

# RECALLING ELECTED OFFICIALS

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## **INTRODUCTION**

Article VI, Section 6 of the Idaho Constitution guarantees the right of the people to recall anyone holding elective office in the state. It states, "Recall of Officers Authorized. – Every public officer in the State of Idaho, excepting the judicial officers, is subject to recall by the legal voters of the state or of the electoral district from which he is elected. The legislature shall pass the necessary laws to carry this provision into effect."

## **WHO CAN BE RECALLED** (Section 34-1701, Idaho Code)

The following public officers, whether holding their elective office by election or appointment are subject to recall:

- (a) State Officials (Governor, Lieutenant Governor, Secretary of State, State Controller, State Treasurer, Attorney General, and Superintendent of Public Instruction)
- (b) State Legislators
- (c) County Officials (County commissioners, sheriff, treasurer, assessor, prosecuting attorney, clerk of the district court and coroner)
- (d) City Officials (Mayor and city council members)
- (e) Special district elected officers for whom recall procedure is not otherwise provided by law.

## **GETTING STARTED**

You will find it helpful to familiarize yourself with the sections of the law that govern the recall of elected officials. The recall statutes are found in chapter 17, title 34 of the Idaho Code.

## **DRAFTING THE PETITION** (Section 34-1703, 34-1704 and 34-1705 Idaho Code)

Drafting a recall petition is not difficult and a format to follow is included in this pamphlet. The petition must include:

- The name of the person being recalled (A separate petition is required for each official being recalled).
- The office for which the person is being recalled.
- Reasons for the recall in not more than 200 words.
- Adequate space for qualified electors to:
  - Sign
  - Print name
  - Provide residence address
  - Date
- Circulator affidavit (Can be found in section 34-1807, Idaho Code).

Before or at the time of beginning to circulate any petition for the prospective recall of any officer, the person or persons, organization or organizations under whose authority the recall petition is

to be circulated, shall send or deliver to the appropriate filing officer a copy of such petition duly signed by at least twenty (20) electors eligible to sign such petition. These twenty (20) signatures shall not be counted toward the required number of certified signatures. However, these 20 individuals may sign the petition after approval for circulating.

The appropriate filing officer with whom petitions are to be filed:

<u>Office Holder</u>	<u>Filing Officer</u>
Statewide	Secretary of State
Legislative	Secretary of State
County	County Clerk
City	City Clerk
Special Districts	County Clerk where the district is located (If in more than one county, each County Clerk performs the functions within that county.)

### **APPROVAL OF THE PETITION** (Section 34-1704, Idaho Code)

All recall petitions need to be approved as to form by the appropriate filing office with the first 20 signatures. The filing officer shall inform whoever is circulating the recall petitions, in writing, that they have been approved.

### **TIME DEADLINE FOR THE PETITIONS** (Section 34-1704, Idaho Code)

The circulators shall then have seventy-five (75) days from the date of approval to collect the required number of signatures. Petitions must be signed by qualified electors of the jurisdiction in which the recall is being conducted and must be signed in the presence of the signature gatherer. Petitions cannot be left on a counter, unattended, for people to read and sign. All signatures must be witnessed by the signature gatherer.

### **PETITION FOR CIRCULATION** (Section 34-1704, Idaho Code)

- (A) All petitions and signature sheets for recall shall be printed on a good quality bond or ledger paper of standardized size.

To every sheet of petitioners' signatures shall be attached a full and correct copy of the recall petition.

- (B) If the petition seeks recall of: (Section 34-1702, Idaho Code)

#### **Statewide Officeholder**

The petition must be signed by registered electors equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held to elect a governor.

#### **State Legislator**

The petition must be signed by registered electors of the legislative district equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held in the legislative district at which the member was elected.

**County Officeholder**

The petition must be signed by registered electors of the county equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held in the county at which the officer was elected.

**City Officeholder**

The petition must be signed by registered electors of the city equal in number to twenty percent (20%) of the number of electors registered to vote at the last general city election held in the city for the election of officers.

**Special District Officeholder**

The petition must be signed by registered electors of the district equal in number to fifty percent (50%) of the number of electors who voted at the last general election held in the district at which the officer was elected. School Board Trustees recall petitions must be signed by members of the trustee zone the board member represents. If no district election has been held in the past six (6) years, the petition must be signed by twenty percent (20%) of the number of electors registered to vote in the district or school zone at the time the petition is filed.

