The Facts About the Montana Recall Act

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The Beginning

In 1976, Montana voters said they had enough of Montana elected and appointed officials not being accountable to the voters. The voters decided, by a margin of 57.4% YES to 42.6% NO, to pass Initiative 73 - THE MONTANA RECALL AND ADVISORY RECALL ACT.

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In the Attorney General's Explanatory Statement for Initiative 73, it stated "A officer could be recalled for any reason, regardless of a good faith attempt to perform his duties"

Those advocating for, and passing, initiative 73 had some of the same concerns and frustrations with government that we still experience today. In the argument advocating for approval of Initiative 73, the supporters stated "The Montana Recall Act is designed to give back to the people the power of recall which was taken away by the enactment of the 1972 Montana Constitution. Because over 80% of our government is presently in the hands of appointed officials, this act also provides for recall of appointed officials". They also stated that "The Recall law is an effort to put control of government back into the hands of the people by giving the citizens of Montana the authority to recall any government official from office if hefails to uphold the Constitution of the United States or ignores his fiduciary responsibility to the electorate". Finally, the supporters of Initiative 73, commenting on the petition process, stated that "many Montanans are convinced that such a law is necessary and badly needed to protect our state from the growth and ravages of unresponsive government".

All of these statements advocating for passage of Initiative 73, still apply today – almost 50 years later!

Those opposed to the Recall Act provided the Chicken Little defense. If you believed their rambling arguments, government would almost certainly cease to function. The voters didn't buy it and passed Initiative 73 by a significant margin.

Initiative 73 passes and Montana government is again accountable to the people. Great. So what is the problem?

The Problem



Recall Act stated that an official could only be recalled for: "Physical or mental lack of fitness, incompetence, violation of oath of office, official misconduct, or conviction of a felony offense enumerated in Title 45 are the only grounds for a recall. A person may not be recalled for performing a mandatory duty of the office that the person holds or for not performing any act that, if performed, would subject the person to prosecution for official misconduct." MCA 2-16-603(3).

This 'for cause' requirement made the Montana Recall Act, as passed into law, the exact opposite of what the voters in 1976 approved by a wide margin, thus making it nearly impossible to successfully recall an elected or appointed official in Montana.

Where Are We Today?

The Montana Recall Act has changed little since 1979.

Here are the basics of the Recall Act as written into law.

If you want to recall an elected or appointed official, it needs to be 'for cause', as stated above.

You must circulate a properly formatted petition for signatures and collect verified signatures of between 10% to 20% of qualified voters. Nominally 10% for state officials, 15% for City or County officials and 20% for school board officials.

office and an election is held to replace the official, pursuant to MCA 7-4-2106 - Vacancy on Board of County Mission; and/or MCA 5-2-402 – Appointment By Board of County Commissioners.

The successful candidate from this election will then be sworn into office.

There are many rules and requirements in each step of the process, but this is the gist of it.

The process is relatively simple, straightforward and completely stacked against the voters because of the 'for cause' requirement!

It is also important to point out that the government entity, of which the official belongs, can fight the recall petition at any step in the process – and usually do. The official will usually have access to government lawyers fighting on their side. Unless the petitioner has unlimited funds, and a lawyer who will take on the government, many recall petitions are killed because the petitioners cannot afford the legal costs to take on the government. Other attempts to recall an official have been met with threats of lawsuits by government lawyers against the petitioners if the recall effort is not dropped, when the petitioners are only exercising their constitutional rights. Ironically, this is the kind of government excess and overreach Initiative 73 was trying to address.

The Problem With the 'For Cause' Requirement

Initiative 73 – THE MONTANA RECALL AND ADVISORY RECALL ACT as passed by the voters would have put oversight and control of the government back in the hands of the people if it had been implemented as written and approved in 1976. The problem began when the Legislature, in 1977 and 1979, modified Initiative 73 before it was made into Law (MCA 2-16-6).

What changes did they make? The Legislature, made up of people who themselves, their friends, families and cronies, would be most affected by Initiative 73, effectively gutted the law. The most significant and damaging change made required that an elected or appointed official could only be recalled 'for cause'. Remember, Initiative 73 as passed by the voters, provided that "A officer could be recalled for any reason".

