

Wis. Stat. § 9.10

This document is current through Act 380, dated April 24, 2014 (All 2014 legislation)

Wisconsin Statutes > ELECTIONS > CHAPTER 9. POST-ELECTION ACTIONS; DIRECT LEGISLATION

9.10. Recall.

(1) RIGHT TO RECALL; PETITION SIGNATURES.

- (a) The qualified electors of the state, of any county, city, village, or town, of any congressional, legislative, judicial, town sanitary, or school district, or of any prosecutorial unit may petition for the recall of any incumbent elective official by filing a petition with the same official or agency with whom nomination papers or declarations of candidacy for the office are filed demanding the recall of the officeholder.
- (b) Except as provided in par. (c), a petition for recall of an officer shall be signed by electors equal to at least 25% of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled.
- (c) If no statistics are available to calculate the required number of signatures on a petition for recall of an officer, the number of signatures shall be determined as follows:
 - 1. The area of the district in square miles shall be divided by the area of the municipality in square miles in which it lies.
 - 2. The vote for governor at the last general election in the municipality within which the district lies shall be multiplied by 25% of the quotient determined under subd. 1. to determine the required number of signatures.
 - 3. If a district is in more than one municipality, the method of determination under subds. 1. and 2. shall be used for each part of the district which constitutes only a fractional part of any area for which election statistics are kept.
- (d) The official or agency with whom declarations of candidacy are filed for each office shall determine and certify to any interested person the number of signatures required on a recall petition for that office.

(2) PETITION REQUIREMENTS.

- (a) Every recall petition shall have on the face at the top in bold print the words "RECALL PETITION". Other requirements as to preparation and form of the petition shall be governed by [s. 8.40](#).
- (b) A recall petition for a city, village, town, town sanitary district, or school district office shall contain a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought.
- (c) A petition requesting the recall of each elected officer shall be prepared and filed separately.
- (d) No petition may be offered for filing for the recall of an officer unless the petitioner first files a registration statement under [s. 11.05 \(1\)](#) or (2) with the filing officer with whom the petition is filed. The petitioner shall append to the registration a statement indicating his or her intent to circulate a recall petition, the name of the officer for whom recall is sought and, in the case of a petition for the recall of a city, village, town, town sanitary district, or school district officer, a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought. No petitioner may circulate a petition for the recall of an officer prior to completing registration. The last date that a petition for the recall of an officer may be offered for filing is 5 p.m. on the 60th day commencing after registration. After the recall petition has been offered for filing, no name may be added or removed. No signature may be counted unless the date of the signature is within the period provided in this paragraph.
- (e) An individual signature on a petition sheet may not be counted if:

1. The signature is not dated.
 2. The signature is dated outside the circulation period.
 3. The signature is dated after the date of the certification contained on the petition sheet.
 4. The residency of the signer of the petition sheet cannot be determined by the address given.
 5. The signature is that of an individual who is not a resident of the jurisdiction or district from which the elective official being recalled is elected.
 6. The signer has been adjudicated not to be a qualified elector on grounds of incompetency or limited incompetency as provided in [s. 6.03 \(3\)](#).
 7. The signer is not a qualified elector by reason of age.
 8. The circulator knew or should have known that the signer, for any other reason, was not a qualified elector.
- (em) No signature on a petition sheet may be counted if:
1. The circulator fails to sign the certification of circulator.
 2. The circulator is not a qualified circulator.
- (f) The filing officer or agency shall review a verified challenge to a recall petition if it is made prior to certification.
- (g) The burden of proof for any challenge rests with the individual bringing the challenge.
- (h) Any challenge to the validity of signatures on the petition shall be presented by affidavit or other supporting evidence demonstrating a failure to comply with statutory requirements.
- (i) If a challenger can establish that a person signed the recall petition more than once, the 2nd and subsequent signatures may not be counted.
- (j) If a challenger demonstrates that someone other than the elector signed for the elector, the signature may not be counted, unless the elector is unable to sign due to physical disability and authorized another individual to sign in his or her behalf.
- (k) If a challenger demonstrates that the date of a signature is altered and the alteration changes the validity of the signature, the signature may not be counted.
- (L) If a challenger establishes that an individual is ineligible to sign the petition, the signature may not be counted.
- (m) No signature may be stricken on the basis that the elector was not aware of the purpose of the petition, unless the purpose was misrepresented by the circulator.
- (n) No signature may be stricken if the circulator fails to date the certification of circulator.
- (p) If a signature on a petition sheet is crossed out by the petitioner before the sheet is offered for filing, the elimination of the signature does not affect the validity of other signatures on the petition sheet.
- (q) Challenges are not limited to the categories set forth in pars. (i) to (L).
- (r) A petitioner may file affidavits or other proof correcting insufficiencies, including but not limited to:
4. Failure of the circulator to sign the certification of circulator.
 5. Failure of the circulator to include all necessary information.
- (s) No petition for recall of an officer may be offered for filing prior to the expiration of one year after commencement of the term of office for which the officer is elected.
- (3) STATE, COUNTY, CONGRESSIONAL, LEGISLATIVE AND JUDICIAL OFFICES.**

