

RECENT ELECTION

STATE ELECTION LAW — RECALL PROCESS — SAN FRANCISCO DISTRICT ATTORNEY CHESA BOUDIN RECALLED.

States and localities are proving grounds for systems of democratic representation, often experimenting with electoral processes not available at the federal level.¹ Ideally, democratic processes allow for the maximum number of people to make informed decisions as to their elected representatives, thus exercising equal political power regardless of individual wealth or influence.² A system of regular-term elections balances direct democracy with pragmatic limitations, reflecting a compromise between mirroring the will of the people and giving elected officials time to enact policy and establish a track record by which they (or their party) can be evaluated by voters at the next election.³ But recently, on June 7, 2022, fifty-five percent of San Francisco voters in the California Consolidated Statewide Direct Primary Election chose to recall the city’s district attorney, Chesa Boudin.⁴

California’s recall provision, codified in the state constitution, allows voters to organize to remove an official before their term expires,⁵ with few meaningful procedural limitations.⁶ Since 1911, voters have used this power “to express their dissatisfaction with their elected representatives”⁷ — a dissatisfaction so great that the electorate cannot wait for the next election. Boudin’s recall under distinct San Francisco provisions, while a disappointment for some progressive advocates, does not necessarily implicate concerns about antidemocratic procedures. Viewed in the context of the two most recent *statewide* gubernatorial recall attempts, Boudin’s *citywide* recall is less vulnerable to accusations of unfair partisan reversal because the turnout, policy motivations, and replacement mechanism of Boudin’s recall reflected the original intent of the provision. Boudin’s recall process, conducted under local

¹ Cf. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“[A] single courageous State may, if its citizens choose, serve as a laboratory . . .”).

² See Nikolas Bowie, *The Supreme Court, 2020 Term — Comment: Antidemocracy*, 135 HARV. L. REV. 160, 167 (2021).

³ Without regular terms for elected officials, governance can drift to a state of “permanent election,” where political losers seek to unseat an election’s winner as soon as possible, rather than wait until the next election. Robert Reich, *The Permanent Election*, AM. PROSPECT (Aug. 27, 2003), <https://prospect.org/features/permanent-election> [<https://perma.cc/JXK8-V234>].

⁴ *June 7, 2022 Election Results — Summary*, CITY & CNTY. S.F., <https://sfelections.sfgov.org/june-7-2022-election-results-summary> [<https://perma.cc/3HD4-36XP>].

⁵ See CAL. CONST. art. II, §§ 13–19.

⁶ See S.F., CAL., CHARTER § 14.103 (2023), https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_charter/0-0-0-1264 [<https://perma.cc/8NN5-UVZK>]; CAL. ELEC. CODE § 11007 (West 2022); OFF. OF THE SEC’Y OF STATE OF CAL., PROCEDURES FOR RECALLING STATE AND LOCAL OFFICIALS 2 (2023), <https://elections.cdn.sos.ca.gov/recalls/recall-procedures-guide.pdf> [<https://perma.cc/V22P-QKPN>] [hereinafter RECALL PROCEDURES].

⁷ RECALL PROCEDURES, *supra* note 6, at i.

San Francisco law, offers an exemplar for reforms to California's statewide recall provision.

Chesa Boudin was elected as San Francisco's district attorney in November 2019 and took office in January 2020.⁸ Boudin, a former deputy public defender in San Francisco, won on a platform of progressive prosecution.⁹ Though not part of an officially defined school, progressive prosecutors are recognized for their commitment to using prosecutorial power and discretion to reduce mass incarceration and to make the criminal legal process more equitable.¹⁰ Voters elected Boudin after he promised to lead a generally anticarceral prosecutor's office by implementing reforms like pretrial diversion and shorter sentences.¹¹ Boudin also committed to the nonprosecution of "quality-of-life crimes,"¹² which began as a popular campaign message before eventually stoking controversy.¹³ Once elected, Boudin began delivering on those promises, nearly eliminating cash bail, reevaluating possible wrongful convictions, and increasing pretrial diversion.¹⁴

While San Francisco's overwhelmingly left-leaning electorate¹⁵ initially supported the progressive prosecutorial mission, public opinion began to shift as the COVID-19 pandemic set in. As people across the country stayed home, national news outlets broadcast security footage

⁸ Michelle Robertson, *Chesa Boudin Wins San Francisco D.A. Election*, SFGATE (Nov. 10, 2019, 6:19 AM), <https://www.sfgate.com/elections/article/Chesa-Boudin-wins-San-Francisco-D-A-election-14823180.php> [<https://perma.cc/ZN2G-C4FP>].

