

# ***Undoing Democracy? Recall Elections in Texas 2004- 2022***

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**Brandon Rottinghaus, Professor  
Kiran Ahmed Khan, UH Class of 2024  
Jose Antonio Gutierrez, UH Class of 2023  
Eos Sison, UH Class of 2023**

**UNIVERSITY of HOUSTON**

**COLLEGE of LIBERAL ARTS & SOCIAL SCIENCES**  
Department of Political Science

# Summary

Recall elections allow voters to remove incumbents from office, often with a small number of participating voters and removal under vague justifications. In this report, we highlight our findings from a review of Texas city charters and recall elections from 2007-2022. We stress the following points:

- Most cities (89%) had a provision for a recall but a sizeable majority (64%) did *not* include in their charters a specific criteria for triggering a recall election.
- Most cities had a “grace period” of either 3 or 6 months in office before an incumbent could not be removed, and when removed, a majority of cities had a provision for a special election to replace that incumbent.
- Over the period of 2007-2022, we found 211 recall elections over 102 cities. Of these recall elections initiated, only 60% of incumbents were removed from office. That’s 57 total over this fifteen year period.

## Recommendations

Based upon the information and analysis in this report, we suggest the following recommendations:

- **Amend charters to include specific removal justifications.** Most cities had no justification required, leaving opponents to include odd or minor complaints justifying recall elections.
- **Include a 50% threshold for triggering a recall and a two-thirds of voters as threshold to remove an official.** While most cities use 30% as a threshold, this amounts to only a few hundred voters in some cities. This is too low to overturn an election.
- **Hold recall election with next concurrent election.** Turnout in municipal election is terrible to put it bluntly. Those seeking to manipulate the process may use low turnout in a special municipal to their advantage to install their preferred candidates.
- **Limit the timing and total number of recalls per candidate.** Happily most - but not all - cities give a grace period on when incumbents can be removed. These date guideposts should be more prominent.
- **Clarify and increase ease of access of charter requirements for recall.** The recall process can be unknown and confusing so clarity about rules helps make the process smoother.

# How Recall Elections Work

Recall elections allow citizens to remove incumbent elected officials. Petitioners collect signatures that allow them to trigger an election to decide whether an elected official should remain in office or not.

Some states (41 total) allow for recall of any public officials while others allow only recall of local political subdivisions. Each state and local government has different rules about the legal cause of removal (if any), the number of signatures needed to recall an elected official (and the time allowed to collect those signatures), and the process to replace that official. In Texas, recall elections are limited to municipal office holders.

And while recall elections date back to the early 1900s, little academic work explores the subject in the United States case where these elections have important implications to elections in Texas and nationally.<sup>1</sup>

If a small number of voters can overturn elections at the state or local level, the impact of recall elections will be profound as polarization spreads across the nation and even at the local (often non-partisan) level.<sup>2</sup> As technology improves, recall elections may also become easier. Concerns about the active political interests undoing the will of voters complicates democratic rule. Even states with a long history of recall elections have recently sought to adapt recall rules to slow the number of attempts.<sup>3</sup>

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<sup>1</sup> Joshua Spivak. 2020. "Recall Elections in the US: It's Long Past and Uncertain Future." In *The Politics of Recall Elections*, Yanina Welp and Laurence Whitehead, Editors. New York: Palgrave MacMillan.

<sup>2</sup> Yanina Welp and Laurence Whitehead. 2020. "Recall: Democratic Advance, Safety Valve or Risky Adventure?" In *The Politics of Recall Elections*, Yanina Welp and Laurence Whitehead, Editors. New York: Palgrave MacMillan.

<sup>3</sup> Lara Korte and Hannah Wiley. 2021. "Gavin Newsom Crushed the Recall Campaign. Now Democrats Want to Change the Rules." *Sacramento Bee*, September 15.

## Are Recall Elections Good for Democracy?

In one view, these recall elections are a corrective measure, used to remove a corrupt official or due to abuse of the public trust. Incumbents who fail to represent their constituents' best interests can be removed through a democratic process. Recalls allow a democratic procedure to counter citizen disillusionment who remain loyal to democratic principles.<sup>4</sup>

In another view, recall elections may circumvent the will of the voters by allowing a small group of citizens to remove an elected official already selected by a majority of the voting electorate. Snap judgements often associated with recall election attempts are antithetical to democracy that prefers "slow cooking to fast food."<sup>5</sup> This "excess of democracy" lessens the independents of elected officials and raises the possibility that special interest groups game the system.

