

**A RESOLUTION TO BE SUBMITTED BY
LEGISLATORS HARDWICK and RATH**

Re: Expressing Support for NYS A.5392/S.2214, Amending the New York State Constitution to Permit a Recall Election

WHEREAS, unlike some states, New York State does not allow the opportunity for recall elections when a substantial number of voters feel that their representative is unable to perform his or her duties; and

WHEREAS, permitting recall elections would serve as an incentive to elected officials to be more receptive and responsive to their constituents; and

WHEREAS, permitting recall elections would serve as a disincentive to elected officials to behave unethically or illegally; and

WHEREAS, New York State Assembly Bill 5392 and Senate Bill 2214 seek to create the opportunity to recall an elected official upon presenting a petition signed by a number of constituents equal to twenty percent of the total votes cast in that official's election; and

WHEREAS, before becoming law, the New York State Constitution must be amended to permit a recall; and

WHEREAS, as such, the New York State Senate and Assembly must approve resolutions supporting the Constitutional amendment at two consecutive sessions, followed by the amendment being voted on as a public referendum; and

WHEREAS, passing New York State Assembly Bill 5392 and Senate Bill 2214 are the first steps in the process.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature supports New York State Assembly Bill 5392 and Senate Bill 2214, the first step in creating a Constitutional vehicle to permit a recall election; and be it further

RESOLVED, that a certified copy of this resolution be forwarded to Governor Andrew Cuomo, Assembly Speaker Sheldon Silver, Senate Majority Leaders Dean Skelos and Jeffrey Klein and the local delegation to the New York State Legislature.

Fiscal Impact: None for this resolution.

S T A T E O F N E W Y O R K

5392

2013-2014 Regular Sessions

I N A S S E M B L Y

February 25, 2013

Introduced by M. of A. KOLB, RAIA, CORWIN, GIGLIO, P. LOPEZ, PALMESANO
 -- Multi-Sponsored by -- M. of A. HAWLEY -- read once and referred to
 the Committee on Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing the addition of a new article 20 to the constitution, in
 relation to providing for initiative and referendum and recall

1 Section 1. Resolved (if the Senate concur), That article 20 of the
 2 constitution be renumbered article 21 and a new article 20 be added to
 3 read as follows:

ARTICLE XX

INITIATIVE AND REFERENDUM AND RECALL

6 SECTION 1. 1. THE INITIATIVE IS THE POWER OF THE ELECTORS TO PROPOSE
 7 STATUTES AND AMENDMENTS TO THE CONSTITUTION AND TO ADOPT OR REJECT THEM.

8 2. AN INITIATIVE MEASURE MAY BE PROPOSED BY PRESENTING TO THE SECRE-
 9 TARY OF STATE A PETITION THAT SETS FORTH THE TEXT OF THE PROPOSED STAT-
 10 UTE OR AMENDMENT TO THE CONSTITUTION AND IS CERTIFIED TO HAVE BEEN
 11 SIGNED BY ELECTORS EQUAL IN NUMBER TO FIVE PERCENT IN THE CASE OF A
 12 STATUTE, AND EIGHT PERCENT IN THE CASE OF AN AMENDMENT TO THE CONSTITU-
 13 TION, OF THE VOTES FOR ALL CANDIDATES FOR GOVERNOR AT THE LAST GUBERNA-
 14 TORIAL ELECTION.

15 3. THE SECRETARY OF STATE SHALL THEN SUBMIT THE MEASURE AT THE NEXT
 16 GENERAL ELECTION HELD AT LEAST ONE HUNDRED THIRTY-ONE DAYS AFTER IT
 17 QUALIFIES OR AT ANY SPECIAL STATEWIDE ELECTION HELD PRIOR TO THAT GENER-
 18 AL ELECTION. THE GOVERNOR MAY CALL A SPECIAL STATEWIDE ELECTION FOR THE
 19 MEASURE.

20 4. AN INITIATIVE MEASURE EMBRACING MORE THAN ONE SUBJECT MAY NOT BE
 21 SUBMITTED TO THE ELECTORS OR HAVE ANY EFFECT.

22 5. AN INITIATIVE MEASURE SHALL NOT INCLUDE OR EXCLUDE ANY POLITICAL
 23 SUBDIVISION OF THE STATE FROM THE APPLICATION OR EFFECT OF ITS
 24 PROVISIONS BASED UPON APPROVAL OR DISAPPROVAL OF THE INITIATIVE MEASURE,
 25 OR BASED UPON THE CASTING OF A SPECIFIED PERCENTAGE OF VOTES IN FAVOR OF
 26 THE MEASURE, BY THE ELECTORS OF THAT POLITICAL SUBDIVISION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
 [] is old law to be omitted.

