



The State Bar of California

COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT

F.1. DA Request
09-11-20 Meeting
Open Session

Date: August 31, 2020

To: Members, Committee on Professional Responsibility and Conduct

From: Steve Bundy and Dena Roche

Subject: Discussion of District Attorneys' Proposal

We are planning for a full Committee discussion of the DAs' proposal for a rule or ethics opinion barring candidates for elected prosecutor positions from seeking or accepting political or financial support from law enforcement unions.

We anticipate that the topics of discussion will proceed roughly as outlined below. The goal of the discussion is to see where the Committee is in its understanding of the issues, to identify issues requiring further inquiry, and to begin to think about the timing and form of our recommendations to the Board of Trustees.

We recommend that you review the attached public comments, as well as the working group's July 20, 2020 issue memorandum, also attached, as you prepare for our discussion.

1. Developments at the public hearing
 - a. Clarification of the DAs' proposal
 - b. The ACLU's modified proposal
 - c. Pending legislation: AB 1506 (attached)
 - d. Summary of testimony—pro and con
2. Understanding the problem:
 - a. Police misconduct and prosecutorial response
 - i. Testimony
 - ii. Other data
 - b. Union political and financial support for DA candidates
 - i. Testimony
 - ii. Other data

- c. Conflict of interest in investigating and prosecuting police misconduct—actual and apparent
 - i. Working relationship conflicts
 - ii. Contribution conflicts
- 3. How existing law addresses the problem
 - a. Actual or potential conflicts under 1.7(b) and 1.10—consent, imputation, enforcement
 - b. Actual or potential conflicts under Penal Code section 1424—case law and the Attorney General’s position
 - c. Appearance of impropriety conflicts
- 4. The proposed rules
 - a. The District Attorneys’ proposal
 - i. How effective
 - 1. Actual or potential conflicts
 - 2. Apparent conflicts
 - ii. Constitutional issues
 - iii. Possible tensions with other law and other branches of government
 - b. The ACLU proposal
 - i. How effective
 - ii. Constitutional issues
 - iii. Possible tensions with other law and other branches of government
- 5. Other ways the State Bar could contribute to addressing the problem
 - i. Revisions to existing Rules of Professional Conduct
 - 1. Comment to Rule 1.7 dealing with prosecutors
 - 2. Comment to Rule 1.10 dealing with imputation in prosecutor’s office
 - ii. Ethics opinion
 - 1. Identify prosecutorial conflicts that would be disqualifying under Rule 1.7(b).
 - 2. Other issues?
 - iii. Standards for prosecutorial conduct generally, or specifically for investigating and prosecuting police misconduct (analogy to ABA Prosecutorial Function standards)
- 6. Next steps

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Charles H. Bell Jr
City	Sacramento
State	California
Email address	cbell@bmhlaw.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Oppose
ATTACHMENTS You may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	200806_Letter_to_State_Bar.pdf (1190k)

BELL, McANDREWS & HILTACHK, LLP

Attorneys and Counselors at Law

455 CAPITOL MALL, SUITE 600
SACRAMENTO, CA 95814

(916) 442-7757
FAX (916) 442-7759

August 6, 2020

Alan Steinbrecher
Chair, Board of Trustees
State Bar of California
180 Howard Street
San Francisco, CA 94105

Donna Hershkowitz
Interim Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Rule to Prohibit Campaign Endorsements and Contributions

“If all mankind minus one were of one opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind.”

- John Stuart Mill

On behalf of a substantial number of Elected District Attorneys across California, the following written comment is submitted in response to the State Bar’s hearing on whether Elected District Attorneys or candidates for District Attorney should be prohibited from seeking endorsements or financial contributions from law enforcement unions.

The undersigned is a member in good standing of the California State Bar, has practiced campaign, election and constitutional law exclusively since 1980. I have represented numerous clients in litigation involving campaign finance and redistricting matters before federal and state courts, including the California Supreme Court and the United States Supreme Court. In 2010, I served as Co-Chair of Fair Political Practices Commission Chair Dan Schnur’s Task Force on Campaign Finance Reform. I have served as a member of the American Bar Association’s Standing Committee on Election Law (2015-2018) and currently serve as the Chair of the Advisory Committee of the Standing Committee. My views reflect those of my clients and do not represent the views of the Standing Committee.

I. The Proposed Rule Is Unconstitutional

A. Campaign Endorsements and Contributions are Protected by the First Amendment.

On June 1, 2020, the proponents of this rule change sent a letter to the State Bar asking them to prohibit “elected prosecutors-or prosecutors seeking election” from accepting endorsements or contributions from police unions. They claim there is a conflict of interest or appearance one, as District Attorneys work daily with law enforcement officers. Per their statement, “[p]rosecutors are in a unique position of having to work closely with law enforcement officers and evaluate whether some of those same officers have committed crimes.”

