

MEINERS v. BERING STRAIT SCHOOL DISTRICT AND THE RECALL OF PUBLIC OFFICERS: A PROPOSAL FOR LEGISLATIVE REFORM

W. RICHARD FOSSEY*

I. INTRODUCTION

Recall is a process whereby voters remove an elected official before his term of office expires. In Alaska, public officials may be recalled from office for incompetence, misconduct, or failure to perform prescribed duties.¹ Persons dissatisfied with a public official's performance may circulate a petition setting forth the reasons for recall, and if the requisite number of signatures is obtained, a recall election is held.²

In *Meiners v. Bering Strait School District*,³ the Alaska Supreme Court interpreted Alaska's municipal recall statute for the first time. The supreme court ruled that statutes governing the recall of public officials should be liberally construed to permit "the people . . . to vote and express their will."⁴ Moreover, the supreme court stated that factual disputes in recall petitions should not be resolved by election officials. Rather, the public should decide the truth of the allegations against the public official in a recall election.⁵ Finally, the supreme

Copyright © 1985 by Alaska Law Review

* B.A. Oklahoma State University, 1970; M.A. University of Texas, 1974; J.D. University of Texas School of Law, 1980; Partner, Bankston & McCollum, P.C., Anchorage, Alaska.

The author wishes to express his appreciation to Dianna Reading for her efforts in the preparation of this article for publication and to J.B. McCombs for his comments and suggestions on the text.

1. ALASKA STAT. § 29.28.140 (1984).

2. *Id.* § 29.28.200.

3. 687 P.2d 287 (Alaska 1984).

4. *Meiners v. Bering Strait School Dist.*, 687 P.2d 287, 296 (Alaska 1984) (citing *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974)). The recall of local public officials is governed by Alaska Statutes sections 29.28.130-.250 (1984). The law pertaining to the recall of state officers is set forth in Alaska Statutes sections 15.45.470-.720 (1982). Unless otherwise indicated, all references to the recall statutes pertain to those statutes set forth in Alaska Statutes sections 29.28.130-.250 (1984).

5. 687 P.2d at 300 n.18.

court in *Meiners* ruled that a recall election should be held even if only one of the allegations in the recall petition states a statutory ground for recall. Election officials may delete an allegation that fails to state a proper ground for recall, but the fact that some allegations are statutorily deficient will not be sufficient cause to reject the petition.⁶

This article begins by reviewing the political development of the recall device since its inception in the early twentieth century. Next, the article outlines Alaska's recall process as it is set out in the state constitution and statutes and as it has been interpreted by the Alaska Supreme Court in *Meiners*. Third, the article identifies and discusses recurring problems with the recall of public officials which have arisen in other states. Specifically, public officials are sometimes forced to defend themselves against recall drives based on false allegations or on motives unrelated to the allegations stated in a recall petition. To the extent that recall is used to punish those who make legitimate but unpopular decisions, it inhibits incumbent officials' freedom of action and discourages qualified individuals from seeking public office. Finally, the article concludes by proposing specific statutory amendments designed to preserve the positive aspects of the recall process while curbing potential abuses.

II. HISTORICAL OVERVIEW OF THE RECALL PROCESS IN THE UNITED STATES

The right of the electorate to recall public officials while they are still in office is a relatively new political idea in the United States. The concept was first espoused in the early twentieth century during the progressive movement, which advocated political reforms of local and state government. Like the initiative and the referendum,⁷ recall reflects the progressive philosophy that voters should have power to bypass or countermand elected officials.

Although some municipalities already had incorporated recall provisions into their charters by the early 1900's, Oregon in 1908 became the first state to place a recall provision in its constitution.⁸ Oregon was soon followed by Washington,⁹ California,¹⁰ and Nevada.¹¹ By 1927, twelve states, most of them in the West, had constitutional

6. *Id.* at 302-03.

7. Alaska's current Initiative and Referendum statutes are found at Alaska Statutes sections 29.28.060-.110 (1984).

8. The first recall provision in the United States was adopted by charter in Los Angeles in 1903. Note, *Constitutional Law: Recall of Public Officers: Discretionary Acts Cannot Be Sufficient Basis for Recall — State ex rel. Citizens Against Mandatory Bussing v. Brooks*, 48 WASH. L. REV. 503, 505 n.6 (1973).

9. WASH. CONST. art. I, §§ 33-34.

10. CAL. CONST. art. II, § 13 (1911, amended 1976).

11. NEV. CONST. art. II, § 9.

recall provisions.¹² Other states, such as Minnesota¹³ and South Dakota,¹⁴ provided for recall by statute rather than by constitutional amendment.

Arizona's experience reflects the popularity of recall in the early twentieth century. In 1910, Arizona Territory convened a constitutional convention for the purpose of drafting a state constitution. Progressive politics dominated the convention, which adopted numerous progressive ideas, including the initiative, the referendum, and a constitutional recall provision that permitted judges, as well as other public officials, to be recalled from office. The adoption of the recall provision led President Taft to warn the convention delegates against creating a "crank constitution." President Taft threatened to veto Arizona's admission to the Union unless the provision for the recall of judges was deleted from the constitution.¹⁵ Congress passed a resolution in 1911 requiring the Arizona Territory, as a condition for statehood, to exempt the judiciary from its constitutional recall provision.¹⁶ Arizona capitulated, and the constitutional recall provision was amended to exclude the judiciary. Nevertheless, after Arizona was admitted to the Union, the legislature amended the constitution, reinserting a provision allowing recall of judges.¹⁷

Several recent developments demonstrate the continuing popularity of recall. In 1973, New Mexico passed a constitutional amendment for the exclusive purpose of authorizing the recall of local school board members.¹⁸ Kansas revised its recall provisions in 1976.¹⁹ Georgia voters ratified a constitutional amendment in 1978, allowing

12. ARIZ. CONST. art. VIII, §§ 1-6; CAL. CONST. art. II, § 13; COLO. CONST. art. XXI, § 1; IDAHO CONST. art. VI, § 6; KAN. CONST. art. IV, §§ 3-5; LA. CONST. art. IX, § 9; MICH. CONST. art. II, § 8; NEV. CONST. art. II, § 9; N.D. CONST. art. III, § 1; OR. CONST. art. II, § 18; WASH. CONST. art. I, §§ 33-34; WIS. CONST. art. XIII, § 12.

13. 1909 Minn. Laws 170, § 5 (codified at MINN. STAT. ANN. § 410.20 (West 1958 & Supp. 1984)).

14. 1913 S.D. Sess. Laws 119, § 15 (codified at S.D. CODIFIED LAWS ANN. §§ 9-13-29 to -35 (1981 & Supp. 1984)).

15. H. LAMAR, *THE FAR SOUTHWEST 1846-1912, A TERRITORIAL HISTORY* 503 (1970).

16. Act of Aug. 21, 1911, 37 Stat. 42.

17. H. LAMAR, *supra* note 15, at 504. Some states, such as Alaska, Idaho, Kansas, Louisiana, Michigan, and Washington, specifically exempt judges from the threat of recall. Fordham, *The Utah Recall Proposal*, 1976 UTAH L. REV. 29, 35 n.28. Other states, including California, Colorado, Nevada, North Dakota, Oregon, and Wisconsin, do not exclude the judiciary from recall. *Id.* at 35 n.27.

18. N.M. CONST. art. XII, § 14.

19. 1976 Kan. Sess. Laws 178, § 31 (codified at KAN. STAT. ANN. §§ 25-4301 to -4331 (1981)).

the Georgia General Assembly to enact comprehensive recall procedures.²⁰

Although recall provisions vary widely from state to state, all recall provisions employ the same three-part process. First, voters seeking to recall a public officer must circulate a recall petition. Second, election officials must review the petition to determine whether it is legally sufficient and whether it contains the requisite number of signatures. Third, if election officials determine that the petition meets these requirements, a recall election is held to determine whether the public official should retain his office.

In general, recall provisions fall into two categories.²¹ Recall provisions in the first category place no specific restrictions on the grounds for a recall vote, so that an official may be recalled for virtually any reason. Thus, recall is strictly a political process, allowing the electorate to dismiss in mid-term a public officer whose policies are sufficiently unpopular to inspire a recall vote.²² California, for example, adopted this approach in a constitutional provision which states that the sufficiency of reason for recall is not reviewable.²³

Recall provisions that fall into the second category specify that a public official can be recalled only for misconduct in office. For example, Washington's constitution permits voters to recall a public official for misfeasance or malfeasance during office, or for violation of the oath of office.²⁴ New Mexico's constitution applies the same standards

20. See GA. CONST. art. II, § 2, ¶ 4 (1976); GA. CODE § 21-4-2 (1982).

21. Some states do not have recall statutes but permit public officers to be impeached or judicially removed from office through civil actions or criminal proceedings. Oklahoma, for example, permits public officials to be removed by all three means. See *L'Acquarius v. Hampton*, 642 P.2d 1143 (Okla. 1982); OKLA. STAT. tit. 22, §§ 1181-97 (1971); OKLA. STAT. tit. 51, § 91-105 (1971). In general, public officials may not be removed by judicial proceedings except for statutorily defined misconduct.

In Iowa, the courts may remove an elected or appointed officer for six reasons: (1) wilful or habitual neglect or refusal to perform duties of office; (2) wilful misconduct or maladministration in office; (3) corruption; (4) extortion; (5) conviction of a felony; or (6) intoxication or conviction of intoxication. IOWA CODE ANN. § 66.1 (West 1973).