- (a) This subsection applies to the recall of all elective officials other than city, village, town, town sanitary district, and school district officials. City, village, town, town sanitary district, and school district officials are recalled under sub. (4).
- (b) Within 10 days after the petition is offered for filing, the officer against whom the petition is filed may file a written challenge with the official, specifying any alleged insufficiency. If a challenge is filed, the petitioner may file a written rebuttal to the challenge with the official within 5 days after the challenge is filed. If a rebuttal is filed, the officer against whom the petition is filed may file a reply to any new matter raised in the rebuttal within 2 days after the rebuttal is filed. Within 14 days after the expiration of the time allowed for filing a reply to a rebuttal, the official shall file the certificate or an amended certificate. Within 31 days after the petition is offered for filing, the official with whom the petition is offered for filing shall determine by careful examination whether the petition on its face is sufficient and so state in a certificate attached to the petition. If the official finds that the amended petition is sufficient, the official shall file the petition and call a recall election to be held on the Tuesday of the 6th week commencing after the date of filing of the petition. If Tuesday is a legal holiday, the recall election shall be held on the first day after Tuesday which is not a legal holiday. If the official finds that the petition is insufficient, the certificate shall state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 5 days after the offering of the amended petition for filing, the official with whom the petition is filed shall again carefully examine the face of the petition to determine sufficiency and shall attach a certificate stating the findings. Upon showing of good cause, the circuit court for the county in which the petition is offered for filing may grant an extension of any of the time periods provided in this paragraph.
- (bm) Within 7 days after an official makes a final determination of sufficiency or insufficiency of a recall petition under par. (b), the petitioner or the officer against whom the recall petition is filed may file a petition for a writ of mandamus or prohibition with the circuit court for the county where the recall petition is offered for filing. Upon filing of such a petition, the only matter before the court shall be whether the recall petition is sufficient. The court may stay the effect of the official's order while the petition is under advisement and may order the official to revise the election schedule contained in the order if a revised schedule is necessitated by judicial review. Whenever the recall petitioner files a petition under this paragraph, the officer against whom the recall petition is filed shall be a party to the proceeding. The court shall give the matter precedence over other matters not accorded similar precedence by law.
- (c) The official against whom the recall petition is filed shall be a candidate at the recall election without nomination unless the official resigns within 10 days after the original filing of the petition. Candidates for the office may be nominated under the usual procedure of nomination for a special election by filing nomination papers not later than 5 p.m. on the 4th Tuesday preceding the election and have their names placed on the ballot at the recall election.
- (d) If more than 2 persons compete for a nonpartisan office, a recall primary shall be held. The names of the 2 persons receiving the highest number of votes in the recall primary shall be certified to appear on the ballot in the recall election, but if any person receives a majority of the total number of votes cast in the recall primary, a recall election shall not be held. If the incumbent receives a majority of the votes cast, the incumbent shall be retained in office for the remainder of the term. If another candidate receives a majority of the votes cast, that candidate shall be elected to serve for the residue of the unexpired term of the incumbent. Write-in votes are permitted only at a recall primary or at a recall election in which no primary is held.
- (e) For any partisan office, a recall primary shall be held for each political party which is entitled to a separate ballot under [s. 5.62 \(1\) \(b\)](#) or (2) and from which more than one candidate competes for the party's nomination in the recall election. The primary ballot shall be prepared in accordance with [s. 5.62](#), insofar as applicable. The person receiving the highest number of votes in the recall primary for each political party shall be that party's candidate in the recall election. Independent candidates shall be shown on the ballot for the recall election only.

- (f) If a recall primary is required, the date specified under par. (b) shall be the date of the recall primary and the recall election shall be held on the Tuesday of the 4th week commencing after the recall primary or, if that Tuesday is a legal holiday, on the first day after that Tuesday which is not a legal holiday.

(4) CITY, VILLAGE, TOWN, TOWN SANITARY DISTRICT, AND SCHOOL DISTRICT OFFICES.