The proposed rule is patently unconstitutional and prohibited by the First Amendment. As the California Supreme Court stated in *Woodland Hills Residents Association, Inc. v. City Council of City of Los Angeles* (1980) 26 Cal.3d 938, 946:

“Political contributions involve an exercise of fundamental freedom protected by the First Amendment to the United States Constitution and article I section 2 of the California Constitution.”

In *Woodland Hills*, the court rejected the notion that elected city council members must be recused from voting on a development issue because developers had donated to the council members’ campaigns. In rejecting this claim, the Court went on to state,

“To disqualify a city council member from acting on a development proposal because the developer had made a campaign contribution to that member would threaten constitutionally protected political speech and association freedoms.”

Furthermore, while individual counties may, by state law or local ordinance, put campaign limits on direct contributions to candidates, there is no authority to limit what proportion of a candidate’s total contributions may be obtained from any individual, group or association. Any reliance on *Caperton v. A.T. Massey Coal, Co. Inc.* (2009) 556 U.S. 868 is misplaced. In that case, a party to a case *pending* in front of an appellate judge, donated \$3 million to the judge’s election campaign, equating to 300% more than the judge’s campaign committee had raised. The Supreme Court found that, given the disproportionately large donation, the judge should have *recused* himself. Nothing about the decision establishes that judges-or prosecutors-can be *prohibited* from accepting donations.¹

¹ The State Bar’s Committee on Professional Responsibility and Conduct posed several questions related to amount and percentage of contributions received. There is no legal authority for the government to impose a “proportionality” standard to the amount of contributions allowed.

B. The proposed rule is unconstitutional because it is content based

The proposed Rule of Professional Conduct prohibiting prosecutors from accepting political or financial support from police and “law enforcement” unions is not only violative of the First Amendment’s protection of freedom of speech through campaign expenditures, but constitutes an impermissible content-based restraint on speech as well.

The United States Supreme Court has long held that the First Amendment protects political and ideological speech, including campaign financing. *See West Virginia State Board of Education W. Va. State Bd. of Educ. v. Barnette* (1943) 319 U.S. 624, 642.; also, *NAACP v. Button* (1963) 371 U.S. 415, 428-429; *Citizens United v. FEC* (2010) 558 U.S. 310. As the Supreme Court stated in *Citizens United* at page 898:

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. *See Buckley v. Valeo* (1976) 424 U.S. 1, at 14-15, 96 S.Ct. 612 (“In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential”). The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment “‘has its fullest and most urgent application’ to speech uttered during a campaign for political office.” *Eu v. San Francisco County Democratic Central Comm.* (1989) 489 U.S. 214, 223, 109 S.Ct. 1013, 103 L.Ed.2d 271 (quoting *Monitor Patriot Co. v. Roy* (1971) 401 U.S. 265, 272, 91 S.Ct. 621, 28 L.Ed.2d 35); see *Buckley, supra*, at 14, 96 S.Ct. 612 (“Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution.”). For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are “subject to strict scrutiny,” which requires the Government to prove that the restriction “furthers a compelling interest and is narrowly tailored to achieve that interest.”

The proposed rule imposes restrictions on contributions and support from one particular group or presumed category of organizations based not on a legal conflict but on a disagreement with, and more pointedly, a disdain for, a particular philosophy. (See also Part III, *infra*, pp. 7-13.) The pretext for this proposed rule is to ensure and preserve the integrity of the legal profession and the role of the District Attorney in its oversight of police agencies. The real purpose of this proposed rule is to further an agenda designed to stifle and silence opposing viewpoints. This is antithetical to healthy political discourse.

The proposed rule is, by design, content based in its clear attempt to suppress the political speech of candidates supported by law enforcement unions. There can be little doubt that this effort is politically driven to silence and attempt to unseat District Attorneys who are supported by law enforcement.

II. Law enforcement endorsements and contributions do not create a conflict for a District Attorney.

The proponents claim that endorsements and contributions should be prohibited because there is a conflict or appearance of a conflict of interest since District Attorneys work daily with law enforcement officers. As they state, “Prosecutors are in a unique position of having to work closely with law enforcement officers and evaluate whether some of those same officers have committed crimes.”

