

When Local Elected Officials Behave Badly: An Analysis and Recommendation to Empower State Intervention

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TABLE OF CONTENTS

I. INTRODUCTION	654
II. THE ORIGINS OF LOCAL GOVERNMENT SHOW WHY STATES HAVE, AND SHOULD EXERCISE, THE AUTHORITY TO REMOVE LOCAL OFFICERS	660
III. THE VARYING MECHANISMS OF REMOVING LOCAL OFFICIALS ACROSS STATES HAS DEMONSTRATED THE VIRTUES AND DRAWBACKS OF COMPETING METHODS	664
A. <i>Impeachment Is the Original Method of Removal in the English Tradition, but Its History and Underlying Premises Make It Ineffective when Handling the Removal of Local Officials</i>	665
B. <i>The Recall Developed as an Electoral Solution to Remove Elected Officials, but It Has Become a Political Tool Used to Harass Officials Making Legitimate, if Unpopular, Policy Decisions</i>	669
C. <i>Many States Have Innovated to Develop Novel Removal Mechanisms of Local Officials, with Some Being Better than Others</i>	674
1. <i>Impeachment Only or None at All: Vermont, Maryland, and Illinois</i>	674
2. <i>Recall: Washington and Oregon</i>	675
3. <i>Public Prosecution: Kentucky and Texas</i>	676
4. <i>Private Lawsuit: Nebraska and Utah</i>	676
5. <i>State Executive Action: Florida, Michigan, and Ohio</i>	677

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IV. THE VARIOUS METHODS OF REMOVAL SHOULD BE ASSESSED USING A FRAMEWORK TO ACCOUNT FOR COMPETING FACTORS	678
A. <i>Certain Factors Are Relevant When Evaluating Removal Mechanisms</i>	679
1. <i>Public Trust</i>	679
2. <i>Preventing Harassment of Public Officials</i>	680
3. <i>Public Will</i>	680
4. <i>Due Process</i>	681
5. <i>Efficiency</i>	682
6. <i>Independence</i>	682
B. <i>While All Factors Matter, Policymakers Should Use a Framework to Determine Which Factors Should Receive More Weight</i>	683
V. USING THIS FRAMEWORK, STATES MUST CREATE REMOVAL MECHANISMS THAT ENABLE STATE EXECUTIVE ACTION TO DISPOSE OF MISBEHAVING ELECTED OFFICIALS	685
A. <i>Within the Framework, States Must Develop Removal Mechanisms Involving Both State-Level Executive Action and State-Level Judicial or Quasi-Judicial Review</i>	685
B. <i>States Should Also Curtail Other Methods of Removal Like Civil Actions, Public Prosecutions and the “Harsh Remedy” of Recall</i>	688
VI. CONCLUSION	691
APPENDIX	693

I. INTRODUCTION

Late one evening in April 2016, eight members of the Rhoden family in four separate homes were shot and killed in rural Pike County, Ohio.¹ Of the entire family, only three children were spared.² One child, four days old, was found alive in bed with her deceased mother.³ No witnesses, no leads.⁴ The Rhoden

¹ Ralph Ellis & Emanuella Grinberg, *3 Kids Survive Slaying of 8 Family Members in Ohio*, CNN (Aug. 13, 2020), <https://www.cnn.com/2016/04/22/us/ohio-shooting-pike-county/index.html?sr=twtsr0422ohiokillings> [https://perma.cc/TD3Q-TLR5].

² *Id.*

³ Josh Sweigart, Steve Bennish & Will Garbe, ‘Cold-Blooded Calculated Massacre’: 8 Dead in Piketon; 1 Week Later, DAYTON DAILY NEWS (Apr. 29, 2016), <https://projects.daytondailynews.com/reports/pike-county-murders/> [https://perma.cc/TKP8-QQBF].

⁴ See Holly Zachariah, *Five Weeks in, Pike County Waits and Hopes for Answers in 8 Killings* (May 31, 2016), <https://www.dispatch.com/article/20160528/NEWS/305289913> [https://perma.cc/VL6J-URFB].

family murders shocked the public with their brutality and puzzling efficiency.⁵ It was the kind of grizzly mystery one sees on late night television, but this was real life to Pike County Sheriff Charles Reader.⁶ He had only just completed his first year on the job.⁷

Pike County is not unlike many Appalachian counties.⁸ Unemployment is high,⁹ and many of the jobs that do exist have been in jeopardy for years.¹⁰ Tracing back centuries, the county had been a reliably “Democrat bastion”—until recently.¹¹ Opiate overdoses are not uncommon.¹² In his first year in office, Sheriff Reader made a reputation for himself by cracking down on drug trafficking, once intercepting a 28-pound marijuana package.¹³ It was against this backdrop that the Rhoden family was murdered.¹⁴

⁵ Ellis & Grinberg, *supra* note 1. Adding to the mystery is the fact that the family guard dogs (apparently) did not bark or otherwise impede the murderer(s). Associated Press, *Dad of Ohio Victim Notes that Killer Was Able to Get by Dogs*, L.A. DAILY NEWS (Aug. 28, 2017), <https://www.dailynews.com/2016/04/26/dad-of-ohio-victim-notes-that-killer-was-able-to-get-by-dogs/> [<https://perma.cc/97NP-VYM6>].

⁶ Sweigart, Bennish & Garbe, *supra* note 3.

⁷ *Id.*

⁸ See generally J.D. VANCE, *HILLBILLY ELEGY* (2016). Pike County claimed a historical footnote when, in 1873, the *Pike County Republican* newspaper published the autobiography of local resident Madison Hemings—son of, and former slave to, President Thomas Jefferson and his slave Sally Hemings—confirming a lineage that had previously been only rumor. Dumas Malone & Steven H. Hochman, *A Note on Evidence: The Personal History of Madison Hemings*, 41 J. SO. HIST. 523, 523 (1975).

⁹ As of June 2021, the unemployment rate in Pike County, Ohio, was 7.4%. OHIO DEP’T OF JOB & FAM. SERVS., JUNE 2021 RANKING OF OHIO COUNTY UNEMPLOYMENT RATES, <https://ohiolmi.com/portals/206/LAUS/Ranking.pdf> [<https://perma.cc/U24P-4M7P>]. While this was during the COVID-19 crisis, Pike County was in the twenty-fifth percentile among other Ohio counties for unemployment. *Id.*

¹⁰ See, e.g., *In Southern Ohio, a Nuclear Town Faces a Hazy Future*, WYSO (Dec. 12, 2015), <https://www.wyso.org/news/2015-12-12/in-southern-ohio-a-nuclear-town-faces-a-hazy-future> [<https://perma.cc/2JFV-QHTT>].

¹¹ Pike County has a long history of supporting Democrat candidates but began drifting towards Republican candidates in the 2000s. KYLE KONDIK, *THE BELLWETHER: WHY OHIO PICKS THE PRESIDENT* 85, 123 (2016); see also Malone & Hochman, *supra* note 8, at 525 (noting that in 1873, “Pike County was a Democratic bastion”). In 2020, Pike County voted for Donald Trump by over 73%. PIKE CNTY. BD. OF ELECTIONS, STATEMENT OF VOTES CAST 1 (Nov. 2020), <https://www.boe.ohio.gov/pike/c/elecres/20201103results.pdf> [<https://perma.cc/F7KK-D4Q9>].

¹² Jona Ison, *Ohio’s Fatal Drug Overdoses Topped 3,000 in 2015*, CHILLICOTHE GAZETTE (Aug. 25, 2016), <https://www.chillicothe Gazette.com/story/news/local/2016/08/25/ohios-fatal-drug-overdoses-topped/89331888/> [<https://perma.cc/5QMT-XMQE>] (noting that from 2010 to 2015, Pike County experienced 26 opiate overdose deaths per 100,000).

¹³ Sweigart, Bennish & Garbe, *supra* note 3.

¹⁴ At this point, the author would like to note his personal affinity for the people and community of Pike County. It is because of his friends there that the author wishes for Pike County to have worthy elected representatives who serve the community honorably. For those interested in visiting Pike County to see its natural beauty and friendly residents, see

Sheriff Reader quickly became a face of the Rhoden investigation.¹⁵ Newspapers ran flattering stories about his background, small town roots, and work ethic.¹⁶ Despite rumors that the killers were members of a foreign drug cartel, Sheriff Reader remained adamant that locals were responsible.¹⁷ An eerie quiet fell on the community while the investigation seemingly stalled.¹⁸ Years passed as dread hung like a fog over the county.¹⁹ Then abruptly, in November 2018, Sheriff Reader joined with state law enforcement to announce the arrest of four members of the Wagner family in connection with the Rhoden murders.²⁰ At the press conference, Sheriff Reader looked into the camera to admonish the killers, saying that they “did this quickly, coldly, calmly and very carefully—but not carefully enough.”²¹ But despite Sheriff Reader’s bravado, less than eight months later, he too would be on the wrong end of the law.²²

Pike County Parks & Nature Preserves, TREKOHIO, <https://trekohio.com/pike/> [<https://perma.cc/GT3H-VN72>].

¹⁵ Chris Graves, *To Pike County Sheriff, Killings Are Personal*, CINCINNATI ENQUIRER (May 9, 2020), <https://www.cincinnati.com/story/news/2016/05/08/pike-county-sheriff-killings-personal/84012716/> [<https://perma.cc/9PYY-ZB6S>]. The Ohio Attorney General’s Office was called for assistance the same day the Rhoden family was discovered. After Sheriff Reader got into his own legal trouble, it was revealed that he had “played no material role” in the investigation. However, Sheriff Reader’s minimal role was not known to the public while the investigation was ongoing. See Holly Zachariah, *Pike County Sheriff Charles Reader Suspended Amid Investigation*, COLUMBUS DISPATCH (July 11, 2019), <https://www.dispatch.com/news/20190710/pike-county-sheriff-charles-reader-suspended-amid-investigation> [<https://perma.cc/K2E5-QLY8>].

¹⁶ Graves, *supra* note 15; *Pike County Rallies Around “Heartbroken” Sheriff*, COLUMBUS DISPATCH (May 6, 2020), <https://www.dispatch.com/article/20160505/NEWS/305054684> [<https://perma.cc/QB8W-SBHN>].

¹⁷ When asked if the killers were local to the Pike County, Sheriff Reader replied “[y]es, that is my belief.” WCPO 9, *I-Team: Sheriff Says Pike County Killers Are Likely Locals*, YOUTUBE (Oct. 17, 2016), https://www.youtube.com/watch?v=fgX_ZCf2cuM [<https://perma.cc/6ERR-N5HS>]. The Ohio Attorney General and the head of the local DEA office agreed with Sheriff Reader’s assessment. *Id.*

¹⁸ Sam Hendren, *One Year After the Rhoden Family Murders, Questions Remain Unanswered*, WKSU (Apr. 21, 2017), <https://www.wksu.org/post/one-year-after-rhoden-family-murders-questions-remain-unanswered#stream/0> [<https://perma.cc/T7TM-B37S>] (“Resident after resident I approached refused to talk about the case.”); Hillary Lake, *I-Team: Few Answers a Year After Pike County Massacre Left 8 Rhoden Family Members Dead*, WCPO (Apr. 17, 2017), <https://www.wcpo.com/news/local-news/i-team/pike-county-rhoden-family-massacre-update-heres-what-we-know-one-year-later> [<https://perma.cc/YX84-ASNT>].

¹⁹ Lake, *supra* note 18.

²⁰ Bob Strickley, Chris Graves & Sarah Brookbank, *Pike County: Wagner Family Arrested in the Rhoden Family Massacre*, CINCINNATI ENQUIRER (Nov. 14, 2018), <https://www.cincinnati.com/story/news/crime/crime-and-courts/2018/11/13/pike-county-massacre-wagner-family-arrested-rhoden-family-homicides/1373456002/> [<https://perma.cc/JYN8-4PTZ>] (noting that two other members of the family were arrested for assisting in a cover up of the murders).

²¹ *Id.*

²² *Ethics Charges Filed Against Suspended Ohio County Sheriff*, WSAZ (June 28, 2019), <https://www.wsaz.com/content/news/Pike-County-Ohio-sheriff-facing-16-count-indictment->

In June 2019, the grand jury indicted Sheriff Reader on 16 counts, including theft in office, requesting loans from his employees and vendors, and tampering with evidence of his own wrongdoing.²³ It was revealed that a year earlier, *while the Rhoden investigation was ongoing*, someone in Pike County had whispered to state officials that locals were “scared to death of him” and that the sheriff was “unstable and threatens people.”²⁴ In fact, state auditors had raided the sheriff’s office not one month after the Wagner arrests were announced.²⁵ While his alleged misdeeds did not directly relate to the investigation, the public’s trust in the sheriff was shattered and calls of outrage rose to remove him from office at once.²⁶ By September, the Ohio Supreme Court had formally suspended him pending the result of his criminal trial.²⁷ Incredibly, despite the pending criminal indictment and recent suspension, Sheriff Reader, previously a Democrat, filed to run for reelection as an Independent.²⁸

Local elected officials, like Sheriff Reader, occupy a special place of public trust.²⁹ Indeed, local officials are generally among the most trusted officeholders in today’s polarized climate.³⁰ Many of the most essential government services are delivered at the local level, with law enforcement being perhaps the most

511965102.html#:~:text=Also%20Tuesday%2C%20the%20Ohio%20attorney,been%20credibly%20accused%20and%20indicted [https://perma.cc/AR5N-S3AB].

²³ Hillary Lake, *Pike County Sheriff Charles Reader Indicted on 16 Counts Including Theft in Office*, WCPO (June 28, 2019), <https://www.wcpo.com/news/crime/pike-county-sheriff-charles-reader-indicted-on-16-counts-including-theft-in-office> [https://perma.cc/NB27-8TJU].

²⁴ *Id.* (“The anonymous complaint last year to then Ohio Auditor Yost’s office said, ‘Reader just does whatever he wants and no one ever calls him on it . . . We are scared to death of him . . . He is unstable and threatens people.’”).

²⁵ Holly Zachariah, *Suspended Pike County Sheriff Charles Reader Had Gambling, Marital Problems, New Documents Show*, COLUMBUS DISPATCH (Sept. 4, 2019), <https://www.dispatch.com/news/20190903/suspended-pike-county-sheriff-charles-reader-had-gambling-marital-problems-new-documents-show> [https://perma.cc/7G8N-YS28].

²⁶ Lake, *supra* note 23.

²⁷ Zachariah, *supra* note 25. Sheriff Reader had accepted a voluntary suspension in July of 2019, but the suspension was formalized by the Supreme Court later in September. *Id.*

²⁸ *Sheriff Reader Officially Files to Run for Re-Election*, SCIOTO VALLEY GUARDIAN (Oct. 1, 2020), <https://sciotovalleyguardian.com/2020/03/12/sheriff-reader-officially-files-to-run-for-re-election/> [https://perma.cc/ER9J-YJS2]. Sheriff Reader ultimately failed to file the adequate number of signatures and was not on the 2020 general election ballot. Holly Zachariah, *Ex-Pike County Sheriff Charles Reader to Serve Three Years in Prison for Theft in Office*, COLUMBUS DISPATCH (Mar. 24, 2021), <https://www.dispatch.com/story/news/courts/2021/03/24/pike-county-sheriff-who-investigated-rhoden-homicides-court-criminal-case/4801200001/> [https://perma.cc/CWG2-XF6G]. Several similar cases and examples of elected officials behaving badly are discussed throughout this Note. Those discussed may not be the most renowned in the field, but each was selected due to its illustrative contribution.

²⁹ Justin McCarthy, *Americans Still More Trusting of Local than State Government*, GALLUP (Oct. 8, 2018), <https://news.gallup.com/poll/243563/americans-trusting-local-state-government.aspx> [https://perma.cc/C9XZ-X4K4].

