of San Francisco.

The results of the four recent recalls are not surprising. By accepting their party’s ballot line in the election, Horcher and Allen were not just being elected as individuals, but as Republicans. Their actions, which helped keep the Democrats in power, could be viewed as a clear party betrayal. On the other hand, the two failed recalls were based on issues that the elected representatives had publicly held. Both Roberti and Machado managed strong showings in the recall elections they faced. Observers were uncertain as to what the future would hold for the recall. During the battles, Mike Schroder, vice-chairman of the Republican Party, predicted, “recalls won’t be unusual in five years.”¹¹⁷ History proved Schroder wrong, though perhaps not by much.

GOVERNOR GRAY DAVIS

The recall took on new life when it was used to oust the highest-ranking officer in California, Governor Gray Davis, in October 2003. This event, and the subsequent election of actor Arnold Schwarzenegger, stunned Americans, many of whom were caught unaware by the power of the recall. Previous to Davis, only one governor throughout the entire country ever faced a recall vote.¹¹⁸

Despite its undeniable significance, what follows is only a broad overview of the Davis recall, presenting a few relevant highlights.¹¹⁹ One of the obvious questions is why Davis was recalled. There is no simple reason to cite, except that nearly all commentators agree that Davis’s own personality was a major factor.¹²⁰ Among the more popular arguments for the recall include: failure to properly manage the state’s budget,¹²¹ the energy crisis,¹²² right wing conspiracy,¹²³ and incompetence. One columnist claimed that Davis was in the pocket of special interests, and tied his downfall to the anti-SP movement that begat the recall.¹²⁴ Others felt the recall was an outcome of unprecedented voter anger at the political system.¹²⁵

The reaction to the recall petitioning was illustrative of the recall’s heretofore-marginal place on the political spectrum. Many commentators expressed shock at the unheralded recall, and ironically, in light of the hyper-democratic anti-recall arguments of Hamilton, Taft and others, complained that the recall itself was an undemocratic device.¹²⁶ One of the reasons for the argument that the recall is undemocratic is the belief that the eventual winner of the replacement election, who had to win only a plurality in a crowded field, would receive significantly fewer votes than Davis would in the recall vote (Davis was not allowed to run in the replacement portion of the recall). These fears proved unfounded, as the high voter turnout caused Schwarzenegger’s vote total to top Davis’ performance from either the 2003 recall or the 2002 election.

The origins of the Davis recall are a matter for some debate. Credit has been awarded to talk radio programs, as a conservative political activist named Ted Costa started the recall on a talk radio show, and other programs were instrumental in rallying support for the petition drive. This was not Costa’s first foray into recall politics, as he was a supporter of the Roberti recall, and an opponent of the Machado one.¹²⁷ However, some Republican leaders were contemplating a recall before that time, even though the national



Governor Arnold Schwarzenegger shakes hands at his inauguration in November 2003 with former Governor Gray Davis. The Davis recall was the apex of a recent nationwide revival. More state officials have been recalled since 1971 than in the previous sixty-three years of the recall's existence.

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Republicans appeared to be wary of a potential boomerang effect.¹²⁸ Despite the credit these early activists received in later narratives, their efforts seemed to be sputtering,¹²⁹ until Republican Representative Darrell Issa pledged millions of dollars to pay for enough signature gatherers necessary to get the measure on the ballot.¹³⁰ This turned out to be the critical moment in the recall's success.