The proponents fail to delineate what they mean by “law enforcement unions.” For instance, does this proposed rule ban *all* endorsements or contributions, irrespective of whether the union represents officers from the same jurisdiction as the individual Elected District Attorney? For instance, will this proposed rule prohibit:

- The Sacramento County or San Diego County District Attorney from seeking endorsements or contributions from the Los Angeles Police Protective League?
- The San Luis Obispo County District Attorney candidate from seeking the endorsement of the Hayward Police Officers Association (POA)? What if the Hayward POA gives endorsements but does not have a PAC to give financial contributions? Is the candidate still prohibited under this proposed rule?
- The candidate for Los Angeles County District Attorney from accepting endorsements from the Alameda Deputy Sheriffs Association?
- The Fresno County District Attorney from accepting contributions from the Riverside Police Officers Association?
- Elected District Attorneys or candidates for district attorney from receiving endorsements and/or contributions from law enforcement unions that represent officers from statewide agencies and have little or nothing to do with local prosecutions?²

² For instance, the California State Law Enforcement Association (CSLEA) represents DMV, Alcohol Beverage and Control, Fish and Wildlife, Fire Marshalls, DOJ criminalists, 911 dispatchers, and Bureau of Automotive Repair.

These questions are particularly relevant since the proponents' claim of conflict arises because District Attorneys "work closely" with these officers and evaluate whether some of these officers have committed crimes. Yet, this argument fails for several reasons:

- District Attorneys are bound by their prosecutorial ethics in making charging decisions. Those decisions are based upon the facts and the law.
- District Attorneys have in fact charged police officers with crimes when the facts and law support the prosecution. Just a few examples of such crimes include³:
 - Murder
 - Los Angeles Police Officer Stephanie Lazarus convicted of murder of Sherri Rasmussen
 - San Diego Sheriff's Deputy Aaron Russell: pending murder charges for an officer-involved fatal shooting
 - Riverside Sheriff Deputy Oscar Rodriguez: pending murder charges for an officer-involved fatal shooting
 - Rape
 - Sacramento Police Officer Darrell Rosen convicted of rape committed on duty; sentenced to state prison.
 - West Sacramento Police Officer convicted of multiple counts of rape while on duty; sentenced to 205 years to life
 - Excessive Force
 - Elk Grove Police Officer currently pending felony charges for excessive force (*People v. Bryan Schmidt*)
 - Placer County: in 2018, three correctional deputies were prosecuted and convicted of excessive force
 - Los Angeles: LAPD Officer Frank Hernandez currently pending charges of felony assault under color of authority (Case No. BA487734)
 - Public Integrity
 - El Dorado Deputy Sheriffs Association President Donald Atkinson convicted of embezzling over \$400,000 from the DSA; Atkinson was sentenced to 5 years in prison
- Endorsements and contributions by law enforcement unions outside the District Attorney's jurisdiction have a First Amendment right to do so⁴
- Officer-involved use of force cases represent a tiny fraction of all cases reviewed by a District Attorney

³ These examples are just a fraction of crimes prosecuted by District Attorneys against police officers in California. If the State Bar wants more information on the number and types of cases involving police officers, I can provide that upon request.

⁴ For instance, in the 2018 Election, the Sacramento District Attorney received over 80% of her law enforcement contributions either from statewide unions or those from associations outside Sacramento County.

To further demonstrate the absurdity of the claimed “conflict” as the reason to adopt the rule are the following questions:

- Should District Attorneys be prohibited from accepting endorsements or donations from Crime Victims associations? After all, by the very nature of their jobs, “work closely” with crime victims.
- Should District Attorneys be prohibited from accepting donations from criminal defense attorneys? After all, by the very nature of their jobs, “work closely” with defense attorneys.
- Should District Attorneys be prohibited from accepting endorsements or donations from Real Estate Associations? After all, District Attorneys often investigate and prosecute real estate cases.
- Should District Attorneys be prohibited from accepting endorsements or donations from Insurance Associations? After all, District Attorneys often investigate and prosecute insurance fraud cases.

There can be little doubt that one of the underlying reasons for this proposed rule is the baseless claim that District Attorneys cannot fairly review use of force cases. However, these cases represent a miniscule number of cases reviewed each year by a District Attorney. In mid-large counties, thousands of cases are reviewed each year by a District Attorney’s Office for charging decisions. The number of use of force cases is less than 1%. For instance:

- In 2019, the Sacramento District Attorney’s Office reviewed approximately 33,000 cases for charging decisions. Of these 33,000 cases, only *six* fatal use of force cases were submitted for review. This represents .018% of all cases.
- The Riverside District Attorney’s Office reviews approximately 122,000 cases per year. In 2018, 173 of these cases involved use of force or police misconduct. This represents .014% of all cases.
- The Los Angeles District Attorney’s Office reviews approximately 65,000-70,000 felony cases per year. Of these, approximately 95-115 cases involve use of force. This represents .017% of all cases.