## Which Texas Cities Allow Recalls?

To examine the frequency of recall elections we examined city charters and related city codes to analyze the rules for each city with respect to recall elections. Home Rule cities are cities that have the ability of local government to set policies and rules within their jurisdiction unless state law prohibits it. There are 381 home rule cities in Texas we examined. Specifically we looked at the charter of each

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**Most cities (89%) had a provision for a recall but most (64%) *did not* require in their charters a specific criteria for triggering a recall election.**

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<sup>4</sup> Yanina Welp and Laurence Whitehead. 2020. "Recall: Democratic Advance, Safety Valve, or Risky Adventure?" In *The Politics of Recall Elections*. Cham, Switzerland: Palgrave MacMillan.

<sup>5</sup> Yanina Welp and Laurence Whitehead. 2020. "The Politics of Recall Elections." In *The Politics of Recall Elections*. Cham, Switzerland: Palgrave MacMillan.

city to determine the rules and procedure involving recall elections.

Most home rule cities allow for a recall option of municipal office holders - 89% have language in their charters or codes that allow for recall of public officials. A few cities (3) did not have a charter we could easily locate online.

Cities that had a provision for a recall election also included a threshold requirement for triggering a recall election. Most (96 total) used 30% of either the turnout in the most recent municipal election or the of the total number of registered voters. Almost 50 cities used 10% as the threshold, followed closely by 20% (47) and 25% (45). The mean percentage was 28%.

## What are the Justifications for Recalls?

Although recall elections are allowed by most home rule cities and the threshold for removal is rather low, a majority of cities did *not* have a justification criteria included in their charters for a recall. More than 64% of cities (215) did *not* have a specific criteria described to trigger a recall. We include in this list cities that indicated some justification was necessary but did not indicate specific grounds (that is, some charters indicated "a general statement of the grounds for which removal is sought" or the petition should "state the reasons for the recall" but no specific items mentioned). For example, a 2014 recall of city councilmember Victor Hernandez in Lubbock involved a petitioner claiming that Hernandez had not returned his phone calls since winning the election. The City of Lubbock does not require a justification to initiate recall petitions.

Of the other 36% who *did* include a justification, most list "incompetency, misconduct, or malfeasance in office" as the justification. Other cities simply included "misfeasance" or "malfeasance." A handful of cities require a hearing before the city council to discuss the allegations before submitting to voters.

## Barred from Office?

If an officeholder was successfully put on the ballot to be recalled, we captured if the city charter barred that candidate from running again either in the current or future elections. Most cities did not include a ban on a recalled officeholder running again (67%) although a few had a limitation on running

for office again of between 2 and 5 years. Many had a provision that the recalled official could not succeed themselves in office or limited the recalled candidate from running in the election that followed their recall.

## What Happens Next? Limits and Replacement Elections

Most Texas cities limit when an office holder was subject to a recall election. Typically cities had a grace period of either 3 or 6 months where an elected official could not be recalled. A few cities also banned recall elections within several months of the end of an incumbent's term.

We know that the type of election matters - scholarship shows recalls across the country taking place the same day as a general election are more likely to oust an elected official than a

special election.<sup>6</sup> In effect, recall elections are two separate elections - one asking voters whether or not to remove an elected official and one asking whom should replace that elected official once recalled.

Most city charters in Texas (80%) have a provision for a special election to proceed an incumbent removed from office due to recall.

Other cities require an election at the "next uniform" election (14%), a city council appointment through that recalled member's term (4%), or some other kind of selection method (3%), such as the next municipal election or a combination of the other processes.

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## Tracking Recall Elections, 2007-2022

To examine the frequency of recall elections we scoured relevant local and state media sources to compile a list of recall attempts from 2007 to 2022. Over this period, we found 211 recall elections over 102 cities. We capture each separately because a person seeking a recall must collect signatures for each individual office holder. Some cities had several recall efforts in one

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<sup>6</sup> Spivak 2021.

