

The ethics of endorsement: Our high court should speak up

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An endorsement can make or break a candidate's prospects, and for an aspiring attorney or reigning commissioner, the backing of a local law enforcement association, prominent labor organization, the chief of police, the deputy district attorney association, or the actual DA can be campaign-defining.

That's almost entirely not a problem. Freedom of speech guarantees the public the right to endorse whomsoever they please, whether they're Joe Schmo or the county's lead district attorney, and the public can take it or leave it. As well, our election laws allow them to let their wallets do the endorsing for them, and unless they exceed contribution limits, that's fine too. The system working as intended.

But in acknowledgment of the encroaching politicization of even our most apolitical offices, California's governing ethics organizations should offer reassessments of the situation. The California Supreme Court's Committee on Judicial Ethics has already acknowledged the reality of this problem, albeit indirectly, in a July opinion addressing judicial participation in public demonstrations and rallies. CJEO Formal Opinion 2020-014, issued July 20, 2020.

"In view of recent events that have focused attention on concerns regarding racial justice and equality in our communities, judicial officers may feel a moral obligation to support these issues, and other social justice issues, by participating in public demonstrations and rallies, or by making public statements," the committee stated.

The committee recommends judicial officers exercise excessive caution, as an appearance at such a demonstration might undermine the public's confidence in the judiciary. A rally might relate to a situation that could end up on the judge's docket in the future, or a protest could deviate from the message the judge initially attended to endorse through factors they couldn't predict or control.

"Judges have a paramount duty to comply with the judicial canons to promote the public's confidence in judicial impartiality, which is the foundation of our system of justice," wrote the committee. "Judges must not allow their conduct outside the courthouse to affect their ability to fulfill their judicial obligations on the bench."

This logic should be applied to endorsements, both for prospective officials and those already appointed. A stamp of approval from the county's top cop might have seemed like a no brainer for a would-be commissioner nowadays invites a more careful consideration of the endorsers' statements and public history.

Exacerbating this problem is the fact that your average public official is more public than ever, thanks to social media, and many aren't afraid to treat Twitter or Facebook as their own personal soapbox. It can be hard to step back or clarify an insensitive comment or poorly timed joke once it has entered the public consciousness.

Attorneys are increasingly aware of the problems with endorsements and are speaking up about it, with Contra Costa County District Attorney Diana Becton serving as a primary example. Becton, along with a handful of other district attorneys, issued a statement to the State Bar of California calling to ban "elected prosecutor -- or prosecutors seeking election -- from seeking or accepting political or financial support from law enforcement unions."

The state Supreme Court's ethics committee, as well as the California Judges Association, should speak up on the matter as well. It's unlikely we'll get any opinions ahead of the upcoming election, but it's not too late for judicial candidates to exercise increased caution with regard to the endorsers they choose to promote. A candidate can't stop a divisive public official from endorsing them, but celebrating that endorsement will open them to questions about the nature of their association.

While a protest might not be necessarily partisan, concluded the ethics committee in its aforementioned opinion, "they address matters that are the subject of current debate and litigation and can relate to subjects over which passions run high." Individuals should be treated to this level of scrutiny, not just movements. □

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