⁹ Evan Sernoffsky, *Chesa Boudin, Son of Imprisoned Radicals, Looks to Become SF District Attorney*, S.F. CHRON. (Jan. 15, 2019, 4:00 AM), <https://www.sfchronicle.com/crime/article/Chesa-Boudin-son-of-imprisoned-radicals-looks-13533584.php> [<https://perma.cc/8J3M-SM6F>].

¹⁰ See Note, *Welfarist Prosecution*, 135 HARV. L. REV. 2151, 2158-61 (2022); Note, *The Paradox of "Progressive Prosecution"*, 132 HARV. L. REV. 748, 752-54 (2018).

¹¹ See Elizabeth Weill-Greenberg, *How Chesa Boudin Is Pursuing His Promise to Reduce Incarceration*, THE APPEAL (Mar. 18, 2021), <https://theappeal.org/chesa-boudin-san-francisco-district-attorney-reduce-mass-incarceration-criticism> [<https://perma.cc/3PCK-UPDU>].

¹² Boudin defined quality-of-life crimes as charges that criminalize poverty and homelessness, including "public camping, offering or soliciting sex, public urination, blocking a sidewalk, etc." Phil Matier, *What's the Answer to Quality-of-Life Crimes in SF. DA Candidates Give Answers*, S.F. CHRON. (Oct. 27, 2019, 4:29 AM), <https://www.sfchronicle.com/local-politics/article/What-s-the-answer-to-quality-of-life-crimes-in-14563426.php> [<https://perma.cc/C82S-AA8J>]; see also Matt Charnock, *Boudin Will Not Prosecute Prostitution, Public Camping, and Other "Quality-of-Life Crimes" Once Sworn In*, SFIST (Nov. 16, 2019), <https://sfist.com/2019/11/16/boudin-will-not-prosecute-prostitution-public-camping-and-other-quality-of-life-crimes-once-sworn-in> [<https://perma.cc/J9R8-FL9B>].

¹³ See Susie Neilson, *We Obtained Never-Before-Seen Data on How Chesa Boudin Is Prosecuting Cases. Here's What It Shows*, S.F. CHRON. (Feb. 8, 2022, 4:35 PM), <https://www.sfchronicle.com/crime/article/We-obtained-never-before-seen-data-on-Chesa-16592626.php> [<https://perma.cc/H2R6-UMLB>].

¹⁴ See Weill-Greenberg, *supra* note 11.

¹⁵ See *Current Registration Counts*, CITY & CNTY. S.F., https://www.sfelections.org/tools/election_data [<https://perma.cc/RF6B-3NXW>].

of people shoplifting from San Francisco retail stores.¹⁶ Larceny theft increased significantly from 2020 to 2021,¹⁷ with multiple high-profile instances of organized theft making national news.¹⁸ These trends led to widespread frustration with Boudin’s policies, particularly his pledge not to prosecute quality-of-life crimes, which some voters viewed giving perpetrators carte blanche.¹⁹

At the same time as property crimes were on the rise, several attacks on elderly Asian Americans caused local and national uproar, with multiple incidents caught on video.²⁰ San Francisco citizens saw Boudin’s policies of diversion and lenient charging as particularly responsible for the slow “justice” in these racially motivated crimes.²¹ The San Francisco Police Department reported a “major” rise in anti-Asian hate crimes, further stoking public outrage against Boudin’s lenient policies.²² The same policies that were touted on the campaign trail as the best progressive response to crime became politically disastrous after citizens fixated on these visible crimes.²³ Within a few weeks, over ten thousand people had signed a petition calling for the resignation of both

¹⁶ See, e.g., Erik Ortiz & Jacob Ward, *After San Francisco Shoplifting Video Goes Viral, Officials Argue Thefts Aren't Rampant*, NBC NEWS (July 14, 2021, 4:37 AM), <https://www.nbcnews.com/news/us-news/after-san-francisco-shoplifting-video-goes-viral-officials-argue-thefts-n1273848> [<https://perma.cc/E5TD-T5MV>].