- (a) Within 10 days after a petition for the recall of a city, village, town, town sanitary district, or school district official, is offered for filing, the officer against whom the petition is filed may file a written challenge with the municipal clerk or board of election commissioners or school district clerk with whom it is filed, specifying any alleged insufficiency. If a challenge is filed, the petitioner may file a written rebuttal to the challenge with the clerk or board of election commissioners within 5 days after the challenge is filed. If a rebuttal is filed, the officer against whom the petition is filed may file a reply to any new matter raised in the rebuttal within 2 days after the rebuttal is filed. Within 14 days after the expiration of the time allowed for filing a reply to a rebuttal, the clerk or board of election commissioners shall file the certificate or an amended certificate. Within 31 days after the petition is offered for filing, the clerk or board of election commissioners shall determine by careful examination of the face of the petition whether the petition is sufficient and shall so state in a certificate attached to the petition. If the petition is found to be insufficient, the certificate shall state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 2 days after the offering of the amended petition for filing, the clerk or board of election commissioners shall again carefully examine the face of the petition to determine sufficiency and shall attach to the petition a certificate stating the findings. Immediately upon finding an original or amended petition sufficient, except in cities over 500,000 population, the municipal clerk or school district clerk shall transmit the petition to the governing body or to the school board. Immediately upon finding an original or amended petition sufficient, in cities over 500,000 population, the board of election commissioners shall file the petition in its office.
- (d) Promptly upon receipt of a certificate under par. (a), the governing body, school board, or board of election commissioners shall call a recall election. The recall election shall be held on the Tuesday of the 6th week commencing after the date on which the certificate is filed, except that if Tuesday is a legal holiday the recall election shall be held on the first day after Tuesday which is not a legal holiday.
- (e) The official against whom the recall petition is filed shall be a candidate at the recall election without nomination unless the official resigns within 10 days after the date of the certificate. Candidates for the office may be nominated under the usual procedure of nomination for a special election by filing nomination papers or declarations of candidacy not later than 5 p.m. on the 4th Tuesday preceding the election and have their names placed on the ballot at the recall election.
- (f) If more than 2 persons compete for an office, a recall primary shall be held. The names of the 2 persons receiving the highest number of votes in the recall primary shall be certified to appear on the ballot in the recall election, but if any person receives a majority of the total number of votes cast in the recall primary, a recall election shall not be held. If the incumbent receives a majority of the votes cast, the incumbent shall be retained in office for the remainder of the term. If another candidate receives a majority of the votes cast, that candidate shall be elected to serve for the residue of the unexpired term of the incumbent. Write-in votes are permitted only at a recall primary or at a recall election in which no primary is held.
- (g) If a recall primary is required, the date specified under par. (d) shall be the date of the recall primary and the recall election shall be held on the Tuesday of the 4th week commencing after the recall primary or, if that Tuesday is a legal holiday, on the first day after that Tuesday which is not a legal holiday.
- (h) All candidates for any village, town, and town sanitary district office, other than the official against whom the recall petition is filed, shall file nomination papers, regardless of the method of nomination of candidates for town or village office under [s. 8.05](#).

(5) VOTING METHOD; ELECTION RESULTS.

- (a) The recall primary or election of more than one official may be held on the same day. If more than one official of the same office designation elected at large for the same term from the same district or territory is the

subject of a recall petition, there shall be a separate election contest for the position held by each official. Candidates shall designate which position they are seeking on their nomination papers. Instructions shall appear on the ballot to electors to vote for each position separately.

- (b) The official against whom a recall petition has been filed shall continue to perform the duties of his or her office until a certificate of election is issued to his or her successor. The person receiving a plurality of votes at the recall election or a majority of votes at a primary when authorized under sub. (3) (d) or (4) (f) shall be declared elected for the remainder of the term. If the incumbent receives the required number of votes he or she shall continue in office. Except as provided in sub. (4) (f), if another person receives the required number of votes that person shall succeed the incumbent if he or she qualifies within 10 days after receiving a certificate of election.

- (6) **LIMITATION ON RECALL ELECTIONS.** After one recall petition and recall election, no further recall petition may be filed against the same official during the term for which he or she was elected.

- (7) **PURPOSE.** The purpose of this section is to facilitate the operation of article XIII, section 12, of the constitution and to extend the same rights to electors of cities, villages, towns, town sanitary districts, and school districts.

History

1977 c. 187 s. 134; 1977 c. 403, 447; 1979 c. 260; 1983 a. 219, 491, 538; 1985 a. 304; [1987 a. 391](#); [1989 a. 31](#), [192](#); [1991 a. 269](#), [315](#); [1999 a. 182](#); [2001 a. 109](#); [2005 a. 451](#); [2007 a. 56](#).

Annotations

Notes

Notes supplied by the State of Wisconsin.

Cross-reference: See definitions in [s. 5.02](#).

Cross-reference: See also ss. GAB 2.09, 2.11, and 6.04, Wis. adm. code.

Case Notes

Civil Procedure: Justiciability: Mootness: General Overview
 Civil Procedure: Jurisdiction: Subject Matter Jurisdiction: Jurisdiction Over Actions: General Overview
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LexisNexis (R) Notes**Civil Procedure: Justiciability: Mootness: General Overview**

1. Trial court's erroneous interpretation of [Wis. Stat. § 9.10\(2\)\(a\)](#) and (4)(a) in a citizen's request for a special election was still subject to review, despite the occurrence of a general election while the case was on appeal, because the interpretation of a good and sufficient reason for removal of a city official was a question of public interest; the reviewing court ordered that the special election should have been held. [In re Recall of Certain Officials, 63 Wis. 2d 362, 217 N.W.2d 277, 1974 Wisc. LEXIS 1461 \(Wis. 1974\).](#)

Civil Procedure: Jurisdiction: Subject Matter Jurisdiction: Jurisdiction Over Actions: General Overview