Even with this overly broad attempt to restrict the First Amendment right to accept endorsements and contributions, there is no authority to outright *prohibit* such constitutionally protected actions. (See, *Woodland Hills Residents Association, Inc., supra.*) In fact, in 2018, several months prior to the June elections, California Attorney General Xavier Becerra found that “the mere fact of a campaign endorsement and financial contributions to a campaign does not create a conflict of interest for a district attorney.” In his analysis, the Attorney General went on to state, “Case law makes clear that a conflict of interest stems from the district attorney’s perspective, not the public’s perception, and is rooted in the ability of a district attorney to wield discretion in a way to ensure that the defendant will receive a fair trial.” (Attorney General’s Letter attached.)

Furthermore, there are adequate protections in place to ensure the fair administration of justice and addressing either actual or perceived conflicts of interest. This includes the State Bar's Rules of Professional Conduct, the American Bar Association's Standards for Criminal Justice, and Penal Code section 1424 authorizing recusal of the District Attorney.

Finally, it cannot be understated that the Attorney General has the Constitutional authority to review any case, including decisions regarding allegations of police misconduct. It is unclear if this proposed rule would apply to the Attorney General. Whether or not it applies, the inherent authority of the Attorney General authorizes him or her to step in where there is an actual or perceived conflict. Given the Constitutional rights implicated by this proposed rule, the current safeguards are adequate to ensure impartiality in decisions being made by district attorneys.

III. The proposed rule applies only to some, not all.

Glaringly omitted from the proposed rule is any prohibition on any other organization or group posing an equally compelling conflict from providing similar contributions, endorsements or independent expenditures. Yet even more alarming is the absence of any analysis into other such organizations and their contributions and expenditures. Logic dictates and fairness demands that *any* group or organization with such a perceived conflict significant enough to warrant a prescription on contributions, independent expenditures and endorsements would be faithfully vetted and critically examined. The conspicuous absence of any such analysis provides clarity into the true motivation behind this proposed solution.

Engaging in a holistic and comprehensive examination of potential conflicts makes it readily apparent that there are a number of organizations whose contributions to and endorsements of the campaigns of District Attorney candidates would rise to the same level of conflict as with police unions that warrant this drastic proposal.

This effort to suppress the First Amendment rights of candidates supported by law enforcement unions is evidenced by the fact that the proponents are supported by individuals and organizations that promote anti-law enforcement agendas. No such attempt to limit contributions from groups who support the proponents demonstrates the glaring hypocrisy of this proposal.

Moreover, a one-sided ban on the contributions on one side also runs up against two issues: (1) violation of equal protection of the laws under the First and Fourteenth Amendments, which is related to but somewhat different than the prohibition on content-based regulation of speech (*Buckley v. Valeo*, *supra*, 424 U.S. at 48-49; *McConnell v. FEC*, (2003) 540 U.S. 93, 227, and *Davis v. FEC* (2008) 554 US 724, 741-742) ["the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment."]), and (2) ignores the constitutional prohibition against limitations on independent expenditures by the very organizations the proposed rule purports to prohibit. (*Citizens United*, *supra*; and *Long Beach Chamber of Commerce v. City of Long Beach*, 603 F.3d 684 (9th Cir. 2010).)

A review of the proponents' financial supporters, advocates and own endorsers reveals they are on the "political payroll" of those who support these agendas. These agendas include the prosecution of police officers irrespective of the facts or law.

Examples of these agenda driven groups include:

- George Soros and his network of foundations that he financially supports, including:
 - Open Society Foundations
 - California Justice and Public Safety PAC
 - Tides Foundation
 - Fair and Just Prosecution
 - Color of Change
 - ACLU (\$50 million in grants awarded in 2014)
 - The Justice Collaborative
- Shaun King, Real Justice PAC/Black Lives Matter

In the recent 2018 election cycle, Soros and his network of foundations and supporters poured nearly \$3 million into California candidates who support his platforms. These include races in San Diego, Sacramento, and Alameda counties.

