

The San Diego
Union-Tribune.

Wednesday, July 31, 2013

How city's legal hurdles make recalls difficult

By JOSHUA SPIVAK

With a flood of revelations against San Diego Mayor Bob Filner and his refusal to resign, voters are faced with a difficult proposition. They can recall the mayor, but history shows that the signature total required is daunting. And, due to what may be a legislative drafting error, the voters' ability to use the recall is limited in a surprising fashion. San Diego would not be the first jurisdiction to find out that their lawmakers' carelessness greatly impacted their ability to remove elected officials.

The first dash of cold water is the most obvious. Recall proponents will need a shade over 100,000 valid signatures. San Diego's signature requirement is on the high side, 15 percent of registered voters. It's a doable amount — especially in California, where signature gathering is basically an industry. However it is still a high hurdle. In U.S. history, there appear to be only four recalls that got on the ballot with a six-figure signature requirement — Arizona Gov. Evan Meacham in 1988 (he was impeached), California Gov. Gray Davis in 2003, Wisconsin Gov. Scott Walker and Lt. Gov. Rebecca Kleefisch in 2012.

There have been many others that didn't get that number. A recent attempt against Maricopa County, Ariz., Sheriff Joe Arpaio needed 335,000. The petitioners claimed they got 200,000 signatures. The 2011 Miami-Dade mayoral recall — with 3.5 million people in the county, this was probably the largest local recall by population in U.S. history — needed 52,000 signatures. The mayoral recalls in L.A. in the first half of the 20th century got closer to the requirement but still didn't top it. In 1938, 120,000 were handed in for the recall of L.A. Mayor Frank Shaw, though the total needed was much less. The man who defeated Shaw, Fletcher Bowron, faced a recall which he survived in 1950, but the petitioners needed to get a little over 89,000 signatures.

If someone starts putting serious cash behind the recall, it is likely to start moving. Additionally, the disgust with Filner appears to be bipartisan (though that may be blunted if a Republican were the clear leader as a replacement). But history shows that 100,000 signatures in one city for a recall is still a large challenge. The sheer number of signatures isn't the only issue. There is also a tight time limit on the recall — one that may be unique to San Diego. Thanks to a bizarre quirk in the law, petitioners have only 39 days to collect the signatures (they may have an additional 30 days to add signatures on a supplemental petition, but that could be challenged). It's unclear whether any jurisdiction in the country has a 39-day limit. California law has a general standard for cities that don't have recall laws of their own on the books. If the city has more than 50,000 registered voters, then petitioners would have 160 days. In L.A., which has its own law, there is a 120-day time limit. Some places, like in Wisconsin and Michigan, have a time limit of 60 days. There are places with 30 days, but 39 days is very different, and points to a likely mistake. What may have happened is that the drafters of the law intend to have a 60 day time limit, but wrote the law poorly. The result was that 21 days were lopped off. Such mistakes are not a surprise — the impact of recall laws are frequently not thought out by lawmakers, resulting in surprising possibilities. A less charitable view could claim that this botched law was

not unintentional. Elected officials have a long history of trying to subvert the recall law. While this may be unlikely, the fact that San Diego's law is different — and much harder, as even a 60-day time limit is half of L.A.'s — is certainly a big strike against the law drafters.

The San Diego law has other deficiencies, such as an almost certainly unconstitutional provision that voters can only vote for a replacement candidate in a recall if they cast a ballot to oust the incumbent. That provision may seem easily dealt with, but in reality any litigation serves as a tactical weapon for the incumbent, both delaying and sapping the efforts and money of the proponent.

With the drumbeat of criticism pushing Filner to the door, a recall may seem inevitable. But thanks to a high signature requirement and a bizarre law, San Diego voters are put in an unusually difficult position to get this recall on the ballot.

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