¹⁷ See Olga R. Rodriguez & Janie Har, *San Francisco's Vaunted Tolerance Dims Amid Brazen Crimes*, AP NEWS (Dec. 12, 2021), <https://apnews.com/article/coronavirus-pandemic-sports-business-health-lifestyle-538efc664e9daod2fo831f3f3ed9a4d7> [<https://perma.cc/6C7T-SFNL>] (citing a 17% increase given data available); see also *Crime Dashboard*, S.F. POLICE DEP’T, <https://www.sanfranciscopolice.org/stay-safe/crime-data/crime-dashboard> [<https://perma.cc/T9GJ-TACF>] (citing a 24.3% increase from 2020 to 2021 in larceny theft).

¹⁸ See, e.g., Jessica Lipscomb, *80 People Simultaneously Broke into a Nordstrom near San Francisco, Police Say: “Clearly a Planned Event” in Weekend Filled with Looting Incidents*, WASH. POST (Nov. 22, 2021, 4:51 AM), <https://www.washingtonpost.com/nation/2021/11/22/san-francisco-organized-looting> [<https://perma.cc/4SHH-8RST>]; Azi Paybarah, *California Leaders Vow to Crack Down After High-Profile Burglaries*, N.Y. TIMES (Nov. 24, 2021), <https://www.nytimes.com/2021/11/24/business/california-organized-crime-theft-looting.html> [<https://perma.cc/Q735-NLGN>].

¹⁹ See Neilson, *supra* note 13 (describing recall supporters criticizing Boudin for “creating an atmosphere of ‘no consequences’ for some types of criminal activity”).

²⁰ See Joe Fitzgerald Rodriguez & Han Li, *Why High-Profile Attacks on SF's Asian Communities Rarely Lead to Hate Crime Charges*, KQED (June 2, 2022), <https://www.kqed.org/news/11915634/why-high-profile-attacks-on-sfs-asian-communities-rarely-lead-to-hate-crime-charges> [<https://perma.cc/95A8-VU2J>].

²¹ See *id.*; Akela Lacy, *What's Stopping Chesa Boudin?*, THE INTERCEPT (June 3, 2022, 12:57 PM), <https://theintercept.com/2022/06/03/san-francisco-chesa-boudin-recall> [<https://perma.cc/66MN-72CJ>].

²² See *San Francisco Reports Major Rise in Anti-Asian Hate Crimes*, NBC NEWS (Jan. 26, 2022, 8:01 AM), <https://www.nbcnews.com/news/asian-america/san-francisco-reports-major-rise-anti-asian-hate-crimes-rcna13585> [<https://perma.cc/6BZZ-A7YN>] (describing “the increase in reported hate crimes against Asian Americans and Pacific Islanders [in 2021], up an astonishing 567 percent from the previous year”).

²³ See Susie Neilson, *San Francisco Crime Rates Drastically Shifted in the Pandemic. These Charts Show What's Happening Now*, S.F. CHRON. (Feb. 6, 2023, 11:03 AM), <https://www.sfchronicle.com/crime/article/san-francisco-crime-rate-17065509.php> [<https://perma.cc/A846-T8QM>] (noting that the “average Bay Area voter” thought that crime was getting worse under Boudin’s tenure).

