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## This bill could take away from Maine voters a powerful tool to hold politicians accountable

by JOSHUA SPIVAK

Maine is no stranger to tough elections and controversial elected officials, but a bill proposed by Democratic Sen. Justin Chenette to allow recall elections against elected officials, LD 1125, may have voters thinking the state could take political hijinks to the next level.

Voters can look at Wisconsin and California to see what they may be facing. But the proposed Maine law is unlikely to result in the overuse of the recall. In fact, the wording of the recall law could greatly reduce the ability of Mainers to recall local officials.

Maine does not have a statewide recall, but state law allows cities and towns to recall local officials. Over the last six years, at least 29 officials in 11 towns across Maine have faced a recall, with 18 of them being kicked out by voters, according to my own analysis. Two other officials have resigned in the face of a recall.

The places in Maine that have used the recall have what is called a “political recall” law, meaning they can recall an official for virtually any reason. There does not need to be a showing of cause, such as criminal action. The famous recalls in U.S. history, such as Wisconsin Gov. Scott Walker in 2012 and California Gov. Gray Davis in 2003, were not for any charges of incompetence or ethical violations reason but solely for political reasons.

Most states that have recalls allow for political recall. Currently, 19 states allow a form of recall for state-level officials. (Illinois allows it just for the governor, Rhode Island exempts its legislature, and Virginia has a “recall trial” decided by a judge rather than an election.) Thirty-eight states, including Maine, allow municipalities to provide for a recall of local officials.

Among the states with the recall for state level officials, there is a deep and very meaningful divide. Eleven states have political recall laws, and almost all recalls take place under these conditions. For example, among the 42 state-level officials who have faced a recall in U.S. history, all but one — a Washington state senator — were in political recall states.

The other eight states have what is called a “judicial recall,” or “malfeasance,” standard. In these states, the recall proponents have to show cause — incompetence, malfeasance, conviction or an ethical violation — before getting the recall on the ballot. This is exactly what Chenette proposes.

It is not a big surprise that Chenette proposes this limited form of recall. Of the last five states to adopt the recall on the state level, four of them have adopted a malfeasance standard — New Jersey being the exception. A perusal of editorial pages during recall attempts shows that many people think that recalls are solely designed to be used against demonstrably incompetent or convicted officials. But the laws show that is not the case. When Maine voters are given a chance to adopt a local political recall law, they seem to be happy to do so.

This leads to potential hole in the proposed law. State law generally overrides local law. There is a good chance that Maine courts would hold that localities cannot adopt political recall laws and instead must abide by the malfeasance standard. Therefore, the many different jurisdictions in Maine that have recall laws on the books would find these laws tossed out.

As Maine's experience shows, when the recall is deployed, it is a powerful weapon. But a recall with a malfeasance standard requirement is rarely used. Maine voters likely would not have to worry about an avalanche of recalls taking over the state. The law as written, however, may actually serve to remove the recall from many voters arsenal. This may make a statewide law less popular than it may seem.

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