As can be seen by the thirty-one failed gubernatorial recall attempts, qualifying the recall for placement on the ballot represents a major hurdle. Once on the ballot, the recall has a fairly good chance of succeeding, as evidenced by the four out of seven removal rate for state legislators. The Davis recall had one significant advantage rooted in the device's origins, namely the state's low signature requirement. When the recall law was written in 1911, there was no focus on the signature requirements. The original Los Angeles law called for signatures of eligible voters equal to twenty-five percent of the vote from the last election for the office facing the recall. Other municipalities varied the total, with Long Beach requiring forty percent and San Francisco requiring ten percent of the vote for mayor.¹³¹ The 1911 amendment adopting the recall for officials elected to statewide office required the gathering of voter signatures equaling twelve percent of the total vote in the last election for the office, plus one percent in each county.¹³² Judging from contemporary accounts, there did not appear to be much discussion about this provision, though there was debate about signature requirements for the initiative.¹³³ Today, the twelve percent requirement is the lowest barrier for any state with the recall. Due to California's large population, this is still a high hurdle; in aggregate number of signatures, it is possibly higher than any other state. However, the 2002 California gubernatorial election had the lowest voter turnout for a governor's race in history. Fifty percent of registered voters, and only thirty-six percent of eligible voters went to the polls that day. Therefore, the number of signatures needed to get on the ballot was proportionally lower than ever.

The early anti-recall arguments were threefold: One was that recalling Davis would be an illegitimate use of the recall. This argument was based on the ahistorical position that the recall was solely intended to depose corrupt officials.¹³⁴ A second argument presented was that the recall was a waste of money, a tactic that had proven successful in Dianne Feinstein's successful defense of her San Francisco mayoralty in 1983 and in the Machado recall, though it did not help Grant.¹³⁵ A third defense was that the recall was a part of a Republican "conspiracy" to gain political power without electoral success.¹³⁶ This argument was frequently tied in with the impeachment of President Bill Clinton and the disputed 2000 election in order to maximize Democratic anger, boost party-faithful turnout, and thereby use the Democratic registration advantage to ward off the recall.¹³⁷ None of these arguments proved particularly successful.

When the recall got onto the ballot, candidates of all stripes started entering the race. Minimal requirements to get placed on the ballot, gathering sixty-five signatures and paying \$3,500, resulted in 135 diverse candidates entering the race. The serious contenders included Republicans Schwarzenegger, Issa, former major league baseball commissioner Peter Ueberroth, Bill Simon (the man Davis defeated in the 2002 election), and conservative state Senator Thomas McClintock. In order to focus the campaign on a partisan angle, Davis attempted to keep the big name Democrats, such as Senator Dianne Feinstein, out of the race, though Lieutenant Governor Cruz Bustamante, who had an icy relationship with Davis, jumped in. In the end, most of the big name Republican candidates dropped out before the vote, leaving only Schwarzenegger and McClintock to battle for the party's base. The Republicans were concerned about the possibility that McClintock would siphon support from the far more popular Schwarzenegger, and allow Bustamante to triumph, but in the end, such concerns were unfounded.

The campaign that followed shared many bizarre facets, which will undoubtedly provide

source material for entertaining studies to come. Several court cases were fought, with the end result allowing the recall to proceed, although one case led to a change in the law permitting any voter who casts a ballot against the recall to be able to vote in the replacement election. When the dust settled on October 7, 2003, Davis was recalled by fifty-five percent of the vote, and Schwarzenegger was elected to replace him. Schwarzenegger garnered forty-eight percent of the vote, Bustamante received thirty-one percent and McClintock thirteen percent. Sixty percent of voters turned out for the election, a significantly larger percentage than had elected Davis, although fewer than voted in the 2000 presidential election.¹³⁸

It is difficult and potentially dubious to draw out lessons, patterns and historical comparisons from this uniquely interesting recall. The presence of a popular figure such as Schwarzenegger, and the Republicans' willingness to coalesce around him, unbalances some of the possible patterns. With this preface, there are two candidates whose failures are particularly worthy of comment: Darrell Issa and Bill Simon.

As the first major figure to provide serious financial support to the recall, Issa should have been viewed as a serious candidate. He had already run for the Republican nomination for the Senate in 1998. However, it does not seem that Issa gained any credibility by being the first prominent backer of the recall. Many saw his financial backing as a backdoor way to gain the governorship. Issa proved unable to translate his sponsorship of the recall effort into popular support, and dropped out.¹³⁹

In 2002, Simon had been the surprise Republican candidate for governor, defeating the popular former mayor of Los Angeles, Richard Riordan and then losing in a bitterly fought close race to Gray Davis. As the party's most recent standard-bearer just a year before, Simon might have been the party's logical choice. However, he was considered an incompetent campaigner, and was unable to make headway in the 135-person scum.

