

If California Governor Is Replaced with Republican, Senate Could Swing to GOP

By [Prof. Marjorie Cohn](#)

Global Research, August 29, 2021

Region: [USA](#)

Theme: [Intelligence](#)

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*There’s a good chance that California — a solidly blue state — will get a right-wing Republican governor as a result of the September 14 recall election. If **Gov. Gavin Newsom** is recalled, the health, civil rights and future of Californians — and people across the country — will be profoundly threatened. It is also possible that Newsom’s defeat could change the balance of power in the U.S. Senate, since the next California governor may be in a position to appoint a senator.*

In defending his governorship, Newsom emphasizes that a GOP leader would likely roll back progressive reforms.

“The recall is an attempt by national Republican and Trump supporters to force an election and grab power in California,” Newsom’s ballot statement in the [Official Voter Information Guide](#) says. “The leaders of the Republican recall seek to repeal California’s clean air protections, roll back gun safety laws and take away health care from those who need it.”

Newsom [cited](#) his efforts to fight racism and police violence in an interview with the *San Diego Union-Tribune*:

California has fought systemic racism and fought to infuse our justice system with more safety and equality.... I’ve signed into law the nation’s strongest police use-of-force standard; outlawed private, for-profit prisons and immigration detention centers; banned all chokeholds in California; passed the nation’s first bill requiring independent investigations by the attorney general of all police shootings of unarmed individuals; and passed legislation to reform California’s juvenile justice system, break the school to prison pipeline, and phase out state-operated youth prisons.

Right-wing forces behind the recall were aided by the pandemic, gaining more time than usual to collect signatures to place the recall election, estimated to cost taxpayers [\\$276 million](#), on the ballot. Newsom is also suffering from a self-inflicted wound stemming from the pandemic. Although he was the first governor to issue a mask mandate, which was [popular](#) with most Californians, he attended a dinner in November at the upscale French Laundry restaurant with no masks or social distancing, giving rise to charges of hypocrisy.

Even though Republicans make up just 24 percent of registered California voters, a *CBS News* poll released on August 15 [indicated](#) that Newsom has only a slim lead, within the margin of error, among likely voters. Republicans will probably vote at a greater rate than Democrats because California Democratic Party leaders didn't initially take the recall seriously and dragged their feet while Republicans were mobilizing.

Right-Wing Republican Larry Elder Leads the GOP Pack to Replace Newsom

Trumpster radio talk-show host Republican Larry Elder is the front-runner among the 46 candidates vying to replace Newsom if the latter is recalled. Elder — who mentored Trump's anti-immigrant adviser Stephen Miller — [denies the existence of systemic racism](#), inaccurately describes Black people as crime-prone, and opposes sanctuary laws and citizenship for Dreamers. He is against vaccine and mask mandates and doesn't take the climate crisis seriously. Elder opposes gun control, any minimum wage, paid family leave and [has called](#) *Roe v. Wade* "one of the worst decisions that the Supreme Court ever handed down."

California is a national leader in moving away from fossil fuels, which drive global warming and exacerbate wildfires. But Elder said he would end the "[war on oil and gas](#)," reduce regulation of fracking, and de-emphasize solar and wind power.

Meanwhile, if Elder is elected, "[t]he threat to immigrants in this state and racial justice for all would be catastrophic," Jean Guerrero [wrote](#) in the *Los Angeles Times*.

Little-known Democrat Kevin Paffrath is running neck-in-neck with Elder. His "grab bag of ideas includes a few that appeal to Democrats (like marriage equality, higher teacher pay and promotion of solar and wind farms)," [according to](#) Norman Solomon. But Paffrath "features a lot of pseudo-populist notions that would do tremendous damage if implemented." Indeed, Brooke Staggs [writes](#) that Paffrath wants "to make all coronavirus safety measures optional, to ditch income tax for anyone making less than \$250,000, to use the National Guard to get all unhoused Californians off the streets and to give trained gun owners more rights."

A GOP Governor Could Replace Senator Feinstein With a Republican

The Democrats have a razor-thin majority in the U.S. Senate. There are 50 Republicans, 48 Democrats and two Independents who caucus with the Democrats. If they are split 50-50 on a vote, Vice President Kamala Harris breaks the tie. A simple majority can confirm judicial nominations and enact funding legislation.

In the event that 88-year-old Sen. Dianne Feinstein dies or [cannot continue to serve](#), the governor of California could replace her with an appointee of their choice for at least 14 months following the certification of the recall election. A new GOP governor could appoint a new senator from California, resulting in a Republican majority in the Senate. Solomon suggests that Feinstein resign to enable Governor Newsom to replace her with a Democrat, but admits that is "[highly unlikely](#)."