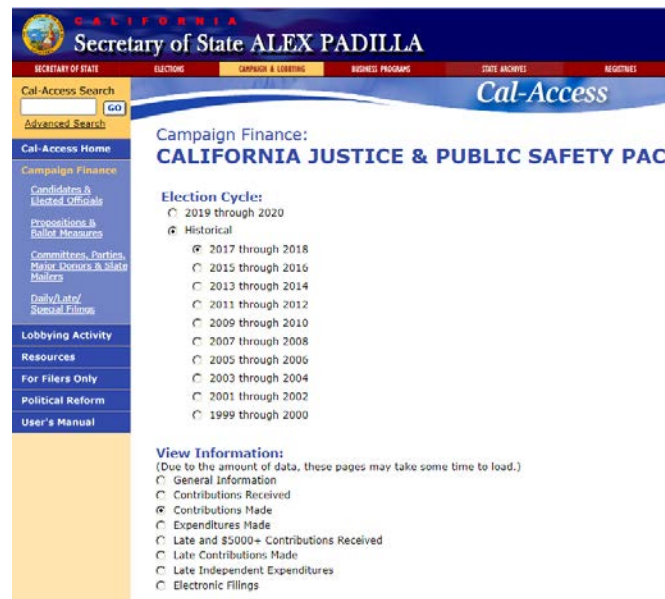
Similarly, Shaun King's Real Justice PAC has poured large amounts of money into candidates who support his progressive agendas. This organization actively recruits and endorses progressive candidates to defeat sitting District Attorneys who do not share his agendas. (<https://realjusticepac.org/>) It is also well-known that Shaun King, who has a social media following of millions of people, has made false accusations against police officers. In fact, in 2018 he falsely accused a Texas Trooper of kidnapping and rape on his various social media platforms. His twitter post, including naming the trooper, was as follows:



These accusations were later proven false by bodycam videos and a confession by the woman who made the false allegation.

The candidates endorsed and supported by these groups often made campaign promises to “prosecute killer” cops,⁵ and often citing cases that had been found justified by the sitting District Attorney.⁶

A brief review of the Secretary of State’s campaign finance reports demonstrates the volume of money funneled into these races by Soros funded super PACs:



⁵ Examples of campaign mailers include:



⁶ Many District Attorney’s Offices post the police use of force reports online detailing the facts and legal analysis of each incident. Often, anti-law enforcement groups *demand* that police officers be prosecuted for murder. In these demands, these groups often make false claims about the true facts of these incidents.

Who did the committee give contributions to, and how much?					
DOWNLOAD THESE RESULTS: MICROSOFT EXCEL					
DATE	PAYEE	CONTEST	POSITION	PAYMENT TYPE	AMOUNT
05/29/2018	PRICE, PAMELA	DISTRICT ATTORNEY	SUPPORT	IND	\$218,215.44
05/22/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$209,055.00
05/08/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$198,750.00
05/11/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$198,750.00
05/03/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$194,884.00
05/22/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$124,035.79
05/19/2018	PRICE, PAMELA	DISTRICT ATTORNEY	SUPPORT	IND	\$121,250.00
05/23/2018	STEPHAN, SUMMER	DISTRICT ATTORNEY	OPPOSE	IND	\$111,968.05
05/29/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$111,781.00
05/29/2018	STEPHAN, SUMMER	DISTRICT ATTORNEY	OPPOSE	IND	\$111,781.00
05/29/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$108,963.30
05/08/2018	PHILLIPS, NOAH	DISTRICT ATTORNEY	SUPPORT	NON-MONETARY	\$101,475.00
05/04/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$101,377.12
05/03/2018	PHILLIPS, NOAH	DISTRICT ATTORNEY	SUPPORT	NON-MONETARY	\$77,648.48
05/14/2018	PRICE, PAMELA	DISTRICT ATTORNEY	SUPPORT	IND	\$75,676.22
05/21/2018	O'MALLEY, NANCY	DISTRICT ATTORNEY	OPPOSE	IND	\$73,424.11
05/01/2018	PRICE, PAMELA	DISTRICT ATTORNEY	SUPPORT	IND	\$66,196.84
05/07/2018	PRICE, PAMELA	DISTRICT ATTORNEY	SUPPORT	IND	\$65,163.69
05/30/2018	O'MALLEY, NANCY	DISTRICT ATTORNEY	OPPOSE	IND	\$64,931.95
05/29/2018	PRICE, PAMELA	DISTRICT ATTORNEY	SUPPORT	IND	\$64,035.53

<http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1402586&view=contributions&session=2017>

For instance, in San Diego county, Soros funneled \$2 million in his effort to unseat District Attorney Summer Stephan. The shocking amounts donated include the following: Outside of California, Soros has poured many more millions into “Soros-minded” candidates. This includes over \$1,000,000 to Philadelphia District Attorney Larry Krasner. Prior to being elected, Krasner was a criminal defense attorney with a reputation for having suing police officers 75 times. (<https://www.nytimes.com/2017/06/17/us/philadelphia-krasner-district-attorney-police.html>)

Several articles document the amount of money being funneled to these candidates, either directly or indirectly, as well as who is supporting them.

