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The judge in the Stanford case will almost definitely keep his job

People want to oust Judge Aaron Persky for giving Brock Turner a six-month jail sentence on a sexual assault conviction. But even though he's up for re-election, he is very unlikely to lose or be recalled.

by STEPHANIE M. LEE

Aaron Persky — the Santa Clara judge under fire for the six-month sentence he gave an ex-Stanford University swimmer convicted of sexual assault — is all but certain to remain in office for another six-year term, despite widespread criticism and an announced recall effort.

In March, a jury convicted Brock Turner, 20, of three counts of sexually assaulting an unnamed, unconscious woman behind a dumpster; Turner faced up to 14 years in state prison. Persky sentenced him to six months in county jail and probation on Thursday, saying in court that a longer prison sentence would have a “severe impact” on Turner.

The case received major attention after the survivor released to BuzzFeed News the letter she'd read to Turner in court. The letter was published Friday; by Monday, angry observers were circulating online petitions to oust Persky.

Persky is technically up for re-election this year — but he is running unopposed, so his name will not appear on the ballot for California's primary Tuesday, nor for the general election in November. Barring a write-in candidate, of which there are none right now, he will continue to occupy the seat he's held since 2003.

The handful of Change.org petitions seeking to recall Persky carry no legal weight, no matter how many signatures they gather (one had collected about 100,000 as of Monday afternoon). A Stanford law professor and a Democratic donor also intend to lead recall campaigns against him. But according to legal experts, recalls are incredibly rare, especially for judges, and difficult to pull off.

“I don't believe there's ever been a recall on a Superior Court judge in the state,” David Gould, a Long Beach political consultant who works on judicial races and is not involved with Persky's campaign, told BuzzFeed News. “You're entering very uncharted territory.”

Other online petitions urge people to file complaints against Persky, but while judges can be reprimanded by a judicial disciplinary agency, that is unlikely to happen in this scenario, experts say.

Persky was appointed to his role in 2003 by then-Gov. Gray Davis. Before that, he had worked in the Santa Clara district attorney's office since 1997, including as deputy district attorney, prosecuting juvenile offenders, according to the Silicon Valley Business Journal. And prior to that, he worked for five years as an associate at the law firm Morrison and Foerster. He earned his bachelor's degree at Stanford, where he was captain of the lacrosse team, and attended law school at UC Berkeley.

A message left for Persky through his court reporter's voicemail was not returned.

THE RECALL ROUTE

Michele Landis Dauber, a law professor and sociologist at Stanford who is also a family friend of the 23-year-old victim, says she intends to lead a recall campaign against Persky in

conjunction with Progressive Women of Silicon Valley, a California super PAC, and a core group of six to 10 people.

Other members, in addition to Dauber, include Bay Area political consultant Maureen Erwin and Jillian Mc Nerney, executive director of the political organization Electing Women Silicon Valley.

The group has launched a website, RecallAaronPersky.com, where supporters can give donations to cover signature collection efforts for a recall petition, as well as sign up for e-mail updates.

“We have retained experienced political operatives who have worked on signature-based local referenda and we have retained counsel that is also experienced in this very specialized area,” Dauber told BuzzFeed News by e-mail. “We are aware of the task, do not feel at all daunted by it, and are confident that we can prevail.” She did not give an estimated timeline since it would be “premature,” but said that “when the signature drive opens, we expect to be successful very quickly.”

Steve Phillips, a San Francisco-based Democratic donor, co-founder of PowerPAC.org, and Stanford alumnus, told BuzzFeed News on Monday that he also intends to help launch a recall effort. “What I can say is that I am reaching out to fellow Stanford alumni as we speak — and also progressives broadly — and I have election law attorneys researching the mechanics of a recall election,” he wrote in an e-mail. “People are outraged by this decision, and many of us are quite serious about proceeding with a recall. We think it could be a national rallying cause.”

Generally speaking, recall organizers would have to first file paperwork with the county and secure approvals from election officials. A petition this year would then have to gather signatures from nearly 59,000 registered voters in Santa Clara County — in the old-fashioned, door-to-door, supermarket-canvassing type of way — within a span of 160 days, according to the Santa Clara County Registrar of Voters. The signatures would in turn have to be counted, verified, and certified.

In order to get the matter before voters in the November election, organizers would have to complete these steps by Aug. 12 — a timeline that Shannon Bushey, registrar of voters, called “very, very unlikely,” though not impossible. “I don’t imagine how they could get all of that process, that usually takes six to eight months, done in two months,” she told BuzzFeed News.

A special election, if it were to happen, would more realistically occur next year, since there are no scheduled countywide elections next year, Bushey said. But there’s yet another, even more significant reason why a recall couldn’t happen until next year, organizing logistics aside. Under California law, recalls cannot begin against local elected officials if they’re in their last six months of a term, as Persky currently is, or in the first three months of a term, which Persky would be from January through March.

Joshua Spivak, a senior fellow at the Hugh L. Carey Institute for Government Reform at Wagner College, pointed out this legal buffer zone on his recall elections blog. “It’s pretty standard to have these grace periods,” he told BuzzFeed News. “They don’t want someone to start a recall on the first day in office, and the other thing is they don’t want to have somebody trying to do a recall in the last six months because the term is over so they probably feel ‘OK, we don’t want to spend money on a recall when they’re up for election anyway.’”

The last recalls of judges in the U.S. took place in Wisconsin in 1977 and 1982, Spivak said.

A WRITE-IN CANDIDATE?

Someone could also file paperwork to become a write-in candidate against Persky in November. Only then would Persky's name appear on the ballot, with a blank line underneath for voters to fill in.

No one has filed that paperwork as of Monday, according to the Santa Clara County Registrar of Voters. Such a person would need to alert the office of their intent by Aug. 17.

THE CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE

One online petition is asking the survivor's supporters to file official complaints against Persky. These are submitted to the state Commission on Judicial Performance, an independent state agency responsible for looking into reported misconduct and disciplining judges.

But it would have to "determine that something was done that was wrong by the judge, not just that his judgment was lame," Gould said. For example, Persky would have to be found to have accepted a bribe or failed to report a conflict of interest.

And it's not even totally clear that Turner's six-month sentence is unprecedented, said Jessica Levinson, a professor at Loyola Law School in Los Angeles who specializes in California election law. There may be many more, less publicized sexual assault cases in which the perpetrator received a similar sentence — although Levinson stressed that she personally has "no sympathy" for Turner.

"It's like the maximum for murder in the worst-case scenarios is the death penalty," Levinson told BuzzFeed News. "Just because a person didn't get the death penalty doesn't mean they got a light sentence."

WHAT ABOUT LEGISLATORS?

At least one Change.org petition against Persky is urging California state lawmakers, among other parties, to take action. Technically, the state legislature does have the ability to impeach judges for misconduct in office. But, as Levinson pointed out, this doesn't appear to have happened since 1929, nearly a century ago.