LBD89077-01-3

A. 5392

2

1 6. AN INITIATIVE MEASURE SHALL NOT CONTAIN ALTERNATIVE OR CUMULATIVE
 2 PROVISIONS WHEREIN ONE OR MORE OF THOSE PROVISIONS WOULD BECOME LAW
 3 DEPENDING UPON THE CASTING OF A SPECIFIED PERCENTAGE OF VOTES FOR OR
 4 AGAINST THE MEASURE.

5 S 2. 1. THE REFERENDUM IS THE POWER OF THE ELECTORS TO APPROVE OR
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 7 CALLING ELECTIONS, AND STATUTES PROVIDING FOR TAX LEVIES OR APPROPRI-

8 ATIONS FOR USUAL CURRENT EXPENSES OF THE STATE.

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11 PETITION CERTIFIED TO HAVE BEEN SIGNED BY ELECTORS EQUAL IN NUMBER TO
12 FIVE PERCENT OF THE VOTES FOR ALL CANDIDATES FOR GOVERNOR AT THE LAST
13 GUBERNATORIAL ELECTION, ASKING THAT THE STATUTE OR PART OF IT BE SUBMIT-
14 TED TO THE ELECTORS. IN THE CASE OF A STATUTE ENACTED BY A BILL PASSED
15 BY THE LEGISLATURE ON OR BEFORE THE DATE THE LEGISLATURE ADJOURNS IN THE
16 SECOND CALENDAR YEAR OF THE BIENNIUM OF THE LEGISLATIVE SESSION, AND IN
17 THE POSSESSION OF THE GOVERNOR AFTER THAT DATE, THE PETITION MAY NOT BE
18 PRESENTED ON OR AFTER JANUARY FIRST NEXT FOLLOWING THE EFFECTIVE DATE
19 UNLESS A COPY OF THE PETITION IS SUBMITTED TO THE ATTORNEY GENERAL
20 PURSUANT TO SUBDIVISION FOUR OF SECTION THREE OF THIS ARTICLE BEFORE
21 JANUARY FIRST.

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25 GOVERNOR MAY CALL A SPECIAL STATEWIDE ELECTION FOR THE MEASURE.

26 S 3. 1. AN INITIATIVE STATUTE OR REFERENDUM APPROVED BY A MAJORITY OF
27 VOTES THEREON TAKES EFFECT THE DAY AFTER THE ELECTION UNLESS THE MEASURE
28 PROVIDES OTHERWISE. IF A REFERENDUM PETITION IS FILED AGAINST A PART OF
29 A STATUTE THE REMAINDER SHALL NOT BE DELAYED FROM GOING INTO EFFECT.

30 2. IF PROVISIONS OF TWO OR MORE MEASURES APPROVED AT THE SAME ELECTION
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36 UTE PERMITS AMENDMENT OR REPEAL WITHOUT THEIR APPROVAL.

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45 PROVIDE. EXCEPT AS PROVIDED IN SUBDIVISIONS TWO AND THREE OF THIS
46 SECTION, THIS SECTION DOES NOT AFFECT A CITY HAVING A CHARTER.

47 2. A CITY OR COUNTY INITIATIVE MEASURE SHALL NOT INCLUDE OR EXCLUDE
48 ANY PART OF THE CITY OR COUNTY FROM THE APPLICATION OR EFFECT OF ITS
49 PROVISIONS BASED UPON APPROVAL OR DISAPPROVAL OF THE INITIATIVE MEASURE,
50 OR BASED UPON THE CASTING OF A SPECIFIED PERCENTAGE OF VOTES IN FAVOR OF
51 THE MEASURE, BY THE ELECTORS OF THE CITY OR COUNTY OR ANY PART THEREOF.

52 3. A CITY OR COUNTY INITIATIVE MEASURE SHALL NOT CONTAIN ALTERNATIVE
53 OR CUMULATIVE PROVISIONS WHEREIN ONE OR MORE OF THOSE PROVISIONS WOULD
54 BECOME LAW DEPENDING UPON THE CASTING OF A SPECIFIED PERCENTAGE OF VOTES
55 FOR OR AGAINST THE MEASURE.

A. 5392

3

1 S 5. NO AMENDMENT TO THE CONSTITUTION, AND NO STATUTE PROPOSED TO THE
2 ELECTORS BY THE LEGISLATURE OR BY INITIATIVE, THAT NAMES ANY INDIVIDUAL
3 TO HOLD ANY OFFICE, OR NAMES OR IDENTIFIES ANY PRIVATE CORPORATION TO
4 PERFORM ANY FUNCTION OR TO HAVE ANY POWER OR DUTY, MAY BE SUBMITTED TO
5 THE ELECTORS OR HAVE ANY EFFECT.

