

Recall Legal Scholars?

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“For weeks, legal scholars have debated whether the recall election of [California] Gov. Gavin Newsom could be found unconstitutional,” *The Los Angeles Times* reports, “if Newsom failed to realize a ‘no recall’ majority of the ballots cast and was ousted by a candidate who received fewer votes than he did.”

By “failed to realize a ‘no recall’ majority,” writer Maura Dolan means — in normal lingo — that Newsom gets booted out of office by majority vote. But following that phrase with “ousted by a candidate who received fewer votes than he did” ignores precisely who just did the “ousting” or, if you prefer, “booting” — voters.

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Her confusion was mightily assisted by University of California at Berkeley academics, Law School Dean Erwin Chemerinsky and Professor Aaron S. Edlin, economist, arguing in *The New York Times* that the recall is “nonsensical and undemocratic.” Oh, and “unconstitutional,” too, because more votes could be cast to keep the incumbent than for the incumbent’s replacement.



“Every voter should have an equal ability to influence the outcome of the election,” they contend.

A Golden State recall petition results in two separate elections: (1) the voters’ up-or-down decision on keeping or recalling the official in question, and (2) a second election for voters to choose among candidates running to replace that official should the recall succeed.

Every Californian casting a ballot on these two separate issues indeed has an equal vote. The recall is automatically decided by majority, while the replacement could win with a plurality.

The equal protection angle has been raised unsuccessfully before. In fact, Chemerinsky acknowledged, according to the *LA Times*, “that courts could decide that the recall proposal itself amounted to a separate election from the second question on the replacement candidates.”

No duh.

The authors should be glad that recalling academics isn’t a thing — even so, they’re not as awful as Governor Newsom.

This is Common Sense. I’m Paul Jacob.