- <http://contracostaherald.com/05271801cch/>
- <https://www.politico.com/states/california/story/2019/11/07/california-da-race-a-major-test-for-criminal-justice-reform-movement-1226372>
- <https://apnews.com/0aa7d76876c24be7a8a9d4cab737342b/Big-money-Soros-contributions-change-prosecutor-campaigns>

Furthermore, a brief review of the Secretary of State's campaign finance reports demonstrates the volume of money funneled into these races by Shaun King's Real Justice PAC:

CALIFORNIA Secretary of State ALEX PADILLA					
SECRETARY OF STATE		ELECTIONS	CAMPAIGN & LBBING	BUSINESS PROGRAMS	STATE ARCHIVES
REGISTRARS		Cal-Access			
Cal-Access Search					
GO					
Advanced Search					
Cal-Access Home					
Campaign Finance					
Candidates & Elected Officials					
Propositions & Ballot Measures					
Committees, Parties, Major Donors & State Mailers					
Daily/late/ Special Filings					
Lobbying Activity					
Resources					
For Filers Only					
Political Reform					
User's Manual					

Campaign Finance:

REAL JUSTICE PAC (FED PAC ID #C00632554)

Election Cycle:

☒ 2019 through 2020

☐ Historical

View Information:

(Due to the amount of data, these pages may take some time to load.)

☐ General Information

☐ Contributions Received

☒ Contributions Made

☐ Expenditures Made

☐ Late and \$5000+ Contributions Received

☐ Late Contributions Made

☐ Late Independent Expenditures

☐ Electronic Filings

Who did the committee give contributions to, and how much?

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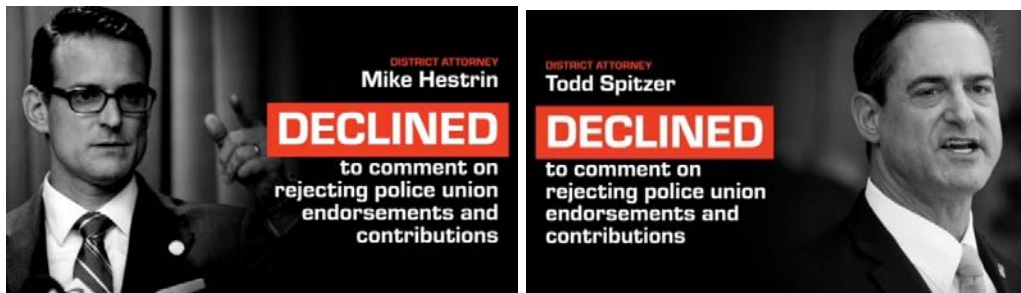
DATE	PAYEE	CONTEST	POSITION	PAYMENT TYPE	AMOUNT
02/03/2020	RUN, GEORGE, RUN: GEORGE GASCON FOR LA DA 2020		SUPPORT	MONETARY	\$250,000.00
02/19/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$35,000.00
02/13/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$13,375.00
12/09/2019	GASCON, GEORGE	OTHER	SUPPORT	MONETARY	\$4,666.00
03/18/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$4,666.00
01/25/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$4,666.00
01/15/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$4,666.00
04/29/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$4,166.00
06/08/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$4,166.00
03/10/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$3,333.00
01/25/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$2,632.72
02/28/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$2,532.44
03/02/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$2,263.90
05/29/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$2,150.46
03/18/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$1,754.40
03/02/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$1,633.48
06/30/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$1,302.14
02/12/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$1,272.48
03/05/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$1,114.78
04/14/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$750.00
06/29/2020	GASCON, GEORGE	OTHER	SUPPORT	IND	\$600.00
03/18/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$577.32
04/14/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$560.40
06/30/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$511.29
02/28/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$491.87
06/30/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$231.04
06/30/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$209.14
03/31/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$144.72
03/31/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$142.69
03/19/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$74.84
02/28/2020	ROSSI, RACHEL	OTHER	SUPPORT	IND	\$58.33
02/28/2020	GASCON, GEORGE	OTHER	SUPPORT	IND	\$58.33
06/25/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$58.28
02/12/2020	ROSSI, RACHEL	OTHER	SUPPORT	IND	\$50.00
02/12/2020	GASCON, GEORGE	OTHER	SUPPORT	IND	\$50.00
02/28/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$32.34
03/03/2020	GASCON, GEORGE	OTHER	SUPPORT	IND	\$29.25
03/03/2020	ROSSI, RACHEL	OTHER	SUPPORT	IND	\$29.25
03/02/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$22.62
02/28/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$15.44
06/30/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$5.56

<http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1404289&view=contributions>

To further demonstrate the viewpoint driven effort underway in this proposed rule is the fact that within just weeks of the proponents' June 1, 2020 letter, the Soros funded Justice Collaborative emailed Elected District Attorneys across California, demanding they "reject police union contributions and endorsements" and aggressively threatening: **"We will be publishing whether you respond "yes," "no," or "declined to answer" by Tuesday, July 7th."**

This email was followed a week later with a threat to publish non-compliance: "When [The Appeal](#) publishes the final list of responses, they will use the attached graphic."