San Francisco Mayor London Breed and Boudin for their perceived ineffectual response to this uptick in crime.²⁴ Coalitions that had initially opposed his election to district attorney were joined by investors, politicians of both parties, small business owners, and Asian American community organizers in a growing effort to establish a recall election.²⁵ Boudin did not shift his policies in response to growing public discontent, instead giving statements articulating the gap between voters' perception of crime and what crime statistics actually showed: a decrease in violent crime and an increase in crimes "solved" by an arrest.²⁶

The confluence of these circumstances allowed the recall campaign to gain momentum. To initiate a recall election, a proponent — usually a political action committee (PAC) or an individual citizen — must meet several procedural requirements.²⁷ These requirements include alerting the official and voters via formal notice, filing requirements ahead of an election, and, most notably, obtaining the signatures of at least ten percent of registered voters in the city on a petition for recall.²⁸ Richie Greenberg, a political commentator and former Republican mayoral candidate, started the first petition to recall Boudin in January 2021.²⁹ Although this petition fell short of the approximately fifty-one thousand signatures necessary,³⁰ coalitions supporting the recall had solidified. In October, a second recall campaign led by several organizations submitted a second petition with about eighty-three thousand signatures.³¹ On June 7, 2022, Boudin faced a recall, known as Proposition H, on the city's primary-election ballot.³²

²⁴ See Joshua Sharpe, *Key Moments in the Recall Election*, S.F. CHRON. (May 5, 2022, 10:57 AM), <https://www.sfchronicle.com/projects/2022/chesa-boudin-recall-election-timeline> [https://perma.cc/2554-X4VS].

²⁵ See *id.*; Lacy, *supra* note 21; Megan Cassidy, *Second Campaign Launches to Recall S.F. D.A. Chesa Boudin*, S.F. CHRON. (Apr. 19, 2021, 6:17 PM), <https://www.sfchronicle.com/crime/article/Second-campaign-forms-to-recall-S-F-DA-Chesa-16112232.php> [https://perma.cc/86AE-9G2N]; Claire Wang, *How San Francisco's D.A. Recall Election Shows a Rift in the Asian American Community*, NBC NEWS (June 10, 2022, 3:26 PM), <https://www.nbcnews.com/news/asian-america/san-francisco-d-recall-election-shows-rift-asian-american-community-rcna33017> [https://perma.cc/TU5D-M3JD].

²⁶ See Annie Lowrey, *The People vs. Chesa Boudin*, THE ATLANTIC (May 19, 2022), <https://www.theatlantic.com/ideas/archive/2022/05/chesa-boudin-recall-san-francisco-crime/629907> [https://perma.cc/L2SG-PB7Q] (quoting Boudin as saying "[w]e're experiencing somewhat of a disconnect between what the data shows us and what people feel").

²⁷ S.F. DEP'T OF ELECTIONS, GUIDE TO RECALLING LOCAL ELECTED OFFICIALS 6–10 (2022), https://selections.sfgov.org/sites/default/files/Documents/candidates/20200427_Recall-Guide.pdf [https://perma.cc/E4WX-BQFS].

²⁸ See *id.* at 6.

²⁹ See Sharpe, *supra* note 24.

³⁰ *Id.*

³¹ Trisha Thadani, *Recall of S.F. D.A. Chesa Boudin Likely to Head to Voters, With Many More Signatures Submitted than Needed*, S.F. CHRON. (Oct. 24, 2021, 2:11 PM), <https://www.sfchronicle.com/sf/article/Recall-of-S-F-DA-Chesa-Boudin-likely-to-head-to-16555970.php> [https://perma.cc/X2TY-ETPB].

³² See Musadiq Bidar, *San Francisco Votes Overwhelmingly to Recall Progressive DA Chesa Boudin*, CBS NEWS (June 8, 2022, 11:37 AM), <https://www.cbsnews.com/news/chesa-boudin-san-francisco-da-recalled> [https://perma.cc/CHM5-U9WD].

