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**Law Professors' Statement for the Independence of the Judiciary and
Against the Recall of Santa Clara County Superior Court Judge Aaron Persky
(91 law professors as of August 17, 2017)**

We the undersigned are part of a broad diversity of law professors from California universities; among our relevant fields of specialization are criminal law, gender and law, and constitutional law. We write in strong opposition to the campaign to recall Judge Aaron Persky of the Santa Clara County Superior Court. We do so because this recall campaign, which just now is beginning the formal process of gathering signatures, threatens the fundamental principles of judicial independence and fairness that we all embed in the education of our students.

The mechanism of recall was designed for and must be limited to cases where judges are corrupt or incompetent or exhibit bias that leads to systematic injustice in their courtrooms. None of these criteria applies to Judge Persky. The recall campaign was instigated in response to a sentencing decision in the case of Brock Turner, where the judge followed a probation report recommendation and exercised discretion towards a lenient sentence, in accordance with the California Penal Code. We appreciate that some people (indeed including some of the signers of this letter) might have chosen a different result, but the core values of judicial independence and integrity require the judge to make a decision based on the record (including, in this case, the recommendation of a skilled professional, a probation officer) -- *not* on public outcry about a controversial case. Judge Persky's decision was controversial, but it was a lawful decision. Other sentencing decisions by Judge Persky that have been challenged by the recall movement have followed the equally common and legitimate practice of accepting a recommendation agreed on by the prosecution and defense.

We believe it is critical to distinguish disagreement with a particular sentence or allegations about a handful of decisions from an attack on a judge's overall record. Thus, it is vital to recognize the following: the Santa Clara County Bar Association issued a 2016 statement opposing attempts to remove Judge Persky from the bench; this can be found at <http://www.sccba.com/blogpost/1133925/249782/SCCBA-Statement-on-Judicial-Independence>. The State Commission on Judicial Performance, an independent state agency, conducted a review and concluded that the claims of bias were unfounded. (https://cjp.ca.gov/wp-content/uploads/sites/40/2016/08/Persky_Explanatory_Statement_12-19-16.pdf). We encourage you to read both documents for details of their reasoning.

The last three elected District Attorneys of Santa Clara County, with 27 years of leadership in that office, are against the recall; surely, they would speak up if they found the judge's record to be improper. Similarly, the defense bar's outpouring of opposition to the recall underscores Judge Persky's reputation for being unbiased against those most harshly disadvantaged by our criminal justice system. A broad range of lawyers who have appeared before Judge Persky have publicly attested to the respect they have for him as a fair and impartial jurist.

In particular, lawyers who represent indigent defendants in our system rightly view the recall as a danger to, not promotion of, progressive values. This is because, historically and empirically, recall actions push judges towards sharply ratcheting up sentences, especially against the poor and people of color, out of fear of media campaigns run by well-funded interest groups. No wonder that former U.S. Supreme Court Justice Sandra Day O'Connor, observing the effects of judicial elections, lamented "political prizefights where partisans and special interests seek to install judges who will answer to them instead of the law and the Constitution."

A fair and equitable justice system requires judges who dispassionately assess the culpability and background of offenders, without fear of public opinion, balancing the goals of retribution, deterrence, and rehabilitation. The recall campaign risks allowing public clamor to distort these crucial acts of judgment. We urge you not to sign the petition, and to oppose the recall. Thank you.

University affiliations are listed solely for the purpose of identifying the individual signers. The statement expresses the views of the individual professors. (89 as of August 15, 2017)

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