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COVER STORY

Petition objections stall judge recall campaign

By James Getz
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SAN JOSE — A retired Orange County judge put the brakes on the recall campaign against Santa Clara County Superior Court Judge Aaron Persky on Friday.

Judge Marjorie Laird Carter, who was assigned to hear the case after Presiding Judge Brian C. Walsh ordered a recusal of the entire Santa Clara County Superior Court, found there would be irreparable harm to Persky if circulation of petitions were to continue without a hearing on his rights. A hearing was scheduled to take place Aug. 23.

Persky's attorneys had wanted the judge to order County Registrar of Voters Shannon Bushey to withdraw her certification of the petitions and enjoin the "real parties of interest" — petition sponsors such as Stanford Law School professor Michele Dauber — from circulating them. But Carter ordered only the latter.

Last year, Persky sparked controversy when he sentenced Stanford University student Brock Turner — convicted of three felony counts of sexual assault — to six months in jail and three years on probation. Dauber and recall supporters say Persky has, in other cases, been biased against women while favoring male athletes.



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Elizabeth Pipkin, a partner with McManis Faulkner, persuaded a judge to halt the recall campaign against Santa Clara County Superior Court Judge Aaron Persky until a hearing on his rights can take place.

In arguing for a temporary restraining order, Persky's attorneys made two contentions: First, that the secretary of state, not the county registrar of voters, is the proper official to certify the petitions; and second, that a sentence in the petition, "We demand an election of a successor to that office," is misleading and inaccurate.

Persky wanted the restraining order to give a judge time to hear arguments on those points. *Persky v. Bushey*, 17-CV314311 (Santa Clara Super. Ct., filed Aug. 11, 2017).

One of Persky's attorneys, Elizabeth Pipkin of McManis Faulkner, told Carter that if there

is "some action in violation of the rights of an individual, then a restraining order is in order. That's exactly what we're dealing with here, your honor."

The threat, Pipkin argued, is that the public will be misled by the petition language and Persky's rights will be infringed.

"This is about rights that a judge must hear after a full briefing," Pipkin told the judge.

Earlier, George Yin of Kaufman Legal Group, representing Dauber and other petition sponsors, argued that Persky had neither shown he would prevail on the merits nor that he would suffer "great and irreparable injury."

"In fact," Yin continued, "the

only irreparable harm that will be suffered is to the proponents. Why? The registrar of voters has already approved a certification, and they have a right to proceed."

Steve Mitra and Elizabeth Piana of the Santa Clara County counsel's office argued that the county could suffer harm because if the Persky issue is on the June 2018 ballot, the cost is \$500,000. But a stand-alone election on that single issue could cost the county \$6 million.

To get the issue on the June ballot, the recall camp must collect 58,643 signatures of registered Santa Clara County voters. They have 160 days to do so, but could begin only after Bushey certified the petition language, which she did last Wednesday.

The final day for either Bushey or the county Board of Supervisors to approve language for the June ballot is March 9 — and Bushey's staff must have enough time to certify 58,643 valid signatures before then.

Under the best outcome on Aug. 23, proponents lose 12 days of circulation. Under the worst, they may have to wait for the November 2018 ballot.

"We believe this is a delaying tactic, that there is no merit," Dauber said afterward. "The [order] should not have issued, because there was no irreparable harm to Judge Persky."