Boudin was recalled by more votes than had elected him in an election with comparable turnout numbers,³³ sparking both local and national discussions on his policies.³⁴ San Francisco officials were quick to assure voters and spectators that this was not the end of progressive prosecution in San Francisco, and they were likely correct — left-leaning Mayor Breed was tasked with appointing Boudin’s replacement, per San Francisco’s recall rules.³⁵ Boudin’s supporters argued that he was the victim of a targeted political attack by monied outside interests and claimed that the recall did not actually reflect the will of San Franciscans.³⁶

Setting aside the merits of progressive prosecution, Boudin’s recall under local San Francisco law reflected the will of a legitimate democratic majority that no longer supported his approach to prosecution. On several axes, including turnout, changing circumstances, and replacement opportunities, Boudin’s recall was less prone than other recall elections to concerns that the losing party was simply rerunning a valid election. Thus, this local “success” presents an opportunity to discuss the inherent risks of the statewide recall mechanism, and it offers an avenue for citizens who may have disagreed on the merits of the Boudin recall to work to reform the statewide recall provision.

When California added its statewide recall provision to the constitution in 1911, the mechanism was meant to combat the pervasive influence of large companies like the Southern Pacific Railroad at every level of state government.³⁷ Proponents of the recall argue that the core of the constitutional provision remains unsullied: “[The modern] recall is aimed at removing officials who have acted ‘corruptly’ in the sense that they are no longer representing the people but are serving the interests of a powerful minority.”³⁸ This idea of the recall as the “people’s impeachment” aligns with historical ideals of state governance as subject

³³ Compare *June 7, 2022 Election Results — Summary*, *supra* note 4 (showing 122,588 votes to recall Boudin out of 222,765 votes cast on the provision), with *November 5, 2019 Election Results — Summary*, CITY & CNTY. S.F. (Nov. 26, 2019, 3:39 PM), <https://sfelections.sfgov.org/november-5-2019-election-results-summary> [<https://perma.cc/X6SM-W6Y2>] (showing 68,575 votes for Boudin out of 192,053 votes cast for district attorney).

³⁴ See Bidar, *supra* note 32.

³⁵ See *id.*

³⁶ See Dario McCarty, *Big Donors Fueled High Profile Recall of Progressive San Francisco District Attorney Chesa Boudin*, OPENSECRETS (July 7, 2022, 2:14 PM), <https://www.opensecrets.org/news/2022/07/big-donors-fueled-high-profile-recall-of-progressive-san-francisco-district-attorney-chesa-boudin> [<https://perma.cc/WC2F-RTZD>]. A single “megadonor-backed” PAC, Neighbors for a Better San Francisco, contributed more than half of the \$7 million spent to advance the recall campaign. *Id.* Individuals or organizations who spent more than \$50,000 contributed the overwhelming majority of the pro-recall campaign’s funds, while less than half of the \$3 million spent for the anti-recall campaign was contributed by large donors. *Id.*

³⁷ See LARRY N. GERSTON ET AL., CALIFORNIA’S RECALL ELECTION OF GAVIN NEWSOM: COVID-19 AND THE TEST OF LEADERSHIP 97 (2023).

³⁸ Elizabeth Garrett, *Democracy in the Wake of the California Recall*, 153 U. PA. L. REV. 239, 272 (2004).

to much more intimate local control compared to federal representatives.³⁹ Ideally, the recall promotes direct democracy by “empowering the relatively unorganized many as they combat the clout of the organized but impassioned few in the legislative [or political] arena.”⁴⁰

California’s recall provision should maximize the democratic values of consistency and transparency in the exercise of this power. A process that evinces the simple choice of a majority is not automatically democratic.⁴¹ Although the California constitution can be interpreted and reformed by citizens as they see fit, “majority rule is not the same as majority will and certainly not the same as majority whim.”⁴² A simple majority does not cure the vulnerabilities in the process of the recall provision. Ideally, elections allow each constituent to participate in a decision on equal terms.⁴³ In arming the electorate against those in power, a low procedural threshold for a recall can potentially give an out-of-power minority another bite at the apple. Realizing direct democracy through the recall process requires careful implementation, lest losing political parties receive an easy opportunity to rerun a valid election.