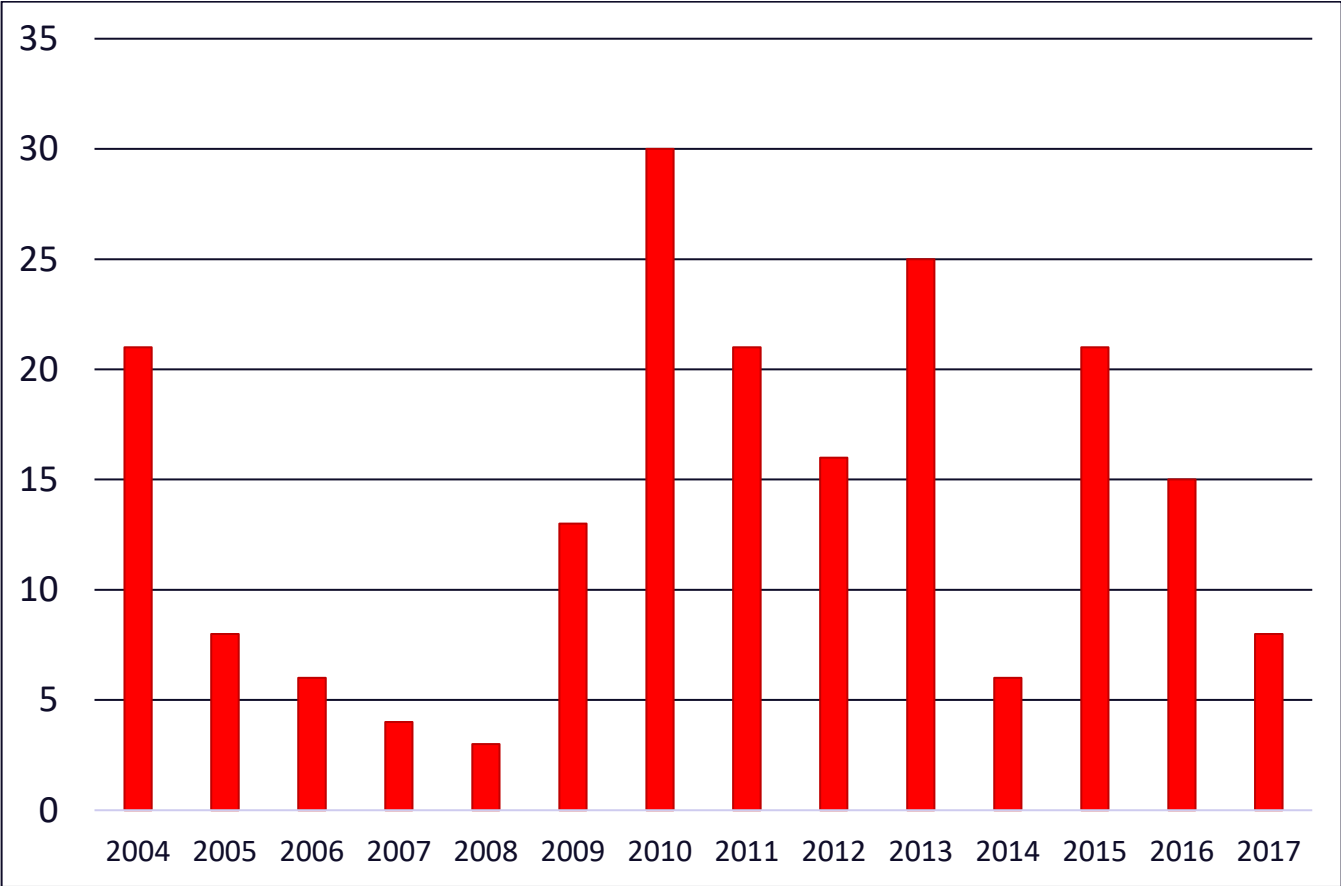
year, like 5 in San Antonio in 2018 or 7 in Killen in 2011. Other cities had multiple attempts over several years like Alice in 2014, 2016, and 2017.

The City of San Juan faced 2 sets of recall attempts within a year of four city commissioners: Lupe Rodriguez, Armando Garza, Eddie Suarez, and Bob Garza. All attempts failed due to a lack of verification of signatures.

The number of attempted recalls raises and falls each year over the time period studied. Most recalls attempts occurred in 2010, the peak of the Tea Party electoral success in Texas and the nation. The numbers fell slowly since then but increased in 2013 and 2015 from the prior year. These are the result of recalls of officials elected in the prior election cycle.

For example, the City of La Marque in 2010 succeeded in recalling 3 city councilmembers: Larry Mann, Connie Trube, and Deanie Barrett, for entering a contract that voters had asked to be delayed.

**Table 1: Total Recall Elections Initiated**



## Success of Recall Elections

Not all attempts to recall officials move forward. Some do not get the required number of signatures and, even if the recall is placed on the ballot, voters may not approve. Of the 211 recall election attempts, only 53% were successful. Most attempts failed to get the required number of signatures or did not get them in time.