³⁰ *Id.*

visible.³¹ But when a local official—county or municipal—misbehaves, breaks the law, or refuses to do their job, what happens? In Sheriff Reader’s case, a small community looked to him as a source of protection and resolve in a terrifying time, yet he violated their trust. Thankfully, the state of Ohio has mechanisms in place to suspend local officials who violate the public’s trust.³²

But not all states have these mechanisms. For example, in Vermont, there is no way to remove a recalcitrant Sheriff short of legislative impeachment (exceedingly rare and hard to do)³³ or felony conviction (which can take a long time).³⁴ In 2006, Windham County, Vermont Sheriff Shelia Prue was indicted for embezzling \$60,000 from her office.³⁵ Despite calls from the media, lawmakers, and the state auditor, Sheriff Prue adamantly refused to resign and continued to serve as Sheriff.³⁶ Even more troublesome, she could have been re-elected even after going to jail.³⁷ In a creative solution to this tricky situation, the state Attorney General’s office offered Sheriff Prue a plea bargain to expunge her felony conviction in exchange for a guilty plea, a partial payback, and her resignation.³⁸ She took the deal.³⁹ But what if she had not? What message would that have sent to the public?

Setting aside what improper conduct should warrant removal,⁴⁰ these questions cut to the very core of the public’s perception of elected officials. Charles M. Kneier, former law professor at the University of Illinois and scholar

³¹ See *infra* Part II.

³² See *infra* Part III.C.5.

³³ See *infra* Part III.C.1. Perhaps the most noteworthy Vermont impeachment was in 1785 when Vermont Clerk Matthew Lyon was accused of “dealing with enemies of the state.” Christopher Reinhart, Off. of Legis. Rsch., *Impeachment of State Officials*, CONN. GEN. ASSEMBLY (Feb. 9, 2004), <https://www.cga.ct.gov/2004/rpt/2004-r-0184.htm> [<https://perma.cc/45UF-D939>]. The first person convicted for violating the Sedition Act of 1798 and the deciding congressional vote to elect President Jefferson in 1800, Matthew Lyon was an exceptionally colorful and controversial character. Jane Lindholm, Mary Engisch & Nina Keck, *Vermont’s Disputatious Statesman Matthew Lyon Will Be Focus of New Musical*, VT. PUB. RADIO, at 7:40 (Apr. 4, 2018), <https://www.vpr.org/post/vermonts-disputatious-statesman-matthew-lyon-will-be-focus-new-musical#stream/0> [<https://perma.cc/V7BJ-MX67>]. Recently, Lyon has been honored with his own theatrical production in the vein of *Hamilton*, although ironically Lyon and Alexander Hamilton agreed on almost nothing. *Id.* at 5:20.

³⁴ See *infra* Part III.C.

³⁵ Angela Evancie & Emily Corwin, *Who Oversees Vermont’s County Sheriffs?*, VT. PUB. RADIO (Feb. 2, 2018), <https://www.vpr.org/post/who-oversees-vermonts-county-sheriffs#stream/0> [<https://perma.cc/TVN5-4QCE>].

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ This is a value judgement to be decided state by state. This Note assumes that in addition to criminal conduct, there is some conduct, although not technically criminal, that warrants removal from elected office.

of local governments,⁴¹ recognized this in 1931 when he examined the ways state executives oversee and depose local officials.⁴² This fascinating scholarship is illuminating but dated, as the landscape of removal has evolved profoundly even in the past 20 years.⁴³ In the modern era, scholarship on removal of local elected officials is surprisingly sparse, save examinations of and recommendations to individual states.⁴⁴ Much of the focus on removal more generally concerns national or high-ranking state officials.⁴⁵ But many of the most vital and visible government services are delivered locally.⁴⁶ What is more, local elected officials are more likely to live in areas without robust news coverage, making wrongdoing easier to hide and the need for oversight greater.⁴⁷ For these reasons, states must develop or otherwise reexamine their current removal laws to enable swift but fair mechanisms to depose local officials who are behaving badly.⁴⁸

This Note argues that the age-old practice of impeachment (a legislative solution) and the comparatively modern practice of recall (an electoral solution) are not wholly adequate removal mechanisms for today. After examining the pros and cons of various methods, this Note recommends that states implement removal mechanisms for local officials that are initiated by state-level executives followed closely by expedited review by a judicial or quasi-judicial body. At the same time, this Note argues that states should curtail other methods of removal that are overly political or easily abused, like the recall. This Note's

⁴¹ See generally JOHN A. FAIRLIE & CHARLES M. KNEIER, *COUNTY GOVERNMENT AND ADMINISTRATION* (1930).

⁴² See generally Charles M. Kneier, *Some Legal Aspects of the Governor's Power to Remove Local Officers*, 17 VA. L. REV. 355 (1931).

⁴³ See *infra* Part III.B.

⁴⁴ See, e.g., Shawn D. Chapman, *Removing Recalcitrant County Clerks in Kentucky*, 105 KY. L.J. 261 (2017).

⁴⁵ See, e.g., Alex Ebert, *Covid 'Culture War' Fuels Long-Shot Governor Recall Campaigns*, BLOOMBERG (July 28, 2020), <https://about.bgov.com/news/covid-culture-war-fuels-long-shot-governor-recall-campaigns/> [<https://perma.cc/R3QB-DMSN>]; Amber Phillips, *Can Trump Be Impeached Again?*, WASH. POST (Feb. 6, 2020), <https://www.washingtonpost.com/politics/2020/02/06/can-trump-be-impeached-again/> [<https://perma.cc/4GJ3-ZDCP>].

⁴⁶ See *infra* Part II.

⁴⁷ See Clara Hendrickson, *Local Journalism in Crisis: Why America Must Revive Its Local Newsrooms*, BROOKINGS INST. (Nov. 12, 2019), <https://www.brookings.edu/research/local-journalism-in-crisis-why-america-must-revive-its-local-newsrooms/> [<https://perma.cc/U7RB-SV73>].

⁴⁸ Of course, some misbehaving elected officials do choose to resign voluntarily. See, e.g., Michele Newbanks, *Investigation into Former Washington County Prosecutor Rings Continues*, PARKERSBURG NEWS & SENTINEL (Jan. 13, 2020), <https://www.newsandsentinel.com/news/local-news/2020/01/investigation-into-former-washington-county-prosecutor-rings-continues/#:~:text=Rings%20resigned%20on%20May%2015,to%20practice%20law%20in%20Ohio> [<https://perma.cc/B2TE-Y9Q2>] (describing a prosecutor who resigned voluntarily after receiving a misdemeanor conviction for coercion of a woman who was both a defendant in a drug case and separately a victim of kidnapping and assault). However, this Note is replete with examples of officials who chose not to resign.

proposals are ripe—hardly a week goes by without new misdeeds by government officials reported somewhere in America. Therefore, states should be proactive and examine their current removal laws now, before the next rogue sheriff or embezzling mayor appears on the front page. Part II briefly explains the history of counties and local municipalities and shows why the states have both the authority and the obligation to exercise removal oversight over them. Part III examines the history of existing removal methods and attempts to categorize them. Part IV proposes a framework of competing factors with which to judge removal methods. Part V offers recommendations for removing local officials through a combination of state executive and judicial power, encourages the curtailing of the recall, private actions, and public prosecutions, and refutes anticipated counterarguments.⁴⁹

II. THE ORIGINS OF LOCAL GOVERNMENT SHOW WHY STATES HAVE, AND SHOULD EXERCISE, THE AUTHORITY TO REMOVE LOCAL OFFICERS

Some state officers may think the misdeeds of local officials are not their problem, but they would be wrong, even in those states that embrace the Home Rule model of governance. Local government officials owe their authority to state law, and therefore states have the responsibility to oversee those exercising that authority.⁵⁰

Generally speaking, states divide local government between counties and municipalities,⁵¹ both having roots in the English tradition.⁵² From their earliest

⁴⁹ This Note concerns local officials that are elected and does not concern appointed figures nor federal or state figures. This Note also takes no position on which acts of misbehavior justify the removal of an official, but assumes that both criminal conduct as well as reprehensible, if not criminal, conduct could warrant removal from office. Put another way, what defines “misbehavior” is best left for future scholarship and the value judgements of each state. Finally, some local governments have their own removal ordinances. For simplicity, this Note only concerns state level mechanisms. For a few examples of city specific removal mechanisms, see Bruce Geiselman, *Want to Recall a Mayor? Easier in Cleveland, Though Happening More All Over*, CLEVELAND.COM (Jan. 11, 2019), https://www.cleveland.com/metro/2015/06/want_to_recall_a_mayor_easier.html [<https://perma.cc/VH8M-7JNH>].

⁵⁰ See *Dudley v. City of Flemingsburg*, 72 S.W. 327, 329 (Ky. 1903) (noting that “municipal officers, while engaged in those duties which relate to the public safety and the preservation of public order, are the servants of the state”). For an instructive, if not slightly dated, list of governing constitutional and statutory provisions of local government authority, see ADVISORY COMM’N ON INTERGOVERNMENTAL RELS., M-131, MEASURING LOCAL GOVERNMENTAL AUTHORITY 14–15 (1981).

⁵¹ See, e.g., *Local Government*, OHIO.GOV, <https://ohio.gov/wps/portal/gov/site/government/topic-hubs/local-government/> [<https://perma.cc/92AS-R4Y6>] (“Ohio has more than 1,000 local governments, including villages, townships, cities, and counties.”).

⁵² See NAT’L ASS’N OF CNTYS., COUNTY GOVERNMENT STRUCTURE: A STATE BY STATE REPORT 6 (Mar. 2009), <https://www.pfw.edu/dotAsset/98216b7d-e66c-4da6-a78b-1871b6c1f439.pdf> [<https://perma.cc/9S38-GPSA>] [hereinafter STATE BY STATE]; Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1090 (1980).

days, what is now considered county governance was an organ of, and accountable to, the higher authority in the land, namely the Crown.⁵³ On the other hand, cities in England arose organically with their own sense of autonomy but over time also came under the authority of a different higher power, namely Parliament.⁵⁴

In post-Revolution America, local government shifted from being royally appointed to being elected by the public, eventually coming under the total authority of the states.⁵⁵ The United States Constitution makes no reference to the composition of local governments, leaving that power to the states under the Tenth Amendment.⁵⁶ As a result, while states and the federal government obtain their governing authority through their respective constitutions, local governments' authority comes only with the consent of their state's laws and constitution.⁵⁷ In effect, counties and municipalities were, and continue to be, accountable to a higher authority in a way the sovereign states are not to the federal government. In the years following the Founding, states tailored the structure of their local governments to meet the unique needs of their citizenry.⁵⁸

By the late 1800s and early 1900s, counties and municipalities were still functioning as a direct expression of state will and power.⁵⁹ This role was typified by the influential Chief Justice Dillon of the Iowa Supreme Court, who believed that local governments could only exercise that authority which was explicitly granted by state government.⁶⁰ Chief Justice Dillon took a sharply negative view of local government, believing that its leaders were "both unwise and extravagant," and that its excesses of management would lead to the erosion

⁵³ STATE BY STATE, *supra* note 52, at 6.

⁵⁴ See Frug, *supra* note 52, at 1093–94.

⁵⁵ *Id.* at 1105–06. It was once a hotly debated topic whether cities should be subordinate to the will of the state. *Id.* Indeed, until the 1850s, states largely left cities alone. *Id.* at 1108. At the dawn of the industrial age however, states began to take a much more active role in city operations. *Id.* at 1108–09, 1108 n.204.

⁵⁶ U.S. CONST. amend. X; *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178–79 (1907); see also *City of Corvallis v. State*, 464 P.3d 1127, 1131 (Or. Ct. App. 2020) ("Under federal constitutional law, municipal corporations are 'convenient agencies' of their respective states. As such, states enjoy every prerogative to add or withdraw authority from their municipalities, merge municipalities, or abolish a municipality altogether, 'unrestrained by any provision of the Constitution of the United States.'" (citation omitted) (quoting *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178–79 (1907))).

⁵⁷ Frug, *supra* note 52, at 1062–63.

⁵⁸ STATE BY STATE, *supra* note 52, at 6. The densely populated Northeast primarily vested counties with judicial power, while giving most governing authority to towns. *Id.* The middle states, namely New York and Pennsylvania, generally divided governing authority between counties and cities. *Id.* The more agrarian South vested most local government authority into counties. *Id.* Despite these differences, the states themselves determined which offices had what authority, and local governments developed early as an arm of the state government. *Id.*

⁵⁹ *Id.*

⁶⁰ Note, *Dillon's Rule: The Case for Reform*, 68 VA. L. REV. 693, 694–95 (1982); see also *City of Clinton v. Cedar Rapids & Mo. River R.R.*, 24 Iowa 455, 478 (1868).

of private property rights.⁶¹ Instead, Chief Justice Dillon argued that states should closely monitor and direct how local governments were run and statutes delegating power should be read with a strict constructionist lens.⁶² This came to be known as the “Dillon Rule,” and it was the dominant theory in local governance for decades.⁶³ The United States Supreme Court endorsed this view in 1903, 1907, and 1923.⁶⁴ Many states still practice some form of the Dillon Rule.⁶⁵

However, there have long been those that have advocated that local governments possess, or otherwise should possess, inherent power apart from the state.⁶⁶ Advocates like Justice Thomas Cooley of Michigan⁶⁷ and Judge Eugene McQuillin of Missouri⁶⁸ challenged the underpinnings of the Dillon Rule in favor of more local governmental autonomy.⁶⁹ Eventually, these ideas took form in the doctrine of “Home Rule,” advocating that local governments should have the ability to exercise power not explicitly authorized by the state, to adopt a charter to alter its government structure, and to block the invasion of state power into “local” issues.⁷⁰ By the 1940s and 1950s, a trend had developed towards Home Rule and state-recognized local autonomy.⁷¹ Despite this trend, Home Rule has largely failed to create a “local” sphere of authority where states cannot invade.⁷² Even where discretionary authority is granted to locals, the state is still recognized as the grantor of that discretion, be it through its constitution or its laws.⁷³ Early attempts to wall off spheres of power for local governments as “a state within a state” fell flat, and local governance remains, at least in part, a state issue.⁷⁴

⁶¹ Frug, *supra* note 52, at 1110–11 (emphasis removed).

⁶² *Id.* at 1110–12.

⁶³ See Note, *supra* note 60, at 694–95; Frug, *supra* note 52, at 1110–12.

⁶⁴ *Atkin v. Kansas*, 191 U.S. 207, 220–21 (1903); *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178–79 (1907); *City of Trenton v. New Jersey*, 262 U.S. 182, 187 & n.1 (1923).

⁶⁵ See, e.g., *Bragg Hill Corp. v. City of Fredericksburg*, 831 S.E.2d 483, 489 (Va. 2019) (applying the Dillon Rule); NEV. REV. STAT. § 244.137 (2019) (recognizing that Nevada applies the Dillon Rule but modifying its application). However, other states have explicitly repudiated the Dillon Rule. See, e.g., *Lakehaven Water & Sewer Dist. v. City of Federal Way*, 466 P.3d 213, 221 (Wash. 2020) (noting that the Dillon Rule was intentionally abrogated by the Washington Legislature in 1967); *Knob Hill Dev. LLC v. Town of Georgetown*, 113 N.E.3d 729, 740 (Ind. Ct. App. 2019) (“Recognizing the disadvantages of the Dillon Rule, the Legislature abrogated it in 1971 . . .”).

⁶⁶ Frug, *supra* note 52, at 1113.

⁶⁷ *Id.*

⁶⁸ Judge Eugene McQuillin is perhaps best known as the author of a famous treatise on local governments. See generally EUGENE MCQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* (Thomson Reuters 3d ed. 2010).

⁶⁹ Frug, *supra* note 52, at 1113.

⁷⁰ *Id.* at 1116.

⁷¹ STATE BY STATE, *supra* note 52, at 6.

⁷² Frug, *supra* note 52, at 1117.

⁷³ See ADVISORY COMM’N ON INTERGOVERNMENTAL RELS., *supra* note 50.