Perhaps most ironic is the Justice Collaborative’s statement in their email, “Campaign endorsements and contributions send a message to constituents. They tell voters that a candidate aligns with the values and interests of the donor.”

The irony is that this very email demonstrates the core values of the First Amendment and the fundamental protection of political and ideological speech. As poignantly stated in *Citizens United*, “speech is the essential mechanism of democracy” ... and “For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence.”

Revealing all these viewpoint driven candidates begs the obvious question: Should these candidates and Elected District Attorneys be prohibited from accepting endorsements and contributions from these groups, or let alone any other group that “aligns with the values and interests” of the candidate? As divided the values may be among the candidates, the answer to the obvious question is clear: The First Amendment wins.

IV. Conclusion


It is as logically incongruous as it is intellectually disingenuous to assert that law enforcement contributions and endorsements to a District Attorney candidate create an intolerable conflict yet a contribution by an organization requiring a District Attorney candidate to decide to prosecute or not to prosecute a case in conformity with its stated beliefs and mission does not.

The proponents ignore the natural and logical extension of the purpose of the very rule they suggest. If this particular perceived conflict is so egregious as to warrant this proposed remedy, *all* contributions from any organization presenting a perceived conflict should also be prohibited. Moreover, the prohibition on contributions should be extended to *any* lawyer seeking to hold an elected office in order to preserve the integrity of the profession.

Fundamental to our democracy is the notion that the government cannot regulate speech based on its content or viewpoint. Content-based restrictions on speech are presumptively invalid and the United States Supreme Court and the California Supreme Court have held that campaign donations are protected political speech and that a donation in and of itself does not give rise to a conflict of interest. Likewise, California’s Attorney General reached the same conclusion in 2018.

The proponents' proposed rule is unconstitutional, content driven and politically motivated to silence District Attorneys and candidates who are supported by law enforcement. It is a flawed attempt to stifle opposing viewpoints and chill political discourse. There is no conflict of interest that would authorize a *prohibition* on endorsements and contributions. This proposed rule violates the fundamental principles of democracy and should be wholly rejected.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Charles H. Bell, Jr.", written in a cursive style.

Charles H. Bell, Jr.

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7687
Facsimile: (916) 324-2960
E-Mail: Michael.Farrelle@doj.ca.gov

RECEIVED

MAR 05 2018

ANNE MARIE SCHUBERT
District Attorney

February 28, 2018

Assistant Chief Deputy District Attorney Michael Blazina
Sacramento District Attorney's Office
901 G Street
Sacramento, CA 95814

RE: Conflict of Interest Analysis – Campaign Contributions

Dear Mr. Blazina:

In your letter, dated February 5, 2018, you asked whether campaign endorsements and contributions from an individual or an organization present a conflict that bars the District Attorney from impartially deciding whether to prosecute a case in which that individual is a potential defendant. Your questions focused on an officer-involved-shooting case in which an officer being prosecuted was a member of a labor union that had endorsed and financially contributed to the district attorney's campaign. The short answer to these questions is that there is no conflict.

Under Penal Code section 1424, recusal of a district attorney's office requires proof of a conflict of interest that makes it unlikely that the defendant could receive a fair trial if the district attorney's office prosecutes the case. A conflict has been described as "a structural incentive for the prosecutor to elevate some other interest over the interest in impartial justice, should the two diverge." (*People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 754.) "[A] prosecutor's interest should coincide with the interest of the public in bringing a criminal to justice and should not be under the influence of third parties who have a particular axe to grind against the defendant." (*People v. Parmar* (2001) 86 Cal.App.4th 781, 797 (*Parmar*)).