A public official opposing judicial removal is generally afforded the same protection as any civil defendant. For example, Oklahoma requires proof by a preponderance of the evidence in removal actions. OKLA. STAT. ANN. tit. 51, § 105 (West 1962). Moreover, either the state or the public official may demand a jury trial. OKLA. STAT. ANN. tit. 51, § 103 (West 1962).

22. See *Abbey v. Green*, 28 Ariz. 53, 235 P. 150 (1925); *Wallace v. Tripp*, 358 Mich. 668, 101 N.W.2d 312 (1960); *Westpy v. Burnett*, 82 N.J. Super. 239, 97 A.2d 400 (1964).

23. CAL. CONST. art. II, § 14(a).

24. WASH. CONST. art. I, § 33.

to the recall of school board members.²⁵ A Florida statute authorizes a recall election for seven specific forms of misconduct.²⁶

The distinction between systems allowing recall for any reason and those specifying acceptable grounds for recall tends to become blurred in practice. Courts often have construed constitutional and statutory recall provisions very broadly in order to permit voters to decide whether a public officer should be permitted to remain in office. For example, Washington courts broadly construed "misfeasance or malfeasance"²⁷ to include "any wrongful conduct that affects, interrupts or interferes with the performance of official duty;" and interpreted "violation of an official's oath of office" to include any failure to perform official duties honestly, faithfully, and to the best of the officer's ability.²⁸ The Washington courts repeatedly ruled that the voters, not the courts, are to determine whether allegations in a recall petition are true.²⁹ A Florida court took the same view in refusing to review the truth or falsity of recall allegations.³⁰ A Kansas statute which limits recall grounds to the conviction of a felony, incompetence, or failure to perform duties prescribed by law³¹ has an explicit provision for liberal construction. The provision states that "[n]o recall submitted to the voters shall be held void because of the insufficiency of the grounds."³²

Montana does not follow the majority rule of liberally construing recall provisions to permit a recall vote. Instead, Montana's Recall Act provides that "[p]hysical or mental lack of fitness, incompetence, violation of [the official's] oath of office, official misconduct, or conviction of a felony offense enumerated in Title 45 is the only basis for recall."³³ Moreover, under Montana law, a public official may not be recalled for performing a mandatory official duty or for failing to take an action that, if performed, would subject him to prosecution for official misconduct.³⁴ The Montana Supreme Court has stated that recall

25. N.M. CONST. art. XII, § 14.

26. FLA. STAT. § 100.361(b) (1982) permits a municipal official to be recalled for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, and conviction of a felony involving moral turpitude.

27. See WASH. REV. CODE ANN. § 29.82.010 (Supp. 1984).

28. *Danielson v. Faymonville*, 72 Wash. 2d 854, 435 P.2d 963, 966-67 (1967). *But see* *Cole v. Webster*, 103 Wash. 2d 280, 692 P.2d 799 (1984), in which the Washington Supreme Court ruled that the discretionary acts of school board members did not provide grounds for recall and overruled *Danielson v. Faymonville* to the extent it is inconsistent.

29. See, e.g., *State ex rel. Lamon v. Westport*, 73 Wash. 2d 255, 438 P.2d 200 (1968), *overruled on other grounds in* *Cole v. Webster*, 103 Wash. 2d 280, 692 P.2d 799 (1984); *Skidmore v. Fuller*, 59 Wash. 2d 818, 370 P.2d 975 (1962).

30. See *Bent v. Ballantyne*, 368 So. 2d 351 (Fla. 1979).

31. KAN. STAT. ANN. § 25-4302 (1981).

32. *Id.*

33. MONT. CODE ANN. § 2-16-603(3) (1983) (emphasis added).

34. *Id.*

is a "special, extraordinary, and unusual proceeding," and a "harsh remedy."³⁵ According to the Montana court, the statutory limitations contained in the Montana Recall Act³⁶ express a clear intent that the recall procedure not be lightly undertaken.³⁷

In all states having recall statutes, a petition signed by the requisite number of dissatisfied voters must be presented to the appropriate election official before the recall process may proceed. Signature requirements vary widely. For example, in Washington, recall petitions for most public officials must contain signatures equal to twenty-five percent of the votes cast for all candidates who ran for the targeted official's office. The signature requirement is increased to thirty-five percent for certain local officials.³⁸ In North Dakota, a recall petition must be signed by at least twenty-five percent of the number of voters in the last gubernatorial election in the district from which the public officer is to be recalled.³⁹ To recall a state officer in Georgia, the number of signatures must equal at least fifteen percent of the *registered* voters at the last general election for the office held by the targeted officer.⁴⁰ Moreover, at least one-fifteenth of the necessary signatures must come from each congressional district in the state. The signature requirement is increased to thirty percent for local officials.⁴¹

The number of signatures required can significantly affect the frequency of recall elections. In states that base the signature requirement on the number of people who voted in a given election, a light voter turnout allows a recall petition to be obtained with relatively few signatures. On the other hand, states which base signature requirements for recall on the number of votes for governor in the official's district generally require more signatures, because, as a rule, more people vote in gubernatorial than in strictly local elections.⁴² States basing the signature requirement on the number of registered voters have the most strict signature requirements because the number of registered voters is usually much higher than the number of actual voters in any election.⁴³

35. State *ex rel.* Palmer v. Hart, 655 P.2d 965, 967 (Mont. 1982).

36. MONT. CODE ANN. §§ 2-16-601 to -635 (1983).

37. 655 P.2d at 968; *see also* Chandler v. Otto, 103 Wash. 2d 268, 693 P.2d 71 (1984) and Cole v. Webster, 103 Wash. 2d 280, 692 P.2d 799 (1984), in which the Washington Supreme Court retreated from prior decisions which liberally construed Washington's constitutional recall provision, and expressed concern that the recall process not be used to harass public officials. *See infra* text accompanying notes 141-66.

38. WASH. REV. CODE ANN. § 29.82.060 (1965).

39. N.D. CONST. art. III, § 10.

40. GA. CODE ANN. § 21-4-4(a)(1) (1982).

41. *Id.* § 21-4-4 (a)(2).

42. *See Meiners*, 687 P.2d at 297 n.9.

43. For example, fewer than twenty-five percent of the registered voters in the Matanuska-Susitna Borough voted in the school board election held on October 2, 1984. *See infra* note 174.

In summary, the distinction between various recall provisions is illusory: most state courts are reluctant to void a recall petition on the ground that it fails to state statutory grounds for recall. If a recall petition is found to be valid on its face, most courts will not scrutinize it. Instead, they will let the matter be decided by the voters. Even narrow statutory grounds for recall are often construed liberally to permit the voters, rather than the courts, to decide whether a public officer should remain in office. The frequency of recall elections, however, is largely a function of the number of signatures required on recall petitions.

III. RECALL IN ALASKA

A. Legislative History

Alaska passed its first recall statute in 1949, while it was still a territory. Before that time, voters could bring removal proceedings against Alaska municipal officers in the territorial district court. The statutory grounds for removal were malfeasance, misfeasance, or nonfeasance.⁴⁴ Elective recall was established by a statute,⁴⁵ which, like the earlier removal provision, specified malfeasance, misfeasance, or nonfeasance as the permissible grounds for recall. The recall ballot was to include the reason or reasons for recall, and petitioners were required to swear the allegations were true to the best of their knowledge and belief. A sixty-five percent majority was needed for successful recall.⁴⁶ In 1955, the territorial legislature reduced the required percentage to a simple majority.⁴⁷

At the Alaska constitutional convention, the delegates debated the merits of a proposed recall provision which specified four grounds for recall: malfeasance, misfeasance, nonfeasance, or conviction of a crime involving moral turpitude.⁴⁸ The convention voted to delete the specific grounds from the constitutional provision and then considered whether even the legislature should have the power to limit the grounds for recall of public officers.⁴⁹ Opposing any legislative power

44. See ALASKA COMP. LAWS ANN. § 16-1-61 (1949) (cited in *Meiners v. Bering Strait School Dist.*, 687 P.2d 287, 294 (Alaska 1984)). "Removal" refers to the process whereby public officials are dismissed from office in mid-term by court action rather than by a popular election. For a brief discussion of the removal processes in Iowa and Oklahoma, see *supra* note 21.

45. 1949 Alaska Sess. Laws 90 (cited in *Meiners*, 687 P.2d at 294).

46. *Id.*

47. *Meiners*, 687 P.2d at 294 (citing 1955 Alaska Sess. Laws 126).

48. 2 PROCEEDINGS OF THE ALASKA CONSTITUTIONAL CONVENTION 1237-39 (January 5, 1956) (cited in *Meiners*, 687 P.2d at 295).

49. *Id.*

of limitation, Delegate White argued that "[t]he vital part of the recall movement . . . is that the people retain not only the right to recall a public official but to name the reasons for instituting such action and let the action itself stand or fall on the merits of the case."⁵⁰ Delegate Hurley argued in favor of the legislative power:

I think it is fair to leave it to the legislature to prescribe the grounds under which a recall petition should be circulated so as to prevent circulation of recall petitions for petty grounds in local jurisdictions by some recalcitrant officer who was not elected, which I have seen happen in my own community.⁵¹

The latter view ultimately prevailed. Article XI, section 8 of the Alaska Constitution, unchanged since statehood, states:

Recall. [A]ll elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.

In 1959, the state legislature passed a recall statute that appeared to follow Delegate White's view that a public official should be subject to recall for any reason chosen by the voters. Although the statute specified narrow grounds for recall, they were rendered meaningless by a statutory provision stating that any insufficiency in the statement of grounds shall not affect the validity of the proceedings or the election. The statement of grounds was "intended solely for the information of the electors."⁵²

In 1972, the legislature enacted the current recall statute, which has more stringent requirements for recall. The statute limits the permissible grounds for recall to misconduct in office, incompetence, or failure to perform prescribed duties.⁵³ The recall petition must now contain a statement of grounds detailing specific instances of the alleged misconduct.⁵⁴ The current statute no longer provides that the sole purpose of the statement of grounds is to provide information. These changes reflect a movement away from recall at will toward recall only in more specifically defined situations.