2. While a circuit court has jurisdiction to determine whether a petition states cause for recall, it does not have jurisdiction to determine whether a petition's allegations or hearing testimony is true or false. [Szymkowski v. Iowa & Howard Citizens for Better Government, 140 Wis. 2d 860, 409 N.W.2d 670, 1987 Wisc. App. LEXIS 3689 \(Wis. Ct. App. 1987\).](#)

Civil Procedure: Appeals: Appellate Jurisdiction: General Overview

3. Trial court's erroneous interpretation of [Wis. Stat. § 9.10\(2\)\(a\)](#) and (4)(a) in a citizen's request for a special election was still subject to review, despite the occurrence of a general election while the case was on appeal, because the interpretation of a good and sufficient reason for removal of a city official was a question of public interest; the reviewing court ordered that the special election should have been held. [In re Recall of Certain Officials, 63 Wis. 2d 362, 217 N.W.2d 277, 1974 Wisc. LEXIS 1461 \(Wis. 1974\).](#)

Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review

4. A reviewing court is required to accord precedence to a case seeking review of an order certifying the recall election of aldermen. [Szymkowski v. Iowa & Howard Citizens for Better Government, 140 Wis. 2d 860, 409 N.W.2d 670, 1987 Wisc. App. LEXIS 3689 \(Wis. Ct. App. 1987\).](#)

Civil Procedure: Appeals: Standards of Review: De Novo Review

5. The appeal of a recall requires the reviewing court to construe [Wis. Stat. § 9.10](#) in relation to the particular facts contained in the petition and the hearing record; this is a question of law which an appellate court decides independently without deference to the decision of the trial court. [Szymkowski v. Iowa & Howard Citizens for Better Government, 140 Wis. 2d 860, 409 N.W.2d 670, 1987 Wisc. App. LEXIS 3689 \(Wis. Ct. App. 1987\).](#)

Constitutional Law: Equal Protection: Voting Districts & Representatives

6. Where a candidate for city treasurer appealed a canvassing board's determination, on a second recount as provided by former Wis. Stat. § 6.66(1) (now [Wis. Stat. § 9.01](#)), that his opponent received 787 votes and that he received 786 votes, as well as the certificate of election given to his opponent under, the trial court erred because when the ballots came before it, they should have been considered regardless of the nonaction of the election inspectors; the ballots were properly counted and were not defective, and because the clerks had initialed them, no voter could be punished for depositing one of the ballots so initialed. [Ollmann v. Kowalewski, 238 Wis. 574, 300 N.W. 183, 1941 Wisc. LEXIS 83 \(Wis. 1941\).](#)

Education Law: Administration & Operation: Boards of Elementary & Secondary Schools: Removal

7. Where a citizens' group organized an effort to oust two school board members by gathering signatures on petitions for a recall election pursuant to [Wis. Stat. § 9.01\(1\)](#), neither the fact that the notary who took each signature did not consistently include the expiration date of his or her commission as required by [Wis. Stat. § 137.01\(4\)](#) nor the fact that the school board clerk, rather than the municipal clerk as required by [Wis. Stat. § 9.10\(4\)\(a\)](#), certified the petitions and transmitted them to the circuit court clerk was sufficient to defeat the will of the voters for a recall election. [In re Haase, 120 Wis. 2d 40, 353 N.W.2d 821, 1984 Wisc. App. LEXIS 4060 \(Wis. Ct. App. 1984\).](#)

8. Read in conjunction with [Wis. Stat. § 5.02\(10\)](#), [Wis. Stat. §§ 8.10\(6\)\(d\)](#), [9.10\(1\)](#) and [120.06\(6\)](#) provided that the school district clerk in the situation of a recall election for a school board member was the appropriate official to certify recall petitions to the circuit court. [In re Haase, 120 Wis. 2d 40, 353 N.W.2d 821, 1984 Wisc. App. LEXIS 4060 \(Wis. Ct. App. 1984\).](#)

9. Under [Wis. Stat. § 9.10\(2\)\(a\)](#), the preparation and form of recall petitions for the ouster of school board members was

governed by [Wis. Stat. § 8.15](#), which provided that a candidate's nomination papers and sworn declaration were valid even without the seal impression of the authorized officer who administered the oath; by analogy, insignificant technical defects in recall petitions were overlooked to give effect to the will of the electorate. [In re Haase, 120 Wis. 2d 40, 353 N.W.2d 821, 1984 Wisc. App. LEXIS 4060 \(Wis. Ct. App. 1984\).](#)

10. To constitute good and sufficient reasons under [Wis. Stat. § 9.10\(2\)\(a\)](#), a recall petition must set forth reasons related to official duties with sufficient specificity so as to give notice to the official so he can respond to the electors. [GRONKE v. STRUCK, 101 Wis. 2d 738, 306 N.W.2d 310, 1981 Wisc. App. LEXIS 3921 \(Wis. Ct. App. 1981\).](#)