⁷⁴ See *id.*

Today, counties and municipalities, either under the Dillon Rule or Home Rule, deliver many of the most essential government services.⁷⁵ America's approximately 3,068 counties, 36 city-county consolidations, and 42 independent cities maintain 45% of all roads, 40% of all bridges, 33% of all airports, and a venerable multitude of hospitals, jails, courthouses, 911 call centers and libraries.⁷⁶ In addition, America has approximately 19,519 municipal governments and 16,360 towns and townships.⁷⁷ These municipal entities provide an impressive laundry list of essential services, like fire protection, law enforcement, waste collection, water and sewer services, street maintenance, and building code enforcement, just to name a few.⁷⁸ When considering the delivery of basic necessities today—safety, medical care, water, shelter, and transportation—county and municipal governments loom large. And to facilitate the delivery of these services, states permit the public to elect local officials to offices established or authorized by state law.⁷⁹

Yet the important duties of local government can be frustrated by the misdeeds or mismanagement of local officials. A commissioner or a mayor occupy their office not only by the will of the people but also by the authority of the state's system of laws that have established that office in the first place.⁸⁰ Put another way, it is both the express authority of the voting public and the implicit grant to use that authority by the state that allows local officials to perform their duties. The state necessarily stands as a silent enabler, for good or ill, because its constitution and laws created the office. When a local official does not live up to the standard of the office and misbehaves, they abuse not only the public's trust, but also the authority granted them by the state. Therefore, a state can never fully abdicate its joint liability when a local official misbehaves and violates the public's trust.

From their inception, many states understood this joint liability. Many of the first state constitutions expressly permitted impeachment for *all* elected

⁷⁵ Nat'l Ass'n of Cntys., *Federal Policies Matter to County Governments*, YOUTUBE (Apr. 5, 2017), https://www.youtube.com/watch?list=PLFBqmtBrSGF9iWysChif5nQomplu57i8Q&v=tXVCMdZsKbE&feature=emb_title [<https://perma.cc/B6WP-PRZD>] [hereinafter *Federal Policies Matter*].

⁷⁶ *Id.*

⁷⁷ *Cities 101—Number of Local Governments*, NAT'L LEAGUE OF CITIES (Dec. 13, 2016), <https://www.nlc.org/resource/cities-101-number-of-local-governments> [<https://perma.cc/CC2G-AR9M>].

⁷⁸ See, e.g., Kara Millonzi, *Required Municipal Services*, COATES' CANONS: N.C. LOC. GOV'T L. (Apr. 7, 2011), <https://canons.sog.unc.edu/required-municipal-services/> [<https://perma.cc/8357-PL3F>]. In addition, local governments are now “gatekeepers” for the marijuana industry, which has become a potent temptation for bribery and corruption. Mona Zhang, *How State Marijuana Legalization Became a Boon for Corruption*, POLITICO (Dec. 27, 2020), <https://www.politico.com/news/2020/12/27/marijuana-legalization-corruption-450529> [<https://perma.cc/V2L3-GSWF>].

⁷⁹ See, e.g., OHIO CONST. art. X, § 1.

⁸⁰ See, e.g., *id.* (providing that the Ohio Legislature will prescribe the method of county governance in the state).

officials, not merely state level officers.⁸¹ That impeachment was (and hardly ever is) carried out against local officials does not change the fact that from the earliest days of American democracy, the states understood and accepted their oversight role over local officials.⁸² This concept has followed through to today, and, in the modern era, many states have state-level mechanisms for removal of local officials.⁸³ Yet not all do.⁸⁴ For states that do not have functional methods of removal, they must develop them.⁸⁵ For states that do have functional methods of removal, they must evaluate their current mechanisms. Local officials who behave badly are not of singularly local concern, and states must exercise effective oversight over local officials who speak with delegated state authority.

III. THE VARYING MECHANISMS OF REMOVING LOCAL OFFICIALS ACROSS STATES HAS DEMONSTRATED THE VIRTUES AND DRAWBACKS OF COMPETING METHODS

In one manner or another, all states permit for local officials who are behaving badly to be removed from office before the end of their elected term.⁸⁶ However, removal mechanisms vary wildly in their efficacy, and some are easily abused.⁸⁷ As a threshold matter, it is very common for states to automatically depose any elected officials convicted of a felony.⁸⁸

⁸¹ See FRANK O. BOWMAN III, *HIGH CRIMES AND MISDEMEANORS: A HISTORY OF IMPEACHMENT FOR THE AGE OF TRUMP 75–79* (2019) [hereinafter *HIGH CRIMES*].

⁸² See, e.g., Annie Linskey, *It's Difficult to Remove a Md. Mayor from Office*, *BALT. SUN* (Jan. 10, 2009), <https://www.baltimoresun.com/politics/bal-md.ci.mayor10jan10-story.html> [<https://perma.cc/X9QG-8DDA>] (noting that no Maryland official has ever been impeached in its history of statehood). Curiously, Maryland colony carried out some of the first colonial impeachments starting in 1669 and what appears to be the first impeachment and removal of a “local” official in Cecil County Sheriff Charles James in 1676. See *HIGH CRIMES*, *supra* note 81, at 53–54.

⁸³ See *infra* Part III.C.

⁸⁴ See *infra* Part III.C.1.

⁸⁵ Impeachment by the state legislature is authorized by many states for removal of officials, but very difficult to implement and functionally weak. See *infra* Part III.A.

⁸⁶ See *infra* Part III.C.

⁸⁷ *Id.*

⁸⁸ See, e.g., OHIO REV. CODE ANN. § 2961.01(A)(1) (West 2020). However, local officials convicted of a misdemeanor may not be automatically removed from office. *Id.* For example, in 2012 San Francisco, California Sheriff Rostam Mirkarimi was charged with domestic violence battery, child endangerment, and dissuading a witness, yet he plead guilty to only misdemeanor false imprisonment. Josh Richman, *San Francisco Sheriff Mirkarimi to Face Misdemeanor Charges*, *MERCURY NEWS* (Aug. 13, 2016), <https://www.mercurynews.com/2012/01/13/san-francisco-sheriff-mirkarimi-to-face-misdemeanor-charges/> [<https://perma.cc/KS3P-2XHX>]; Rachel Gordon, *SF Sheriff Pleads Guilty to Misdemeanor*, *SFGATE* (Mar. 12, 2012), <https://www.sfgate.com/crime/article/SF-Sheriff-Mirkarimi-pleads-guilty-to-misdemeanor-3406888.php> [<https://perma.cc/873C-2H96>]. Because he only pled guilty to a misdemeanor, he was not removed from office and ran for re-election before losing in

Unfortunately, like any criminal proceeding, this can take a long time and expend taxpayer resources.⁸⁹ Thus, conviction is not necessarily an adequate method of removal. Some states have taken to crafting novel methods of removal, with some functioning better than others. Part A describes the origins and current practices of the original Anglo-American method of removal: impeachment. Part B explores the rise of the recall and discusses its use and drawbacks. Part C categorizes some common methods of removal states employ today.

A. Impeachment Is the Original Method of Removal in the English Tradition, but Its History and Underlying Premises Make It Ineffective when Handling the Removal of Local Officials

Impeachment was the original answer to questions of abuse of office, but its history illuminates why it is not an effective way to address misbehavior by local office holders. Impeachment mechanisms appear in nearly every modern state constitution.⁹⁰ Generally, the mechanism involves an impeachment or “indictment” by the lower house of the state legislature, followed by removal or “conviction” by the upper house of the state legislature.⁹¹ Most Americans may think of impeachment as something that happens to a President, but impeachment may also be carried out in a largely similar manner by the states.⁹² However, with its procedures, impeachment is best designed to address abuses of state-level officers, not local officers. Impeachment’s origins help illuminate this fact.

2015. *See Embattled San Francisco Sheriff Loses Re-Election Bid*, ASSOCIATED PRESS (Nov. 4, 2015), <https://abc30.com/election-lose-sheriff-san-francisco/1067356/> [<https://perma.cc/AM7K-9L74>].

⁸⁹ *See, e.g.,* Steve E. Swenson, *Why Do Some Criminal Cases Take Forever to Go to Trial?*, BAKERSFIELD.COM (Sept. 13, 2016), https://www.bakersfield.com/news/why-do-some-criminal-cases-take-forever-to-go-to/article_a957b119-4e1b-5a4b-84c9-4428331450ee.html [<https://perma.cc/B9KL-TMJE>] (discussing the factors that make criminal trials take so long to complete).

⁹⁰ Tim Anderson, *Impeachment and the States: A Look at the History, Provisions in Place*, COUNCIL OF STATE GOV'TS (Dec. 13, 2019), <https://knowledgecenter.csg.org/kc/content/impeachment-and-states-look-history-provisions-place> [<https://perma.cc/VZ65-6NBD>].

⁹¹ *Id.* Nebraska, with its single house of legislature, is unique in that impeachment is carried out by the legislature, and the removal is carried out by the Supreme Court. *Id.* Normally, the judiciary has no role in impeachments “because impeachment is the legislature’s check on the judiciary branch.” Michael Teter, *Rethinking Consent: Proposals for Reforming the Judicial Confirmation Process*, 73 OHIO ST. L.J. 287, 329 (2012).

⁹² *See, e.g.,* Anderson, *supra* note 90. *See generally* Barbara McQuade, *The Story of Trump’s Impeachment, and What It Says About Our Democracy*, WASH. POST (Aug. 21, 2020), https://www.washingtonpost.com/outlook/the-story-of-trumps-impeachment-and-what-it-says-about-our-democracy/2020/08/19/68a7c17a-d76d-11ea-aff6-220dd3a14741_story.html [<https://perma.cc/2V8F-RE85>].

Impeachment developed as an English Parliamentary solution to check the power of a perceived equal—the English Monarchy.⁹³ The ideas of impeachment have their roots in the Magna Carta, with the earliest impeachments being carried out in the fourteenth century.⁹⁴ A foundational concept in the Magna Carta was that “[n]o freeman is to be taken or imprisoned, or dispossessed of his free tenement or liberties or his free customs, or be outlawed or exiled, or in any other way destroyed, nor will we go against him, nor send against him, except though the lawful judgment of his peers.”⁹⁵ This meant that those of rank, such as royal appointees, were in theory answerable to their “peers” in Parliament.⁹⁶ Therefore, Parliament took it upon itself to express displeasure with the King by removing royal appointees carrying out unpopular policies.⁹⁷ Of course, at this time in English history, the legitimacy of Parliament was shaky, and throughout the years, various Kings resisted its authority.⁹⁸ Indeed, the first impeachments were only completed with the tacit approval of King Edward III.⁹⁹ Parliament had no authority to directly challenge the King but recognized its ability to hamper royal power and policies by deposing the King’s personnel tasked with carrying out those policies.¹⁰⁰ On the whole, impeachment was developed initially as a distinctively *defensive* measure, where Parliament (akin to a modern legislature) was exercising a check on the policies and authority of the Monarchy (akin to a modern executive).¹⁰¹ Indeed, the use of impeachment waned as royal power expanded, and English impeachment saw a resurgence as royal power receded again in the early seventeenth century.¹⁰²

Impeachment, after centuries of dormancy between the death of Richard II through the powerful reign of Queen Elizabeth, returned to prominence right around the establishment of the American colonies.¹⁰³ Much like the impeachments of centuries before, the English impeachments of the seventeenth and eighteenth centuries were in many ways a power struggle between Parliament and the Monarchy.¹⁰⁴ These English impeachment proceedings were well-known to the colonists and helped to inform colonists’ understanding of

⁹³ HIGH CRIMES, *supra* note 81, at 22 (“Impeachment is a British invention, created by Parliament . . . to resist the tendency of the monarchy to absolutism . . .”).

⁹⁴ *Id.* at 23–24, 26.

⁹⁵ POCKET MAGNA CARTA 34 (Bodleian Libr. 2016) (1217).

⁹⁶ HIGH CRIMES, *supra* note 81, at 24.

⁹⁷ *Id.* at 24–25.

⁹⁸ *Id.* at 27–29.

⁹⁹ *Id.* at 27.

¹⁰⁰ *Id.* at 24–25.

¹⁰¹ *See id.*

¹⁰² HIGH CRIMES, *supra* note 81, at 27–30.

¹⁰³ *Id.* at 30–32 (“[In 1621,] the House of Commons, to what must have been general astonishment, excavated the forgotten impeachment mechanism from under a century-and-a-half of dust and used it . . .”).

¹⁰⁴ *Id.*

the role of checks and balances.¹⁰⁵ Multiple colonies believed that they too possessed the inherent right of impeachment power and attempted to carry out impeachments against royal colonial officers.¹⁰⁶ In fact, the first impeachment of a “local” official in the New World occurred in 1676 when Sheriff Charles James of Cecil County, Maryland was removed from office.¹⁰⁷ On the whole, however, the colonies were frustrated in their attempt to check royal power in the New World, even in those colonies that expressly granted impeachment power to their representative bodies.¹⁰⁸ The Founders were keenly aware of the role impeachment played in a system of checks and balances, and after the Revolution, ten of the newly ratified state constitutions included impeachment provisions.¹⁰⁹

Impeachment functions best as a check and balance between branches of government. In its early days in England, all executive officers were effectively representatives of the Crown, so impeachments were an attempt by one branch of government to police the other.¹¹⁰ There is reason to think many of the drafters of state constitutions shared this concept of impeachment, as some initial state constitutions expressly named state-level executive and judicial figures as liable to impeachment.¹¹¹ The common procedures of American impeachment also indicate a peer-to-peer check and balance.¹¹² Many states require super-majorities in one or both houses of their legislatures in order to impeach and remove an official.¹¹³ As a result, to successfully impeach and remove an official, the legislature must have sufficient political will and desire to carry it out. An overbearing Governor or recalcitrant Supreme Court Justice would induce such a reaction from the legislature, attempting to safeguard its own sphere of influence. However, the misdeeds of a local county commissioner, judge, or sheriff do not directly threaten a legislature’s sphere of influence. American impeachments, like their antecedent English counterparts,

¹⁰⁵ See *id.* at 52–53. Indeed, Proprietor William Penn of Pennsylvania’s father, Sir William Penn, was unsuccessfully impeached by Parliament. *Id.* at 55.

¹⁰⁶ *Id.* at 55.

¹⁰⁷ *Id.* at 53–54.

¹⁰⁸ See HIGH CRIMES, *supra* note 81, at 58–63.

¹⁰⁹ *Id.* at 65–67. The founders, however, were also aware of the dangers of impeachment. *Id.* at 44. In England, an impeached and removed official was liable to be punished, sometimes harshly with exile or death, for acts that were not themselves criminal in nature. *Id.* at 42–45. In an interest to avoid criminal punishment for acts that were not criminal at the time committed, American impeachment rejected the punitive aspect of English impeachments, so that removal from office was the only “punishment.” *Id.* at 44.

¹¹⁰ *Id.* at 22.

¹¹¹ See, e.g., *id.* at 76–77. At its inception, the North Carolina Constitution stated “[t]he Governor, and other officers . . . may be prosecuted on the Impeachment of the General Assembly” while the New Jersey Constitution said “[t]he Judges of the Supreme Court . . . shall be liable to be dismissed, when adjudged guilty of Misbehaviour [sic] by the Council on an impeachment of the Assembly.” *Id.* at 76–77.

¹¹² See Anderson, *supra* note 90.

¹¹³ *Id.*

appear to function best when the Legislature is responding in a *defensive* manner.

While legislatures certainly share some responsibility for a local official's abuse of state-granted authority,¹¹⁴ often legislators simply do not have the time, interest, or political will to carry out such an impeachment. For example, the Vermont Legislature in 1976 impeached, then acquitted, Washington County Sheriff Mike Mayo, who was accused of assaulting bar patrons, planting drugs on suspects, and falsifying documents.¹¹⁵ Even though the Vermont House impeached Sheriff Mayo and pressed the case in the Vermont Senate, Mayo was acquitted in a confused vote where senators were uncertain whether they were deciding the veracity of the allegations or whether the alleged conduct was impeachable.¹¹⁶ In the end, some speculated that the Senate acquitted Sheriff Mayo simply because they did not want to invite more impeachment trials.¹¹⁷ As elected senators, they wanted to pass laws, not serve as jurors.¹¹⁸ Decades later, it is likely such an unstated sentiment still carries on in state legislatures across the country. Passing any bill or resolution, let alone one requiring a super-majority, takes leadership and political capital, vote whipping and hand wringing. When the legislature's own authority is directly threatened, impeachment is conceivable.¹¹⁹ But when the potential target of impeachment is a local official unable to directly threaten the legislature's authority—the incentive to take action may be absent.