California’s statewide recall provision differs from San Francisco’s locally legislated recall in two key process areas: the replacement mechanism and the signature requirement. A statewide recall appears on the ballot in two parts: one that asks citizens to vote for the recall and one that asks citizens to select a replacement.⁴⁴ But in a successful San Francisco recall, like Boudin’s, the mayor appoints a temporary replacement.⁴⁵ Furthermore, statewide recalls have not adopted the experimental signature requirement that San Francisco uses. San Francisco requires signatures of ten percent of the currently registered voters in the city to get a recall provision on the ballot, in contrast to the twelve percent of voters in the most recent election required by the state.⁴⁶

The two most salient gubernatorial recall provisions of the last two decades show how these key procedural deficits have dogged the statewide recall in its modern application. In 2003, voters recalled second-term Governor Gray Davis and elected Arnold Schwarzenegger

³⁹ Vikram David Amar, *Adventures in Direct Democracy: The Top Ten Constitutional Lessons from the California Recall Experience*, 92 CALIF. L. REV. 927, 945 (2004); see also *id.* at 942–45.

⁴⁰ Garrett, *supra* note 38, at 243.

⁴¹ See, e.g., LANI GUINIER, *THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY* 1–6 (1994); Amar, *supra* note 39, at 948–49 (acknowledging that in one sense, Californians have the right to run, abolish, and alter their election processes, but arguing that this is not the same as having *carte blanche* in actual governance).

⁴² Amar, *supra* note 39, at 949 (citing Akhil Reed Amar, *The Consent of the Governed: Constitutional Amendment Outside Article V*, 94 COLUM. L. REV. 457, 501–04 (1994)).

⁴³ See Bowie, *supra* note 2, at 169 (“[M]ajoritarian elections without a universal franchise, power sharing, or attempts at fostering consensus can create dominating hierarchies between permanent winners and losers.”).

⁴⁴ RECALL PROCEDURES, *supra* note 6.

⁴⁵ See Bidar, *supra* note 32.

⁴⁶ See David A. Carillo et al., *California’s Recall Is Not Overpowered*, 62 SANTA CLARA L. REV. 481, 527, 529 (2022).

as his replacement on the same ballot.⁴⁷ This election was marked by over twenty lawsuits,⁴⁸ voter confusion,⁴⁹ and the election of a candidate who might not have been able to win a primary, let alone a regular election.⁵⁰ Recall supporters paid private workers around one dollar per signature they collected on Davis's recall petition,⁵¹ raising more questions about the democratic value of the exercise. Despite calls for reform, the recall mechanism remained mostly unchanged, and in 2021 a petition gathered enough signatures to trigger a recall provision for Governor Gavin Newsom.⁵² Despite the huge amount of money and attention this recall contest attracted, Governor Newsom defeated the recall provision by about the same margin as he won his general election.⁵³ Calls for reform have focused on the perceived waste of taxpayer money that paid for the recall election's administration,⁵⁴ but more salient are the threats presented to democratic processes.

In contrast to the Davis and Newsom recalls, the Boudin recall had a procedural protection against the risk of becoming a "do-over" by the losing political party. Boudin's replacement was appointed by Mayor Breed, not selected on the same ballot as his recall.⁵⁵ As this appointment did not involve a switch in political parties, Boudin's recall was not a do-over in the partisan sense.⁵⁶ Governor Davis's recall provision included 135 candidates to succeed him in case of recall, resulting in confusion and the eventual election of an opposite-party candidate who might not have survived a primary.⁵⁷ The attempted recall of Governor Newsom threatened to place a syndicated radio personality with fringe views as the executive of the nation's most populous state.⁵⁸

⁴⁷ Garrett, *supra* note 38, at 239.

⁴⁸ *See id.*

⁴⁹ R. Michael Alvarez et al., *The Complexity of the California Recall Election*, 37 PS: POL. SCI. & POL. 23, 24 (2004).

⁵⁰ Garrett, *supra* note 38, at 255.

⁵¹ Shaun Bowler & Bruce Cain, *Introduction — Recalling the Recall: Reflections on California's Recent Political Adventure*, 37 PS: POL. SCI. & POL. 7, 8 (2004).