Under Alaska's current statutes, a recall petition in an area with fewer than 7,500 residents must be signed by a number of registered voters equal to at least twenty-five percent of the total number of votes

50. *Id.*

51. *Id.*

52. 1959 Alaska Sess. Laws 121, §§ 2-4 (cited in *Meiners*, 687 P.2d at 295). Compare *id.* with ALASKA STAT. § 15.45.710 (1982) (pertaining to the recall of the Alaska governor, lieutenant governor, or state legislators; it states: "No recall submitted to the voters shall be held void because of the insufficiency of the grounds, application, or petition by which the submission was procured.").

53. ALASKA STAT. § 29.28.140 (1984).

54. *Id.* § 29.28.150(a)(3).

cast at the last general election. In areas with more than 7,500 residents, the required percentage is reduced to fifteen.⁵⁵ The petition must be filed with the appropriate election official within sixty days after the date of the earliest signature, and it must contain "a statement of the grounds of the recall stated with particularity as to specific instances."⁵⁶ Within ten days of the petition's filing, the election official must review the sufficiency of the petition's content and determine whether the signature requirement has been met. If the number of signatures is insufficient, the sponsors may supplement the petition with additional signatures within ten days of the petition's rejection.⁵⁷ If the petition is insufficient for any other reason, it is rejected and filed as a public record.⁵⁸

If a recall petition is determined to be valid and no regular election is scheduled within seventy-five days, the appropriate election official is directed to hold a special recall election within that period.⁵⁹ In a recall election, the ballot must contain the specific grounds stated in the recall petition, as well as any rebuttal of up to 200 words submitted by the targeted official. If the recall election fails, another recall petition may not be filed against the same official for six months.⁶⁰ In the event a public officer is recalled, another election is held to select his successor.⁶¹

B. *Meiners v. Bering Strait School District*: The Alaska Supreme Court Interprets the Recall Statute

The Alaska Supreme Court first interpreted Alaska's municipal recall statute in *Meiners v. Bering Strait School District*.⁶² *Meiners* involved an effort to recall the eleven school board members of the Bering Strait School District, a Regional Education Attendance Area (REAA)⁶³ located in Northwest Alaska.

55. *Id.* §§ 29.28.150(a)(1)-170(b).

56. *Id.* § 29.28.150(a)(3).

57. *Id.* §§ 29.28.160-170(a).

58. *Id.* Petitions to recall municipal officials, including municipal school board members, are filed with the municipal clerk. *Id.* § 29.28.150. Petitions to recall school board members of Regional Education Attendance Areas are filed with the Alaska Division of Elections, which performs the functions of a municipal clerk in recall matters. *Id.* § 14.08.081 (1982).

59. *Id.* § 29.28.200(b) (1984).

60. *Id.* §§ 29.28.210-.240.

61. *Id.* § 29.28.250.

62. 687 P.2d 287 (Alaska 1984).

63. *Id.* at 291-92. REAAs were formed in 1976 to provide for local management of education in the unorganized boroughs and military reservations of Alaska. ALASKA STAT. § 14.08.011 (1982).

1. *Elements of the Dispute in Meiners*. The recall petition contained three paragraphs. Paragraph one charged the school board with "failure to control the administrative practices of [the] superintendent."⁶⁴ Paragraph two of the petition accused the board of "failure . . . to provide full and open communication" with voters of the district and of failure to give adequate notice of school board meetings.⁶⁵ In addition, paragraph two charged the board with failure to disclose adequate school board minutes.⁶⁶ Paragraph three accused the board of failure to respond to allegations of conflict of interest.⁶⁷

Under Alaska law, recall petitions against regional school board members are submitted to the Alaska Division of Elections, which performs the same function as the municipal clerk in local recall matters.⁶⁸ In *Meiners*, the Division verified 249 signatures on the recall petition and determined that only 198 were necessary to meet the statutory requirements,⁶⁹ based on the number of votes cast at the last regular school board election.⁷⁰ With the assistance of the Alaska Attorney General's office, the Division rewrote the recall petition to correct perceived problems with the petition's language and statements of law.⁷¹

Acting on behalf of the targeted school board members, the School District sued the Division of Elections, seeking to enjoin the recall election. The District claimed that the conduct alleged in the recall petition did not come within the statutory grounds for recall. The District also argued that the number of signatures was insufficient and that the Division of Elections erred in using language in the recall ballot that differed from the language in the recall petition.⁷² Subsequently, the Division of Elections reconsidered its decision to modify the language of the recall petition and decided that the text of the charges on the ballot should be exactly as stated in the recall petition.⁷³

The superior court granted summary judgment for the School District and enjoined the recall election. The court ruled that the Director of Elections had misinterpreted the statute that specifies the number of signatures required.⁷⁴ According to the superior court, the

64. *Meiners*, 687 P.2d at 291-92.

65. *Id.* at 292.

66. *Id.*

67. *Id.*

68. ALASKA STAT. § 14.08.081 (1982).

69. *Meiners*, 687 P.2d at 292.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 293.

74. *Id.* (discussing ALASKA STAT. § 29.28.070(b) (1984)).

“last general election,” which determines the number of signatures required, meant the last election for statewide officers held in November 1982, not the last regular election of school board members held in October 1982. More votes were cast in the district in the statewide election than in the school board election; thus, the 249 signatures obtained were less than the required twenty-five percent of the appropriate, larger vote.⁷⁵

Although the superior court found the signature issue to be dispositive, it commented on other issues as well. First, the court stated that the Division of Elections could not edit the language of the recall petition when preparing recall ballots; the language on the ballot must be identical to the statement of recall grounds contained in the recall petition.⁷⁶ In addition, the court indicated, without deciding, that the allegations contained in paragraphs one and three of the recall petitions did not state grounds for recall.⁷⁷

After the superior court enjoined the recall in *Meiners*, recall proponents gathered sufficient additional signatures within the prescribed ten-day period to surpass twenty-five percent of the number of votes in the November 1982 general election.⁷⁸ The Division of Elections certified as adequate the petition with the additional signatures and scheduled a recall election. Acting on the advice of the Alaska Attorney General's Office, the Division concluded that paragraph three of the recall petition did not state statutory grounds for recall and omitted it from the recall ballot.⁷⁹

The School District again sought to enjoin the recall election. The District argued that paragraphs one and two failed to state grounds for recall. In addition, the District argued that once the Division of Elections found that any portion of a petition failed to state statutory grounds for recall it was required to reject the entire petition, rather than merely delete the insufficient grounds from the recall ballot.⁸⁰

The superior court's ruling on the new petition was largely favorable to the School Board's position. The court held that paragraphs one and three of the recall petition did not state statutory grounds for recall and that paragraph two was partially insufficient.⁸¹ The court further ruled that a recall petition must be placed on the ballot in its entirety. Since some of the allegations in the recall

75. *Id.*

76. *Id.*

77. *Id.*

78. See ALASKA STAT. § 29.28.170(a) (1984).

79. *Meiners*, 687 P.2d at 293.

80. *Id.*

81. *Id.* at 294.

petition failed to state grounds for recall, no election could be held on that petition.⁸² The Division of Elections appealed the superior court's decision.⁸³

2. *The Supreme Court's Analysis.* The Alaska Supreme Court began its analysis by concluding that the recall statute should be liberally construed to permit recall petitions to go before the voters:

[W]e conclude that statutes relating to the recall, like those relating to the initiative and referendum, "should be liberally construed so that 'the people [are] permitted to vote and express their will'" Like the initiative and referendum, the recall process is fundamentally a part of the political process. The purposes of recall are therefore not well served if artificial technical hurdles are unnecessarily created by the judiciary as parts of the process prescribed by statute.⁸⁴

The supreme court then noted that each issue before the court arose because of the recall statute's ambiguity. Less judicial participation would be necessary, the court observed, if the recall statute were more carefully drawn.⁸⁵ The Alaska Constitution directs the legislature to prescribe the grounds and procedures for recall. Thus, the legislature, not the courts, should "strike the balances" necessary to carry out the constitutional command that elected officers be subject to recall.⁸⁶

Turning to the merits of the appeal, the supreme court began by interpreting the statute that fixes signature requirements for recall petitions based on the "total number of votes cast at the last general election in the [jurisdiction] concerned, or special election called for the purpose of electing city or borough officers."⁸⁷ The superior court had ruled that "general election" in this context was synonymous with "general election" as defined in Title 15 of the Alaska Code dealing with state elections: the statewide election "held on the Tuesday after the first Monday in November of even-numbered years."⁸⁸ The Division of Elections contended instead that "general election" for the purposes of the recall statute meant the regular *municipal* election held

82. *Id.* The school district argued that the statutory ten-day period for gathering additional signatures did not follow a judicial — as opposed to an administrative — decision that the petition had insufficient signatures. The superior court rejected this argument. *Id.* at 293.

83. The superior court certified a partial judgment for immediate appeal under Alaska Civil Rule 54(b). *Id.* at 294.

84. *Id.* at 296 (citations omitted).

85. *Id.*

86. *Id.*

87. ALASKA STAT. § 29.28.070(b) (1984).

88. *Meiners*, 687 P.2d at 297 (citing ALASKA STAT. § 15.60.010(a) (1982)).

annually on the first Tuesday in October of each year.⁸⁹ Since more people had voted in the previous statewide general election than in the previous regular municipal (or, more properly, REAA school board) election, the superior court's definition of "general election" required more signatures on the recall petition than the definition endorsed by the Division of Elections.