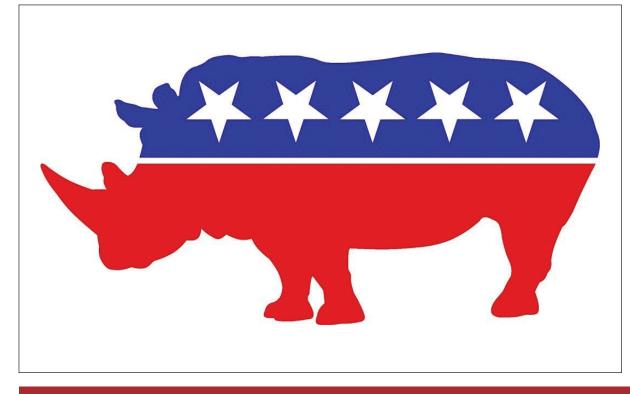
So what does 'for cause' mean? After the Legislature finished their work, the Montana

From the date when the petition format is approved, the petitioners only have 90 days to collect the signatures.

If you get the required number of verified signatures, a recall election will be held and the voters will determine whether the official subjected to the recall petition should be recalled. A yes or no is by simple majority. There is a general misconception of the recall act that if the petition collects the required number of verified signatures, the official is removed from office. That is incorrect! A recall election will be held and the official's fate is decided by a vote of the people.

If during the recall election, the voters decide not to recall the official, the official stays in office and cannot be subject to another recall effort for a minimum of 2 years.

If during the recall election, the voters decide to recall the official, the official will leave



The primary problem with the 'for cause' requirement is that the Recall Act, as passed by the legislature, has not clearly defined the criteria of each 'for cause' item. In some cases, the courts have provided the definition through case law. In other cases, there is insufficient case law.

And here is the real racket – judges, county and state's attorneys, politicians and bureaucrats, all of whom could potentially be subject to recall, interpret the law to the benefit of those in power and to the detriment of the people. This is best epitomized by the ruling in Foster V. Kovich. To quote the Montana Supreme Court, "Some state constitutions or statutes provide very broad recall and vest in the electorate the power to determine whether acts alleged in the petition are grounds for recall. In Montana, however, the legislature has limited the grounds for recall and has given the District Court the power to determine the legal sufficiency of the allegations in the recall petition. The legal sufficiency of the allegations is not left to the electorate". (Foster V. Kovich). This had to be a devastating blow to the sponsors of Initiative 73 and the people who voted for it.

A good example is the definition of "official misconduct" regarding recall. The courts have established case law that to meet the "official misconduct" hurdle for recall, the official effectively needs to have been convicted of "official misconduct" in a court. (Foster v. Kovich, Steadman v. Hallard).

This is an incredibly high, if not impossibly high bar, for a recall petition to meet.

Have Any Recall Attempts in Montana Been Successful?

Most attempts at recall in Montana have failed. Many have been unable to collect and verify all of the signatures within the 90 day statutory requirement. In a larger county, you may need 10,000 or more verified signatures. Most recall efforts don't have the funding to hire paid signature gatherers like CI-126, 127 and 128 most recently did. Other recall efforts were thrown out by the district courts because the court didn't feel they had met the 'for cause' hurdle or because their petition didn't meet the form requirements. Some have been thrown out because they were slightly over the 200 statutory word limit of the petition. Others have failed because government lawyers convinced the petitioners to drop the case. While others have run the gauntlet and gotten all of the way to a recall election and failed to gain the 50% needed from the voters to recall the official.

There have been some successes however, although not always directly. In Stevensville, the recall effort against Mayor Brandon Dewey failed at the ballot box, but the effort encouraged the City police department to begin an investigation based on the claims the recall petitioners had made. The Mayor ended up pleading guilty to three misdemeanors and serving some time in prison.

How Should We Go Forward and What Can You Do?

It is clear that the '**for cause'** requirement in the current Recall Act (MCA 2-16-6) needs to be removed, so the law reflects what the voters overwhelming voted for in 1976. There are enough safeguards within the law to keep it from being abused.

There is currently proposed legislation in the 2025 session sponsored by Senator Jeremy Trebas. Call your Senators and Representatives and tell them to pass this legislation (draft bill LC0521).

Elect judges who are voter friendly and follow the constitution. This applies all the way from the District Courts to the Montana Supreme Court.

Attend your County, City and School board meetings and hold the people who work for us

accountable to the voters.

If you are thinking about starting a recall petition there are a number of patriots in Montana that have attempted to recall. Reach out to them and learn what worked and what didn't. Who knows - they may even help you collect signatures!

To Conclude

The ability for the voters to recall elected and appointed officials who are not doing their job to the standards of their constituents is a right the Montana voters demanded in 1976. That effort was undermined by the same politicians and courts that it was intended to address. Now, 45 years later, it is time for that dream to be realized!

If you want to find out more about the Montana Recall Act you can find more details in the Montana Code Annotated, Title 2, Chapter 16, Part 6.