Impeachment is an important procedure that deserves a place in state law, but it is not well equipped to address abuses by local officials. It plays a distinct check and balance role best applied for state-level abuses. This recognition may have factored into the creation of the recall.

¹¹⁴ See *supra* Part II.

¹¹⁵ Evancie & Corwin, *supra* note 35.

¹¹⁶ *Id.*

¹¹⁷ *Id.* (“[E]ven Mayo’s own defense attorney . . . wondered if the acquittal [by the Senate] had more to do with a fear that conviction would lead to more impeachments.”).

¹¹⁸ *Id.*

¹¹⁹ As of 2004, more than twenty American governors have been impeached and eight removed from office, although only one governor had been impeached in the seventy preceding years. Kevin E. McCarthy, Off. of Legis. Rsch., *Impeachment in Other States*, CONN. GEN. ASSEMBLY (Jan. 13, 2004), <https://www.cga.ct.gov/2004/rpt/2004-R-0061.htm> [<https://perma.cc/3TWF-ARBT>]. That governor was Evan Mecham of Arizona, who was removed from office in an impeachment proceeding in 1988 for failing to disclose a \$350,000 loan from an attorney who was himself under criminal investigation by the state. *Id.*

B. The Recall Developed as an Electoral Solution to Remove Elected Officials, but It Has Become a Political Tool Used to Harass Officials Making Legitimate, if Unpopular, Policy Decisions

The recall was developed as a mechanism by which voters themselves call for an election to remove an official before the end of the official's term.¹²⁰ Historically, the recall has been most frequently used at the local level, and more states today allow for the recall of local officials than for state officials.¹²¹ However, the recall has come a long way from its well-intended beginnings and now functions as a sword of Damocles dangling over public servants.¹²² Today, the recall is a political tool easily abused by malcontents,¹²³ and yet it is not even a terribly effective means of removal for official misconduct.

The modern recall came to American government around the turn of the century, with Los Angeles, California being the first to adopt it in 1903.¹²⁴ Although the recall has roots going back much earlier,¹²⁵ its adoption in Los Angeles sparked a wave of recall provisions in other states, including Michigan and Oregon soon after.¹²⁶ A popular cause of the Progressive Movement, the recall attempted to wrestle power away from special interests and return it to the people.¹²⁷ From its inception, opponents like former President William Howard Taft warned of the potential excesses of direct democracy and the recall.¹²⁸

¹²⁰ *Recall of State Officials*, NAT'L CONF. OF STATE LEGISLATURES (July 2, 2021), <https://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx> [<https://perma.cc/UCX7-H38A>] [hereinafter *Recall of State*].

¹²¹ *Id.* (including a list of statutes and processes state by state).

¹²² For information clarifying this reference, see 'Sword of Damocles' Reference Sometimes Misused, NPR (Aug. 19, 2011), <https://www.npr.org/2011/08/19/139799434/sword-of-damocles-reference-sometimes-misused> [<https://perma.cc/7VBA-TH5P>].

¹²³ See, e.g., *Imperfect Recall*, ECONOMIST, Sept. 11, 2021, at 29 [hereinafter *Imperfect Recall*].

¹²⁴ Joshua Spivak, *War Against the Law*, MONT. LAW., Sept. 2006, at 7, 7.

¹²⁵ The concept of a recall in America traces back to 1631 in the laws of the Massachusetts Bay Colony. Joshua Spivak, *What Is the History of Recall Elections?*, HIST. NEWS NETWORK, <https://historynewsnetwork.org/article/1660> [<https://perma.cc/UG48-ELZ3>]. At the time of the founding, Alexander Hamilton was an opponent of the recall. *Imperfect Recall*, *supra* note 123.

¹²⁶ Samuel D. Zurier, *You're Fired! Voter Recall of Elected Officials in Rhode Island*, R.I. BAR J., May-June 2017, at 17, 19.

¹²⁷ Matea Gold, *Recall Idea Got Its Start in L.A. in 1898*, L.A. TIMES (July 13, 2003), <https://www.latimes.com/archives/la-xpm-2003-jul-13-me-history13-story.html> [<https://perma.cc/JER3-LVXN>].

¹²⁸ See generally WILLIAM HOWARD TAFT, *POPULAR GOVERNMENT, ITS ESSENCE, ITS PERMANENCE AND ITS PERILS* (1913). The recall was one of many points which the more conservative President Taft and more progressive President Theodore Roosevelt disagreed. Julia L. Ernst, *The Legacy of Theodore Roosevelt's Approach to Governmental Powers*, 92 N.D. L. REV. 309, 361 n.293 (2017). The drawbacks of direct democracy are still debated today. See Richard A. Epstein, *Direct Democracy: Government of the People, by the People, and for the People?*, 34 HARV. J.L. & PUB. POL'Y 819, 823–25 (2011).

Nonetheless, the recall continued to expand across the country, and today at least thirty states allow the recall of locally elected officials.¹²⁹

Every state's recall procedure looks slightly different, but many share common themes. First, a qualified elector may or may not be required to have the "grounds of removal" certified by an elections officer.¹³⁰ Some states require specific, articulable grounds¹³¹ while others allow recall for any reason or no reason at all.¹³² If the grounds are deemed sufficient, the elector begins collecting petition signatures from constituents.¹³³ After securing a required number of signatures, they are submitted for verifications with an elections body.¹³⁴ If enough signatures are valid, an election is called, and the elected official must campaign to keep their job.¹³⁵

The recall sits in a curious place in the American political arena today. On one hand, it is actively used against local, and occasionally state, officials, including a reported 200 efforts in 2016 alone.¹³⁶ The majority of recall efforts concern local officials, where constituencies are smaller, and it is easier to get the signatures needed.¹³⁷ However, even when a recall campaign collects enough signatures, overcomes procedural hurdles, and reaches the ballot, recall elections "fail" to remove the official two-thirds of the time.¹³⁸ But even still, an unsuccessful recall campaign does not leave the victorious officeholder unscathed.¹³⁹

Defending against a recall expends time, funds, and political capital, placing an elected official in a near constant state of campaigning.¹⁴⁰ Max Neiman, a

¹²⁹ *Recall of State*, *supra* note 120 (noting that some argue the number is closer to thirty eight states); Robert A. Mikos, *The Populist Safeguards of Federalism*, 68 OHIO ST. L.J. 1669, 1705 (2007) ("[I]n eighteen states and in more than two-thirds of all local governments, voters are allowed to recall public officials who have squandered the public trust.").

¹³⁰ *See Chandler v. Otto*, 693 P.2d 71, 74 (Wash. 1984) (en banc).

¹³¹ *See, e.g., id.* at 72; *Hamlett v. Hubbard*, 416 S.E.2d 732, 733–34 (Ga. 1992).

¹³² *See, e.g., State ex rel. Hackley v. Edmonds*, 80 N.E.2d 769, 775 (Ohio 1948); *Westpy v. Burnett*, 197 A.2d 400, 406 (N.J. Super. Ct. App. Div. 1964).

¹³³ *See, e.g., ORANGE CNTY. REGISTRAR OF VOTERS, HANDBOOK ON THE PROCEDURES FOR RECALLING LOCAL OFFICIALS* 8–10, <https://www.ocvote.com/election-library/docs/Recall%20Petition%20Process%20Handbook.pdf> [<https://perma.cc/2PUB-3PAE>].

¹³⁴ *See, e.g., id.* 14–16.

¹³⁵ *See, e.g., id.* 17.

¹³⁶ *See Zurier, supra* note 126, at 20.

¹³⁷ *See Alan Greenblatt, Total Recall*, GOVERNING MAG. (Nov. 4, 2010), <https://www.governing.com/topics/politics/Total-Recall.html> [<https://perma.cc/RGV2-97S7>].

¹³⁸ *Id.*

¹³⁹ *See, e.g., Imperfect Recall, supra* note 123 ("Whatever its outcome, the recall election has taken a toll on [California Governor Gavin] Newsom.").

¹⁴⁰ *See Caroline Cournoyer, Did Wisconsin End the Recall Wave?*, GOVERNING MAG. (Aug. 28 2012), <https://www.governing.com/topics/politics/gov-did-wisconsin-end-recall-wave.html> [<https://perma.cc/MB98-JPSG>] ("Any official who does something controversial in a state that allows recalls, like raising taxes or attacking public-sector unions, knows that he or she will be at risk.").

Senior Research Fellow and professor at the University of California, Berkeley, noted that the recall now forces “all decision-making [to be] within the context of an ongoing campaign There seems to be no focus on solving actual problems, but only positioning oneself for reelection.”¹⁴¹ This can make elected officials feel like they are living in a “permanent campaign,” where an election may lurk imminently behind every decision.¹⁴² This feeling is exacerbated because recalls efforts are typically not geared towards addressing misbehavior but instead displeasure with policy decisions.¹⁴³ As the magazine *The Economist* put it, “[t]he potential recall of California’s governor [Gavin Newsom] shows how a populist tool is being appropriated for partisan ends.”¹⁴⁴

What is more, modern recall elections can cost a lot of money.¹⁴⁵ Tom Cochran, Chief Executive Officer of the United States Conference of Mayors, argued that recalls elections are costly to the taxpayer.¹⁴⁶ For example, Cochran pointed to the estimated \$4,000,000 spent to recall Mayor Carlos Alvarez of Miami-Dade County and the nearly \$300,000 spent to recall Mayor Lance Maclean of Mission Viejo, California.¹⁴⁷ A special election to recall the Irrigation District director in Paradise, California in 2016 was estimated to potentially cost between \$30,000 and \$50,000.¹⁴⁸ Most recently in a statewide context, California spent an estimated \$276,000,000 on the 2021 recall election of Governor Gavin Newsom.¹⁴⁹ And these expenses are all in addition to the costs of the next regularly scheduled election.¹⁵⁰

¹⁴¹ *Id.*

¹⁴² Reid Wilson, *The Era of the Recall*, WASH. POST (Sept. 3, 2013), <https://www.washingtonpost.com/blogs/govbeat/wp/2013/09/03/the-era-of-the-recall/> [<https://perma.cc/F76E-2TX4>].

¹⁴³ *Id.*

¹⁴⁴ *Imperfect Recall*, *supra* note 123.

¹⁴⁵ Tom Cochran, *Recall Elections Waste Public Funds and Cause Chaos*, U.S. NEWS (May 10, 2011), <https://www.usnews.com/opinion/articles/2011/05/10/recall-elections-waste-public-funds-and-cause-chaos> (on file with the *Ohio State Law Journal*).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* It is unclear whether these figures refer to the cost to the taxpayer alone or if it includes fundraising and campaigning.

¹⁴⁸ Trevor Warner, *Recall Proponents Move Toward Costly Special Election*, PARADISE POST (May 16, 2018), <https://www.paradisepost.com/2016/07/01/recall-proponents-move-toward-costly-special-election/> [<https://perma.cc/F67K-DT7A>].

¹⁴⁹ *Imperfect Recall*, *supra* note 123.

¹⁵⁰ *See* Warner, *supra* note 148.

Once rare,¹⁵¹ recall attempts exploded in the last two decades after the successful recall of California Governor Gray Davis in 2003.¹⁵² Partisan actors in both parties have latched onto the tool as a weapon to bludgeon the other side.¹⁵³ More and more, the recall is not employed to remove bad actors but instead to punish unfavorable policy decisions.¹⁵⁴ Occasionally, the recall is used by an election's loser to try to undo the results.¹⁵⁵ In the last few years, both Republicans¹⁵⁶ and Democrats¹⁵⁷ have lamented the rise and abuse of the recall as a political weapon. In fairness, much of the recent partisan warfare employing recalls seems to be targeted at the state level, but local recalls are not immune to orchestration by political parties.¹⁵⁸ Unsurprisingly, some states

¹⁵¹ Alan Greenblatt, *Recall Elections Are Becoming a More Common and Coordinated 'Partisan Power Play,'* GOVERNING MAG. (May 14, 2019), <https://www.governing.com/topics/politics/gov-political-recall-election-state-government-partisan.html> [https://perma.cc/B5NE-SKST] [hereinafter Greenblatt, *Power Play*] ("Recall campaigns against state legislators used to be rare. They've not only become more common, they're now more often driven by partisan politics than accusations of high crimes or misdemeanors."); Alan Greenblatt, *Why Attempts to Recall State Lawmakers Are Rare,* GOVERNING MAG. (Oct. 25, 2017), <https://www.governing.com/topics/politics/gov-state-recalls-rare.html> [https://perma.cc/UR78-TGLP].

¹⁵² Cournoyer, *supra* note 140.

¹⁵³ Greenblatt, *Power Play*, *supra* note 151.

¹⁵⁴ See, e.g., Jiquanda Johnson, *Recall Language Filed Against Flint Mayor Karen Weaver for Third Time*, MLIVE.COM (Jan. 19, 2019), https://www.mlive.com/news/flint/2017/01/recall_language_filed_against_3.html [https://perma.cc/GS6Q-E224] (noting a resident's repeated attempted to recall a mayor over a garbage contract); see also Nathaniel Rakich, *There Are 5 Governors Being Targeted for Recalls*, FIVETHIRTYEIGHT (Aug. 19, 2019), <https://fivethirtyeight.com/features/governor-recall-elections/> (on file with the *Ohio State Law Journal*) ("Devised as a Progressive-era reform around 100 years ago, recalls were originally intended to punish politicians who had committed crimes or other misdeeds. But they're much more often used to express unhappiness with the officeholder's politics.").

¹⁵⁵ See *State ex rel. Palmer v. Hart*, 655 P.2d 965, 968 (Mont. 1982) (discussing the limitation that an officer must have served for two months before a recall may be filed against them to ensure "that election issues and controversies are not confused with performance in office"); Greenblatt, *Power Play*, *supra* note 151.

¹⁵⁶ Megan Messerly, Jackie Valley & Riley Snyder, *Signatures to Recall One of Three State Senators Submitted to County in Republican-Led Effort*, NEV. INDEP. (Oct. 30, 2017), <https://thenevadaindependent.com/article/signatures-to-recall-one-of-three-state-senators-submitted-to-county-in-republican-led-effort> [https://perma.cc/JG4X-732X] (noting that Republican Governor Brian Sandoval lamented that recalls "just kind of escalate[] the politics, mean-spiritedness politics. I think both parties will now use it on a regular basis, and that's not what Nevada politics has ever been and that's not what it should be").

¹⁵⁷ Greenblatt, *Power Play*, *supra* note 151 (describing how Democrat Speaker of the Colorado House KC Becker said that recent recall efforts are "all clearly a strategy to undo elections . . . I think it is a partisan power play").

¹⁵⁸ See, e.g., *Omaha Mayor Blames Politics for Recall Effort*, LINCOLN J. STAR (Jan. 24, 2011), https://journalstar.com/news/state-and-regional/nebraska/omaha-mayor-blames-politics-for-recall-effort/article_73073d14-b6fb-5cd9-a2e7-5760989cc428.html [https://perma.cc/ZQB4-EHAT].

have attempted to curtail the recall,¹⁵⁹ while others have called for the abolition of the recall altogether.¹⁶⁰ As one Louisiana Court of Appeals Judge bluntly put it: “the recall election is a harsh remedy.”¹⁶¹

The recall is not an adequate means of removal for misconduct. The modern recall began as a Progressive effort to keep elected officials accountable to the people.¹⁶² Unfortunately, this early dream has been corrupted.¹⁶³ Today, recalls are just one more tool in the partisan toolbox to get an edge on an opponent. It places elected officials, both local and state, into a permanent campaign, where any well-intended policy choice can spark an imminent election. Yet beyond these drawbacks, the recall does not serve as an effective removal mechanism for misbehaving local officials when it really matters. If a local official is misbehaving, there should be an emphasis placed on a speedy removal to quickly restore public trust.¹⁶⁴ But a successful recall takes time, money, and an engaged populace.¹⁶⁵ For example, the Orange County California Handbook on the Procedures for Recalling Local Officials details an extensive, grassroots driven process that can take anywhere from five months to an entire year to complete.¹⁶⁶ If an elected official is truly violating the public’s trust, waiting five to twelve months is inadequate.

