

HOMER TRIBUNE

Homer, Alaska — May 18, 2017

Recall petition may not hold up to Alaska law

by JOSHUA SPIVAK

Over the last two decades, recalls have become a nationwide phenomena, and Alaska is no exception to the rule. Three members of the Homer City Council are finding this out, as their support for protestors of the Dakota Pipeline has led to petitions against them, and an ACLU brief calling the recall a violation of Alaska law. A look at Alaska law shows why the state's recalls are different than California, Wisconsin and many of the other places holding recalls.

The state has been a regular user of recalls. There have been at least 22 recalls attempted which received enough signatures to make the ballot in the state over the last six years. Of those recalls, 17 officials have been kicked out, though recalls against the Wrangell Medical Center and the mayor and city council of Dot Lake make up 13 of those. The other four officials who were kicked out were the mayor of Whittier, "the weirdest town in Alaska," the mayor of North Slope Borough, a Galena school board member and a Wasilla city councilman who was accused of trashing a hotel room. Only one official survived a recall vote, the mayor of Houston. In Holy Cross, the city council simply refused to schedule a recall, which killed the effort.

Five other recalls efforts, one against the governor, two against state representatives, one against an assembly representative, and four against Anchorage school board members, are a bit more instructive. Using the same arguments that the ACLU has cited in Homer, they were rejected by governmental officials as beyond the scope of Alaska's recall law. For this, it pays to understand how the state's law works compared to how people might expect a recall to operate.

While 38 states allow the recall on the lower level, only 19, including Alaska, allow it for some or all state-level officials. There are two broad categories of states with recall laws. Eleven states have what is called a political recall law. This means that an official can face a recall for almost any reason. There is no need to prove a cause of action, such as criminal behavior for the recall to move forward. Essentially, all famous recalls in the U.S., such as California Governor Gray Davis or Wisconsin Governor Scott Walker, have taken place under these laws.

The other eight states, including Alaska, have a form of a recall called judicial recall (not to be confused with a recall of a judge) or malfeasance-standard recall. For recalls to take place in these states, the petition must show a violation of either law or, in some cases, of incompetence. These laws are not uniform. In Illinois, it is only the governor who is covered by recall and, in Virginia, there is no election but rather a recall petition triggers a judicial hearing. The judge decides whether to kick out the official. But all require an agency or the courts to hold that a specific, statutorily delineated bad act was performed by the elected official.

The ACLU's brief mentions a "free speech" claim, but that is not the focus of the complaint. Rather it is that the recall petition doesn't set forth a valid cause of action under Alaska law. Based on those five decisions, the city council members have good reason to feel that the recall will be thrown out before it gets to the ballot.

Alaska's own experience with recalls shows how they can be a powerful weapon — as in most of the country, when a recall gets on the ballot, it is likely to result in an ousted official. But Alaska's law limits the ability of voters to use the recall. There is a very good chance that the voters in Homer will find out the strict limits of the state's recall law.

Joshua Spivak is a senior fellow at the Hugh L. Carey Institute for Government Reform at Wagner College in New York, and blogs at recallelections.blogspot.com.