In support of its interpretation, the Division of Elections argued that because a recall election is itself a local election it is logical to assume that signature requirements on a recall petition should be based on the last local election, not the last statewide election.⁹⁰ Moreover, the Division pointed out instances in Title 29, which contains municipal election statutes, in which the legislature had used "general election" in contexts suggesting that it meant "regular municipal election."⁹¹

Persuaded by the arguments of the Division of Elections, the Alaska Supreme Court ruled that the legislature had inadvertently used the term "general election" to define recall signature requirements when it meant "regular municipal election." Therefore, the requisite number of signatures was twenty-five percent of the number of votes cast in the last regular municipal election. Accordingly, the original petition contained the necessary number of signatures.⁹²

The court next considered the School District's argument that the recall petition failed to state any of the statutory recall grounds of "misconduct in office, incompetence or failure to perform prescribed duties."⁹³ The petition charged the school board⁹⁴ first, with failure to control its superintendent (alleging specific examples of inappropriate conduct by the superintendent), and second, with failure to provide full and open communication between the board and voters of the district, in violation of the state's open meetings⁹⁵ and public records laws.⁹⁶ The School District argued that none of the allegations in the

89. *Id.* (citing ALASKA STAT. § 29.28.020 (1984)).

90. *Id.* The argument advanced by the Division of Elections is not particularly persuasive in light of the fact that other jurisdictions specifically base signature requirements for local recall elections on the number of votes cast in the jurisdiction during the last gubernatorial election. See MICH. COMP. LAWS § 168.955 (1967); S.D. CODIFIED LAWS ANN. § 9-13-30 (1981).

91. *Meiners*, 687 P.2d at 297.

92. *Id.* at 298.

93. ALASKA STAT. § 29.28.140 (1984).

94. The original recall petition contained three paragraphs. The sufficiency of paragraph three was not at issue before the supreme court because the Division of Elections had already conceded that it did not state statutory grounds for recall. See *Meiners*, 687 P.2d at 298 n.13.

95. ALASKA STAT. § 44.62.310 (1984). The petition did not make reference to any specific statute.

96. *Id.* §§ 09.25.110-.120 (1983).

petition stated a failure to comply with the Board's statutory duties and powers. In the District's view, although the school board has a duty to employ a superintendent, the decision to control the superintendent is a discretionary power. Thus, an allegation that the school board failed to control the superintendent would not amount to a charge that the school board had failed to perform a statutory duty.⁹⁷

The supreme court rejected the District's narrow interpretation of the school board's duties. The court construed the school board's duty to employ a superintendent to include the duty to supervise. Thus, a charge that the board failed to supervise the superintendent adequately was sufficient to charge the board with failure to perform its duty.⁹⁸ The court held that school board members had a duty to comply with statutes of general application relating to education. "When the board undertakes to exercise one of its powers specified in section 101," the court stated, "it must do so in accordance with the law, even though it had no obligation to exercise that particular power at all."⁹⁹ Therefore, the board's failure to exercise its power in a lawful manner could constitute a failure to perform a duty prescribed by a statute of general application.¹⁰⁰

The supreme court also ruled against the District on the second charge contained in the recall petition. The court held that the allegation that the school board had violated the state's public records¹⁰¹ and open meetings laws¹⁰² fell within the statutory ground of failure to perform a prescribed duty.¹⁰³

Finally, the supreme court reviewed the lower court's holding that if any individual charge on a recall petition is insufficient election officials must reject the entire petition. The court reversed the lower court and ruled that the certifying election officer should delete statutorily deficient charges and place charges that are sufficient under the recall statutes on the ballot in full and without revision.¹⁰⁴ The supreme court believed rejection of a partially insufficient recall petition would frustrate the purpose of the recall statute. In many cases, the court reasoned, petitions are prepared without the assistance of counsel and may be attacked by the targeted public officials' attorneys. If a recall petition were rejected for partial insufficiency, the recall proponents' only recourse would be to begin again the process of circulat-

97. Compare ALASKA STAT. § 14.08.111(3) (1982) with ALASKA STAT. § 14.08.101(4) (1982).

98. *Id.* at 300.

99. *Id.*

100. *Id.*

101. ALASKA STAT. §§ 09.25.110-.120 (1983).

102. *Id.* § 44.62.310 (1984).

103. *Meiners*, 687 P.2d at 301.

104. *Id.* at 303.

ing a petition, with no assurance that the new petition would withstand different objections.¹⁰⁵ In the court's view, the signature requirement itself requires a substantial commitment of resources which should not be disregarded because a portion of the petition is deficient.¹⁰⁶

3. *Implications of the Meiners Decision for Future Recall Efforts in Alaska.* In addition to deciding the specific issues before it, the supreme court in *Meiners* enunciated several guidelines for election officials evaluating future recall petitions. First, the court expressed a strong reluctance to reject a recall petition for merely technical deficiencies.¹⁰⁷ Second, the court indicated that the language of the allegations set forth in the recall ballot should be identical to the corresponding language in the recall petition. Recall election officials should not edit or revise the language of a recall petition in any way when placing recall charges on the ballot.¹⁰⁸ Third, a recall petition is not fatally defective solely because it contains dubious characterizations of the law. Unless a petition alleges violation of a fictitious law, "[i]t is not the place of [election officials] to decide legal questions of this kind."¹⁰⁹

Finally, the *Meiners* decision places Alaska among those jurisdictions which hold that deciding the truth or falsity of recall charges is a matter for the voters, not the election officials. The School District argued that the recall petition should be invalidated because it stated as fact that the Department of Education had ruled that the funds were spent in an inappropriate manner. According to the court, this statement did not provide a basis for rejecting the petition:

This is a statement of fact. If it is not true, the board members may say so in their rebuttals. Similarly, if they believe that it is a mischaracterization of what the Department of Education actually did, or if they think that there are circumstances in mitigation which should have caused the Department to refrain from making such a judgment, it is open to the board members to make their positions known by way of rebuttal. Again, it is the responsibility of the voters to make their decision in light of the charges and rebuttals. It is not the role of the municipal clerk or Director of Elections to take the matter out of the voters' hands.¹¹⁰

In summary, the *Meiners* court liberally construed Alaska's recall statute so that "the people [are] permitted to vote and express their

105. *Id.* at 302-03.

106. *Id.* at 303.

107. *Id.* at 296, 301.

108. *Id.* at 303.

109. *Id.* at 301.

110. *Id.*

will."¹¹¹ In the court's view, the purpose of recall would be thwarted if technicalities and "legal straight jackets" were permitted to thwart the recall process.¹¹² The court broadly construed the grounds for recall and indicated that the truth or falsity of charges should be decided by the voters. In many respects, *Meiners* is in harmony with decisions in other states, particularly the earlier Washington cases that liberally construed recall statutes.¹¹³ Nevertheless, in taking this view the Alaska Supreme Court failed to consider the potential for abuse that exists when the availability of recall is not balanced with the legitimate interests of public officials and the public's interest in the unobstructed performance of legitimate activities by public officials.

Perhaps the *Meiners* opinion did not recognize the potential for abuse of the recall statute because the facts of the *Meiners* case did not suggest that the recall statute had been misused. Nevertheless, as will be discussed in the next section, abuse of the recall process is a recurring problem in every jurisdiction that permits recall.

One area of potential abuse, which was absent and hence not considered in *Meiners*, is the use of inflammatory or false allegations to gain signatures in recall drives. Such tactics may induce some voters to sign a recall petition containing allegations that fail to state proper grounds for recall. The *Meiners* remedy of deleting such allegations after the voters have signed is inadequate from the targeted official's viewpoint, because there is no way of knowing whether the necessary number of signatures would have been obtained without the objectionable allegations.

One Alaska court considering this problem prior to *Meiners* threw out the entire recall petition because one allegation failed to state a ground for recall under Alaska law. In *Siry v. Matanuska-Susitna Borough*,¹¹⁴ the superior court ruled that not only was the allegation statutorily deficient, but it was also inflammatory and capable of inciting persons to sign a recall petition who otherwise might not sign. In the superior court's view, the inflammatory allegation "infest[ed] the whole process with illegitimacy," and for that reason the entire petition was rejected.¹¹⁵

Although the approach employed in *Siry* has now been foreclosed by the supreme court's decision in *Meiners*, the potential for similar

111. *Id.* at 296 (quoting *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974)).

112. *Id.* at 296, 301.

113. See *infra* discussion accompanying notes 125-32. Even the Washington Supreme Court, however, has recently retreated from its most expansive recall decisions in recognition of the countervailing need to protect public officials from abuse of the recall process. See *infra* text accompanying notes 143-66.

114. No. 3 PA-84-426 (Alaska Super. Ct. May 23, 1984) (oral opinion on motion for preliminary injunction).

115. *Id.* transcript at 8-9.

abuses of the recall process remains. The following sections discuss further the problems with Alaska's recall process remaining after *Meiners* and propose additional measures designed to allow continued access to the recall process while minimizing abuse.

IV. RECURRING PROBLEMS WITH THE RECALL PROCESS

The popularity of recall reflects the continuing appeal of its underlying policy favoring electoral removal of public officials who displease a majority of the electorate. Nevertheless, inherent in the recall process are two serious recurring problems: the possibility of false allegations in the recall petition and potential inhibition of discretionary political decisionmaking.