California's Recall System Is Unfair and Unconstitutional

California's recall system is unfair and unconstitutional, as Berkeley Law School Dean Erwin Chemerinsky and Berkeley law and economics professor Aaron S. Edlin [explain](#) in a *New*

York Times op-ed on August 11. “Mr. Newsom can receive far more votes than any other candidate but still be removed from office,” they wrote. “Many focus on how unfair this structure is to the governor, but consider instead how unfair it is to the voters who support him.”

If Newsom doesn’t defeat the recall by a majority, he can be replaced by a candidate who receives only a plurality. For example, if 49 percent of voters vote against the recall, Newsom is out and a candidate such as Elder could win the governorship with just 20 percent of the vote or even less.

That’s because [Article II, Section 15\(c\)](#) of the California Constitution reads: “If the majority vote on the question is to recall, the officer is removed and, if there is a candidate, the candidate who receives a plurality is the successor. The officer may not be a candidate.”

“Based on virtually every opinion poll, Mr. Newsom seems likely to have more votes to keep him in office than any other candidate will receive to replace him,” Chemerinsky and Edlin noted. “But he may well lose the first question on the recall, effectively disenfranchising his supporters on the second question.”

They wrote, “Every voter should have an equal ability to influence the outcome of the election.” Chemerinsky and Edlin advocate the filing of a state or federal lawsuit challenging the constitutionality of California’s recall election. They propose, “The court could declare the recall election procedure unconstitutional and leave it to California to devise a constitutional alternative. Or it could simply add Mr. Newsom’s name on the ballot to the list of those running to replace him.”

Three days after the op-ed was published, on August 14, two California voters [filed a lawsuit](#) in U.S. District Court, Central District of California challenging the constitutionality of the recall process. Plaintiffs R.J. Beaber and A.W. Clark are claiming that Article II, Section 15(c) violates the Equal Protection and Due Process Clauses of the U.S. Constitution because it does not comply with the federal legal principle of “one person, one vote.”

The plaintiffs are asking the court to declare that Section 15(c) is unconstitutional. They also request a preliminary injunction to either stop the election entirely or suspend it until Newsom’s name is added to the list of candidates who seek to replace him.

“Undoing an unconstitutional election after the fact would be considerably messier than fixing the process beforehand,” according to Chemerinsky and Edlin.

In order to obtain a preliminary injunction, the plaintiffs must demonstrate that they are likely to succeed on the merits, that they will likely suffer irreparable harm without preliminary relief, and that the injunction would be in the public interest.

All three conditions are met in this case. The plaintiffs will likely prevail on the constitutional issues they raise; they would be deprived of their rights to have their votes count and be given equal weight with all of the votes that favor the recall and a candidate other than Newsom; and it is always in the public interest to have constitutional elections.

The federal court should declare California’s recall system unconstitutional and/or issue a preliminary injunction to stop the election unless and until Newsom is listed as a candidate in part two of the ballot.

On August 20, the [Los Angeles Times published](#) a separate op-ed by Chemerinsky and Edlin, in which they note that it would be better to file a case directly in the California Supreme Court than in federal court. They cite three reasons to bring the case in state court: 1.) California law makes it easier for plaintiffs to show they have standing, which is the right to bring a lawsuit in court; 2.) As recently as last year, the U.S. Supreme Court held that federal courts should not involve themselves in election processes shortly before the vote; and 3.) California needs a fast and definitive resolution, which is more likely to occur in the California Supreme Court than in a federal court.

In their new op-ed, Chemerinsky and Edlin write that “the easiest solution is for the California Supreme Court to allow the recall election to go forward but hold that if Newsom is recalled, the lieutenant governor will then become governor until the expiration of Newsom’s term in January 2023.”

Meanwhile, we must recognize what is at stake if a right-wing minority succeeds in recalling Newsom. He would likely be replaced by someone who would make Californians more vulnerable to the deadly pandemic, violate the rights of immigrants and people of color, and imperil the future of the planet by refusing to take action to combat climate change.

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[Marjorie Cohn](#) is professor emerita at Thomas Jefferson School of Law, former president of the National Lawyers Guild, and a member of the bureau of the International Association of Democratic Lawyers and the advisory board of Veterans for Peace. Her books include [Drones and Targeted Killing: Legal, Moral, and Geopolitical Issues](#).

She is a frequent contributor to Global Research.

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