11. Contention of school board members, that a petition seeking their recall failed to specifically state a violation of an official duty, was rejected on appeal where [Wis. Stat. § 9.10\(2\)\(a\)](#) only required that the reason for the recall have a relation to an official duty. [GRONKE v. STRUCK, 101 Wis. 2d 738, 306 N.W.2d 310, 1981 Wisc. App. LEXIS 3921 \(Wis. Ct. App. 1981\).](#)

12. Good and sufficient reason, as that phrase relates to a recall petition under [Wis. Stat. § 9.10\(2\)\(a\)](#), is simply one that expresses dissatisfaction with the actions of an elected official, which actions have a direct relation to the duties of that official. [GRONKE v. STRUCK, 101 Wis. 2d 738, 306 N.W.2d 310, 1981 Wisc. App. LEXIS 3921 \(Wis. Ct. App. 1981\).](#)

13. Where a recall petition displays good and sufficient reasons for the recall, the requirements of [Wis. Stat. § 9.10\(2\)\(a\)](#) are met; there is nothing further for a trial court to do other than determine that the procedural requirements of the recall statute are satisfied. [GRONKE v. STRUCK, 101 Wis. 2d 738, 306 N.W.2d 310, 1981 Wisc. App. LEXIS 3921 \(Wis. Ct. App. 1981\).](#)

Governments: Courts: Authority to Adjudicate

14. Where a recall petition displays good and sufficient reasons for the recall, the requirements of [Wis. Stat. § 9.10\(2\)\(a\)](#) are met; there is nothing further for a trial court to do other than determine that the procedural requirements of the recall statute are satisfied. [GRONKE v. STRUCK, 101 Wis. 2d 738, 306 N.W.2d 310, 1981 Wisc. App. LEXIS 3921 \(Wis. Ct. App. 1981\).](#)

Governments: Legislation: Interpretation

15. When applying the statutes pertaining to recall, there are certain statutory rules of construction the court must follow; statutory provisions relating to recall are to be liberally interpreted in favor of the electorate. [In re Recall of Redner, 153 Wis. 2d 383, 450 N.W.2d 808, 1989 Wisc. App. LEXIS 1074 \(Wis. Ct. App. 1989\).](#)

16. Purpose of recall statute's requirement that a petition brought against a city official had to include a statement of good and sufficient reason was to inform voters of the reasons for the recall, not to prove the truth of the allegations. [Beckstrom v. Kornsi, 63 Wis. 2d 375, 217 N.W.2d 283, 1974 Wisc. LEXIS 1462 \(Wis. 1974\).](#)

Governments: Local Governments: Charters

17. In a mandamus action to compel a city clerk to process petitions for the recall of an elective member of the Retirement Board of the Policemen's Annuity and Benefit Fund of Milwaukee, the court erred by issuing a peremptory writ, as requested, because the clerk acted properly in refusing to process the recall petitions; the Wisconsin City Charter did not provide for the removal of the elective members of the Board, and [Wis. Stat. § 17.12\(1\)\(a\)](#) and [Wis. Stat. § 9.10\(1\)](#) did not encompass removal of such members because they were not elected by qualified electors of the city but by persons qualified to vote by fulfillment of voting requirements in the city charter. [JAECK v. CALHOUN, 91 Wis. 2d 848, 284 N.W.2d 120, 1979 Wisc. App. LEXIS 3342 \(Wis. Ct. App. 1979\).](#)

Governments: Local Governments: Elections

18. Under [Wis. Stat. § 9.10\(2\)\(b\)](#), a petition for a mayor's recall was sufficient to trigger a recall election; the mayor did not meet his heavy burden of showing that a writ should issue and that the trial court abused its discretion by failing to issue a writ. [In re Recall of Redner, 153 Wis. 2d 383, 450 N.W.2d 808, 1989 Wisc. App. LEXIS 1074 \(Wis. Ct. App. 1989\).](#)

19. When applying the statutes pertaining to recall, there are certain statutory rules of construction the court must follow; statutory provisions relating to recall are to be liberally interpreted in favor of the electorate. [In re Recall of Redner, 153 Wis. 2d 383, 450 N.W.2d 808, 1989 Wisc. App. LEXIS 1074 \(Wis. Ct. App. 1989\).](#)

20. Circuit court properly granted a petition for certification directing a recall election for the town chairman's position because an evidentiary presentation of facts, akin to a trial, was not essential -- only frivolous petitions were to be denied. [In re Recall Petition of Carlson, 147 Wis. 2d 630, 433 N.W.2d 635, 1988 Wisc. App. LEXIS 1005 \(Wis. Ct. App. 1988\).](#)