A. False Allegations

Courts are generally unsympathetic to suits by public officials seeking to enjoin recall elections on the ground that the allegations against them are false. In Washington, the courts have stated repeatedly that the voters, not the courts, shall determine the truth of allegations contained in recall petitions.¹¹⁶ The Alaska Supreme Court also has adopted this view.¹¹⁷

The courts' rationale for refusing to rule on the truth of allegations in recall petitions is that recall is a political process which should not be impeded by judicial intervention. The political process is weakened, however, when public officials are subjected to recall on the basis of false allegations; public confidence in the electoral process is undermined and cynicism is generated about the political process in general. As one Washington commentator has noted, permitting recall proponents to place false allegations on recall ballots is nothing short of an election fraud.¹¹⁸ During a general election, an official's opponents may not put false allegations against the official on the ballot.¹¹⁹ Yet, this practice is permitted, in effect, in most jurisdictions if the false allegation is placed on a recall ballot.

Alaska public officials who are subjected to recall based on false allegations have no effective remedy. A targeted public official may submit a two hundred-word rebuttal on the recall ballot, but this opportunity for rebuttal is not an adequate protection because it requires

116. See, e.g., *Cole v. Webster*, 103 Wash. 2d 280, 692 P.2d 799 (1984); *Skidmore v. Fuller*, 59 Wash. 2d 818, 370 P.2d 975 (1962).

117. See *Meiners*, 687 P.2d at 300 n.18.

118. Cohen, *Recall in Washington: A Time for Reform*, 50 WASH. L. REV. 29, 53 (1974).

119. Alaska's election statutes provide that a person who knowingly circulates false campaign literature about a candidate commits a Class A misdemeanor. See ALASKA STAT. § 15.56.010 (1982).

the official to expend substantial time and resources defending his office with no assurance that voters will believe or even read the rebuttal. A public official may bring a libel action against persons who circulate false recall charges,¹²⁰ but the broad privilege given to persons commenting on matters of public interest, particularly in Alaska,¹²¹ renders a libel action ineffective in curbing this kind of abuse. In public interest cases, false statements are not actionable unless they are made with knowledge of their falsity or with reckless disregard of their truth or falsity.¹²² Moreover, persons who initiate recall petitions in Alaska are not required to identify themselves. Thus, a public official may not know who is responsible for drafting the charges that may drive him from office.

B. Inhibition of Discretionary Action by Public Officials

A second serious problem inherent in the recall process is that the threat of recall may inhibit public officials from making legitimate but unpopular decisions for fear that the decisions will lead to premature removal from office. Even if a public official were confident that he would win a recall election, the expense involved in defending against the recall charges may discourage him from making decisions that will anger an active minority of his constituency.

The problem of inhibiting discretionary action is illustrated by *Siry v. Matanuska-Susitna Borough*,¹²³ in which a school board member was targeted for recall in Alaska after participating in a controversial personnel decision. The superior court expressed concern that the use of the recall statute to oust officials who make difficult decisions would undermine representative government:

Mrs. Siry, like any other elected official, is called upon from time to time to make unpopular decisions. . . . This is an area that we have to be very careful about. We certainly don't want to discourage public officials, elected officials, from making those difficult decisions. You know, the United States has seen the Congress of this country for many years, refuse to face many, many of the devious [sic] issues in the country. And the courts have increasingly had to take that over. That is unfortunate because many of those issues, indeed, should have been decided by elected representatives so they could have received the approval or the disapproval of the electorate at the elections held every two or four years and we should not

120. *State v. Wilson*, 137 Wash. 125, 241 P. 970 (1925); see Annot., 43 A.L.R. 1268 (1926).

121. See *Pearson v. Fairbanks Publishing Co.*, 413 P.2d 711, 714 (Alaska 1966) (holding privilege of public discussion to include even factual misstatements so long as the misstatements are not malicious).

122. *Id.* at 715.

123. No. 3 PA-84-426 (Alaska Super. Ct. May 23, 1984) (oral opinion on motion for preliminary injunction).

allow ourselves to begin using the recall petition device for the purpose of giving people the heave-ho just because they've taken a stand on a difficult public issue. Furthermore, we have to recognize that many people that are brought before the electorate on a recall petition win, and what happens is that a person gets subjected to a recall petition because they have taken a position on a difficult public issue, then they are put to the burden of either giving up their public office, or of spending substantial campaign monies to keep the office. This is not the purpose of the recall statutes at all. The purpose is to weed people out of public office whose conduct falls within very narrowly defined standards of impropriety or insufficiency.¹²⁴

The potential for misuse of recall in reaction to officials' unpopular discretionary decisions can also be seen in a number of cases decided by the Supreme Court of Washington. For example, in *Danielson v. Faymonville*,¹²⁵ a public utility commissioner was targeted for recall after he allegedly circulated petitions to establish an independent water district. Recall proponents charged that the commissioner's conduct conflicted with his duty to operate the existing public water system.¹²⁶ The *Danielson* court upheld the validity of the recall and allowed the election to proceed.¹²⁷

Similarly, the Washington Supreme Court in *Bocek v. Bayley*¹²⁸ upheld a petition alleging that a school board hired an unqualified superintendent and failed to bargain in good faith, without inquiring into the motives of the recall petitioners or addressing itself to the possibility that the recall process was used to oust a public official for unpopular discretionary acts.

In *State ex rel. Citizens against Mandatory Bussing v. Brooks*,¹²⁹ the Seattle school board was faced with recall after instigating a mandatory school busing plan for the purpose of racial desegregation. Recall petitioners did not directly challenge the adoption of the busing plan. Rather, the recall petition accused the board members of malfeasance, misfeasance, and violation of their oaths of office based on a number of allegations, some of which related to the busing program. In addition, other recall charges were made against school board members that did not relate to the busing plan. These charges included the allegation that the school board had hired an unqualified superintendent and had officially imposed segregation by race within the school district.¹³⁰

124. *Id.* transcript at 8.

125. 72 Wash. 2d 854, 435 P.2d 963 (1967).

126. *Id.* at 855-56, 435 P.2d at 964.

127. *Id.* at 860, 435 P.2d at 967.

128. 81 Wash. 2d 831, 505 P.2d 814 (1973).

129. 80 Wash. 2d 121, 492 P.2d 536 (1972).

130. *Id.* at 125-27, 492 P.2d at 539-40.

The *Brooks* court ruled that the charges directed against the school board's busing plan failed to state grounds for recall under Washington law because they alleged acts within the proper discretion of the school board.¹³¹ Nevertheless, the Washington Supreme Court held that the allegations not directed toward the busing plan could constitute grounds for recall and, therefore, a recall election could be held.¹³²

The consequences for public officials who must face recall drives motivated by dissatisfaction with their discretionary actions can be severe. An Alaska public official who makes a valid but unpopular decision may find himself charged with grave misconduct. He may be forced to spend considerable amounts of time, energy, and money defending his office in mid-term as a result of a single unpopular decision. In such instances, recall undermines rather than enhances representative government. Elected officials are inhibited from making the decisions for which they are responsible. The long-term effect of such abuses may be to discourage civic-minded individuals from participating in local government.

V. MOVING TOWARD REFORM OF THE RECALL PROCESS

A. The Washington Experience: New Legislative and Judicial Controls

As noted earlier,¹³³ the Alaska Supreme Court's decision in *Meiners* was consistent with the Washington Supreme Court's liberal construction of Washington's recall statutes. Recent developments in Washington law, however, demonstrate a strong movement toward a more restrictive construction of Washington's recall statutes. Before these developments, Washington's recall process and its liberal interpretation by the Washington courts had been criticized by several legal commentators.¹³⁴ As one writer commented, the recall device should not serve to remove politically unpopular elected public officials or to express disapproval of unpopular, but otherwise legal, actions of public officials.¹³⁵ Rather, "[u]se of the recall process should be limited solely to removal of a wrongdoer from elective office."¹³⁶ Legislative reforms were proposed to accomplish this limited goal. The proposed reforms would: (1) require recall sponsors to verify they have knowledge of the alleged facts upon which their recall petitions are based;

131. *Id.* at 128, 492 P.2d at 541-42.

132. *Id.* at 131-32, 492 P.2d at 542-43.

133. *See supra* text accompanying note 112.

134. *See, e.g.,* Cohen, *supra* note 118; Note, *Sufficiency of Charges to Support a Recall Election*, 8 GONZ. L. REV. 131 (1973).

135. Cohen, *supra* note 118, at 54.

136. *Id.* at 54-55.

(2) establish narrowly defined grounds for recall; and (3) adopt a statutory provision giving the courts jurisdiction to review recall charges.¹³⁷

In 1984, perhaps in response to criticism from legal commentators, or perhaps out of concern about the increasing number of recall drives in Washington,¹³⁸ the Washington legislature enacted several important changes in Washington's recall statute. The changes include the addition of a requirement that recall sponsors certify that they have knowledge of the alleged facts upon which the recall charges are based.¹³⁹ In addition, the specific grounds for recall, which were already enumerated in the state constitution, were further defined. For example, "violation of the oath of office" was defined to mean the "wilful neglect or failure by an elective public officer to perform faithfully a duty imposed by law."¹⁴⁰

Probably the most significant revision of Washington's recall law was a 1984 statutory amendment that requires the recall charges and the ballot synopsis of charges to be submitted to the superior court for a determination of their legal sufficiency and adequacy.¹⁴¹ The Washington legislature specifically granted jurisdiction to the superior court over matters relating to the recall of local officials, and the supreme court was given jurisdiction over the recall of state officers.¹⁴²

Since the passage of the 1984 legislative amendments, the Washington Supreme Court has issued two decisions that radically depart from its prior decisions. The prior decisions construed Washington law liberally to permit the voters to decide the truth or falsity of recall allegations. In the companion cases of *Cole v. Webster*¹⁴³ and *Chandler v. Otto*,¹⁴⁴ the court retreated from precedents going back more than seventy years¹⁴⁵ and expressed concern about the use of recall to harass public officials or to remove public officials from office for unpopular discretionary actions.

