

### I. Development of the Recall

Generally associated in the public mind with the initiative and referendum, the recall is very much a product of the "Progressive" movement in the early twentieth century. One of the leading tenets of Progressivism was the belief that the voter should be given a greater and more direct voice in the affairs of government. The best cure for the ills of democracy, it was said, is more democracy. In the recall, with its opportunity for the voters to replace elected officials before the end of their term, the Progressive movement found a typical expression.

The use of the recall in the U.S. began in 1903 with the incorporation of recall provisions into the Los Angeles city charter. Several other cities adopted it shortly thereafter, and in 1908 Oregon became the first state to apply the recall to elected state officials. Between the years 1908 and 1914, at the peak of Progressive success, 9 other states (Ariz., Calif., Colo., Idaho, Kans., La., Mich., Nev. and Wash.) adopted a state recall provision. Wash. and Wis., with adoptions in 1920 and 1926, were the last 2 states to permit the recall of state officers. Some of these state recall provisions did, however, exempt judges. All of these 12 states that apply the recall to state officers also permit the recall of at least some local officials. In addition, 16 other states allow only the recall of some or all local officials, bringing the total of states with local recall to 28. Geographically, the recall has been far more popular in states west of the Great Lakes; none of 12 states with state recall, and only 5 of the states with local recall, are east of Michigan.

### II. Adoption of the Recall in Wisconsin

Although the La Follette Progressives in Wisconsin began to urge adoption of the recall in the early 1900's, the first attempt to amend the state Constitution was not made until 1911. In that year the state legislature passed a law providing for the recall in municipal elections (now section 10.44 of the statutes) and at the same time passed for the first time a constitutional amendment to permit recall of officials elected from the state, the counties, congressional districts, judicial districts or legislative districts. After passing the legislature a second time in 1913, the amendment was placed on the ballot and defeated at the 1914 general election (144,386 to 81,628).

Despite some question as to whether the statute on municipal recall was legal without constitutional authorization, the statute stood and was used. The defeated amendment was resurrected in the 1920's, and under the leadership of Sen. Henry Huber (later the Lieutenant Governor) it passed the legislature in 1923 and again in 1925. Greatest opposition to the amendment came from the bench and bar on the grounds that a recall provision that permitted the recall of judges posed a serious threat to the independence of the judiciary. In 1926 the amendment was ratified by the narrow margin of 205,868 to 201,125, and became section 12, Article XIII of the Constitution.

In 1933 the third and last major contribution to the recall in Wis. was made. The legislature in that year passed a law (now section 6.245 of the statutes) to implement the constitutional provisions and to elaborate the procedure in carrying them out. Since then there have been no attempts to alter substantially or to repeal either the constitutional or the 2 statutory provisions.

### III. Wisconsin Constitutional and Statutory Provisions

Article XIII, section 12, of the Wisconsin Constitution applies only to officers elected from the state, counties, congressional districts, judicial districts and legislative districts. After an official has held office for one year, the electors of his constituency may file a petition seeking a recall election; the petition must be signed by a number of electors equal to 25 per cent of the total vote cast for the gubernatorial candidates in that constituency in the last election.

The petition is filed with the officer with whom one would file nomination papers for that office; under section 6.245 it becomes his duty to judge its adequacy and in the event of any inadequacy to permit the parties filing the petition 5 additional days to remedy the faults (by adding signatures, amending the petition, etc.). Section 6.245 also provides that wherever possible the form of the petition shall be governed by the state statute on nomination papers (section 5.05) and that no signature on the petition is valid unless dated less than 60 days preceding the date of filing.

If he certifies the petition, the officer calls a special election not less than 40 nor more than 45 days from the date of filing. The official against whom the petition is filed continues to perform his official duties and automatically becomes a candidate in the recall election unless he resigns within 10 days after the petition is filed. Other candidates for the office nominate themselves in the usual manner, and the candidate getting the greatest number of votes is elected for the remainder of the term. No official can be subjected to more than one recall election in a term.<sup>1</sup>

The oldest recall provision in Wisconsin, that in section 10.44 of the statutes applying to municipal recall, is similar in most respects to the state recall provisions just discussed. The petition for local recall can, however, be circulated after 6 months of a term and is filed with a county judge. The signatures required must total 25 per cent (and one-third in 3rd and 4th class cities) of the vote for that office at the last election, and must have been gathered within a month preceding filing. The common council must call an election on a date 40 to 50 days after the judge's certification, and a primary is provided for where necessary. Finally, a petition for local recall must state the grounds for removal on the petition; a similar provision in section 6.245 was repealed in 1949 after the Attorney General stated that it conflicted with Article XIII, section 12 of the Constitution and was of no effect (37 OAG 91).<sup>2</sup>

The municipal recall law has been interpreted by the state Supreme Court (State ex rel. Baxter v. Beckley, 192 Wis. 367) to permit higher courts to review the certification of the petition by the county judge, even though such review will delay the recall election.

