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## THE RECALL CAMPAIGN

# Court Restores Oct. 7 Recall Vote

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## ACLU Plans No Appeal; GOP Anxiety Over Dual Candidates Grows

By Michael Finnegan  
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A federal appeals court Tuesday put the California recall race back on track for an Oct. 7 election, reversing an order to postpone the vote and setting off a 13-day sprint to a final public judgment on Gov. Gray Davis.

Lawyers for the American Civil Liberties Union, who had challenged the date, said they would not pursue the matter further. Legal experts had projected slim odds of success had the ACLU appealed to the U.S. Supreme Court.

The definitive election date came as a relief to the Democratic governor and the three leading contenders for his job. Each had hoped — and assumed — that the vote would occur Oct. 7 as planned.

"We should strike while the iron is hot," Davis told reporters at a campaign stop in Santa Ana with U.S. Sen. Joe Lieberman (D-Conn.).

In their unanimous ruling, an 11-judge panel of the U.S. 9th Circuit Court of Appeals said "there is no doubt that the right to vote is fundamental, but a federal court cannot lightly interfere" with a state election.

The law requires that judges weigh the risk that voters would be harmed against the "enormous resources already invested" in the election, the panel said. "If the election is postponed, citizens who already cast a vote will effectively be told that the vote does not count and they must vote again," the judges noted.

More than 700,000 Californians have already voted by absentee ballot, according to the secretary of

state's office.

As the judges issued their ruling, the recall race took a distinctly negative turn with a spate of new television ads.

A day after Republican Arnold Schwarzenegger started running a spot accusing rivals of trading state favors for donations from Indian tribes, Lt. Gov. Cruz Bustamante, a Democrat, began airing one of his own saying that the actor "doesn't share our values" and "lives on Planet Hollywood."

In an interview on CNN, Bustamante called Schwarzenegger a "hypocrite" for accepting \$62,000 in Indian donations last year for a ballot measure he was supporting.

"Arnold is pretty phony on this whole issue," Bustamante said.

Rob Stutzman, a spokesman for Schwarzenegger, said the situations are different because a governor can negotiate casino pacts with tribes.

At a campaign stop in Sacramento, Schwarzenegger said he had attacked no one by name in his ad.

"You cannot represent the people of California when you take millions of dollars from the Indians," he said.

He also denied his campaign was turning negative, something he has promised not to do. "What I mean by negative, I will never attack anyone personal," he said.

Meanwhile, anxiety appeared to rise among Republicans over the party's failure to unite behind one candidate in the race to replace Davis if he is recalled. Polls have found Republican voters split between Schwarzenegger and state Sen. Tom McClintock (R-Thousand Oaks), with Bustamante, the only prominent Democrat in the race, holding a narrow lead over the action-film star.

"Somebody needs to recognize that the election of Cruz Bustamante is a real possibility if these two Republicans continue to divide the vote," said state Senate Republican Leader Jim Brulte of Rancho Cucamonga, California's top GOP officeholder.

Brulte, who endorsed Schwarzenegger on Tuesday, said the split Republican field could also help Davis survive the recall. Many who lean toward supporting the recall could instead wind up voting to keep Davis in office if they foresee a Bustamante victory, he said.

On Monday, Rep. Darrell E. Issa (R-Vista), who bankrolled the petition drive that put the recall on the ballot, said he would urge Californians to vote no on the recall if both McClintock and Schwarzenegger remain in the race. Recalling Davis only to replace him with another Democrat would not help the state, he said.

Issa's remarks sparked glee in Democratic ranks Tuesday. Asked about them in Santa Ana, Davis laughed. "I was stunned to hear that," he said. "If, in fact, he is the most recent convert to the no on the

recall campaign, we welcome him."

But Issa backpedaled Tuesday. In a telephone interview, he said he had given up hope that either McClintock or Schwarzenegger would drop out of the race and would endorse one or the other by this weekend.

He said he rejected the option that "we should vote against the recall."

"I will come out with a 'yes on the recall, yes on a candidate' position," Issa said.

Schwarzenegger's allies have called on McClintock — who has gained in the polls but still trails the actor — to step out of the race. But McClintock, the most conservative of the leading candidates, reiterated Tuesday that he would stay in until the end.

"If the most qualified candidate has to step aside every time a millionaire casts a lonely eye on a public office, then we've lost something very important in our democracy," McClintock said. "This isn't a lark for me."

The appeals court ruling putting the election back on schedule ended eight days of uncertainty over its timing. If the election had been put off, the March 2 primary would have been the most likely replacement date.

The court's ruling overturned a Sept. 15 decision by a three-judge panel of the same court, which had thrown the campaign into turmoil, leaving candidates unsure whether they were squandering millions of dollars on TV ads for an election that could have been months away.

The rulings stemmed from a lawsuit in which the ACLU represented three civil rights organizations. The suit challenged the use of punch-card voting machines in Los Angeles and five other counties, devices that state officials have ordered phased out because they are prone to error, as shown in the Florida election fiasco of 2000.

The ACLU alleged discrimination against voters in those counties, because vote-counting machines in the state's other 52 counties were less prone to error.

The ACLU is "legitimately concerned that use of the punch-card system will deny the right to vote to some voters who must use that system," the 11 judges said Tuesday. But the possibility that machine error would change the outcome was merely speculative, they added.

The ruling avoided discussion of many of the weighty constitutional issues raised in the case. Instead, the judges simply noted that U.S. District Judge Stephen V. Wilson in Los Angeles had considered the case in August and, after weighing costs and benefits, had decided to let the election proceed. His decision should be overturned only if he clearly abused his discretion, the judges found.

The judges had heard arguments in the case only Monday in a nationally televised one-hour proceeding. They issued their ruling less than 24 hours later, an unusually speedy process that reflected their

recognition that the election date was only two weeks away.

The conclusion of the court case enabled candidates to focus Tuesday on their endgame for the recall race.

Major candidates prepared for a debate at 6 o'clock tonight in Sacramento. The forum, sponsored by Cal State Sacramento and the California Broadcasters Assn., is the only one in which Schwarzenegger has agreed to participate.

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*Times staff writers Megan Garvey, Matea Gold, Allison Hoffman, Daryl Kelley, Joe Mathews and Henry Weinstein contributed to this report.*

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