

A RESOLUTION IN SUPPORT OF JUDICIAL INDEPENDENCE
AND AGAINST THE ATTEMPT TO RECALL
JUDGE LOREN McMASTER OF CALIFORNIA

Adopted by the American Judges Association Board of Governors
May 14, 2005

WHEREAS, certain individuals are circulating a petition seeking the recall of California Superior Court Judge Loren McMaster of Sacramento, based on a single decision rendered by Judge McMaster; and

WHEREAS, the members of the judicial branch, as an independent branch of the government, are relied upon to protect the rights of all citizens, even in cases in which the rulings of the judge may be contrary to the immediate view of a majority; and

WHEREAS, adherence to the rule of law is among the most fundamental premises of the justice system, prompting President George W. Bush to call the rule of law one of the "non-negotiable demands of human dignity"; and

WHEREAS, the American Judges Association is the largest independent group of judges in the United States and is committed to responding to attacks on judges when those attacks are unfair or demonstrate a lack of understanding of the judicial system and responding to the attack may be helpful to the judge, the public, or both; and

WHEREAS, the Executive Committee of the American Judges Association reviewed the issue of the attempt to recall Judge McMaster at its January meeting and the officers of the Association have further investigated it since that time,

NOW, THEREFORE, BE IT RESOLVED that the American Judges Association urges that a recall of Judge Loren McMaster should not be pursued. In addition, the American Judges Association provides the following additional reasons for this position:

1. The American system of government relies on separation of powers between three branches of government, including a separate

judicial branch, to protect the rights of all from potential oppression of minorities by the majority. Accordingly, the authors of the *Federalist Papers* noted that “the interpretation of the laws is the proper and peculiar province of the courts” and that courts will sometimes be called upon to declare laws invalid, even when supported by a majority, based upon rights protected by the Constitution.

2. If judges are to fulfill this basic and essential function, they must act without fear of being removed from office based upon the popularity of any specific judicial decision, so long as the decisions made are based upon a good-faith application of the law.

3. In the absence of unethical or illegal conduct, the proper means for challenging a specific decision of a trial judge is by appeal, not removal from office. In addition, of course, voters may consider a judge’s suitability for continued service whenever a judge, subject to retention or contested election, stands for a new term.

4. The decision made by Judge McMaster in upholding the validity of California’s domestic partnership rights statute has recently been upheld by a three-judge appellate panel. In a decision filed April 5, 2005, the Third Appellate District Court of Appeal concluded that Judge McMaster’s decision “did not make public policy,” but rather that, “[a]s he was required to do, Judge McMaster conscientiously applied well-established rules of statutory construction to reach a decision compelled by the law.” Whether Judge McMaster is ultimately upheld, in the event a further appeal is taken to the California Supreme Court, is beside the point. For the purposes of considering whether a recall of Judge McMaster is appropriate, it is enough to say—as is the case here—that his decision appears to have given careful consideration to the language of the statutory and constitutional provisions at issue, to established rules of law, and to the proper role of the courts in interpreting the law.

5. Recall procedures should not be used for the purpose of attempting to intimidate judges generally.