

San Jose Mercury News

June 17, 2016

Recalling California judge is next to impossible

By JOSHUA SPIVAK

Santa Clara County Superior Court Judge Aaron Persky is facing recall threats following his sentencing of a Stanford University swimmer to a six month jail for rape. Based on some of the headline catching recalls of recent years, and the hundreds of thousands of signatures on online petitions, it may seem like Persky's days in office are numbered. But it is not that simple. Recall of judges almost never happen. Despite some egregious actions, no judge in America has faced a recall vote in over 30 years.

There have been plenty of attempts. Last year, in a similar too-light sentence for a sex offender case, petitions were taken out against an Orange County Superior Court judge, but no signatures were handed in. The recall of a judge in California is so infrequent that the only examples that anyone cites were not actually recalls.

California Chief Justice Rose Bird and Justices Cruz Reynoso and Joseph Grodin were kicked out of office in 1986 in a mandatory retention election. The difference is that a retention vote election is automatically on the ballot, while a recall requires a ton of signatures. How big is the difference? There were nine different attempts to recall Bird — none went anywhere.

The lack of recalls against judges is a national issue. Currently, the Nevada Supreme Court is set to hand down a ruling on whether a North Las Vegas Municipal Court judge will face a recall vote. If the Nevada recall gets on the ballot, it will probably be the first recall against a judge since two in Wisconsin back in 1977 and 1982, both on sexual assault issues as well.

What explains this recall desert? The problem is the need for signatures, and that usually requires money. Usually, there is no obvious donor putting in the money because there is no clear beneficiary for a recall. When a legislator or an executive is kicked out, there is a clear potential impact -- policy changes and potentially new jobs. But there are no real policy changes for removing a lower-court judge.

In this case, the signature issue is significant. Petitioners need 58,000 signatures from Santa Clara County voters in 160 days and they have to be collected by hand.

There is another problem that makes this difficult for petitioners — the grace period. California law does not allow a recall in the last six months of a term unless the official is appointed or in the first three months of a new term. Persky is up for reelection in November. Even though he was originally appointed, Persky was elected. Therefore, he cannot face a recall until his next term starts. Then if he is reelected — and that's a good bet, as he is running unopposed -- petitioners would have to wait through another grace period before starting the collection process.

A recall may seem like a good way to force Judge Persky out. But there are practical problems with getting a recall against a judge on a ballot, which is why there have been few successful attempts. Petitioners will need patience and hard work to overcome this history and kick the judge out of office.

Joshua Spivak is a senior fellow at the Hugh L. Carey Institute for Government Reform at Wagner College in New York. He blogs at <http://recallelections.blogspot.com>. He wrote this for the Mercury News.