6 S 6. RECALL IS THE POWER OF THE ELECTORS TO REMOVE AN ELECTIVE OFFI-
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8 S 7. 1. RECALL OF A STATE OFFICER IS INITIATED BY DELIVERING TO THE
9 SECRETARY OF STATE A PETITION ALLEGING REASON FOR RECALL. SUFFICIENCY OF
10 REASON IS NOT REVIEWABLE. PROPONENTS HAVE ONE HUNDRED SIXTY DAYS TO FILE

11 SIGNED PETITIONS.

12 2. A PETITION TO RECALL A STATEWIDE OFFICER MUST BE SIGNED BY ELECTORS
13 EQUAL IN NUMBER TO TWELVE PERCENT OF THE LAST VOTE FOR THE OFFICE, WITH
14 SIGNATURES FROM EACH OF FIVE COUNTIES EQUAL IN NUMBER TO ONE PERCENT OF
15 THE LAST VOTE FOR THE OFFICE IN THE COUNTY. SIGNATURES TO RECALL
16 SENATORS, MEMBERS OF THE ASSEMBLY, AND JUDGES OF SUPREME COURTS AND
17 TRIAL COURTS MUST EQUAL IN NUMBER TWENTY PERCENT OF THE LAST VOTE FOR
18 THE OFFICE.

19 3. THE SECRETARY OF STATE SHALL MAINTAIN A CONTINUOUS COUNT OF THE
20 SIGNATURES CERTIFIED TO THAT OFFICE.

21 S 8. 1. AN ELECTION TO DETERMINE WHETHER TO RECALL AN OFFICER AND, IF
22 APPROPRIATE, TO ELECT A SUCCESSOR SHALL BE CALLED BY THE GOVERNOR AND
23 HELD NOT LESS THAN SIXTY DAYS NOR MORE THAN EIGHTY DAYS FROM THE DATE OF
24 CERTIFICATION OF SUFFICIENT SIGNATURES.

25 2. A RECALL ELECTION MAY BE CONDUCTED WITHIN ONE HUNDRED EIGHTY DAYS
26 FROM THE DATE OF CERTIFICATION OF SUFFICIENT SIGNATURES IN ORDER THAT
27 THE ELECTION MAY BE CONSOLIDATED WITH THE NEXT REGULARLY SCHEDULED
28 ELECTION OCCURRING WHOLLY OR PARTIALLY WITHIN THE SAME JURISDICTION IN
29 WHICH THE RECALL ELECTION IS HELD, IF THE NUMBER OF VOTERS ELIGIBLE TO
30 VOTE AT THAT NEXT REGULARLY SCHEDULED ELECTION EQUAL AT LEAST FIFTY
31 PERCENT OF ALL THE VOTERS ELIGIBLE TO VOTE AT THE RECALL ELECTION.

32 3. IF THE MAJORITY VOTE ON THE QUESTION IS TO RECALL, THE OFFICER IS
33 REMOVED AND, IF THERE IS A CANDIDATE, THE CANDIDATE WHO RECEIVES A
34 PLURALITY IS THE SUCCESSOR. THE OFFICER MAY NOT BE A CANDIDATE, NOR
35 SHALL THERE BE ANY CANDIDACY FOR AN OFFICE FILED PURSUANT TO SECTION TWO
36 OF ARTICLE SIX.

37 S 9. THE LEGISLATURE SHALL PROVIDE FOR CIRCULATION, FILING, AND
38 CERTIFICATION OF PETITIONS, NOMINATION OF CANDIDATES, AND THE RECALL
39 ELECTION.

40 S 10. IF RECALL OF THE GOVERNOR OR SECRETARY OF STATE IS INITIATED,
41 THE RECALL DUTIES OF THAT OFFICE SHALL BE PERFORMED BY THE LIEUTENANT
42 GOVERNOR OR COMPTROLLER, RESPECTIVELY.

43 S 11. A STATE OFFICER WHO IS NOT RECALLED SHALL BE REIMBURSED BY THE
44 STATE FOR THE OFFICER'S RECALL ELECTION EXPENSES LEGALLY AND PERSONALLY
45 INCURRED. ANOTHER RECALL MAY NOT BE INITIATED AGAINST THE OFFICER UNTIL
46 SIX MONTHS AFTER THE ELECTION.

47 S 12. THE LEGISLATURE SHALL PROVIDE FOR RECALL OF LOCAL OFFICERS. THIS
48 SECTION DOES NOT AFFECT COUNTIES AND CITIES WHOSE CHARTERS PROVIDE FOR
49 RECALL.

50 S 2. Resolved (if the Senate concur), That the foregoing amendment be
51 referred to the first regular legislative session convening after the
52 next succeeding general election of members of the assembly, and, in
53 conformity with section 1 of article 19 of the constitution, be
54 published for 3 months previous to the time of such election.

S T A T E O F N E W Y O R K

2214

2013-2014 Regular Sessions

I N S E N A T E

January 14, 2013

Introduced by Sens. GRIFFO, GRISANTI, LARKIN, RANZENHOFER -- read twice
and ordered printed, and when printed to be committed to the Committee
on Judiciary

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relation to providing for initiative and referendum and recall

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S. 2214

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S. 2214

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