¹⁵⁹ See, e.g., Howard Fischer, *Senate Committee Passes Bill to Add Restrictions to Recall Elections*, ARIZ. CAPITOL TIMES (Feb. 6, 2020), <https://azcapitoltimes.com/news/2020/02/06/senate-committee-passes-bill-to-add-restrictions-to-recall-elections/> [https://perma.cc/PQV3-G8WT] (describing an Arizona bill that would “erect some new hurdles in the path of those seeking to recall state and local elected officials”); Mark Brush, *5 Ways Michigan Elected Officials Made Recalls More Difficult*, MICH. RADIO (Dec. 21, 2012), <https://www.michiganradio.org/post/5-ways-michigan-elected-officials-made-recalls-more-difficult> [https://perma.cc/6QAT-H63C] (describing recently enacted procedural hurdles in Michigan to make recalls harder); Robert Higgs, *Cleveland Should Change Rules to Make It Harder to Recall Public Officials, Council President Kevin Kelley Says*, CLEVELAND.COM (Jan. 30, 2019), https://www.cleveland.com/cityhall/2018/07/cleveland_should_change_rules.html [https://perma.cc/6KUB-J84X]; Steve Sebelius, *Recall Abuses Leads to Tougher Rules*, LAS VEGAS REV.-J. (Apr. 28, 2019), <https://www.reviewjournal.com/opinion/opinion-columns/steve-sebelius/commentary-recall-abuses-leads-to-tougher-rules-1651241/> [https://perma.cc/QU2F-GF5Y]. Even California has contemplated “tweak[ing] the recall process to dissuade partisan meddling.” *Imperfect Recall*, *supra* note 123.

¹⁶⁰ Grant Schulte, *Nebraska Considers Kicking Its Habit of Recall Elections*, ASSOCIATED PRESS (Feb. 14, 2019), <https://apnews.com/f6f4296c36824f7d928fbd214160b971> [https://perma.cc/DM78-3ZU6].

¹⁶¹ *Cloud v. Dyess*, 172 So. 2d 528, 530 (La. Ct. App. 1965); *State ex rel. Palmer v. Hart*, 655 P.2d 965, 968 (Mont. 1982) (echoing *Cloud* to label recalls a “harsh remedy”).

¹⁶² See Gold, *supra* note 127.

¹⁶³ Of course, the partisan recall has its defenders. See Jefferson B. Fordham, *Judicial Nullification of a Democratic Political Process—The Rizzo Recall Case*, 126 U. PA. L. REV. 1, 1–5 (1977).

¹⁶⁴ See *infra* Part IV.A.5.

¹⁶⁵ George Rede, *A Recall Isn’t All That Easy—and Certainly Not Fast*, OREGONLIVE.COM (Mar. 27, 2019), https://www.oregonlive.com/opinion/2009/01/a_recall_isnt_all_that_easy_an.html [https://perma.cc/A8NH-T5W7]; Cochran, *supra* note 145.

¹⁶⁶ ORANGE CNTY. REGISTRAR OF VOTERS, *supra* note 133, at 18, 20.

The recall is not an effective solution to elected official removal and arguably does more harm than good. Perhaps recognizing this, many states have supplemented impeachment and recall with individualized solutions, some better than others.

C. Many States Have Innovated to Develop Novel Removal Mechanisms of Local Officials, with Some Being Better than Others

States take varied approaches to removing locally elected officials who are misbehaving. This Note attempts to describe a few common state approaches and categorize them. It is important to recognize that, even within the same state, not all local officials are treated the same, and frequently law enforcement officials are singled out for more expedient removal procedures.¹⁶⁷ For this reason, the categorizations below are made in broad brushstrokes looking at statewide policies only. In addition, a felony conviction is not included below but is a widely held grounds for an automatic removal from office.¹⁶⁸

1. Impeachment Only or None at All: Vermont, Maryland, and Illinois

Certain states, such as Vermont¹⁶⁹ and Maryland,¹⁷⁰ only remove local officials by way of impeachment or conviction. Illinois has no method to remove locally elected officials short of conviction,¹⁷¹ with a minor exception that the Governor may remove a sheriff who permits an inmate to be lynched.¹⁷² The minimalist approach taken by these states, and those like them, has led to

¹⁶⁷ See, e.g., OR. CONST. art. VII, § 20 (stating that a prosecutor can be removed by the Governor); *Sweet v. Oregon*, Civ. No. 6:13-CV-0657-AA, 2013 WL 5936386, at *4 (D. Or. Oct. 30, 2013); KY. REV. STAT. ANN. § 63.080-140 (1943) (stating that a peace officer can be removed by the Governor); *Holliday v. Fields*, 275 S.W. 642, 648 (Ky. 1925).

¹⁶⁸ See, e.g., OHIO REV. CODE ANN. § 2961.01(A)(1) (West 2020); PA. CONST. art. VI, § 7; Dani Fitzgerald, *DA Seeks Removal of Harmony Twp. Commissioner Over 20-Year-Old Felony*, BEAVER CNTY. TIMES (Aug. 21, 2020), <https://www.timesonline.com/story/news/2020/08/21/da-seeks-remove-harmony-twp-commissioner-over-20-year-old-felony/5608898002/> [<https://perma.cc/K8HM-XJBB>].

¹⁶⁹ Paul S. Gillies, *Impeachment in Vermont*, VT. BAR J., Spring 2020, at 14, 14. Four officials have been impeached in Vermont's history, with only one actually being removed from office. *Id.* at 18.

¹⁷⁰ MD. CONST. art. XV, § 2; see also Linskey, *supra* note 82 (noting that, since statehood, no Maryland official has ever been impeached).

¹⁷¹ See Don O'Brien, *Only Conviction Could Remove Pike County Sheriff from Office*, HERALD-WHIG (May 19, 2014), <https://www.whig.com/story/25556778/only-conviction-could-remove-pike-county-sheriff-from-office> [<https://perma.cc/9SPF-BWWE>] (“[Illinois] law indicates there is no mechanism for a recall or impeachment process for elected county officials.”). Illinois does allow for a recall of the Governor. ILL. CONST. art. III, § 7.

¹⁷² 720 ILL. COMP. STAT. ANN. § 5/25-6 (West 2010); *DeGenova v. Sheriff of DuPage Cnty.*, 209 F.3d 973, 976 (7th Cir. 2000).

consternation among constituents who want to see ways to kick officials out of office.¹⁷³

2. Recall: Washington and Oregon

Many states, like Washington¹⁷⁴ and Oregon,¹⁷⁵ have enacted the recall to supplement impeachment. For example, voters in Washington submitted petitions to begin recall proceedings against Thurston County Sheriff John Snaza and Snohomish County Sheriff Adam Forney for their refusal to enforce Governor Jay Inslee's statewide mask mandate in the wake of the ongoing COVID-19 crisis.¹⁷⁶ In Oregon, voters successfully recalled Gaston City Councilors Sarah Branch and Suzy Whittaker in July 2020 after they proposed cutting funding to police services.¹⁷⁷ Although both states do have limited additional procedures for removal,¹⁷⁸ both Washington and Oregon in practice only remove local officials via recall.¹⁷⁹

¹⁷³ See, e.g., Chris Andriesen, *Fake Reform: The 2010 Illinois Governor Recall Amendment*, ILL. POL'Y, <https://www.illinoispolicy.org/reports/fake-reform-the-2010-illinois-governor-recall-amendment/> [<https://perma.cc/JC8G-E8ZM>] (advocating for more removal methods of local officials).

¹⁷⁴ WASH. CONST. art. 5, §§ 1–3; WASH. REV. CODE ANN. § 29A.56.110 (West 2014); WASH. REV. CODE ANN. § 9.92.120 (West 2010).

¹⁷⁵ OR. CONST. art. II, § 18; OR. REV. STAT. § 249.865 (2019); see also *Sheriff Recall Would Have to Come from Action of Citizens*, MAIL TRIB. (Feb. 7, 2013), <https://mailtribune.com/news/since-you-asked/sheriff-recall-would-have-to-come-from-action-of-citizens> [<https://perma.cc/E9UG-BJX8>] (stating that the recall is the only way to remove the sheriff from office if citizens are upset with him or her).

¹⁷⁶ Sara Gentzler, *Judge OKs Effort to Recall Thurston County Sheriff Over Refusal to Enforce Mask Order*, OLYMPIAN (July 30, 2020), <https://www.theolympian.com/news/local/article244573147.html> (on file with the *Ohio State Law Journal*).

¹⁷⁷ Max Egner, *Gaston Residents Vote to Recall Two City Councilors*, FOREST GROVE NEWS-TIMES (July 30, 2020), <https://pamplinmedia.com/fgnt/36-news/475494-384283-gaston-residents-vote-to-recall-two-city-councilors> [<https://perma.cc/QJ73-CK6V>]. The recalls occurred at a time of a national debate concerning the prudence of defunding the police. See Dionne Searcey, *What Would Efforts to Defund or Disband Police Departments Really Mean?*, N.Y. TIMES (Dec. 10, 2020), <https://www.nytimes.com/2020/06/08/us/what-does-defund-police-mean.html> [<https://perma.cc/BWB6-NYPH>].

¹⁷⁸ Washington's Constitution includes a special procedure to remove "[a]ny judge of any court of record, the attorney general, or any prosecuting attorney" by three-fourths vote in both houses of the legislature, which is for all intents and purposes an impeachment. WASH. CONST. art. IV, § 9. Oregon too has a constitutional exception allowing for the Governor to remove a prosecutor *after* a two-thirds vote of both houses of the legislature, which also effectively functions like a standard impeachment. OR. CONST. art. VII, § 20. This procedure differs from those described in *infra* Part III.C.5 in that the process is initiated by the legislature, not by a state executive. See *id.*

¹⁷⁹ WASH. CONST. art. V, §§ 1–3; OR. CONST. art. VII, § 6.

3. *Public Prosecution: Kentucky and Texas*

Some states, like Kentucky¹⁸⁰ and Texas,¹⁸¹ treat local official misbehavior as a quasi-criminal matter and task a local county attorney or prosecutor with bringing the removal action, even if the conduct itself is not criminal.¹⁸² For example, in 1930, Bell County, Kentucky Coroner James Fuson was removed from office after being convicted of “malfeasance in office” for improperly delaying the funeral of someone who died of natural causes.¹⁸³ In Texas, any constituent, who meets a few set qualifications, can file a request to remove their local official, but the ensuing trial by jury is prosecuted by the county district attorney.¹⁸⁴ Despite being able to be initiated by a member of the public, this mechanism reflects traditional public prosecution because the district attorney has full discretion to drop the case.¹⁸⁵

4. *Private Lawsuit: Nebraska and Utah*

Other states, like Nebraska¹⁸⁶ and Utah,¹⁸⁷ allow private citizens to file civil actions to remove elected officials from office. In 1990, Eugene Hynes lost an election for Garden County, Nebraska County Attorney to Kelly Hogan and thereafter brought a removal action accusing Hogan of not living in Garden County.¹⁸⁸ At trial, Hynes’ private action prevailed and the office was declared vacant.¹⁸⁹ In Utah, a private party may bring a civil lawsuit to remove an elected

¹⁸⁰ KY. CONST. § 227; KY. REV. STAT. ANN. § 61.170 (LexisNexis 2015). Kentucky peace officers, like sheriffs, are subject to a more expedient removal procedure initiated by the Governor. KY. REV. STAT. ANN. §§ 63.100–.130 (LexisNexis 2015).

¹⁸¹ TEX. LOC. GOV’T CODE ANN. §§ 87.011–.019 (West 2008).

¹⁸² State *ex rel.* Dishman v. Gary, 359 S.W.2d 456, 460 (Tex. 1962) (recognizing the “quasi-criminal” nature of the procedure because it is presented by the county attorney).

¹⁸³ Fuson v. Commonwealth, 44 S.W. 578, 578–79 (Ky. 1931).

¹⁸⁴ TEX. LOC. GOV’T CODE ANN. § 87.015(b) (West 2008) (“Any resident of this state who has lived for at least six months in the county in which the petition is to be filed and who is not currently under indictment in the county may file the petition.”); TEX. LOC. GOV’T. CODE ANN. § 87.018(d) (West 2008) (“The county attorney shall represent the state in a proceeding for the removal of an officer . . .”).

¹⁸⁵ Gary, 359 S.W.2d at 458 (holding that a county attorney had the prerogative to dismiss the ouster proceedings against the county sheriff).

¹⁸⁶ NEB. REV. STAT. ANN. §§ 23-2001 to -2009 (LexisNexis 2011). Nebraska also allows for recalls, implementing them frequently. *See* Schulte, *supra* note 160.

¹⁸⁷ UTAH CONST. art. VI, § 21; UTAH CODE ANN. §§ 77-6-1 to -9 (LexisNexis 2012). This procedure is civil, not criminal. People *ex rel.* Smith v. Lewis, 939 P.2d 176, 176 (Utah 1996). However, it can be brought by a District Attorney. State v. Geurts, 359 P.2d 12, 15 (Utah 1961) (noting the statute “expressly authorizes the district attorney to bring it”).

¹⁸⁸ Hynes v. Hogan, 558 N.W.2d 35, 38 (Neb. 1997).

¹⁸⁹ *Id.* at 37. The ruling was, in part, vacated on appeal because there was no requirement that Hogan live in the county at the time of the election. *Id.* at 38.

official from office for certain misdeeds.¹⁹⁰ In 1982, five citizen plaintiffs successfully removed Grantsville, Utah Mayor Keith Brown in a civil action for killing “loose” dogs.¹⁹¹

5. State Executive Action: Florida, Michigan, and Ohio

Some states, like Florida,¹⁹² Michigan,¹⁹³ and Ohio¹⁹⁴ allow for state-level actors to remove local officials.¹⁹⁵ Florida allows for the Governor to immediately suspend a county official, who may then be removed or reinstated by a majority vote of the Florida State Senate.¹⁹⁶ Recently, Florida Governor Ron DeSantis suspended Broward County Sheriff Scott Israel for his officers’ conduct in connection with Marjory Stoneman Douglas High School shooting.¹⁹⁷ The Florida Senate thereafter removed Sheriff Israel, who ran for his old seat before losing the 2020 Democratic primary.¹⁹⁸ Michigan law is striking in that it grants the Governor the ability to remove any elected official for good cause without the input of others.¹⁹⁹ For example, in 2018, Michigan Governor Rick Snyder considered removing Macomb Township Trustee Dino Bucci, who was accused of corruption in office, although Bucci resigned before

¹⁹⁰ See *Madsen v. Brown*, 701 P.2d 1086, 1090 (Utah 1985) (holding that the procedure of removal is civil). The proceedings can be “initiated by any taxpayer, grand jury, county attorney, or district attorney for the county in which the officer was elected or appointed, or by the attorney general.” UTAH CODE ANN. § 77-6-2 (West 2012). However, Utah law permits removal proceedings to be pursued entirely by private parties. See *Madsen*, 701 P.2d at 1093 (Stewart, J., dissenting) (lamenting that the removal action allows “a handful of citizens to override the voice of the majority”).

¹⁹¹ *Madsen*, 701 P.2d at 1093.

¹⁹² FLA. CONST. art. IV, § 7; FLA. STAT. ANN. §§ 112.40–.51 (West 2021).

¹⁹³ MICH. CONST. art. 5, § 10; Attorney General *ex rel.* Rich v. Jochim, 58 N.W. 611, 615 (Mich. 1894) (affirming the Governor’s constitutional ability to remove elected officials). But see *Morris v. Governor*, 543 N.W.2d 363, 366 (Mich. Ct. App. 1995) (“[T]he Governor may only remove a public officer for good cause.”).

