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## Odds favor O.C. judge in recall effort

by JOSHUA SPIVAK

After sentencing a convicted child molester to a 10-year prison sentence — much less than the state's 25-year minimum for such a crime — Orange County Superior Court Judge M. Marc Kelly is facing an avalanche of criticism and a burgeoning recall effort. The recent spate of high-profile recalls may lead people to think that kicking out a judge should be easy. But they would be wrong. Judges almost never face a recall, in California or anywhere else in the country. And odds are that Kelly will not break this pattern.

The recall of judges in California is so rare that it is not clear when voters last used the device. The most comprehensive book on the early use of the recall, which was written in 1930, notes that four municipal judges and three justices of the peace were recalled and removed. And there has been virtually no mention of a recall of a judge in the state since.

The lack of recalls against judges is not just a California issue. Perhaps the last time the U.S. saw recalls against judges were in Wisconsin, and the subject matter should prove of interest to Kelly's opponents. In both cases, lower court judges had made incredibly inappropriate comments from the bench against sexual assault victims. In 1977, Judge Archie Simonson was tossed out by voters after both handing down extremely lenient sentencing for a rapist and making negative comments about women and rape victims from the bench. This was followed in 1982 when Judge William Reinecke survived a recall vote after making wildly offensive comments about a 5-year-old sexual assault victim.

Why have recalls against judges not taken off? This hesitation dates back to the modern-day origins of the device. The original adopters had many issues with allowing the recall to be used against judges. The major concern, which is echoed today, is that making judges subject to the quick anger of voters may result in misguided rulings and gun-shy judges. President William Howard Taft vetoed the Arizona constitution over a recall of judges' provision, and the debate over the subject helped drive a wedge between Taft and his predecessor Teddy Roosevelt. When California adopted the recall in 1911, the amendment almost floundered over whether to include judges, and if it wasn't for a California Supreme Court scandal, judges may have been exempt.

Of course, it isn't just about a philosophical argument. There is serious, hard work to be done to get a recall on the ballot, and, unlike with a recall of a politician, there are almost no policy changes that can be counted on when ousting a lower-court judge. It is hard to raise money and get people motivated when there is almost nobody who will directly benefit from the change.

What we can clearly see with the Kelly recall attempt is that money and support will be critical. His opponents need 90,829 signatures in 160 days. In the history of the recall in the U.S., there have probably been only four recalls that got to a ballot and required more signatures — Arizona Gov. Evan Meacham in 1988 (impeached before the vote), California Gov. Gray Davis, Wisconsin Gov. Scott Walker and Lt. Gov. Rebecca Kleefisch in 2012.

There have been a couple of Los Angeles mayoral recalls where over a 100,000 signatures were handed in (the recall of Frank Shaw in 1938 and of Fletcher Bowron in 1950),

but both required less than that total. So the Kelly recall would be close to record-setting, especially for a non-executive position.

Judge Kelly's ruling may have infuriated many, enough to actually get people off the couch and in to doing the hard work of signature collection and fundraising. But there is a long way to go before he would have to worry about facing the voters. The long history of the recall shows that ousting a judge with a recall is an incredibly hard, and very unlikely, undertaking.

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