(Section 34-1703, Idaho Code)

- (C) An explanation setting forth the reasons for the recall is required on the petition cover; the explanation shall not exceed 200 words.

(Section 34-1705, Idaho Code)

- (D) Each signature sheet must be verified by the person who circulated that particular petition, and that person's signature, in turn, is verified by a notary public.

A sample form of the petition is attached to this procedural outline.

**EXAMINATION AND CERTIFICATION OF PETITION** (Section 34-1706, Idaho Code)

Within the seventy-five (75) day period, the petitions shall be filed on the same day with the proper filing officer.

If the filing officer is the Secretary of State or City Clerk, they shall promptly transmit the petitions to the County Clerk for examination. Included with the petitions will be a letter notifying the County Clerk to examine the signature sheets within fifteen (15) business days from the date of receipt of the petitions. The County Clerk shall carefully examine said petitions and shall attach to each signature sheet a certification of the number of signatures on the petition being qualified.

In examining petitions, the following shall apply:

- Voter signatures will be rejected if they list an address outside the area indicated on the petition or they have been struck through or crossed out.
- Voter names will be accepted if:
  - The name is exactly as it appears on the voting rolls, however there may be –
    - An initial in the place of the first or middle name;
    - A common nickname;

- The presence or absence of terms such as Sr. or Jr. following the name; and
  - The person was registered to vote at the address on the petition page on the date the petition was signed.
- Voter addresses will be accepted if they meet one or more of a combination of the following:
  - The address is exactly as it appears on the voting rolls;
  - The address is exact except there is –
    - The presence or absence of a letter or number identifying an apartment;
    - The presence or absence of a letter or group of letters indicating the directional location of a street, for example “E” for east;
  - The voter resides in the same residence as indicated on the voting rolls and the local County Clerk can determine that only the address designation has been changed by municipal or postal authorities;
  - The address as listed on the petition was the voter’s registered address on the date the petition was signed.
- Voter’s signature will be accepted as valid if it generally appears to be in a form similar to that found on the voter rolls.

The County Clerk will then attach a certificate, pursuant to section 34-1807, Idaho Code, certifying the number of valid signatures and return the petitions back to the appropriate filing officer. The filing officer will then determine whether or not there are a sufficient number of signatures to call a special election.

In the event that there are not enough signatures on the recall petitions, the officer shall continue in office and no new recall petition can be circulated for a period of 90 days against the same officer.

**SPECIAL ELECTION** (Section 34-1707, Idaho Code)

If the filing officer finds the petition to contain the required number of signatures, he shall notify the petitioner and the officer subject to recall by certified mail that the petition is in proper form. Then:

- (A) The officer being recalled is given five (5) business days to resign his office.
  - (a) If the officer being recalled resigns, his resignation is accepted and the resignation shall take effect on the day it is offered. The vacancy shall be filled as provided by law.
  - (b) If the officer subject to recall chooses not to resign within the five (5) business day period, the Secretary of State shall call a special election.
- (B) The special election must be held on the next available date prescribed in section 34-106(9), Idaho Code.

**BALLOT FORM** (Section 34-1708, Idaho Code)

The special election ballot shall be titled "RECALL BALLOT", and will include the reasons demanding the recall used by the petitioners, and also a rebuttal issued by the officer subject to recall. Both statements must not exceed more than 200 words.

**CONDUCT OF ELECTION** (Section 34-1710, Idaho Code)

Special elections for the recall of an officer shall be conducted and the results thereof canvassed and certified in all respects as general elections, except as otherwise provided. Nothing precludes the holding of a recall election with another election.

**VOTES REQUIRED** (Section 34-1712, Idaho Code)

To recall any officer, a majority of the votes cast at the special recall election must be in favor of such recall, and additionally, the number of votes cast in favor of the recall, must equal or exceed the votes cast at the last general election for that officer. If the officer was appointed or was not required to stand for election, then a majority of the votes cast in the recall election shall be the number necessary for recall.

**OUTCOME OF THE RECALL ELECTION** (Section 34-1712, Idaho Code)

If recalled, the officer shall be recalled at the time the results are proclaimed following the canvass. A vacancy in the office will then exist. Such vacancy shall then be filled in the manner provided by law for filling a vacancy arising from any other cause.

In the event a recall election fails, the officer shall continue in office and no further recall petition shall be filed against the same officer during the remainder of his current term of office unless the persons wishing to recall him first pay into the public treasury the whole amount of the cost of the preceding recount. The specific reason for the first recall cannot be the basis for a second recall during that current term of office.