¹⁹⁴ OHIO CONST. art. II, § 38; OHIO REV. CODE ANN. § 3.16(B)(1) (LexisNexis 2021).

¹⁹⁵ Both Florida and Michigan also permit recalls of local officials. FLA. STAT. ANN. § 100.361 (West 2015); MICH. COMP. LAWS ANN. § 168.951 (West 2005).

¹⁹⁶ FLA. CONST. art. IV, § 7; FLA. STAT. ANN. §§ 112.40–.51 (West 2021).

¹⁹⁷ Nicole Linsalata & Jeff Lennox, *DeSantis Suspends Broward Sheriff Amid Parkland Fallout; Israel Says Decision Was ‘About Politics,’* WSVN (Jan. 10, 2019), <https://wsvn.com/news/politics/desantis-suspends-broward-sheriff-amid-parkland-fallout-israel-says-decision-was-about-politics/> [<https://perma.cc/GCM5-9F89>].

¹⁹⁸ Peter Burke, *Broward County Sheriff Gregory Tony Declares Victory Over Scott Israel in Democratic Primary*, WPTV (Aug. 18, 2020), <https://www.wptv.com/news/election-2020/broward-county-sheriff-gregory-tony-declares-victory-over-scott-israel-in-democratic-primary> (on file with the *Ohio State Law Journal*).

¹⁹⁹ *People ex rel. Johnson v. Coffey*, 213 N.W. 460, 462 (Mich. 1927) (“[The] Governor [is the] sole tribunal in such cases.”); *Morris v. Governor*, 543 N.W.2d 363, 366 (Mich. Ct. App. 1995) (requiring the Governor to have “good cause”).

Snyder took action.²⁰⁰ In a state-level context, the Michigan Governor's removal power was recently discussed when the Michigan Board of State Canvassers weighed delaying the certification of the 2020 presidential election results.²⁰¹ At the time, commentators noted that Governor Gretchen Whitmer could likely use her broad removal authority to depose board members who withheld certification.²⁰² Finally, Ohio allows the Attorney General (or the prosecuting attorney) to initiate removal proceedings against local officials indicted for a felony relating to their elected office.²⁰³ Afterwards, the Chief Justice of the Ohio Supreme Court appoints a panel of three retired judges or justices to hold a hearing and decide on the official's suspension.²⁰⁴ Most recently, Ohio Attorney General Dave Yost used this procedure to remove Cleveland City Councilman Kenneth Johnson for embezzling over \$175,000 from city resources earmarked for his ward.²⁰⁵

IV. THE VARIOUS METHODS OF REMOVAL SHOULD BE ASSESSED USING A FRAMEWORK TO ACCOUNT FOR COMPETING FACTORS

Unsurprisingly, different removal mechanisms have different benefits and drawbacks. As stewards of the public trust, states must examine their own laws to consider altering, modernizing, or curtailing existing mechanisms. In this process, states must consider and prioritize certain factors. While no one factor alone should exclusively steer deliberations, this Note argues that certain factors deserve to be elevated above others. Part A highlights factors courts and commentators have recognized when considering removal of local officials. Part

²⁰⁰ See Joshua Gordon, *Gov. Snyder Won't Make Decision on Bucci Removal Yet*, MACOMB TWP. CHRON. (July 25, 2018), <https://www.candgnews.com/news/gov-snyder-wont-make-decision-on-bucci-removal-yet-109110> [<https://perma.cc/Y3D3-QNWT>]; Christina Hall, *Dino Bucci Leaves Macomb Township Trustee Seat*, DETROIT FREE PRESS (Nov. 16, 2018), <https://www.freep.com/story/news/local/michigan/macomb/2018/11/16/dino-bucci-leaves-macomb-township-trustee-seat/2014112002/> [<https://perma.cc/C8CT-METS>].

²⁰¹ See Elizabeth McElvein, *The State Laws Governing Trump's Power Grab in Michigan*, LAWFARE (Nov. 22, 2020), <https://www.lawfareblog.com/state-laws-governing-trumps-power-grab-michigan> [<https://perma.cc/R8A6-4BGE>].

²⁰² *Id.*

²⁰³ OHIO REV. CODE ANN. § 3.16(B)(1) (LexisNexis 2021). This procedure is relatively new, first enacted in 2004. See Sub. H.B. 181, 125th Gen. Assemb. (Ohio 2004) (enacted).

²⁰⁴ OHIO REV. CODE ANN. § 3.16(C)(1) (LexisNexis 2021).

²⁰⁵ *AG Yost Initiates Suspension Proceedings for Indicted Cleveland City Councilman*, OHIO ATT'Y GEN. (Feb. 26, 2021), <https://www.ohioattorneygeneral.gov/Media/News-Releases/February-2021/AG-Yost-Initiates-Suspension-Proceedings-for-Indic> [<https://perma.cc/GR2S-VNTB>]. Ohio also allows for removal of public officials for misfeasance or malfeasance in office by judicial action after a petition is filed containing signatures of 15% of the electorate. OHIO REV. CODE ANN. §§ 3.07-.09 (LexisNexis 2021). Municipal officers can also be removed by a probate judge for illegal compensation for services, having a private interest in a city contract, or for misfeasance or malfeasance in office. OHIO REV. CODE ANN. § 733.72 (West 2010).

B proposes a hierarchy of these factors to serve as a framework with which to review competing removal mechanisms.

A. Certain Factors Are Relevant when Evaluating Removal Mechanisms

As states evaluate their existing mechanisms and consider implementing new mechanisms, policymakers must carefully weigh different factors and variables. Each represents one or more values of competing stakeholders in a democratic society. While some may stand out as more important, none can be ignored altogether. Those factors discussed in this Note include the public trust, preventing harassment of public officials, the public will, due process, efficiency, and independence.

1. Public Trust

The trust of the public and their faith in their elected officials' ability to perform their duties adequately and honestly is essential when considering competing removal mechanisms. Multiple states have recognized the importance of crafting laws to safeguard the public trust.²⁰⁶ Indeed, to many states, the term "public trust" is synonymous with service in office.²⁰⁷ New York specifically allows for removal of local officials for "violation of a public trust."²⁰⁸ What is more, officials violating the public trust are unlikely to adequately do their jobs.²⁰⁹ Therefore, removal laws must be tailored to safeguard or otherwise restore the trust of the public in their elected officials and their system of government.

²⁰⁶ See, e.g., 65 PA. STAT. AND CONS. STAT. ANN. § 1101.1(a) (West 2010) ("The Legislature hereby declares that public office is a public trust and that any effort to realize personal financial gain . . . is a violation of that trust."); *Swan v. LaFollete*, 605 N.W.2d 640, 644 (Wis. Ct. App. 1999) (noting convicted criminals cannot serve in office to "reduce the risk of injury to the public's trust"); *Exec. Comm'n on Ethical Standards v. Salmon*, 684 A.2d 930, 936 (N.J. Sup. Ct. App. Div. 1996) (arguing ethical laws are designed to safeguard the public's trust in their government); *Golaine v. Cardinale*, 361 A.2d 593, 599 (N.J. Sup. Ct. Law Div. 1976) (recognizing the violation of public trust as warranting removal from office); *State v. Jones*, 407 P.2d 571, 572 (Utah 1965) (arguing the objective of removal laws is to "provide a method of removing from office a public official, even though duly elected, who betrays his trust in office").

²⁰⁷ See, e.g., MISS. CODE ANN. § 25-4-101 (West 2012) ("[E]lective and public office . . . is a public trust and any effort to realize personal gain through official conduct . . . is a violation of that trust."); *State ex rel. Nagle v. Sullivan*, 40 P.2d 995, 997 (Mont. 1935) ("The American concept of a public office is that of a public trust or agency created for the benefit of the people . . .").

²⁰⁸ N.Y. PUB. OFF. LAW § 36 (McKinney 2021); *Chandler v. Weir*, 30 A.D.3d 795, 796 (N.Y. App. Div. 2006).

²⁰⁹ See, e.g., *State ex rel. Timothy v. Howse*, 183 S.W. 510, 513 (Tenn. 1916) (noting removal laws help "to improve the public service, and to free the public from an unfit officer").

2. Preventing Harassment of Public Officials

In the modern era, good public servants must be insulated from excessive, repetitive, and unmeritorious attempts to remove them from office. Locally elected officials must be able govern effectively, and this should be considered when devising removal laws.²¹⁰ Overly-permissive removal mechanisms can be a distraction and source of harassment for elected officials.²¹¹ Even if an attempted removal is unmeritorious and fails to remove the official, that official still loses valuable time, resources, and public image.²¹² As a result, removal mechanisms must be designed to impede harassment of local officials.

3. Public Will

Removal mechanisms must be responsive to the will of the public and their ability to choose their own representatives. At a fundamental level, a democratic-republic should be responsive to the will of the public.²¹³ Multiple states have recognized that removal laws should reflect the public will, even between scheduled elections.²¹⁴ While related to public trust, public will differs

²¹⁰ See Jason Hanselman, *Total Recall: Balancing the Right to Recall Elected Officials with the Orderly Operation of Government*, MICH. BAR J., Jan. 2014, at 34, 34–35 (discussing efforts to alter the operation of recall elections to ensure Michigan government operates properly); see, e.g., Johnson, *supra* note 154 (describing an unpopular garbage contract that led to repeated recall attempts against the mayor).

²¹¹ See, e.g., Joshua Osborne-Klein, Comment, *Electoral Recall in Washington State and California: California Needs Stricter Standards to Protect Elected Officials from Harassment*, 28 SEATTLE U. L. REV. 145, 170–71 (2004) (explaining that California law does nothing to prevent the harassment of elected officials through recall elections); Jesse Paul, *Interest in Reforming Colorado's System to Recall Elected Officials Is Building-On Both Sides of the Aisle*, COLO. SUN (Sept. 10, 2019), <https://coloradosun.com/2019/09/10/colorado-recall-laws-change-capitol/> [<https://perma.cc/NSQ8-QCV8>].

²¹² See Wilson, *supra* note 142 (“Once a recall makes the ballot, political reality means the onus lies with the incumbent to make the case against it, rather than with the recall organizers.”); Craig Garrett, *Harassment or Doing Their Job? Depends on Who Is Asked*, SUN NORTH PORT (July 30, 2020), https://www.yoursun.com/northport/news/harassment-or-doing-their-job-depends-on-who-is-asked/article_237fc50a-d297-11ea-a190-0b52ea56dacd.html [<https://perma.cc/VB2R-VZ7A>] (“It’s impossible to defend yourself [against frivolous citizen complaints]. And even if (you’re) cleared . . . that story goes inside [newspapers] on page 700. The damage is already done.” (internal quotation marks omitted)).

²¹³ See *Powell v. McCormack*, 395 U.S. 486, 547 (1969) (“A fundamental principle of our representative democracy is, in Hamilton’s words, ‘that the people should choose whom they please to govern them.’”).

²¹⁴ See, e.g., *Driscoll v. Burlington-Bristol Bridge Co.*, 86 A.2d 201, 222 (N.J. 1952) (“The citizen is not at the mercy of his servants holding positions of public trust . . . except through the medium of the ballot . . . He may secure relief . . .”); *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287, 296 (Alaska 1984) (noting removal law “should be liberally construed so that ‘the people [are] permitted to vote and express their will . . .’” (alteration in original) (quoting *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974))); *In re Recall*

because the public frequently chooses to remove elected officials through regular elections, even when the public trust has not been directly violated.²¹⁵ Therefore, policymakers must consider as a factor just how responsive to public preference removal mechanisms should be.

4. *Due Process*

Locally elected officials must receive fair process when being challenged for removal. As a threshold matter, there is no federal constitutional property right to elected office subject to Fourteenth Amendment protections.²¹⁶ However, there is clearly some entitlement a duly elected official has in their office, even if it does not warrant traditional due process protections.²¹⁷ As a result, local elected officials deserve a fair procedure before being removed—e.g., notice and a hearing.²¹⁸ Even if these formalized protections are not a legal imperative,²¹⁹ offering elected officials procedural protections must be considered in the interest of fundamental fairness.

of Pearsall-Stipek, 10 P.3d 1034, 1039 (Wash. 2000) (en banc) (finding that the decision of whether an act warrants removal is for the public to decide); Comm. to Recall Robert Menendez v. Wells, 7 A.3d 720, 754 (N.J. 2010) (Rivera-Soto, J., dissenting).

²¹⁵ See Tina Trenkner, *What It Takes for a Governor to Lose Reelection*, GOVERNING MAG. (Jan. 5, 2012), <https://www.governing.com/topics/politics/what-it-takes-for-a-governor-to-lose-reelection.html> [<https://perma.cc/K4RP-5ZB6>] (discussing scenarios where incumbents lose reelection).

²¹⁶ Taylor v. Beckham, 178 U.S. 548, 575 (1900); see also Barnes v. Kline, 759 F.2d 21, 50 (D.C. Cir. 1984) (Bork, J., dissenting) (“[T]hat elected representatives have a separate private right, akin to a property interest, in the powers of their offices . . . is a notion alien to the concept of a republican form of government.”). Some states have developed a state-created property right in elected office, but this is the minority approach. See, e.g., Crowe v. Lucas, 595 F.2d 985, 993 (5th Cir. 1979); see also Mark R. Fitzgerald, Comment, *Should Elected Officials Have a Property Interest in Their Positions?*, 1995 U. CHI. LEGAL F. 365, 375 (1995).

²¹⁷ See, e.g., Slawik v. State, 480 A.2d 636, 645 (Del. 1984); see also State ex rel. Zeigler v. Zumbar, 951 N.E.2d 405, 411 (Ohio 2011) (“Ohio law disfavors the removal of duly elected officials. Thus ‘[a]n elective public official should not be removed except for clearly substantial reasons and conclusions that his further presence in office would be harmful to the public welfare.’” (citation omitted) (quoting State ex rel. Corrigan v. Hensel, 206 N.E.2d 563, 566 (Ohio 1965))).

²¹⁸ See Clark v. Campbell, 193 P.3d 320, 329 (Ariz. Ct. App. 2008); City of Ludowici v. Stapleton, 375 S.E.2d 855, 856 (Ga. 1989) (“The mayor points out that Section 42 does not provide even the rudiments of due process, and we agree that the city charter is clearly deficient in this regard.”).

²¹⁹ See Brown v. Perkins, 706 F. Supp. 633, 634 (N.D. Ill. 1989) (finding the recalled village councilman received sufficient notice and opportunity to be heard by participating in the recall election itself).

5. Efficiency

When a local official is behaving badly while in office, removal mechanisms must operate as quickly and as inexpensively as is practical. Many have recognized that a speedy removal is of high value.²²⁰ Further, policymakers must also consider cost.²²¹ A system of removal that operates slowly and at great expense to the public may not serve the public interest. However, speed can be a direct foil to other factors,²²² so policymakers must weigh efficiency carefully alongside other interests.

6. Independence

Removal mechanisms should operate in a way so that decisionmakers can decide “guilt” or “innocence” in an independent and impartial way. Small town politics can get nasty,²²³ and allegiances between friends and neighbors can frustrate a fair and open process.²²⁴ In recent years, many have called for external and impartial review when examining misbehavior or misconduct by public servants.²²⁵ Therefore, removal mechanisms must consider whether the decisionmakers are independent enough to make impartial judgements to both properly carry out justice and to appear legitimate in the eyes of the public.

²²⁰ See, e.g., *Grodisky v. Pinckney*, 661 P.2d 279, 283 (Colo. 1983) (en banc) (“The purpose underlying recall of public officials for political reasons is to provide an effective and speedy remedy to remove an official who is unsatisfactory to the public”); *State ex rel. Leech v. Wright*, 622 S.W.2d 807, 811 (Tenn. 1981) (“We agree with defendant’s contention that the legislative intent evident in the ouster act was to provide a speedy summary proceeding”); *State ex rel. Byrge v. Yeager*, 472 S.W.3d 657, 664 (Tenn. Ct. App. 2015); *State v. Price*, 280 P.3d 943, 948 n.12 (Okla. 2012) (“The purpose of [removal] is to relieve the people from faithless, corrupt officers, who have violated their trust, by affording a speedy and adequate means for their removal.”); *State v. Geurts*, 359 P.2d 12, 16 (Utah 1961) (“[T]he legislature thought the interests of the public in combating corruption in public office require an expeditious procedure for the removal of public officers who betray their trusts.”).