Initiating a recall is rather rare; successfully recalling an elected official is even more rare. Of the 95 verified recall elections initiated, only 60% of incumbents were removed from office. That's fifty seven total elected officials over this fifteen year period. This is similar to the removal rate for all recalls across the country.<sup>7</sup>

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Of the total 112 recall attempts, 36 (or 32%) were of female officials and even fewer (14 total, 25%) were successful. We were also able to capture race by surname for Latino incumbents. Recall attempts were only made 25 times when the elected official was Latino (22% of the total), and, of those attempts, only 13 (23%) were successful.

## Best Practices

Our experiences researching recall elections has yielded insight into how these elections function - and don't - in Texas. There is significant variety in how recall elections are handled across home rule cities but a few best practices to protect democratic rule stood out:

- **Amend charters to include specific justification.** Most cities had no justification necessary, leaving opponents to include odd or minor complaints justifying recall elections. The City of Bee Cave has a comprehensive explanation for reasons for recall which includes defining

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<sup>7</sup> Joshua Spivak. 2021. Recall Elections: From Alexander Hamilton to Gavin Newsom. ISBN: 9798463296498.



some of the commonplace terms such as malfeasance or misconduct. It specifically defines incompetence to mean “gross ignorance of official duties, gross carelessness in the discharge of official duties; or inability or unfitness to promptly and properly discharge official duties because of a serious mental or physical defect that did not exist at the time of the officeholder's election.” This specificity is commendable but rare.

- **Include two-thirds of voters as threshold.** While most cities use 30% as a threshold, this amounts to only a few hundred voters in some cities. This is too low to overturn an election. The city of Copperas Cove only requires 2.5% of registered voters to trigger a recall election. The City of Denton requires 25% of the number of votes in the previous election for the office of the individual being recalled to trigger a recall. This amounted to recall organizers needing to collect only 76 signatures in the 2016 recall of city councilmember Joey Hawkins.
- **Hold recall election with next concurrent election.** Turnout in municipal election is stingy. Those seeking to manipulate the process may use low turnout to their advantage to install their preferred candidates. The City of Cibolo holds a special election when an elected official is facing a recall. This led to city councilmember Steve Liparoto being recalled by a margin of only 2 votes: 137 voted to recall while 135 voted to retain him. Similarly, Ron Pedde, who was also on the 2013 ballot for recall, was retained by a margin of 1 vote - 75 voted to recall while 76 voted to retain.
- **Limit the timing and total number of recalls per candidate.** Happily most cities give a grace period on when incumbents can be removed. These date guideposts should be more prominent. Most cities have a 3 or 6 month window after an election before a recall can be initiated - some, like the City of Copperas Cove, have a 180 day window.
- **Place limits on the petition filing process following unsuccessful attempts.** Some petitioners repeatedly submit recall petitions for verification to courts which have to certify signatures, hold public hearings, and prepare for a potential recall election. Guidelines at this stage of the process may limit frivolous and incomplete claims. The city of Balch Springs does not allow recall petitions within ninety days of such a petition being filed and found insufficient.

- **Clarify and increase ease of access of charter requirements for recall.** The recall process can be unknown and confusing for many people attempting to become more engaged in local governance. Differing requirements across cities regarding petition format, time limits, and justifications often mean that well-intentioned petitions are scrapped on small, technical grounds. Cities should publish clearly detailed petition requirements on an easily accessible online forum as well as maintain a review period in which citizens are given time to correct technical mistakes.

For instance, A 2012 recall petition for Bryan Miranda, a New Braunfels city councilmember, which collected sufficient signatures was rejected on the basis of an invalid reason even though the charter does not include a requirement to include one. Similarly, a 2016 recall petition for Ann Kitchen, an Austin city councilmember, was rejected despite sufficient signatures by a judge claiming notary stamps were not present on the petition. Furthermore, a 2016 recall petition for Kevin Roden, a Denton city councilmember, was rejected by a judge because the petition did not state the total number of signatures at the bottom of each page despite containing a sufficient number of signatures.

- **Encourage a “cooling off” period with hearings.** A handful of cities require a hearing before the city council to discuss the allegations before submitting to voters. For instance, the City of Frisco requires a public hearing within seven days of a recall petition being presented to the city council as a way to “present the facts pertinent to the charges specified in the recall petition.”



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