21. An evidentiary presentation of facts, akin to a trial, is not essential to the circuit court's evaluation of a recall petition, a purely statutory procedure which does not contemplate a denial of the allegations in the petition. [Wis. Stat. § 9.10\(4\)\(b\)](#), does permit the court, in its discretion, to take testimony with respect to the recall petition; the issue, however, is not the truthfulness of the allegations but whether cause for recall is established. [In re Recall Petition of Carlson, 147 Wis. 2d 630, 433 N.W.2d 635, 1988 Wisc. App. LEXIS 1005 \(Wis. Ct. App. 1988\)](#).
22. The role of the circuit court is to winnow out those recall petitions which are wholly frivolous and inconsequential and therefore do not constitute cause for recall; the court is only permitted to pit the allegations of the petition against the cause requirements of the statute. This is the equivalent of determining whether a pleading states a claim, an issue of law which the appellate court reviews *de novo*. [In re Recall Petition of Carlson, 147 Wis. 2d 630, 433 N.W.2d 635, 1988 Wisc. App. LEXIS 1005 \(Wis. Ct. App. 1988\)](#).
23. In order to certify a petition for a recall election, the court must determine whether the petition states cause for the recall, inefficiency, neglect of duty, official misconduct or malfeasance in office. A recall petition must set forth reasons directly related to the subject's official duties with sufficient specificity to give notice to the official so that he can respond to the electors. [In re Recall Petition of Carlson, 147 Wis. 2d 630, 433 N.W.2d 635, 1988 Wisc. App. LEXIS 1005 \(Wis. Ct. App. 1988\)](#).
24. Because petitions filed by a citizen's group to recall certain aldermen and the hearing evidence showed cause for recall, a reviewing court affirmed the trial court's order certifying a recall election. [Szymkowski v. Iowa & Howard Citizens for Better Government, 140 Wis. 2d 860, 409 N.W.2d 670, 1987 Wisc. App. LEXIS 3689 \(Wis. Ct. App. 1987\)](#).
25. While a circuit court has jurisdiction to determine whether a petition states cause for recall, it does not have jurisdiction to determine whether a petition's allegations or hearing testimony is true or false. [Szymkowski v. Iowa & Howard Citizens for Better Government, 140 Wis. 2d 860, 409 N.W.2d 670, 1987 Wisc. App. LEXIS 3689 \(Wis. Ct. App. 1987\)](#).
26. The appeal of a recall requires the reviewing court to construe [Wis. Stat. § 9.10](#) in relation to the particular facts contained in the petition and the hearing record; this is a question of law which an appellate court decides independently without deference to the decision of the trial court. [Szymkowski v. Iowa & Howard Citizens for Better Government, 140 Wis. 2d 860, 409 N.W.2d 670, 1987 Wisc. App. LEXIS 3689 \(Wis. Ct. App. 1987\)](#).
27. The power granted to the electorate to remove certain elected officials through recall is political in nature; it is for the people and not the courts to decide the merits of the reasons stated in the petitions. [Szymkowski v. Iowa & Howard Citizens for Better Government, 140 Wis. 2d 860, 409 N.W.2d 670, 1987 Wisc. App. LEXIS 3689 \(Wis. Ct. App. 1987\)](#).
28. Under [Wis. Stat. § 9.10](#), a city clerk acted unreasonably in disallowing entire pages of signatures in a recall petition when the clerk found an invalid signature on any page; it was not in keeping with the statute to disallow otherwise valid signatures simply because they appeared on the same page as an invalid signature. [Stahovic v. Rajchel, 122 Wis. 2d 370, 363 N.W.2d 243, 1984 Wisc. App. LEXIS 4577 \(Wis. Ct. App. 1984\)](#).
29. Where a citizens' group organized an effort to oust two school board members by gathering signatures on petitions for a recall election pursuant to [Wis. Stat. § 9.01\(1\)](#), neither the fact that the notary who took each signature did not consistently include the expiration date of his or her commission as required by [Wis. Stat. § 137.01\(4\)](#) nor the fact that the school board clerk, rather than the municipal clerk as required by [Wis. Stat. § 9.10\(4\)\(a\)](#), certified the petitions and transmitted them to the circuit court clerk was sufficient to defeat the will of the voters for a recall election. [In re Haase, 120 Wis. 2d 40, 353 N.W.2d 821, 1984 Wisc. App. LEXIS 4060 \(Wis. Ct. App. 1984\)](#).
30. Read in conjunction with [Wis. Stat. § 5.02\(10\)](#), [Wis. Stat. §§ 8.10\(6\)\(d\)](#), [9.10\(1\)](#) and [120.06\(6\)](#) provided that the school district clerk in the situation of a recall election for a school board member was the appropriate official to certify recall petitions to the circuit court. [In re Haase, 120 Wis. 2d 40, 353 N.W.2d 821, 1984 Wisc. App. LEXIS 4060 \(Wis. Ct. App. 1984\)](#).
31. Under [Wis. Stat. § 9.10\(2\)\(a\)](#), the preparation and form of recall petitions for the ouster of school board members was governed by [Wis. Stat. § 8.15](#), which provided that a candidate's nomination papers and sworn declaration were valid even without the seal impression of the authorized officer who administered the oath; by analogy, insignificant technical defects in recall petitions were overlooked to give effect to the will of the electorate. [In re Haase, 120 Wis. 2d 40, 353 N.W.2d 821, 1984 Wisc. App. LEXIS 4060 \(Wis. Ct. App. 1984\)](#).
32. Pursuant to [Wis. Stat. § 9.10\(2\)\(a\)](#), to constitute good and sufficient reasons, a recall petition must set forth reasons related to official duties with sufficient specificity to give notice to the official so that he can respond to the electors. [In re Naparalla, 114 Wis. 2d 594, 338 N.W.2d 527, 1983 Wisc. App. LEXIS 3651 \(Wis. Ct. App. 1983\)](#).
33. Petition to recall a local politician that stated only that the politician had not been acting in the best interests of his constituents failed to meet the specificity requirements of [Wis. Stat. § 9.10\(2\)\(a\)](#). [In re Naparalla, 114 Wis. 2d 594, 338](#)

N.W.2d 527, 1983 Wisc. App. LEXIS 3651 (Wis. Ct. App. 1983).

