



California and New Jersey Recalls Differ in Key Ways

By Jeffrey Brindle | September 3, 2021, 12:40 pm | in [Columnist](#), [The Diner Booth](#)

California has been much in the news lately.

Firefighters there are battling several wildfires, including one that threatened Lake Tahoe. At the same time, a political inferno has engulfed the state capital in the form of a recall election that threatens to unseat Democratic Governor Gavin Newsom.

For the second time in 18 years, Californians soon will go to the polls to decide the fate of a sitting governor who is the target of a recall effort.

On October 7, 2003, Democratic Governor Gray Davis was recalled 55.4 percent to 44.6 percent and replaced by Republican Arnold Schwarzenegger.

The current recall election is set for September 14. It involves both a ballot question (whether to recall the incumbent) and an election (who to elect as the new governor).

New Jersey has a recall law that has been in effect since May 17, 1995. The statute implemented a 1993 voter-approved Constitutional Amendment that allowed recalls of congressional members, the governor and legislators along with local officials, who previously could be recalled through local laws.

The recall of congressional members was struck down as unconstitutional on November 18, 2010 in response to a lawsuit filed by U.S. Senator Robert Menendez.

Before the voters approved the Constitutional Amendment, “the right to recall public officials was limited to six counties and some 160 towns that had adopted the provision on their own.”^[1]

Nineteen states, including California and New Jersey, plus the District of Columbia, currently allow the recall of public officials, according to the National Conference of State Legislatures.

While similar in some respects to California’s law, New Jersey’s statute also has significant differences.

For example, California Law gives incumbent Governor Newsom a huge fundraising advantage over those who seek to replace him. New Jersey law doesn’t create such a disparity.

According to www.followthemoney.org, pro-Newsom committees opposing the recall have raised \$49.5 million, including \$46.3 million just through the governor’s committee. That compares to \$8.7 million raised by committees supporting the recall ballot question.

While only three of the 46 candidates on the ballot to replace Newsom have raised over a million dollars individually, the challengers combined have garnered \$16.5 million for a total of \$25.2 million raised in support of the recall and their candidates.

A story in “The Guardian” has said Newsom’s anti-recall fund is expected to reach \$70 million by the time of the election.

So one of the lessons of the election may include the importance of money to success in elections.

The reason Newsom has such a fundraising advantage is found in California's recall law. Under the California Act, an "elected state officer," in this case a Governor who is the target of a recall, is not subject to limits on contributions made to his or her committee established to oppose the recall effort.

On the other hand, committees set up by candidates to replace the governor are subject to contribution limits as set forth under California's Campaign Finance law.

Replacement candidates can also control recall committees not subject to contribution limits. But money from those committees can be spent only to support the recall ballot measure in general and not to promote individual candidates seeking to replace the governor.

The governor's large financial edge trumps any benefit challengers get by controlling recall committees.

As noted above, the disparity is the result of the California's Recall Act that treats recall elections as ballot measures while the replacement part of the ballot is the equivalent of a regular candidate election.

Committees participating in ballot question elections are constitutionally permitted to accept contributions in unlimited amounts whereas candidate committees may be subject to contribution limits.

New Jersey's recall law discourages such a disparity.

Both Recall Defense Committees- committees established by the officeholder targeted for recall- and the Recall Sponsor Committees- committees pushing for the recall of the official- are treated similarly under New Jersey's Campaign Finance law.

Both committees are subject to the same contribution limits, the same restrictions on the use of funds, the same disclosure requirements, and the same penalties as committees operating in the course of a regular election.

Thus, unlike California with its parallel recall ballot question and replacement elections, New Jersey's Recall Act holds a single election similar to all candidate elections.

Incumbents do enjoy some advantage under New Jersey's law though it isn't as lopsided as the one in California.

A New Jersey officeholder who is the target of a recall effort can transfer funds from his or her campaign committee to his or her Recall Defense Committee. In this case, the money transferred is not subject to any limitation.

In terms of how it applies to the office of governor and legislator, there is another major difference between California's law and New Jersey's "Uniform Recall Election Law."

California essentially holds two separate, simultaneous elections to decide who occupies one office. The ballot measure decides whether to retain or remove the incumbent. The replacement election decides who takes over from the incumbent.

If a majority of voters vote yes on September 14, then Newsom will be removed from office. If that happens, the replacement candidate who gets the most votes becomes governor for the remainder of the gubernatorial term, which lasts until January 2023.

On the other hand, if 50 percent or more vote no on the ballot question, then the recall fails and Governor Newsom remains in office. The California Secretary of State's office says there have been 55 attempts to recall governors since 1913. So far, only Davis has been recalled.

Unlike California, which following a successful recall effort would immediately replace Governor Newsom with the winner of the replacement election, New Jersey's Recall Act provides that option only for local candidates.

With regard to the Governor and member of the Legislature, there is no replacement candidate. If a governor or legislator is the victim of a successful recall effort than the office is vacated until filled "in the same manner provided in the State Constitution for vacancies in those offices resulting from other causes."

While there have been movements to replace some governors since 1995, none were successful. Nor has any New Jersey legislator been ousted through the recall process so far.

For New Jersey local elected officials subject to a recall campaign and who vacate their office, the office can be filled by the election of a successor at the recall election. Or it can be filled by nomination through the political parties or through direct petition in the case of the general or non partisan elections.

There are other similarities as well between the two state laws.

Both California and New Jersey require a certain number of verified signatures on a designated petition form within a certain time frame.

Both laws require recall sponsors to set forth the reason for the recall effort and for the target of the recall to be notified of the effort in a timely manner.

Moreover, both California and New Jersey allow for the recall of elected officials at all levels of government but contain different provisions depending on the level of official to be recalled.

Finally, both laws are born out of the movement began in the late 1800s and early 1900s termed the Progressive Movement and both laws are motivated by the desire for good government.

Jeff Brindle is the Executive Director of the New Jersey Election Law Enforcement Commission.

The opinions presented here are his own and not necessarily those of the Commission.

[1] George Amick, "Recalls a Minor Footnote on NJ Politics," Trenton Times, June 13, 2011.