In *Cole*, a recall petition was filed against all five members of a school board, charging them with wasting taxes by voting to close three schools. The school board members also were charged with

137. *Id.* at 43-54.

138. During the fifty years from 1913 until 1963, twenty recall petitions were filed in Washington. From 1963 until 1974, thirty-seven petitions were filed. Cohen, *supra* note 118, at 56.

139. WASH. REV. CODE ANN. § 29.82.010 (Supp. 1984).

140. *Id.* § 29.82.010(2).

141. *Id.* §§ 29.82.021-.023.

142. *Id.* § 29.82.160.

143. 103 Wash. 2d 280, 692 P.2d 799 (1984).

144. 103 Wash. 2d 268, 693 P.2d 71 (1984).

145. See e.g., *Cudihee v. Phelps*, 76 Wash. 314, 136 P. 367 (1913).

retaining an incompetent superintendent¹⁴⁶ and with violating Washington's Open Meetings Act¹⁴⁷ by improperly withholding minutes of school board meetings from the public.

The Washington Supreme Court overruled four previous decisions¹⁴⁸ and held that the recall petition was not sufficient under Washington law. In accordance with its earlier decision in *State ex rel. Citizens against Mandatory Bussing v. Brooks*,¹⁴⁹ the court ruled that the school board's decision to close three public schools was a discretionary act which did not form a valid basis for recall. The court noted that the construction of new schools and the closing of old ones are two of the most important functions of local school authorities¹⁵⁰ and stated that:

The board's decision clearly required judgment guided by knowledge, prudence and circumspection. In addition, the right to make such a decision is essential to the board's satisfactory completion of the responsibilities entrusted to the school districts by the Legislature and is necessary to the fulfillment of the state's paramount duty to provide for public education.¹⁵¹

Therefore, the court ruled that school board members could not be recalled for closing a school unless they arbitrarily or unreasonably exercised their discretion.

The court also ruled that allegations that the school board had violated the state's Open Meetings Act should be dismissed as factually insufficient. The recall statute requires that the charges state sufficient facts to demonstrate to the voters, the targeted official, and the election official that the acts or failure to act constitute a prima facie showing of misfeasance, malfeasance, or violation of the oath of office.¹⁵² The recall petition was found insufficient in this regard because

146. The allegation of retaining an incompetent superintendent had become a standard element in Washington recall petitions, as the Washington Supreme Court had previously ruled on a number of recall petitions charging public officials with hiring incompetent subordinates. See *Bocek v. Bayley*, 81 Wash. 2d 831, 505 P.2d 814 (1973); *State ex rel. Citizens against Mandatory Bussing v. Brooks*, 80 Wash. 2d 121, 492 P.2d 536 (1972); *State ex rel. Lamon v. Westport*, 73 Wash. 2d 255, 438 P.2d 200 (1968); *Danielson v. Faymonville*, 72 Wash. 2d 854, 435 P.2d 963 (1967); *Morton v. McDonald*, 41 Wash. 2d 889, 252 P.2d 577 (1953).

147. WASH. REV. CODE ANN. §§ 42.30.020-.920 (1972 & Supp. 1984).

148. *Bocek v. Bayley*, 81 Wash. 2d 831, 505 P.2d 814 (1973); *State ex rel. Citizens against Mandatory Bussing v. Brooks*, 80 Wash. 2d 121, 492 P.2d 536 (1972); *State ex rel. Lamon v. Westport*, 73 Wash. 2d 255, 438 P.2d 200 (1968); *Danielson v. Faymonville*, 72 Wash. 2d 854, 435 P.2d 963 (1967).

149. 80 Wash. 2d 121, 492 P.2d 536 (1972).

150. *Cole v. Webster*, 103 Wash. 2d 280, ____, 692 P.2d 799, 802 (1984) (citing *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971)).

151. *Id.*

152. WASH. REV. CODE ANN. § 29.81.010 (Supp. 1984) states:

The charge shall state the act or acts complained of in concise language, give

it did not state the time and place of the alleged illegal meeting. In the Washington Supreme Court's view, the requirement that recall charges be specific "is not a cumbersome burden when one considers the harassment to which public officials can be subjected if charges need only be general in nature."¹⁵³

Perhaps the most remarkable portion of the *Cole* opinion was the court's conclusion that a charge alleging that the school board had retained an incompetent superintendent must also be dismissed as factually insufficient. The recall petition bolstered its allegations of incompetence with a list of actions such as the superintendent's recommendation to use school funds to create a community center and his decision to close a high school.¹⁵⁴ The court, however, viewed these same allegations as demonstrating the superintendent's willingness and capacity to make difficult and controversial decisions:

This alone shows his competency to take independent action. A superintendent cannot be expected to make decisions with which everyone will agree. Such decisions require the use of judgment and discretion. The use of such judgment does not as a matter of law establish incompetency. Without allegations showing the superintendent's incompetency, the board cannot be subject to recall for retaining the superintendent.¹⁵⁵

By striking the allegation that the board had hired an incompetent superintendent, the Washington Supreme Court overruled a long line of previous decisions in which it had held that allegations suggesting a public official had hired an incompetent subordinate provided sufficient grounds for recall.¹⁵⁶

Finally, the Washington Supreme Court ruled that the trial court had erred in refusing to allow a voir dire examination of the recall petitioners to determine their knowledge of the alleged facts supporting the recall petition. The court pointed out that Washington law requires recall sponsors to verify their knowledge of the alleged facts upon which the stated grounds for recall are based.¹⁵⁷ Furthermore, Washington law requires the superior court to determine the sufficiency of recall charges.¹⁵⁸ According to the court, the statute permits a voir dire examination by the judge of the recall petitioners. This

a detailed description including the approximate date, location, and nature of each act complained of, be signed by the person or persons making the charge, give their respective post office addresses, and be verified under oath that he or they believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.

153. *Cole*, 103 Wash. 2d at ____, 692 P.2d at 803.

154. *Id.*

155. *Id.*

156. *See supra* note 148.

157. WASH. REV. CODE ANN. § 29.82.010 (Supp. 1984).

158. *Id.* § 29.82.023.

examination should be limited to questions about the recall sponsors' knowledge of the charges contained in their recall petition and the basis of that knowledge. The recall petitioners cannot be questioned concerning the truth or falsity of recall charges since Washington law specifically precludes a court from considering the truth of the charges when it is considering their sufficiency.¹⁵⁹

In the companion case of *Chandler v. Otto*,¹⁶⁰ the Washington Supreme Court considered a recall petition to oust four city council members who had voted to reject the two lowest bidders for a waste disposal contract because of irregularities in the bid forms. The recall petition accused the officials of abusing their discretion and acting in contravention of the public interest.¹⁶¹

As in *Cole v. Webster*, the court in *Chandler* rejected the recall petition as legally insufficient. In the court's words, "an elected official cannot be recalled for appropriately exercising the discretion granted him or her by law."¹⁶² The city council had the authority to award the waste disposal contract to "the lowest *responsible* bidder,"¹⁶³ and absent some allegation of fraud or "arbitrary, unreasonable misuse of discretion,"¹⁶⁴ the city council members could not be recalled for rejecting bids because of irregularities in the bid forms. "The petition merely attacks the judgment of the councilmen," the court concluded.¹⁶⁵ "The exercise of judgment is not grounds for recall."¹⁶⁶

Cole v. Webster, *Chandler v. Otto*, and the 1984 amendments to Washington's recall statutes place reasonable and necessary restrictions on the recall process in Washington. It is now well established that a Washington public officer may not be recalled for taking legitimate discretionary action that is politically unpopular. Moreover, the recall sponsors must verify that they have knowledge of the facts upon which recall charges are based. Thus, Washington public officials have significant protection against recall drives instituted by individuals angered by the legitimate but unpopular decisions of elected officials.

These developments, however, do not go far enough. While courts certainly should be authorized to inquire about the recall petitioners' knowledge of the facts supporting recall charges, they should

159. *Id.*

160. 103 Wash. 2d 268, 693 P.2d 71 (1984).

161. The decision to reject the two lowest bidders due to irregularities in the bid forms was alleged to have increased the cost of the contract by \$180,000. *Id.* at 279, 693 P.2d at ____.

162. *Id.* at 274, 693 P.2d at ____.

163. *Id.* (emphasis added).

164. *Id.*

165. *Id.*

166. *Id.*

also be empowered to determine whether facts exist to establish a prima facie case of the charges' truthfulness. Furthermore, as an added protection against unwarranted recall drives, a person who knowingly makes false recall charges should be subject to criminal penalties.

The current state of Washington's recall law stands in stark contrast to the law of recall in Alaska after the *Meiners* decision. *Meiners* is in accord with the status of Washington law *before* the recent developments in Washington. Thus, in Alaska, public officials remain subject to recall without significant protection against recall drives based on false allegations or motivated by the desire to retaliate for valid yet unpopular discretionary actions. The remainder of this article sets forth a proposed legislative program designed to preserve the value of the recall process while curbing potential abuses.