34. Recall petition that expressed dissatisfaction with the actions of a village board president and two trustees in approving a road construction project stated good and sufficient reasons, pursuant to [Wis. Stat. §§ 9.10\(2\)\(a\)](#), (4)(a), as such actions had a direct relation to duties performed as board members. *Hill v. Migayzi*, 108 Wis. 2d 782, 324 N.W.2d 831, 1982 Wisc. App. LEXIS 3812 (Wis. Ct. App. 1982).

35. In a mandamus action to compel a city clerk to process petitions for the recall of an elective member of the Retirement Board of the Policemen's Annuity and Benefit Fund of Milwaukee, the court erred by issuing a peremptory writ, as requested, because the clerk acted properly in refusing to process the recall petitions; the Wisconsin City Charter did not provide for the removal of the elective members of the Board, and [Wis. Stat. § 17.12\(1\)\(a\)](#) and [Wis. Stat. § 9.10\(1\)](#) did not encompass removal of such members because they were not elected by qualified electors of the city but by persons qualified to vote by fulfillment of voting requirements in the city charter. *JAECK v. CALHOUN*, 91 Wis. 2d 848, 284 N.W.2d 120, 1979 Wisc. App. LEXIS 3342 (Wis. Ct. App. 1979).

36. Where a candidate for city treasurer appealed a canvassing board's determination, on a second recount as provided by former Wis. Stat. § 6.66(1) (now [Wis. Stat. § 9.01](#)), that his opponent received 787 votes and that he received 786 votes, as well as the certificate of election given to his opponent under, the trial court erred because when the ballots came before it, they should have been considered regardless of the nonaction of the election inspectors; the ballots were properly counted and were not defective, and because the clerks had initialed them, no voter could be punished for depositing one of the ballots so initialed. *Ollmann v. Kowalewski*, 238 Wis. 574, 300 N.W. 183, 1941 Wisc. LEXIS 83 (Wis. 1941).

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37. Circuit court properly granted a petition for certification directing a recall election for the town chairman's position because an evidentiary presentation of facts, akin to a trial, was not essential -- only frivolous petitions were to be denied. *In re Recall Petition of Carlson*, 147 Wis. 2d 630, 433 N.W.2d 635, 1988 Wisc. App. LEXIS 1005 (Wis. Ct. App. 1988).

38. An evidentiary presentation of facts, akin to a trial, is not essential to the circuit court's evaluation of a recall petition, a purely statutory procedure which does not contemplate a denial of the allegations in the petition. [Wis. Stat. § 9.10\(4\)\(b\)](#), does permit the court, in its discretion, to take testimony with respect to the recall petition; the issue, however, is not the truthfulness of the allegations but whether cause for recall is established. *In re Recall Petition of Carlson*, 147 Wis. 2d 630, 433 N.W.2d 635, 1988 Wisc. App. LEXIS 1005 (Wis. Ct. App. 1988).

39. The role of the circuit court is to winnow out those recall petitions which are wholly frivolous and inconsequential and therefore do not constitute cause for recall; the court is only permitted to pit the allegations of the petition against the cause requirements of the statute. This is the equivalent of determining whether a pleading states a claim, an issue of law which the appellate court reviews *de novo*. *In re Recall Petition of Carlson*, 147 Wis. 2d 630, 433 N.W.2d 635, 1988 Wisc. App. LEXIS 1005 (Wis. Ct. App. 1988).

40. In order to certify a petition for a recall election, the court must determine whether the petition states cause for the recall, inefficiency, neglect of duty, official misconduct or malfeasance in office. A recall petition must set forth reasons directly related to the subject's official duties with sufficient specificity to give notice to the official so that he can respond to the electors. *In re Recall Petition of Carlson*, 147 Wis. 2d 630, 433 N.W.2d 635, 1988 Wisc. App. LEXIS 1005 (Wis. Ct. App. 1988).

41. Because petitions filed by a citizen's group to recall certain aldermen and the hearing evidence showed cause for recall, a reviewing court affirmed the trial court's order certifying a recall election. *Szymkowski v. Iowa & Howard Citizens for Better Government*, 140 Wis. 2d 860, 409 N.W.2d 670, 1987 Wisc. App. LEXIS 3689 (Wis. Ct. App. 1987).