#### IV. Recall Elections in Wisconsin

Only one recall election has ever been held in Wisconsin under the authority of Article XIII and section 6.245. In 1932 state Senator Otto Mueller (25th Dist.) was the object of a recall movement. Mueller, however, was returned to office in the recall election of Sept. 20, 1932, by a vote of 14,160 to 8,541 for Roland Kannenberg. The unsuccessful movement to unseat Mueller was part of a larger Progressive Republican plan to recall state legislators who opposed the tax bill submitted by Governor Philip La Follette. Recall petitions were circulated also, but never filed, against Senators Bernhard Gettelman, Eugene Clifford and William D. Carroll.

At the municipal level section 10.44 has been used far more often, although it is difficult to say exactly how often. Shortly after the passage of the law there was a rash of recalls: Robert Conner, mayor of Marshfield, was recalled in 1913; Mayor Fathers of Janesville, recalled in 1913 by opponents of his anti-saloon and anti-vice campaigns, won reelection by a 98-vote margin; Mayor H. H. Peavey of Washburn retained his office in a recall election, also in 1913. Wisconsin Rapids in

<sup>1</sup>The material of this and the preceding 2 paragraphs is taken from Art. XIII of the Constitution unless otherwise stated.

<sup>2</sup>Minor references to the recall can also be found in sections 10.40, 17.12, 64.06 and 348.201 of the statutes.

1932 removed 3 school commissioners who had been instrumental in dismissing the superintendent of schools, and again in 1936 the voters of the same city replaced 3 members of the school board for their part in dismissing teachers for union activity. Voters in South Milwaukee removed single councilmen in 1936 and in 1951.

In addition to these and other cases of actual recall elections, Wisconsin has had a number of recall attempts which have failed for lack of signatures, faulty procedure or failure to state grounds for the recall action. Throughout 1926 and 1927 a group of Superior citizens tried to recall Mayor Fred Baxter; after lengthy delays in litigation the petitions were held invalid, for omitting the year in placing the date after signatures. Mayor Daniel W. Hoan of Milwaukee was the target of a recall movement in the summer of 1933, but the attempt failed when the recall petitions were found in court to have glaring irregularities and the recall committee asked to have the matter dismissed. And in the same year a group of Progressive Republicans set out to purge the state senate of those senators who balked at supporting the Governor's program. Finally, an unsuccessful attempt to recall Senator Joseph McCarthy in 1954 attracted nationwide attention.

#### V. Issues Raised by the Wisconsin Recall

At the time of the adoption of the recall in Wisconsin in 1926 the greatest opposition to the amendment resulted from a fear that recall could impair the independence of the courts. Leaders of the bench and bar urged that a judge would no longer be free to render an unpopular decision and would be subjected to the pressures of public opinion if recall of judicial officers was permitted. Events since 1926, however, clearly indicate that the prestige of the judiciary has shielded it against recall attempts. As far as can be determined, no recall elections of judicial officers have been held in Wisconsin, nor have there even been any substantial attempts to recall a judge.

Secondly, there has from time to time arisen the question of the applicability of the recall to village officials. Although there is no settled precedent on the matter, informed opinion has generally assumed that village officials were not covered by the state's recall provisions. Article XIII, section 12, and section 6.245 apply clearly to voters of the state, a county, legislative district or judicial district. Section 10.44 concerns only cities.

The third, and most perplexing, problem is that of the scope of the state's recall machinery. That is to say, can the voters of the state recall a U.S. Senator or a member of the U.S. House of Representatives? The sections of the Constitution and the statutes dealing with state-wide recall specifically use the term "congressional district"; from this fact it has been inferred that this section also includes U.S. Senators among officers elected by the voters of the "state". But even if one concedes that the Wisconsin Constitution and laws were intended to include the state's Senators and Representatives, there is considerable doubt whether the U.S. Constitution will permit the state recall of U.S. Congressmen. In the first place, there are no recall provisions in the laws and Constitution of the U.S. Secondly, the U.S. Constitution provides that "each house shall be the judge of the elections, returns, and qualifications of its own members" (Article I, section 5), and elaborate precedent indicates that only the respective chambers can remove their members. Thirdly, it is argued that the states cannot add to the federal constitutional qualifications for members of Congress, nor can they disqualify those who meet the qualifications set forth in the U.S. Constitution. Several years ago the parliamentarian of the U.S. Senate, Charles L. Watkins, expressed the opinion that only the Senate can expel its members, and that a state cannot therefore recall a U.S. Senator. Arizona has attempted to solve this problem by asking candidates for the U.S. Senate and House of Representatives to pledge that they will resign if defeated in a recall election (section 60-301, Ariz. statutes). This pledge or refusal to pledge is noted on the ballot; thus far, however, the recall of a Senator or Representative has never been attempted.