“The Davis recall was simply the apex of a recent nation-wide revival. More state officials have been recalled since 1971 than in the previous sixty-three years of the recall’s existence. In the last decade, two states have adopted the recall for statewide officers.”¹⁴¹

Simon was not able to mobilize the conservative base that helped him capture the Republican nomination in 2002. His failure is another argument against employing the recall to rerun an election. With the exception of the Grant recall, the tactic of using the device to reverse a result has not proven successful.¹⁴⁰

The Davis recall was simply the apex of a recent nation-wide revival. More state officials have been recalled since 1971 than in the previous sixty-three years of the recall’s existence. In the last decade, two states have adopted the recall for statewide officers.¹⁴¹ According to a recent study, over sixty percent of American cities now allow for the recall, which exceeds the total possessing the initiative and referendum,¹⁴² and a 1987 study found that the recall “has been used more often in the past twenty-five years than at any time since its inception during the progressive era.”¹⁴³ In October, following the Davis recall, state Senator Gary George of Wisconsin was recalled, representing the second senator recalled in the state in the last seven years.¹⁴⁴ People in other states have talked about recalling their governors.¹⁴⁵ There has also been some discussion of bringing the recall to the national level. A 1987 poll run by the Twentieth Century Fund found popular support for the extension of the recall to federal officials.¹⁴⁶ In 1996, Representative Peter Hoekstra introduced a package of “Voter’s Bill of Rights,” which would include recalls for Senators and Congressmen, and there have been occasional calls to recall U.S. Senators.¹⁴⁷ Also in 1996, Republican Presidential Candidate Patrick Buchanan advocated adopting the recall for the federal judiciary.¹⁴⁸

While there does not appear to be any real threat of the recall being adopted for federal officials, the fact that candidates use it to score political points highlights its revival.

CONCLUSION

The recall’s precise origins may be a matter for debate, but the reason for its creation is not: to make officials more responsive to the electorate. The Articles of Confederation government, like the Massachusetts Bay Colony before it, wanted the electorate, be it the state legislature or the populace, to have more control over officials than regular elections would provide. The pendulum swung against this tight control in the Constitutional Convention, and it was not until the Progressives that the recall was resurrected as a tool to remove what they saw as a corrupt and incompetent leadership, wholly captured by a special interest group. Since its reintroduction, the recall has occupied a marginal place in American political history. Unlike its direct democracy brethren, it has not succeeded in catching the imagination of the population. The Davis recall may have changed that, but not in the way its Progressive proponents had imagined.

Haynes and other Progressives thought that the recall and other direct democracy devices would become valuable tools in fighting the corrupting influences of special interests. On occasion, mainly on the local level, the recall has performed this task. Some have argued that the Davis recall is a prime example of this use. In general, however, as experience has shown, the recall has been used for other purposes. In the

Horcher, Machado, and Allen recalls, and some would also argue, in the Davis and Grant recalls, political parties hoped to grasp power that otherwise eluded them. In other cases, such as attempts against Roberti and Owens, interest groups have used the device simply to push their own agendas.

A combination of factors points to a strong probability of an increase in recalls in coming years. The slide in voter turnout, combined with an efficient signature gathering industry, has made it easier than ever to get a recall on the ballot. Attracting electoral support for the recall is also easier, as party affiliation has decreased throughout the state, removing yet another barrier to garnering support for a recall campaign. Once on the ballot, the recall has proven successful in five out of eight cases. Perhaps most importantly, deep-pocketed interest groups are willing to get directly involved in political battles. In

California, the initiative process has already been taken over by interest groups. The time may be coming where the modern day equivalents of the Southern Pacific Railroad regularly promote the “Grand Bounce.”

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