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Proposed Alabama recall election law likely won't be misused

Unlike the recall elections in Wisconsin and California, the law being considered in Alabama's Senate would not be a 'political' recall law

By JOSHUA SPIVAK

With the Alabama Senate considering a recall law for all officials throughout the state, voters could look north to the recall fights in Wisconsin and express some concern whether the state would become a brutal, political, three-ring circus. However, because of the way the potential Alabama law is structured, the likelihood of misuse is small.

Alabama would be the 19th state to allow for recalls for state-level officials (an additional state, Illinois, allows it just for the governor). Alabama is already one of the 36 states that allow some municipalities to provide for a recall of local officials.

Among those 18 states with the recall for state-level officials, there is a deep and very meaningful divide. Eleven of them have what is called a "political recall" — meaning they can recall an official for any reason whatsoever. The famous recalls in U.S. history, such as the ones in Wisconsin and the recall of California Gov. Gray Davis in 2003, were not for any charges of incompetence or ethical violations reason. They were solely for political reasons.

Seven of the states have what is called a "judicial recall" or "malfeasance" standard. In these states, the recall proponents have to show cause, such as incompetence, malfeasance, conviction or an ethical violation, before getting the recall on the ballot. Alabama's amendment would be a malfeasance standard.

When you look at the use of the recall, it is clear that the malfeasance standard radically reduces attempts to oust officials. On the state level, there have been very few recalls. Since the recall was first adopted for state-level officials (including legislators) by Oregon in 1908, only two governors (both were kicked out of office) and two other state wide officials (both in North Dakota in 1921) have ever faced recall elections.

The numbers are a little harder to track for other state-level officials, but we know of only 32 state-level legislators ever facing a recall vote, and 11 of those happened in 2011. Additionally, six officials will face a recall in Wisconsin this year — the governor, the lieutenant governor and four state senators. So, in U.S. history, there will have been 42 state-level officials who faced a recall. Only one of those 42, a Washington state senator in 1981 (he survived the recall), took place in a state with a malfeasance standard.

The recalls are generally a local device, but we can see further evidence for this stark political recall versus malfeasance standard divide. Last year, 151 elected officials in 17 states faced a recall election. Only one of these elections took place in a malfeasance standard state (Alaska), and that official resigned before it got to the ballot. Now, this year, there have been a few recalls in malfeasance jurisdictions, including one in Wasilla, Alaska, for a city councilman who trashed a hotel room, and three in Basehor, Kan. But they are still a relative rarity.

Perhaps it's no surprise that a state assemblyman in Wisconsin is trying to revise that state's law to turn it into a malfeasance standard. And, of the last five states to adopt the recall on the state level, four of them have adopted a malfeasance standard.

Misbehaving politicians do have something to fear, though. When a recall does get on the ballot, it has a high likelihood of success. Recalls in the U.S. have had a better than 50 percent success rate. In 2011, 84 of the 151 officials who faced a recall lost their seats (75 were kicked out by voters, and another nine quit before the recall vote was held). Both of the governors who have so far faced recall elections lost their jobs. And, of the 32 state legislators who faced recall votes, 17 were kicked out — and that number would be much higher if seven of nine Wisconsin state senators didn't survive the recall last year. When you consider the fact that political scientists estimate that incumbents for all offices in the country win 75 to 85 percent of re-election runs, this is a truly impressive result.

The recall is a powerful, though infrequently used, weapon that can overturn the political order. However, as the statistics show, when coupled with a malfeasance standard, it rarely gets misused.

Alabama voters and politicians may glance at Wisconsin and California with concern, but the strong likelihood is that the recall will rarely come into use.

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