⁵² GERSTON ET AL., *supra* note 37, at 2.

⁵³ Ben Christopher, *Full Speed Ahead on Overhauling California Recalls*, CALMATTERS (Sept. 29, 2021), <https://calmatters.org/politics/2021/09/california-recall-change-law> [https://perma.cc/DEQ7-99TS].

⁵⁴ *Id.*

⁵⁵ *See* Amar, *supra* note 39, at 945; Bidar, *supra* note 32; *see also* Mark Baldassare, *Californians Want Recall Reforms on the 2022 Ballot*, PUB. POL'Y INST. OF CAL. (Mar. 24, 2022), <https://www.ppic.org/blog/californians-want-recall-reforms-on-the-2022-ballot> [https://perma.cc/AG78-FNSP].

⁵⁶ *See* Annie Lowrey, *What Chesa Boudin Revealed About an Undemocratic Election System*, THE ATLANTIC (June 10, 2022), <https://www.theatlantic.com/ideas/archive/2022/06/chesa-boudin-recall-election-trend-san-francisco/661248> [https://perma.cc/8BN6-6VDS].

⁵⁷ *See* Garrett, *supra* note 38, at 254–55.

⁵⁸ *See* Christopher, *supra* note 53 (noting that the replacement frontrunner, Larry Elder, had "47% of the replacement vote [while] 4 million voters didn't choose anyone"); Tiffany Stecker, *Larry Elder's California Recall Rise Has Even Republicans Uneasy*, BLOOMBERG (Aug. 26, 2021, 10:00 AM), <https://www.bloomberg.com/news/articles/2021-08-26/larry-elder-s-california-recall-rise-has-even-republicans-uneasy> [https://perma.cc/NP8V-FDGE].

Replacement by appointment or simple succession by the lieutenant governor, rather than by the same possibly skewed ballot provision, offer simple reforms to the gubernatorial recall.

Adopting the local approach to signature requirements statewide would also increase predictability and better insulate the statewide recall mechanism from partisan power grabs. Tying the signature requirement to turnout in the most recent election allows out-of-power parties to benefit from unusual circumstances. In the Davis recall, the 2002 gubernatorial election saw historically low voter turnout, meaning the recall campaign had an especially easy qualification requirement.⁵⁹ The COVID-19 pandemic gave the Newsom recall campaign additional time to collect signatures, also lowering the bar.⁶⁰ Although the Boudin recall also took place during the pandemic, the proponents did not receive extra time to collect signatures, and the petition exceeded the number of signatures needed.⁶¹ Using this ten-percent standard statewide would modestly increase the signature requirement and additionally provide consistency to recall thresholds.⁶²

Viewing the Boudin recall in the context of the two gubernatorial recalls shows how difficult reform can be. Although a majority of polled voters in 2021 said they supported recall reforms, no single proposed reform received majority support in the same poll.⁶³ Not even the legal and political chaos created by the Davis recall was able to drum up majority support in California for a constitutional amendment.⁶⁴ Procedural reforms such as those proposed by the Little Hoover Commission, which researched reforms to the provision after Newsom's attempted recall,⁶⁵ cannot incite the same political fervor that recalls themselves do. California can and should continue to experiment with the correct approach to maintaining the people's power over their elected officials, but, at minimum, it should heed the results of local innovation and update the replacement mechanism and signature requirement of the statewide recall.

⁵⁹ Carillo et al., *supra* note 46, at 527.

⁶⁰ *Id.*

⁶¹ Thadani, *supra* note 31.

⁶² Carillo et al., *supra* note 46, at 529.

⁶³ Baldassare, *supra* note 55.

⁶⁴ *See id.*; *see also* GERSTON ET AL., *supra* note 37, at 97.

⁶⁵ Pedro Nava, Opinion, *How to Fix California's Recall Elections*, CALMATTERS (Feb. 15, 2022), <https://calmatters.org/commentary/2022/02/how-to-fix-californias-recall-elections> [<https://perma.cc/P3SP-P6U9>].