42. The power granted to the electorate to remove certain elected officials through recall is political in nature; it is for the people and not the courts to decide the merits of the reasons stated in the petitions. *Szymkowski v. Iowa & Howard Citizens for Better Government*, 140 Wis. 2d 860, 409 N.W.2d 670, 1987 Wisc. App. LEXIS 3689 (Wis. Ct. App. 1987).

43. In a mandamus action to compel a city clerk to process petitions for the recall of an elective member of the Retirement Board of the Policemen's Annuity and Benefit Fund of Milwaukee, the court erred by issuing a peremptory writ, as requested, because the clerk acted properly in refusing to process the recall petitions; the Wisconsin City Charter did not provide for the removal of the elective members of the Board, and [Wis. Stat. § 17.12\(1\)\(a\)](#) and [Wis. Stat. § 9.10\(1\)](#) did not encompass removal of such members because they were not elected by qualified electors of the city but by persons qualified to vote by fulfillment of voting requirements in the city charter. *JAECK v. CALHOUN*, 91 Wis. 2d 848, 284 N.W.2d 120, 1979 Wisc. App. LEXIS 3342 (Wis. Ct. App. 1979).

44. Purpose of recall statute's requirement that a petition brought against a city official had to include a statement of good

and sufficient reason was to inform voters of the reasons for the recall, not to prove the truth of the allegations. [Beckstrom v. Kornsi](#), 63 Wis. 2d 375, 217 N.W.2d 283, 1974 Wisc. LEXIS 1462 (Wis. 1974).

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45. (Unpublished Opinion) Recall committees were entitled to intervene as a matter of right in the action filed by the governor's campaign committee challenging the Government Accountability Board's procedures for reviewing recall petitions, because the motion was timely, the recall committees had interests in the action, including not having valid signatures struck and an interest in opposing delay not required by law, the disposition of the action could impair the recall committees' ability to protect those interests, and the Board did not adequately represent the recall committees' interests since it did not fully share those interests. [Friends of Scott Walker v. Brennan](#), 2012 WI App 40, 340 Wis. 2d 499, 812 N.W.2d 540, 2012 Wisc. App. LEXIS 98 (2012).

46. Under [Wis. Stat. § 9.10](#), a city clerk acted unreasonably in disallowing entire pages of signatures in a recall petition when the clerk found an invalid signature on any page; it was not in keeping with the statute to disallow otherwise valid signatures simply because they appeared on the same page as an invalid signature. [Stahovic v. Rajchel](#), 122 Wis. 2d 370, 363 N.W.2d 243, 1984 Wisc. App. LEXIS 4577 (Wis. Ct. App. 1984).

47. Trial court's erroneous interpretation of [Wis. Stat. § 9.10\(2\)\(a\)](#) and (4)(a) in a citizen's request for a special election was still subject to review, despite the occurrence of a general election while the case was on appeal, because the interpretation of a good and sufficient reason for removal of a city official was a question of public interest; the reviewing court ordered that the special election should have been held. [In re Recall of Certain Officials](#), 63 Wis. 2d 362, 217 N.W.2d 277, 1974 Wisc. LEXIS 1461 (Wis. 1974).

State Case Notes

Striking an entire page of signatures for one invalid signature violated the electorate's right to recall. [Stahovic v. Rajchel](#), 122 Wis. 2d 370, 363 N.W.2d 243 (Ct. App. 1984).

This section applies to members of Congress. [68 Atty. Gen. 140](#).

NOTE: 2005 Wis. Act 451, which made major revisions to the election laws, including to Chapter 9, contains an extensive prefatory note explaining the changes.

Opinion Notes

LexisNexis (R) Notes

OPINIONS OF ATTORNEY GENERAL

1. Elections; Reapportionment; Votes and Voting; The federal district court apportioned both members and senatorial districts in its order of June 17, 1982. The effective date of new district lines for purposes of nominations, regular, recall and special elections, mass mailings and in-district travel is June 17, 1982, as to both holdover senators and incumbents in districts where elections are scheduled in the Fall of 1982., OAG 48-82, [1982 Wisc. AG LEXIS 17](#); [71 Op. Atty Gen. Wis. 157](#).
2. Elective County Executive--County Board--County board can abolish office of county administrator by majority vote, but is without power to abolish elective office of county executive., [NO NUMBER IN ORIGINAL], [1972 Wisc. AG LEXIS 86](#); [61 Op. Atty Gen. Wis. 322](#).
3. Public Office--Election--(Informal)--Discussion of conflicts arising from election of a school principal to the office of alderman., [NO NUMBER IN ORIGINAL], [1971 Wisc. AG LEXIS 86](#); [60 Op. Atty Gen. Wis. 367](#).

Research References & Practice Aids

LexisNexis (R) Notes

LAW REVIEWS

1. [97 Marq. L. Rev. 925](#). ARTICLE: ANYTHING BUT MICKEY MOUSE: LEGAL ISSUES IN THE 2012 WISCONSIN GUBERNATORIAL RECALL.

LEXISNEXIS ® WISCONSIN ANNOTATED STATUTES