B. A Legislative Proposal for Alaska

In *Meiners*, the Alaska Supreme Court suggested legislative reform of the recall statute, indicating that the controversy in *Meiners* arose in part because Alaska's recall statute is ambiguous.¹⁶⁷ Judicial intervention in the recall process could be decreased, the supreme court stated, if the recall statute were drafted more carefully.¹⁶⁸

As the supreme court pointed out in *Meiners*, the parties most intimately involved in the initiation of recall elections frequently lack access to legal counsel, particularly in small, rural communities.¹⁶⁹ Election officials evaluating recall petitions may be part-time municipal clerks who must make decisions without legal advice. Thus, recall statutes should be simple, straightforward, and capable of interpretation and administration by laymen with a minimum of legal assistance or judicial involvement.

A legislative proposal designed to reform Alaska's municipal recall law is set forth in the Appendix. The number of signatures required to satisfy the signature requirement is increased in this proposal. Grounds for recall are narrowly defined to make it easier for election officials to determine whether a recall petition states statutory grounds for recall. Sanctions are imposed for placing false charges on recall petitions, and public officials are given the right to challenge recall petitions in court before the adequacy of signatures is determined. Key provisions of the proposal and the problems they are designed to correct are discussed below.¹⁷⁰

167. See *supra* note 85 and accompanying text.

168. See *supra* note 86 and accompanying text.

169. 687 P.2d at 295-96.

170. In 1984, the Alaska House of Representatives passed House Bill 172, a comprehensive bill to reform Alaska's municipal code (Title 29 of Alaska statutes).

1. *Signature Requirement.* Under present law, a municipal recall election will be scheduled upon the filing of a valid recall petition containing signatures equaling fifteen percent of the votes cast in the last election for the targeted office.¹⁷¹ The figure is increased to twenty-five percent for municipalities having less than 7,500 persons.¹⁷² Alaska has one of the lowest signature requirements in the United States. In rural communities, a tiny number of an official's constituents may force a recall election. In *Meiners*, for example, only 198 signatures were required to force a recall election for eleven school board members.¹⁷³ In the 1984 school board elections in the Matanuska-Susitna School District, only twenty percent of the registered voters went to the polls. Thus, the signatures of only three percent of the registered voters in that school district would have been required to force a recall election.¹⁷⁴

Proposed section 29.26.280 of the Alaska Code raises the signature requirement to twenty-five percent, and bases the percentage upon the number of registered voters, not on the number of persons who voted in the last election. The raised signature requirement reduces the possibility that a public official will be vulnerable to recall merely because of a low voter turnout in the targeted official's election.

2. *Grounds for Recall.* In contrast to jurisdictions that allow voters to recall their officials at will, Alaska limits recall to the specified grounds of misconduct in office, incompetence, or failure to perform

Alaska H. Res. 172, 13th Leg., 2d Sess., 1984. The bill passed the House of Representatives but failed to pass in the Senate. Chapter 26 of that bill contains proposed recall legislation. House Bill 172 contains no major changes in the recall statute, although the signature requirement on recall petitions was raised to twenty-five percent of the number of votes cast in the last municipal election, regardless of the population of the municipality. In addition, the bill provided for election officials to review recall petitions prior to their circulation for signatures.

The author's legislative proposal in the Appendix adopts some of the procedural statutes contained in House Bill 172, many of which are virtually identical to present recall law. The Appendix also adopts the numbering of House Bill 172. Nevertheless, the Appendix goes much further toward curbing abuses in the recall process. For example, sanctions for false allegations in recall petitions and a provision authorizing judicial review of the actions of election officials regarding recall are contained in the author's legislative proposal, but are not contained in House Bill 172. References in the text to proposed statutes are to the author's proposal, not to House Bill 172.

171. ALASKA STAT. § 29.28.070(b)(2) (1984); *id.* § 29.28.150(a)(1).

172. *Id.* § 29.28.070(b)(1).

173. *Meiners*, 687 P.2d at 292.

174. The preliminary tally of votes cast in the Matanuska-Susitna Borough School Board election on October 2, 1984, showed between 3,200 and 3,560 votes cast; however, there are 17,792 registered voters in the district. Under present law, only 534 votes are necessary for a successful recall of a Matanuska-Susitna Borough School Board member. This figure is three percent of the registered voters in that school district. Anchorage Daily News, October 4, 1984, § C at 3.

prescribed duties.¹⁷⁵ Unfortunately, the statutes do not further define Alaska's grounds for recall. Various election officials must decide whether particular charges set forth in a recall petition fall within one of the statutory categories. Proposed section 29.26.250(a) of the Alaska Code narrowly defines the grounds for recall. "Misconduct in office" is defined as an unlawful act wilfully committed by an elected public official. "Incompetence" means mental or physical incapacity of an official to perform the duties of office during a period of at least sixty days. "Failure to perform prescribed duties" means wilful neglect or failure by an official to perform faithfully a duty imposed by law.¹⁷⁶

In addition, proposed section 29.26.250(b) of the Alaska Code makes clear that lawful discretionary acts may not form the basis for recall of a public official. This provision is in harmony with *Cole v. Webster*, in which the Washington Supreme Court held that a school board's decision to close several public schools was a discretionary act which did not furnish grounds for recall under Washington law.¹⁷⁷

These definitions are designed to assist local election officials who must decide whether a recall petition describes statutory grounds for recall. The proposed definitions make it easier for an official to determine whether a charge that a public official failed to perform prescribed duties is legally sufficient, because prescribed duties are defined to mean duties imposed by statute. By the same token, a charge that a public official committed misconduct in office can be more easily evaluated since misconduct in office is defined to mean the wilful commission of an unlawful act.

3. *Truth or Falsity of Recall Allegations.* Because courts in most jurisdictions refuse to determine the truth or falsity of recall allegations, recall proponents are not held accountable for the statements they circulate in recall petitions. Two elements of the proposed statutes deal with this problem. First, proposed section 29.26.260 of the Alaska Code requires recall sponsors to identify themselves and to certify under penalty of perjury their belief in the truth of the charges set forth in an application for a recall petition. Knowingly submitting a false statement in an application for a recall petition would be punishable as a Class A misdemeanor.

Second, proposed section 29.26.370 of the Alaska Code gives the superior court jurisdiction to determine the sufficiency and specificity

175. ALASKA STAT. § 29.28.140 (1984).

176. Definitions for misconduct in office and failure to perform prescribed duties are modeled after those proposed for Washington in Cohen, *supra* note 118, at 44, and after the statutory grounds contained in WASH. REV. CODE ANN. § 29.82.010 (Supp. 1984).

177. 103 Wash. 2d 280, 692 P.2d 799 (1984).

of recall charges, as well as the existence of facts sufficient to support a prima facie case of the charges' truthfulness.¹⁷⁸ The public official opposing a recall petition would have the burden of proving the falsity of recall charges by a preponderance of the evidence. Moreover, the official would be required to bring an action in superior court no later than twenty days after he receives a copy of the statement of grounds for recall from the municipal clerk. Thus, judicial review of a challenged recall petition would take place early in the recall proceedings rather than at the conclusion of the signature-gathering process.¹⁷⁹

These two statutes, if passed by the legislature, would reduce the likelihood of a recall based on false charges. A heavy responsibility would be placed on recall sponsors to stand behind their allegations. A public official would be allowed to dispute these allegations in the superior court. Yet, the public official would have to show by a preponderance of the evidence that the recall charges were false; thus, recall proponents would not be unduly burdened by judicial intervention in the recall process.

4. *Opportunity for and Timing of Response by Targeted Officials.* Alaska's existing recall system contains several provisions which unfairly hinder the targeted officials' attempts to respond to and defend against recall efforts. First, although recall allegations may be any length and must be reproduced verbatim on a recall ballot, rebuttal statements by targeted officials are limited to two hundred words. Second, while recall proponents have the opportunity to circulate allegations against a public official on the recall petition itself, the public official's rebuttal is seen by the voters for the first time on the recall ballot.

Under proposed section 29.26.270 of the Alaska Code, both recall allegations and rebuttals would be limited to two hundred words. Additionally, the public official would have the opportunity to place his rebuttal statement on the recall petition itself. This would allow vot-

178. See ALASKA STAT. § 15.45.720 (1982) (authorizing judicial review of decisions by the Director of the Alaska Division of Elections regarding efforts to recall state officials); see also WASH. REV. CODE ANN. § 29.82.023 (Supp. 1984) (authorizing the superior court to determine the sufficiency of recall charges); WASH. REV. CODE ANN. § 29.82.160 (Supp. 1984) (giving the superior court original jurisdiction pertaining to recall matters). Washington law prohibits the courts from determining the truth or falsity of recall charges. WASH. REV. CODE ANN. § 29.82.023 (Supp. 1984).

179. This proposal is modeled after that of Cohen, *supra* note 118, at 48-51. Washington Supreme Court Justice Utter also suggested that the Washington legislature pass legislation permitting the courts to determine the truth or falsity of recall charges. *Bocek v. Bayley*, 81 Wash. 2d 831, 839-40, 505 P.2d 814, 819 (1973) (Utter, J., concurring).

ers to read both the recall charges and the public official's rebuttal statement prior to signing a recall petition.

Under the current Alaska recall statute, election officials do not examine the sufficiency of a recall petition until after the signatures are gathered. If some of the allegations are insufficient, they are deleted and the balance of the petition is placed on the ballot. If the entire petition is inadequate, the whole petition is rejected and the recall proponents must start the process of gathering signatures again, with no assurance that the new petition will be found statutorily sufficient. This procedure places undue burdens on both the elected official and the recall proponents.

The proposed section 29.26.270 of the Alaska Code would give a municipal clerk the opportunity to examine recall allegations *before* the signature-gathering process begins. Statutory defects could be corrected and the targeted official could challenge factual allegations in court before the petition is submitted to the voting public.

