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Election laws that prevent elections

by JOSHUA SPIVAK

After a half-century in the House of Representatives, Representative John Conyers (D-Mich.), now the second longest serving member of Congress, may be an unsympathetic victim to show how election laws can be unfairly used to keep potential challengers off the ballot.

But recent court rulings on Conyers as well as a New Jersey recall attempt highlight how election laws are frequently designed to benefit those in power — and block potential challengers.

Due to its mix of an embarrassing level of incompetence and Conyers' long service, his failure to get enough signatures got attention. Conyers needed 1,000 valid registered voters in his district to sign his petition in order to get on the ballot. His supporters collected enough raw signatures, but many people either didn't live in the district or weren't registered voters. After striking these and other nonconforming signatures, Conyers only had 455 valid signatures. The county clerk struck Conyers from the ballot.

The New Jersey recall was much different, but the same principles of who is allowed to gather signatures were at stake. A group targeting the mayor of Vineland never handed in the signatures in the first place. The recall proponents had plenty of time to get the 9,447 signatures — 160 days — but they seem to have failed.

They still sued, however, blaming a law similar to the one in Michigan. The only people allowed to collect signatures for recall petitions are registered voters in the affected municipality. This law, according to the recall proponents, blocked them from organizing in force and using more than just the people of Vineland to get the recall moving.

In both cases, the courts agreed that these laws unfairly infringed on the rights of petitioners. Consider, Conyers is now on the ballot and the Vineland recall has been granted more time to collect signatures. The courts ruled that the laws limiting signature gathering is an infringement of free speech and free association.

This isn't the first time that the courts tossed out laws limiting signature gathering. Ralph Nader needed just such a court decision to get on the presidential ballot in some states during the 2008 election.

What the courts seem to recognize is that these laws are designed to prevent insurgents from threatening those in power.

This is not new. But these laws need to be confronted head-on. New York gained fame in the past, for example, for having extremely convoluted ballot laws. Petitions signed with the wrong color pen or that didn't have the correct Assembly district number written in were tossed out.

It took two disgraces on the national level to get any significant rule changes made in Albany. The Republican Party managed to use the ballot access rules to do fatal damage to the New York presidential primary campaigns of two leading contenders — Steve Forbes in 1996 and Senator John McCain in 2000.

These questionable petition-gathering rules are not just designed to keep challengers off the ballots. They also have real value to incumbents — even beyond their most obvious use. They are a bare-knuckled tactic. They force opponents into spending money and time in a fight just to get on the ballot.

The signature petitions remain the most obvious place for officials to use their power to help friends and punish adversaries. But they are by no means the only one.

Recalls, like the one in New Jersey, are a great example of the potential for misuse of power. Some elected bodies, like a city council or a school board, will refuse to schedule a recall against its members. In states with laws that mandate the recall be scheduled by another official, this tactic is useless. Yet this type of behavior has still been used to kill a recall in places like Alaska and Texas. In other states, officials succeed in simply dragging out the process to make the recall effectively useless.

Control of the electoral process — from the rules that govern who gets on the ballot to whether one should even be scheduled — must be closely watched. History shows that incumbents and their supporters simply can't be trusted to not try to craft rules that protect them from electoral threats.

Joshua Spivak, an attorney, is a senior fellow at the Hugh L. Carey Institute for Government Reform at Wagner College. He also blogs at www.recallections.blogspot.com/.