

Joshua Spivak: Colorado's proposed recall election reform

Stung by the recalls of two state senators last September, Colorado Democrats are carrying out an age-old tradition – trying to revamp laws about recall elections. Going back at least a century, practically anytime a surprising recall effort has qualified for the ballot, legislators immediately scurry to modify the law. Despite the seemingly self-serving nature of this and many other post-recall reform proposals, Colorado's Democrats are right in pushing this one forward. If approved, it would clean up poorly drafted statutes that don't conform to general election laws. They would remove roadblocks to citizens seeking recalls. And, learning from the 2013 snafus in Colorado, they seek to avoid expensive delays and lawsuits.

The proposed Colorado changes are an attempt to conform recall law to existing election laws, some of which were passed earlier in 2013. The major focus is to make workable a judicial ruling that prevented the recall from being an all mail election by defining the constitution's language of "date for holding the election" so that it allows candidates to petition onto the ballot until 15 days before mail ballots are sent out, instead of 15 days before the election closes.

Because the original electoral law changes were opposed by Republicans, the quest for recall reform is raising questions by Senate Minority Leader Bill Cadman about whether supporters should seek changes through a voter referendum.

The Democratic reforms are, no doubt, motivated in response by last year's recall upsets. But, as history shows, the fact that recall reform is politically motivated doesn't mean the clunky recall process shouldn't be fixed.

It is, perhaps, the nature of politicians that recalls – successful or not – immediately prompt attempts to change recall laws. Elected officials ignore those laws until the day some cranky constituent comes knocking on the door with a fist-full of petition signatures. Bing, the light bulb goes off – the recall laws need changing.

In Wisconsin, following the 2012 recall elections against the GOP Governor, Lieutenant Governor and 13 state legislators, the Republican-controlled state legislature has tried to heavily limit the potential of recalls so they could be held only when there is a showing of incompetence or malfeasance (such as an indictment) by an elected official. So far, that change hasn't gone anywhere – it would need to pass both houses twice and then be submitted to direct voter approval to pass.

Arizona, whose Republican state Senate President Russell Pearce was recalled in 2011, has also looked at a number of possible fixes, some designed to make it significantly harder to qualify a recall for the ballot.

In Michigan, which constitutionally doesn't have to put recall reform to a popular vote, made significant changes to its statutes following the recall of House Representative Paul Scott (R) in 2011. The changes mandate that recalls can only be held on a date already scheduled for a primary or general election and include a "factualness" requirement for petitions that must be approved by the county election commissions. Reform in Michigan has resulted in a huge drop in recalls there – from 31 recalls in 2011 to 13 in 2013.

In one noteworthy example in California, the recall law only allowed voters to cast ballots on the replacement race if they voted to remove the elected official in the first place. A federal judge threw out this provision as unconstitutional during the Gray Davis recall in 2003.

(Colorado had the same provision, and it was also thrown out. The proposed recall changes would also eliminate this requirement from state law.)

Despite the fact that California's law was ruled unconstitutional on the state level, it was still on the books in local jurisdictions. Last year, during the attempted recall of San Diego Mayor Bob Filner (D), voters would have likely again had to go to court to have the law tossed out – a needless and expensive delay for voters.

A separate example this year in Idaho shows how discrepancies in new election law can kill a recall. A school board member was facing a recall threat over a proposal to allow school staffers to be armed. The recall petition seemed to have included the requisite number of signatures, but the petitioners handed them in in two batches. Idaho law specifically allows for signatures to be handed in in this fashion for a regular elections but the recall law there is different. The second batch was thrown out, and the recall canceled.

Many opponents of recall laws dismiss the importance of having easy to follow rules that synch up with general election rules. This is partly based on the mistaken belief that most recalls are launched by professional political operatives who should know the rules, or at least spend the money the money to look them up.

But in reality, recalls are generally launched by local citizen activists who are using a low-cost method to effect political change. As with most of us, most recall-seekers aren't very conversant on the particulars of electoral law (as the Idaho example shows) nor do they necessarily have the time or the money to fight a recall in court. This means a big advantage for elected officials because the cost of going to court can lead to citizens to abandon the effort. The result is that poorly drafted laws hinder voters' ability to use the recall process.

Colorado Democrats may be motivated to revamp the state's recall law because of last year's defeats. Republicans, who benefitted by the discrepancy in the election law, may view reform as detrimental to their success in future recalls. In the end, the real beneficiaries will be all citizens, regardless of their party affiliation, who want to use the recall with as little litigation as possible.