²²¹ See, e.g., Cochran, *supra* note 145 (attacking recalls in part based on how much they can cost).

²²² See *supra* Part III.B.

²²³ See, e.g., Craig Timberg, *Small-Town Politics Take on the Nasty Air of Big City Fired Police Chief Aims to Oust Former Boss in Mayoral Election*, BALT. SUN (May 11, 1998), <https://www.baltimoresun.com/news/bs-xpm-1998-05-11-1998131044-story.html> [<https://perma.cc/AZT7-K8JT>].

²²⁴ See, e.g., *Fontes v. City of Central Falls*, 660 F. Supp. 2d 244, 252 (D. R.I. 2009) (“One does not have to be a complete cynic about small town politics to see the potential for manipulation.”).

²²⁵ See, e.g., Shaila Dewan & Serge F. Kovalski, *Thousands of Complaints Do Little to Change Police Ways*, N.Y. TIMES (May 30, 2020), <https://www.nytimes.com/2020/05/30/us/derek-chauvin-george-floyd.html> [<https://perma.cc/EWU5-KE27>] (discussing calls for civilian review of police misbehavior).

B. While All Factors Matter, Policymakers Should Use a Framework to Determine Which Factors Should Receive More Weight

As policymakers evaluate existing removal mechanisms and consider new options, they must take into account which factors deserve more or less weight. Many of these factors represent the views of competing stakeholders and therefore can work against one another. For example, a removal mechanism that is extremely efficient, both speedy and cheap, may not give an elected official adequate due process, or perhaps erroneously remove an upstanding public servant. Likewise, a system that exclusively follows the will of the public could lead to excessive harassment of public officials, with every losing candidate or political party acting on sour grapes. Plainly put, no removal mechanism can perfectly satisfy every factor or stakeholder. This leads to understandable tradeoffs, which is why policymakers must carefully consider what framework of competing factors with which they will create, amend, or abolish removal mechanisms.

However, not all factors in the removal conversation are created equal. It cannot be forgotten that elected officials are frequently removed, not through impeachment or recall, but through regular elections. The primary way in which the public will is fulfilled is the general election ballot. Indeed, general elections are better equipped to respond to the public will than removal mechanisms. Turnout for recalls is lower than for general elections,²²⁶ and most of the public simply does not engage in “off-year” special elections like recalls at the same rate as general elections.²²⁷ In this way, recall elections can actually frustrate the will of the greater public by allowing the passionate and energized minority to speak for the distracted majority. But while the will of the public is served primarily through regular elections, many of the other factors so far discussed are uniquely relevant during a middle-of-the-term removal proceeding, such as

²²⁶ Joshua Spivak, *What to Expect when You're Expecting a Recall—Wisconsin Gubernatorial/Legislative Edition*, RECALL ELECTIONS BLOG (June 3, 2012), <http://recallelections.blogspot.com/2012/06/what-to-expect-when-youre-expecting.html> [https://perma.cc/4M2N-MV2N] [hereinafter *Expecting a Recall*] (noting that typically turnout in recall elections is dreadfully low, with “almost no non-hardcore partisans coming out”).

²²⁷ In recent years, while voter turnout among eligible voters in presidential year elections has hovered somewhere between 55%–60%, 2014 saw a turnout of approximately 37%. See *Voter Turnout*, MIT ELECTIONS DATA + SCI. LAB, <https://electionlab.mit.edu/research/voter-turnout> [https://perma.cc/X27L-TLGY]. Odd-year elections can be extremely low, sometimes under 20%. See, e.g., Michael Praats, *Odd-Year Local Elections Mean Low Voter Turnout, but Wilmington's Fought to Keep Things from Changing*, PORT CITY DAILY (July 21, 2019), <https://portcitydaily.com/municipal-elections/2019/07/21/odd-ayear-local-elections-mean-low-voter-turnout-but-wilmingtons-fought-to-keep-things-from-changing/> [https://perma.cc/D94M-E4ND]. Recall elections are no different. See Jim Drummond, *Low Turnout for Recall Could Be Campaign Trend*, ORANGE CNTY. REG. (Oct. 15, 2014), <https://www.ocregister.com/2014/10/15/low-turnout-for-recall-could-be-campaign-trend/> [https://perma.cc/XXW5-2H6R] (discussing a recent local recall where turnout was less than half that of the most recent mid-term election).

preventing harassment and due process. Therefore, the will of the public, while paramount in a general sense, cannot be the primary factor when evaluating methods of removal.²²⁸

On the other hand, public trust is the most important factor in consideration. The public must have faith that their elected officials are working in their best interest, even if they disagree with their policies or supported the other candidate. While the public generally has a low view of federal and state elected officials, research indicates that the public trusts their local officials significantly more.²²⁹ When local elected officials behave badly and erode the public trust, they are degrading one of the last pillars in which the public has faith. What is more, the public must have faith that the vital services offered by their local government are being adequately provided.²³⁰ Removal mechanisms must function in such a way to show the public the system works. They must work to maintain and restore public trust. Little else matters if the public loses faith in its system of local government.

Because public trust is the most important factor, efficiency must be considered the second most important. A transparent and trustworthy removal system that operates too slowly or costs too much will fail to adequately serve the public interest. If misbehaving elected officials can hang on for months without recourse, the public trust cannot be properly restored. Faithful public servants challenged for removal deserve to be quickly exonerated, and unfaithful elected officials must be quickly disposed of. Therefore, it must be a priority to remove elected officials who are found to be misbehaving quickly and without unnecessary cost to the taxpayer.

Next in priority and also closely tied to public trust, policymakers must consider independence. If the people assessing an official's "guilt" or "innocence" are close to them or work alongside them, it can frustrate their judgement and the likelihood of the "correct" outcome. The outcome may appear suspect to the public, and the decisionmaker's judgment may be clouded by inherent biases resulting from past relationships.²³¹ Removal mechanisms must take this potential into account and select decisionmakers with independence and distance from the official in question.

Following independence in this framework must be due process. For a removal mechanism to be adequate, elected officials must receive notice, a chance to be heard, and time to compile a defense. This is not to be construed as rigidly as the due process required under the Fifth and Fourteenth Amendments.²³² However, elected officials must not be summarily dismissed from office on threadbare allegations or policy quirks held by a minority of the

²²⁸ See *supra* Part III.

²²⁹ McCarthy, *supra* note 29.

²³⁰ See *Federal Policies Matter*, *supra* note 75.

²³¹ See Andrew Likierman, *The Elements of Good Judgement*, HARV. BUS. REV., Jan.-Feb. 2020, <https://hbr.org/2020/01/the-elements-of-good-judgment> [<https://perma.cc/2VNE-XZY8>] (noting that the exercise of good judgement can be impeded by biases and emotions).

²³² See U.S. CONST. amends. V, XIV.

populace.²³³ Removal mechanisms must give local elected officials a chance to fairly and effectively state their defense, if they have one.

After due process is the interest in preventing harassment of elected officials. Locally elected officials have incredibly important jobs to do,²³⁴ and repetitive and unnecessary removal actions can distract them from those jobs. At the same time, this factor sits relatively low in the framework because elevating it too much would obviate the other factors. Any effective process must offer open access to removal mechanisms without undue encumbrances. Therefore, policymakers must consider ways to minimize the potential for public official harassment but also must not place too much emphasis on it.

As previously discussed, the general public will is placed last in the removal framework, not because it is least important, but because it is most effectively served in general elections. The diagram below depicts the framework in the above-mentioned hierarchy of factors.

Public Trust > Efficiency > Independence > Due Process > Minimize Harassment > Public Will

V. USING THIS FRAMEWORK, STATES MUST CREATE REMOVAL MECHANISMS THAT ENABLE STATE EXECUTIVE ACTION TO DISPOSE OF MISBEHAVING ELECTED OFFICIALS

Taking account of the above framework, states should focus their attention and energy to develop or modernize removal mechanisms so that they may rebuild public trust. Part A advocates for removal mechanisms driven by state-level executive officials to initiate removal, subject to state-level judicial or quasi-judicial review. Part B explains why states should consider curtailing removal mechanisms involving public prosecution, civil action, and the recall.

A. Within the Framework, States Must Develop Removal Mechanisms Involving Both State-Level Executive Action and State-Level Judicial or Quasi-Judicial Review

States should develop local official removal mechanisms based on actions and review by state officeholders. When removal is warranted, a state executive should be able to suspend a local official, subject to expedited review and ultimate removal by that state's court of last resort or by an appointed board or commission.²³⁵ The suspending official would be charged with pressing the case

²³³ See *Madsen v. Brown*, 701 P.2d 1086, 1093 (Utah 1985) (Stewart, J., dissenting) (arguing that removal mechanisms should not be able to “nullify an election on such flimsy grounds . . . to permit a handful of citizens to override the voice of the majority”).

²³⁴ See *supra* Part II.

²³⁵ Appointees would ideally be balanced to include various perspectives, such as a makeup of gubernatorial appointees, legislative appointees, a representative of a local

before the reviewing body.²³⁶ Such a mechanism would only be available for violations of office and moral failings, not for the implementation of legitimate policies.²³⁷ It will safeguard and rebuild public trust in a speedy manner and minimize the damage a recalcitrant local official can commit. Further, it will give the official a process of review in a detached and neutral forum. The Appendix includes a Sample Statute as a starting point for discussion.

The proposed mechanism has intentional similarities with the systems used in Florida, Michigan, and Ohio. In Florida and Michigan, the Governor initiates removal proceeding, with Florida then requiring the state senate vote to remove and Michigan allowing the Governor to act alone.²³⁸ In Ohio, the Attorney General initiates proceedings, followed by review and suspension by retired judges appointed by the Chief Justice of the Ohio Supreme Court.²³⁹ The proposed mechanism, much like Ohio, would keep initiation by a state-level executive, then allow for review by a judicial body. By requiring review by an impartial body, the removal proceeding can be as apolitical as is practicable. In contrast, Florida's senate review may be, or at least appear, political in nature.²⁴⁰ Because the proposed mechanism is not intended for political or policy disagreements but only for violations of office and moral failings, keeping the system apolitical is important.²⁴¹

The framework outlined would support such a mechanism. The executive branch is best able to act quickly to restore public trust.²⁴² When the public trust is violated by a local official, a state Governor or Attorney General can act

government organization (e.g. Municipal League), and a public member, as well as a required breakdown to have some diversity along partisan lines.

²³⁶ In states where the Governor and Attorney General are independently elected, even if the Attorney General normally represents the state in all legal matters, the mechanism would not require nor seek secondary approval from the Attorney General after the Governor has initiated suspension. Therefore, even if the Attorney General disagrees with the Governor's decision to suspend a local official, the Attorney General would not be allowed to decline to prosecute the case, instead perhaps hiring outside counsel in that situation.

²³⁷ Critically, any factual or legal conclusions reached by the court or commission *should be non-precedential* for any pending or subsequent civil or criminal actions against that official. Thus, a successful removal action would not be pled as evidence in a subsequent criminal trial against that former officeholder.

²³⁸ See *supra* Part III.C.5.

²³⁹ *Id.*

²⁴⁰ See, e.g., Linsalata & Lennox, *supra* note 197.

²⁴¹ Indeed, requiring a vote by a legislative body to effectuate removal begins to look like impeachment. For the reasons outlined in this Note, such a process is not well suited to address misbehavior by local officials. Florida's system is an improvement on impeachment, however, in that it is initiated by a single person, the Governor, instead of the house of the legislature.

²⁴² See Jonathan Macey, *Executive Branch Usurpation of Power: Corporations and Capital Markets*, 115 YALE L.J. 2416, 2416 (2006) ("The executive has structural advantages over the other branches because it can respond faster to perceived emergencies.").

without delay to redress the situation.²⁴³ For example, if it was discovered that a county commissioner was stealing public monies, the proposed system would enable a state executive to suspend that official immediately. This would prevent any further pilfering and send a signal to the public that corruption will not be tolerated. Then, an impartial body would conduct an expedited review to determine if the allegations are both accurate and sufficient. This could be a state supreme court, drawing on the institutional strengths of a high court as a disinterested, independent, and impartial institution.²⁴⁴ It could also be an independent, quasi-judicial board or commission, codified in statute, appointed to in staggered terms by the Governor and specifically structured to review these cases.²⁴⁵ Such a court or commission would give said county commissioner an opportunity to be heard and explain her side of the story without fear of bias.²⁴⁶ However, the process should not function as a traditional trial, and the court or commission would decide both questions of fact and law for the removal. This system would minimize local official harassment since the state executive is herself elected and is accountable for the decisions she makes in office. It is unlikely that a state executive would take a second bite at the removal apple if rejected the first time by judicial or quasi-judicial review. This proposed system would also not allow for removal on policy grounds, thus safeguarding the public will.

Some may critique this mechanism as improper state meddling in local affairs, but this critique is misguided. It may be contended that the state has no business meddling in local affairs. This sounds good, but ignores the fact that

²⁴³ Determining which office should initiate proceedings is a state-by-state judgement call. *See supra* Part III.C. A Governor typically may be preferable, as they are a high profile elected official and thus presumably accountable to the public. Alternatively, an elected attorney general or chief law enforcement officer may be preferable in those states that prefer to view misconduct in office as a quasi-criminal matter. This is Ohio's approach. *See* OHIO REV. CODE § 3.16 (2015). But the attorney general should not have this authority in states where the office is appointed because an appointee is farther removed from public influence.

²⁴⁴ The role of the judiciary has long been seen as that of independence and impartiality. *Schmerber v. California*, 384 U.S. 757, 770 (1966) (noting the importance of warrant requests being vetted by a "neutral and detached magistrate").

²⁴⁵ Developing a standing board or commission may be preferable if a state is concerned giving this responsibility to its court of last resort will overburden it with these fact-sensitive inquiries. Indeed, appellate courts are not typically equipped to answer questions of fact. *See Appellate Courts and Cases—Journalist's Guide*, U.S. CTS., <https://www.uscourts.gov/statistics-reports/appellate-courts-and-cases-journalists-guide> [<https://perma.cc/DE94-7YQ6>]. On the other hand, creating a standing board to address removal proceedings will not be without financial cost. *Cf. supra* notes 146–50 and accompanying text.

²⁴⁶ *See* David F. Levi, *What Does Fair and Impartial Judiciary Mean and Why Is It Important?*, BOLCH JUD. INST. (Nov. 5, 2019), <https://judicialstudies.duke.edu/2019/11/what-does-fair-and-impartial-judiciary-mean-and-why-is-it-important/> [<https://perma.cc/3D57-6H2C>] ("The Framers and the ratifiers considered that a fair and impartial judiciary—one that followed the law and was not biased, partisan, intimidated or seeking preferment—was central to a republican form of government.").

misbehaving local officials are misusing delegated state authority.²⁴⁷ Whether state officials admit it or not, they are partially responsible for misbehaving local officials. Further, as stewards of the public interest, they too have an obligation to safeguard the public trust in government. When a local official misbehaves, it erodes the public's trust in the system overall. Therefore, this is inherently a state problem.²⁴⁸ State leaders can ignore it, but they cannot absolve themselves of joint liability.

Others may contend that even if such a mechanism were implemented, state executives still would not act. It is true that in some states with similar procedures, state executives have hesitated to act to remove misbehaving local officials.²⁴⁹ Indeed, much like state legislators,²⁵⁰ state executives like Governors and Attorneys General likely did not run for office to scrutinize local officials. But there is a key difference—by vesting authority into one office to initiate proceedings, that official can be held personally accountable for abdicating their responsibility. If a Governor ignores a misbehaving local official and blithely refuses to remove them, the voters will know that the Governor is responsible. On the other hand, when removal responsibility is divided out broadly, as through the legislature with impeachment or the general population with recall, the diffusion of responsibility makes it difficult to hold any one person accountable for a failure to act. There is no doubt that any system can be abused or disregarded, but vesting decision making in an executive officer promotes both action and accountability.

