

# CI-98

## A CONSTITUTIONAL AMENDMENT PROPOSED BY INITIATIVE PETITION

Montana statutes currently provide for the recall of public officials, including state court justices or judges, for physical or mental lack of fitness, incompetence, violation of the oath of office, official misconduct, or conviction of a felony offense. This measure amends the Montana Constitution to provide for recall by petition of state court justices or judges for any reason. It is effective upon approval.

[ ] **FOR** amending the Montana Constitution to provide for recall by petition of state court justices or judges for any reason.

[ ] **AGAINST** amending the Montana Constitution to provide for recall by petition of state court justices or judges for any reason.

### **THE COMPLETE TEXT OF CONSTITUTIONAL INITIATIVE NO. 98 (CI-98)**

#### **BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:**

**Section 1.** Article VII is amended to read:

NEW SECTION. **[Section 12].** (1) This amendment shall subject to recall each elected justice or judge of the state or its political subdivisions including a justice or judge appointed to an elected judicial office.

(2) A petition for recall may be filed by up to three qualified electors serving as chief petitioners. The chief petitioners shall:

(a) provide a justification statement, not exceeding 200 words, declaring the reasons for the recall;

(b) circulate the petition in an approved form; and

(c) file the signed petitions with the appropriate election administrator for verification and certification.

(3) No petition for recall may be filed sooner than 60 days following the time the justice or judge takes office.

(4) The sufficiency of the justification statement required under subsection (2) is a political question answered solely by the qualified electors participating in the recall election and no judicial recall petition shall otherwise be subject to judicial inquiry or review. The justification statement is sufficient if it sets forth any reason acknowledging electoral dissatisfaction with a justice or judge notwithstanding good faith attempts to perform the duties of the office.

(5) Notwithstanding the review protections granted under subsection (3) a petitioner or petitioners providing a justification statement shall not be shielded from responsibility for any untrue statements contained in the justification statement.

(6) Prior to circulation, a recall petition shall be approved as to form. The appropriate elections officer is the officer who is provided by law to accept the declaration of nomination or petition for nomination for such office. A judicial recall petition shall be examined for form and shall be approved or denied for circulation within three business days. A petition shall be approved as to form if it contains a

justification statement and includes a circulation sheet that includes signer information categories sufficient to identify qualified electors signing the petition.

(7) Signed circulation sheets containing the required number of signatures shall be submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within 3 months of the time the petition was approved. The required number of signatures shall serve as prima facie evidence of a completed recall that is qualified for election. The required number of signatures shall be:

(a) for an office of justice or judge subject to statewide election, at least 10% of the number of votes cast in the previous election to fill that office; or

(b) for any other office of a justice or judge, at least 15% of the number of votes cast in the previous election to fill that judicial office.

(8) The county clerk in each county in which a judicial recall petition is submitted shall have up to 15 business days to examine the filed signatures and determine whether invalid signatures, if any, exist in such number so as to render the filing incomplete. A recall petition meeting prima facie filing requirements shall not be determined incomplete unless a sufficient number of invalid signatures is identified. The clerk shall certify such to the appropriate elections officer with whom the recall petition is to be filed.

(9) In the case of a statewide election the secretary of state shall have 10 days to tabulate certified signatures from the county; and in the case of districts which are not statewide districts the appropriate election officer or officers shall have 5 days to tabulate certified signatures.

(10) A special election shall be held on the question of recall within 75 days of the filing of a complete recall petition; however, if an election is already scheduled for that electoral district within 90 days of filing, the question of recall may be included in such election. The call for a special election shall be made by the governor in the case of an office subject to statewide election or by the official(s) authorized to call a special election for a political subdivision in the case of all other offices.

(11) If a justice or judge prevailed in a recall vote once during a term of office, the legislature may require the posting of a bond by any subsequent chief petitioners in an amount sufficient to offset the government cost of a subsequent unsuccessful recall election during that term of office.

(12) All other procedural statutory recall provisions not inconsistent with the design of this amendment may be provided by law. This amendment is self-executing and shall supplant any inconsistent statutory recall provisions. This amendment provides a method of removing justices and judges in addition to Article VII, section 11, and does not exist as a substitute for Article VII, section 11.

**NEW SECTION. Section 2. Severability.** If part of this amendment is invalid all valid parts remain in effect. If part of this amendment is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**NEW SECTION. Section 3. Saving clause.** This amendment does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this amendment.

**NEW SECTION. Section 4. Effective date.** This amendment is effective upon approval by the electorate.