VI. CONCLUSION

Recall is firmly embedded in the American political process, particularly in the West. In some jurisdictions officials may be recalled for almost any reason. In other jurisdictions, including Alaska, an official may only be recalled for grounds specified by statute. In most jurisdictions, however, courts are reluctant to rule on the truth or falsity of recall allegations, preferring to let the voters make this decision in a recall election.

In *Meiners*, the Alaska Supreme Court ruled that the municipal recall statute should be liberally construed to permit the voters to express their will.¹⁸⁰ The court's position is that the voters, not the election officials, should decide the truth of recall charges,¹⁸¹ and that "artificial technical hurdles" should not hinder the scheduling of recall elections.¹⁸² In short, the Alaska Supreme Court has expressed a strong reluctance for the judiciary to involve itself in the recall process.

Because of the court's reluctance to entertain challenges to recall efforts, the recall process is subject to abuse. Officials may be recalled based on false allegations with no recourse to the courts. Recall sponsors may try to remove an official from office for political reasons having nothing to do with the statutory grounds for recall, and the process may inhibit officials from making legitimate but unpopular decisions on public questions.

180. *Meiners*, 687 P.2d at 296.

181. *Id.* at 300 n.18.

182. *Id.* at 296.

The proposed amendments require recall sponsors to be responsible for the truth of recall charges. Charges must be made under penalty of perjury, and knowing submission of false recall allegations is punishable as a misdemeanor. If an election is scheduled based on false charges or insufficient grounds, the public official may petition the superior court for relief. The signature requirement for recall petitions is raised in order to prevent a tiny minority from forcing public officials and government bodies to spend public and private funds on mid-term elections. Finally, the grounds of recall are defined to exclude recall for legitimate discretionary acts and to make it easier for election officials to determine whether recall petitions state statutory grounds for recall.

If this proposal were accepted by the Alaska legislature, the positive aspects of recall would be preserved. Voters would still have a reasonable opportunity to recall elected officials who are charged with misconduct. At the same time, abuses in the recall process would be curbed so that public officials would not be ousted from office for making legitimate but unpopular decisions.

APPENDIX¹⁸³

LEGISLATIVE PROPOSAL

ARTICLE 3. RECALL

Sec. 29.26.240. RECALL. An official who is elected or appointed to an elective municipal office may be recalled by the voters after the official has served the first 120 days of the term for which elected or appointed.

Sec. 29.26.250. GROUNDS FOR RECALL. (a) Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties during the term of office which the official is presently serving:

- (1) misconduct in office means an unlawful act committed wilfully by any elected public official;
- (2) incompetence means mental or physical incapacity of an official to perform the duties of office for a period of no less than sixty days;
- (3) failure to perform prescribed duties means the wilful neglect or failure by an official to perform faithfully a duty imposed by statute.

(b) Performance of a lawful discretionary act does not form the basis for recall of an official.

Sec. 29.26.260. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain:

- (1) the signatures and resident addresses of at least 10 municipal voters who will sponsor the petition;
- (2) the address to which all correspondence relating to the petition may be sent;
- (3) a statement in 200 words or less of the grounds of the recall stated with particularity.

(b) An additional sponsor may be added at any time before the petition is filed by submitting the name of the sponsor to the clerk.

(c) Each sponsor of an application for a recall petition shall certify under penalty of perjury that the sponsor believes the charges set forth in the application for the recall petition are true. Knowingly submitting a false statement in an application for a recall petition shall be punishable as a Class A misdemeanor.

Sec. 29.26.270. RECALL PETITION. (a) If the municipal clerk determines that an application for recall petition meets the require-

183. The Appendix sets out the author's legislative proposal. Although a small portion of the language is taken from Alaska's current recall statutes, ALASKA STAT. §§ 29.28.130-250 (1984), the majority of the language is not part of Alaska law. See *supra* note 170 for further explanation.

ments of A.S. 29.26.250 and A.S. 29.26.260, the clerk shall send, by certified mail, a copy of the application for recall petition to the official sought to be recalled along with a notice informing the official that the official may submit to the clerk a rebuttal statement of 200 words or less no later than 10 days after receipt of the petition's statement of grounds.

(b) When the time period for submitting a rebuttal statement by the official has passed, the municipal clerk shall prepare a recall petition. All copies of the petition shall contain:

- (1) the name of the official sought to be recalled;
- (2) the statement of the grounds for recall as set out in the application for petition;
- (3) the official's rebuttal statement if one was submitted in accordance with subsection (a);
- (4) the date the petition is issued by the clerk;
- (5) notice that signatures must be secured within 60 days after the date the petition is issued;
- (6) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;
- (7) a statement, with space for the sponsor's sworn signature and date of signing, that the sponsor personally circulated the petition, that all signatures were affixed in the presence of the sponsor, and that the sponsor believes the signatures to be those of the persons whose names they purport to be; and
- (8) space for indicating the number of signatures on the petition.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

Sec. 29.26.280. SIGNATURE REQUIREMENTS. (a) The signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under A.S. 29.26.270(b)(7) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) The clerk shall determine the number of signatures required on a petition and inform each sponsor. If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by a number of voters equal to 25 percent of the registered voters in the municipality. If a petition seeks to recall an official who represents a district, the petition shall be signed by a number of the voters residing in the district equal to 25 percent of the registered voters in the district.

(c) Illegible signatures shall be rejected by the clerk unless ac-

accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk before certification of the petition.

Sec. 29.26.290. SUFFICIENCY OF PETITION. (a) The copies of a recall petition shall be assembled and filed as a single instrument. A petition may not be filed within 180 days before the end of the term of office of the official sought to be recalled. Within 10 days after the date a petition is filed, the municipal clerk shall:

- (1) certify on the petition whether it is sufficient; and
- (2) if the petition is insufficient, identify the insufficiency and notify the sponsors at the address provided under A.S. 29.26.260(a) by certified mail.

(b) A petition that is insufficient may be supplemented with additional signatures obtained and filed within 10 days after the date on which the petition is rejected if:

- (1) the petition contains an adequate number of signatures, counting both valid and invalid signatures; and
- (2) the supplementary petition is filed more than 180 days before the end of the term of office of the official sought to be recalled.

(c) A petition that is insufficient shall be rejected and filed as a public record unless it is supplemented under (b) of this section. Within 10 days after the supplementary filing the clerk shall re-certify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

Sec. 29.26.300. NEW RECALL PETITION APPLICATION. A new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected as insufficient.

Sec. 29.26.310. SUBMISSION. If a recall petition is sufficient, the clerk shall submit it to the governing body at the next regular meeting or at a special meeting held before the next regular meeting.

Sec. 29.26.320. ELECTION. (a) If a regular election occurs within 75 days, but not sooner than 45 days, after submission of the petition to the governing body, the governing body shall submit the recall at that election.

(b) If no regular election occurs within 75 days, the governing body shall hold a special election on a recall question within 75 days but not sooner than 45 days after a petition is submitted to the governing body.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question may not be submitted to the voters. The governing body may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

Sec. 29.26.330. **FORM OF RECALL BALLOTS.** A recall ballot shall contain:

- (1) the grounds of recall as stated in 200 words or less on the recall petition;
- (2) a rebuttal statement by the official named on the recall petition of 200 words or less, if the statement is filed in accordance with A.S. 29.26.270(a);
- (3) the following question: "Shall (name of person) be recalled from the office of (office)? Yes [] No []."

Sec. 29.26.340. **EFFECT.** (a) If a majority vote favors recall, the office becomes vacant upon certification of the recall election.

(b) If an official is not recalled at the election, an application for a petition to recall the same official may not be filed sooner than six months after the election.

Sec. 29.26.350. **ELECTION OF SUCCESSOR.** (a) If the voters recall an official other than a school board member, the clerk shall conduct an election for a successor to fill the unexpired term. The election shall be held at least 10 but not more than 45 days from the date of the certification of the recall election. However, if a regular or special election occurs within 75 days after certification of the recall election, the successor to the recalled official shall be chosen at that regular or special election. The procedures and requirements for the regular election for the office from which the incumbent is recalled apply to the election conducted under this section.

(b) If a member of the school board is recalled, the office of that member is filled in accordance with A.S. 14.12.070. If all members are recalled from a school board, the governor shall appoint three qualified persons to the school board. The appointees shall appoint additional members to fill remaining vacancies in accordance with A.S. 14.12.070. A person appointed under this subsection serves until a successor is elected and takes office.

(c) Nominations for a successor may be filed until seven days before the last date on which a first notice of the election must be given. Nominations may not be filed before the certification of the recall election.

Sec. 29.26.360. **APPLICATION.** A.S. 29.26.240—A.S. 29.26.360 apply to home rule and general law municipalities.

Sec. 29.26.370. **JURISDICTION OF SUPERIOR COURT.** (a) Any person aggrieved by the filing of recall charges, or by the failure of an election official to perform duties in relation to the recall, may file an action in the Superior Court. On hearing such action, the Superior Court shall have jurisdiction to consider the following matters:

- (1) the sufficiency or specificity of such recall charge or charges;

(2) the issuance of an injunction to compel performance of any act required of the municipal clerk or other elected official in relation to recall, or to prevent the performance of an act by the municipal clerk or other elected official in relation to recall;

(3) the existence or lack of facts establishing prima facie the truthfulness of such recall charges; provided that any person challenging any such recall charge pursuant to this subsection shall have the burden of proof by the preponderance of the evidence.

(b) Any action pursuant to subsections (1) and (3) of this statute shall be commenced no later than 15 days from the date that the officer sought to be recalled received a copy of the statement of grounds for recall from the municipal clerk pursuant to A.S. 29.26.270(a). Any action pursuant to subsection (2) of this section shall be commenced within 15 days from the time the complaint arises.