B. States Should Also Curtail Other Methods of Removal Like Civil Actions, Public Prosecutions and the “Harsh Remedy” of Recall

Applying the framework to existing methods of removal, states must curtail the recall, public prosecution, and private action methods of removal.²⁵¹ The recall began with good intentions but has been corrupted.²⁵² It is now a powerful tool of harassment and distraction used against local officials.²⁵³ It is implemented often as an expression of displeasure with policy. Yet low recall turnout²⁵⁴ may in fact frustrate the will of the larger public who initially elected that official but are not engaged enough to vote in a special election. Even when the recall is used to remove a local official behaving badly, it fails review under

²⁴⁷ See *supra* Part II.

²⁴⁸ See U.S. CONST. amend. X; see also *City of Corvallis v. State*, 464 P.3d 1127, 1131 (Or. Ct. App. 2020).

²⁴⁹ See, e.g., Gordon, *supra* note 200.

²⁵⁰ See Evancie & Corwin, *supra* note 35.

²⁵¹ This paper has also discussed impeachment. For the reasons discussed in Part III.A, impeachment is not necessarily inconsistent with the framework, but it is not the best tool for removing local officials. This Note does not advocate curtailing impeachment.

²⁵² See *supra* Part III.B.

²⁵³ See *id.*

²⁵⁴ See *Expecting a Recall*, *supra* note 226.

the framework. Recalls are a slow process that can impose large costs on taxpayers.²⁵⁵

Further, the recall creates a free-rider problem²⁵⁶ and a bystander effect.²⁵⁷ Anyone can invest the necessary time, energy, and organization to spearhead a recall.²⁵⁸ Yet where the official in question is indeed deserving of removal, everyone benefits from the successful efforts of the recall organizers, whether or not they themselves contribute. Therefore, recall efforts are no one's responsibility because they are *everyone's* responsibility. This creates a free-rider problem. Moreover, it can lead to a bystander effect because everyone can tell themselves it is someone else's problem. On the other hand, politically motivated recall efforts are highly incentivized, because each political party stands to directly gain from deposing an opponent.²⁵⁹ As already discussed, policy and political disagreement are best decided in the general election when the largest portion of the public is paying attention and weighing the issues.²⁶⁰ For these reasons, states must curtail or eliminate the recall once state executive mechanisms are implemented.²⁶¹

It is true that some recall statutes require preliminary review of the grounds for removal and do not allow purely political recalls,²⁶² but this still is not an ideal system.²⁶³ Creating such a check at the beginning of the process can help

²⁵⁵ See *supra* Part III.B.

²⁵⁶ Cf. Maria O'Brien Hylton, *A Common-Sense Defense of Janus: Forthcoming Changes in Public Sector*, 6 BELMONT L. REV. 41, 68–69 (2018) (describing the concept of a free-rider problem where a shared benefit is given to all, whether they worked to achieve it or not, thus disincentivizing contribution by all).

²⁵⁷ Cf. Monica K. Miller & Samantha S. Clinkinbeard, *Improving the AMBER Alert System: Psychology Research and Policy Recommendations*, 30 L. & PSYCH. REV. 1, 12–14 (2006) (explaining the phenomenon that the more people that *could* act to solve a communally known problem reduces the changes they *will* act, instead thinking that someone else will do it).

²⁵⁸ See, e.g., WIS. STAT. ANN. § 9.10 (West 2013); ME. REV. STAT. ANN. tit. 30A, § 2505 (West 2011).

²⁵⁹ See, e.g., Greenblatt, *Power Play*, *supra* note 151.

²⁶⁰ See *Expecting a Recall*, *supra* note 226.

²⁶¹ Some may contend that the previously granted “franchise” to vote in recall elections cannot be withdrawn by a state without passing strict scrutiny. See *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 625–28 (1964) (requiring an attempt to withdraw non-property owners' rights to vote for school board members to pass strict scrutiny). However, under this proposal, voters would retain full voting rights for general elections, while removal procedures are simply transferred to government actors. Therefore, voters could still choose their representatives, and the franchise would not be impacted. And even if strict scrutiny did apply, states have compelling government interests to curtail the recall. See *supra* Part III.B.

²⁶² See, e.g., Fordham, *supra* note 163, at 7–11 (discussing different levels of judicial review of recall petitions).

²⁶³ While some states require judicial approval, others do not and allow a recall to proceed with any allegation the public wishes. Compare OHIO REV. CODE ANN. § 3.09 (LexisNexis 2021), and MINN. STAT. ANN. § 351.17 (West 2012), with UTAH CODE ANN. §§ 77-6-1 to -9 (LexisNexis 2012), and WIS. STAT. ANN. § 9.10 (West 2013).

to weed out harassing and unmeritorious attacks from proceeding to an actual vote.²⁶⁴ But what is gained in avoiding harassment is lost in efficiency—requiring review at step one expends time when it can least be spared.²⁶⁵ While this application is reviewed, the elected official may be continuing to misbehave.

Next, states should curtail or eliminate both public prosecutions and private action removals. Public prosecutions fail to pass review under the framework because they clearly lack independence and efficiency. The county attorney or prosecutor is often legal counsel for the elected officeholders in a given county.²⁶⁶ To expect one's attorney to go from representing their interests to prosecuting them is unrealistic and does not appear impartial under public scrutiny.²⁶⁷ Further, a traditional "criminal" trial can take too long if the official is indeed abusing his or her office. Private civil removals do not pass framework review because they easily can lead to harassment and frustration of the public will.²⁶⁸ They can enable the litigious or disgruntled to pester public servants, even where the grounds for removal are wholly unmeritorious.²⁶⁹ Moreover,

²⁶⁴ See, e.g., *In re Recall of Telford*, 206 P.3d 1248, 1252 (Wash. 2009) (en banc) (rejecting petition to recall port commissioner because "[l]awful, discretionary acts are not a basis for recall"); *Brooks v. Branch*, 424 S.E.2d 277, 279 (Ga. 1993) (finding the facts alleged in application for a petition to recall were insufficient for the recall to proceed).

²⁶⁵ See, e.g., ALASKA STAT. §§ 15.45.540–700 (LexisNexis 2018) (describing a preliminary review of the application to recall).

²⁶⁶ See, e.g., OHIO REV. CODE ANN. § 309.09(A) (West 2019) ("The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, all other county officers and boards . . ."); MINN. STAT. ANN. § 388.051 (West 2015) (requiring county prosecutors to "give opinions and advice, upon the request of the county board or any county officer").

²⁶⁷ Cf. MODEL RULES OF PRO. CONDUCT 1.6 (AM. BAR ASS'N 1983). Of course, this is less of an issue with municipal officeholders, as a county attorney is likely not their legal counsel. See TAMI A. TANOUE, SAM LIGHT, ROBERT WIDNER, LINDA MICHOW & CHRISTIANA MCCORMICK, ETHICS, LIABILITY & BEST PRACTICES HANDBOOK FOR ELECTED OFFICIALS 30–31 (2d ed. 2019), <https://www.cirsa.org/wp-content/uploads/2019/06/EthicsLiabilityBestPracticesHandbookForElectedOfficials.pdf> [<https://perma.cc/V7BR-BUP7>].

²⁶⁸ See Timothy Pack, Comment, *High Crimes and Misdemeanors: Removing Public Officials from Office in Utah*, 2008 UTAH L. REV. 665, 673 (2008) ("Removal Statutes allow only a handful of taxpayers to remove an official from office. . . . Because of this ease and low cost to the initiating taxpayer, people may file accusations against public officials because they dislike them or because they wish to tarnish their name or image.").

²⁶⁹ For example, Frank Sindar is a Utah state prisoner who plead guilty in 2004 to aggravated sexual abuse of a child. *Sindar v. Turley*, 343 F. App'x 326, 327 (10th Cir. 2009). Once incarcerated, he began filing multiple pro se actions under Utah Code § 77-6-1 to remove from office those involved in his trial, including Judge Denise Lindberg and Judge Sharon McCully. *Id.*; *Sindar v. Lindberg*, No. 20051157-CA, 2006 WL 1030368, at *1 (Utah Ct. App. Apr. 20, 2006); *Sindar v. McCully*, No. 20080321-CA, 2008 WL 3866794, at *1 (Utah Ct. App. Aug. 21, 2008). Both suits were dismissed in the trial court because § 77-6-1 does not apply to state officers, which these judges were. *Lindberg*, 2006 WL 1030368, at *1; *McCully*, 2008 WL 3866794, at *1. Then, Sindar appealed both adverse rulings, with both appellate courts affirming. *Lindberg*, 2006 WL 1030368, at *1; *McCully*, 2008 WL

even where the elected official is vindicated, the damage to their image may already be done.²⁷⁰

Some may contend that curtailing other methods of removal is unnecessary or contrary to the public interest, but this is incorrect. First, the current methods are easily abused. The history of the last 20 years indicates that the removal tools available to the public can and will be increasingly abused for partisan purposes.²⁷¹ This is likely part of the reason why some states are working to curtail the recall.²⁷² What is more, private civil removals are easily abused by losing candidates who have sour grapes with the winner.²⁷³ There is no reason to think that the next 20 years will see these tools abused less.

Further, the public will may actually be protected by curtailing the recall. While some states have recognized that the recall is a permissible way to express displeasure with policy,²⁷⁴ this does not necessarily make recalls based on policy disagreement a good idea. Adequate policy debates require broad public input; recalls typically do not have broad public input.²⁷⁵ This means that low turnout recalls can unexpectedly frustrate the will of the larger public that elected the official in the first place.²⁷⁶ It should not be the duty of the broader public to guard their policy preferences against the partisan minority. For this reason, the public will is not necessarily best served by holding recall elections.

VI. CONCLUSION

Local elected officials are human, with all the inherent failures and trappings typical to humankind. As long as they are elected, there will be those who violate and abuse the public trust. This cannot be prevented. But what can be controlled is what happens next. Impeachment, recall, public prosecution, civil lawsuits, and state executive action have all been proposed and implemented as that “next.” States should send a message to their elected officials that misbehavior will not be tolerated by empowering state-level actors

3866794, at *1. Frank Sindar certainly has the right to bring and appeal lawsuits, but removal laws should be crafted with examples like this in mind.

²⁷⁰ See Pack, *supra* note 268, at 673 (“Even if the accuser is not successful in removing the official, the news of the attempted removal will most likely reach the press, resulting in negative publicity for the official.”); Garrett, *supra* note 212. Although these are from a recall context, their logic is applicable to private suits as well.

²⁷¹ See *supra* Part III.B.

²⁷² See, e.g., Schulte *supra* note 160.

²⁷³ See, e.g., Hynes v. Hogan, 558 N.W.2d 35, 37 (Neb. 1997).

²⁷⁴ See, e.g., State *ex rel.* Hackley v. Edmonds, 80 N.E.2d 769, 775 (Ohio 1948); Westpy v. Burnett, 197 A.2d 400, 406 (N.J. Sup. Ct. App. Div. 1964). Other states require certain grounds for recall. See Chandler v. Otto, 693 P.2d 71, 72 (Wash. 1984) (en banc); Hamlett v. Hubbard, 416 S.E.2d 732, 733 (Ga. 1992).

²⁷⁵ See *Expecting a Recall*, *supra* note 226.

²⁷⁶ See Madsen v. Brown, 701 P.2d 1086, 1093 (Utah 1985) (Stewart, J., dissenting) (arguing that removal mechanisms should not be able to “nullify an election on such flimsy grounds . . . to permit a handful of citizens to override the voice of the majority”).

with the authority to swiftly and fairly remove unworthy officeholders. The public deserves no less.

APPENDIX

Sample Removal Statute

a. Statement of Purpose. The Legislature hereby implements the following removal procedure to safeguard and efficiently restore the public trust when violated by the actions of a county or municipal elected official acting with state-sanctioned authority. The following is not intended to apply to disagreements concerning legitimate or reasonable policies. Instead, it is intended to speedily remove local officials who have displayed moral failings or blatant incompetency in or out of office. Under this section, no punishment can be given other than forfeiture of office. Nothing in this section should be construed to limit any other lawful method of removing an elected official from office.

b. Grounds for removal. All County and Municipal elected officials of this State, hereinafter “local officials,” are liable for removal under this section for actions of malfeasance, misfeasance, non-feasance related to their elected office or grave moral failings of the official’s behavior out of office, including non-criminal acts that demonstrate an unworthiness of the public trust. The act or acts in question need not have occurred at the time the official was seeking or in office, and acts that were committed while the official served in a different office are eligible for the proceedings under this section. Legitimate policy decisions undertaken while in office are not grounds for removal. A legitimate policy decision is one a reasonable elected official would make when weighing the purpose of the office, the outcome being sought, and the difficulties the official faces, including budget shortfalls, personnel shortages, natural disasters, and other exigencies.

c. Suspension. The Governor shall have sole authority and responsibility to suspend a local official who has committed one or more acts that are grounds for removal. There is no statute of limitation on an act or acts that warrant removal. Any member of the public, including law enforcement, is permitted to submit to the Governor requests to investigate an official, but the Governor is not required to investigate. During the investigation, the Governor does not possess subpoena power and may evaluate and investigate said local official by examining only those documents in the public record, including an indictment or information, and those confessions given voluntarily. If the Governor determines an act or acts have been committed by the official warranting removal, the Governor shall issue a certification of suspension. A copy of the certification shall be sent to the official, with copies going to the Chief Elections Officer of the state and made public through press release. The suspension shall be effective upon the fixture of the state seal upon the certification of suspension, at which time all authority is divested from said local official. After suspension, a deputy or second in command shall temporarily be assigned the role of acting official while the removal is pending. If there is no deputy or second in command, or the Governor has cause to believe the deputy or second in command themselves committed the same conduct that prompted the

removal, an official shall be appointed in accordance with the laws of this state within 10 days.

d. *Hearing.* The suspended official shall have a right to a hearing before the State Supreme Court no less than 30 days and no more than 60 days after suspension. The Governor shall be responsible for prosecuting the case, or appointing another to prosecute the case. The suspended official may hire counsel. Constituents of the elected official are permitted to submit letters to the Supreme Court in support of or against the removal of the official, but may not speak at the hearing unless called as a witness. The suspended official has a right to be heard in his or her defense, but shall not be required speak. The Supreme Court shall decide both questions of fact and law to determine if the elected official did commit an act or acts that are grounds for removal and should be removed or re-instated to office. Any and all factual or legal conclusions reached by the Supreme Court cannot be raised, plead, or otherwise invoked in any pending or subsequent criminal or civil action in a court of law or equity. All legal conclusions reached shall only have precedential effect on subsequent removal hearings under this statute. Factual conclusions have no precedential effect. The Supreme Court shall reach a decision on removal or re-instatement within 60 days of suspension. If an unsealed state criminal proceeding is pending against the local official pertaining to the conduct being reviewed by the Supreme Court, the criminal proceedings will be stayed pending the resolution of the removal proceedings. If 2/3 of the members of the entire Supreme Court vote for removal, the official is removed in accord with Section (f). If a decision is not made within 60 days, or less than 2/3 of the members of the entire Supreme Court vote for removal, the official is re-instated in accord with Section (e).

e. *Re-Instatement.* If re-instated, the elected official shall be entitled to full compensated salary for the time suspended, reimbursement of reasonable attorney's fees, and resumption of his or her office even if another official has been appointed in the interim. After re-instatement, the elected official will not be subject to the procedures under this section again for the same act or acts raised in the hearing.

f. *Removal.* If removed, the elected official is immediately removed from office and a vacancy is declared. He or she is not entitled to any back-pay for the time of suspension. He or she is not eligible to appear on the ballot for any elected office in this state for five years after removal. If not already done, a new official is appointed to fill the vacancy in accordance with the laws of this state. There is no right of appeal after removal.