Published cases in which a disabling conflict has been found are few and generally fall into the following three categories: an employee of the district attorney's office is a crime victim (see *People v. Conner* (1983) 34 Cal.3d 141, *Lewis v. Superior Court* (1997) 53 Cal.App.4th 1277; *People v. Jenan* (2006) 140 Cal.App.4th 782); the district attorney represented the defendant previously (*People v. Lepe* (1985) 164 Cal.App.3d 685); or the district attorney's

office received money for investigative costs from a victim (see *People v. Eubanks* (1996) 14 Cal.4th 580). As stated in *Parmar*, "...*Eubanks* and virtually every other disqualification case has been concerned with situations in which the prosecutor has either had a personal interest or been claimed to be under the influence of a private party with a personal interest in the prosecution of the particular defendant, usually by virtue of having been a victim." (*People v. Parmar*, *supra*, 86 Cal.App.4th at p. 795.)

In many instances, cases with conflicts of interest can be handled by a district attorney's office after an ethical wall has been established around the affected employee. (See *Stark v. Superior Court* (2011) 52 Cal.4th 368; *People v. Gamache* (2010) 48 Cal.4th 347; *People v. Hamilton* (1985) 41 Cal.3d 211; *People v. Sy* (2014) 223 Cal.App.4th 44; *Hambarian v. Superior Court* (2002) 27 Cal.4th 826; *People v. Lopez* (1984) 155 Cal.App.3d 813; and *Trujillo v. Superior Court* (1983) 148 Cal.App.3d 368.) That focus on fair adjudication of a case is borne out by the fact that failure to recuse a district attorney's office can be harmless on appeal when the district attorney's office "did not infringe upon defendants' state or federal rights to due process of law." (*People v. Vasquez* (2006) 39 Cal.4th 47, 66.) An ethical wall ensures that a defendant receives a fair trial.

The few published cases ordering recusal, as well as courts' acceptance of ethical walls in lieu of recusal, demonstrate that recusal is a disfavored remedy that appellate courts have cautioned should be exercised with "particular caution." (*People v. Lopez* (1984) 155 Cal.App.3d 813, 821-822.) The policy reasons for this position were set out in *Lopez*:

'when the entire prosecutorial office of the district attorney is recused and the Attorney General is required to undertake the prosecution or employ a special prosecutor, the district attorney is prevented from carrying out the statutory duties of his elected office and, perhaps even more significantly, the residents of the county are deprived of the services of their elected representative in the prosecution of crime in the county. The Attorney General is, of course, an elected state official, but unlike the district attorney, is not accountable at the ballot box exclusively to the electorate of the county. Manifestly, therefore, the entire prosecutorial office of the district attorney should not be recused in the absence of some substantial reason related to the proper administration of criminal justice.'

(*Id.*, at p. 822, quoting *Younger v. Superior Court* (1978) 86 Cal.App.3d 180.)

As to whether political contributions create a conflict of interest, it was claimed in another case that city council members should have been disqualified from voting on a subdivision map because developers had donated to the council members' campaigns. The Supreme Court stated, "Political contribution involves an exercise of fundamental freedom

protected by the First Amendment to the United States Constitution and article I, section 2 of the California Constitution.” (*Woodland Hills Residents Association, Inc. v. City Council of City of Los Angeles* (1980) 26 Cal.3d 938, 946.) “To disqualify a city council member from acting on a development proposal because the developer had made a campaign contribution to that member would threaten constitutionally protected political speech and associational freedoms.” (*Ibid.*) The Court further found that law governing disclosure of campaign contributions “provides for disclosure of campaign contributions by recipients of contributions rather than disqualification of recipients from acting in matters in which the contributor is interested.” (*Ibid.*)

While the act precludes an elected official from participating in a decision in which he has ‘a financial interest’ (Gov. Code, § 87100), it expressly excludes from definition of ‘financial interest’ the receipt of campaign contributions. (Gov. Code, §§ 87103, subd. (c), 82030, subd. (b). Thus, the Political Reform Act -- dealing comprehensively with problems of campaign contribution and conflict of interest -- does not prevent a city council member from acting upon a matter involving the contributor.

(*Id.*, at pp. 946-947; see also *Caperton v. A.T. Massey Coal, Co. Inc.* (2009) 129 S.Ct. 2252, 2263 [“exceptional case” where campaign contributions required recusal of a judge]. Disqualification rules applicable to adjudicators are even more stringent than those that govern the conduct of prosecutors. (*County of Santa Clara v. Superior Ct.* (2010) 50 Cal.4th 25, 56 FN 12.)

Accordingly, the mere fact of campaign endorsements and financial contributions to a campaign does not create a conflict of interest for a district attorney. Case law makes clear that a conflict of interest stems from the district attorney’s perspective, not the public’s perception, and is rooted in the ability of a district attorney to wield discretion in a way to ensure that the defendant will receive a fair trial. The factual hypotheticals posed in your letter do not suggest that the District Attorney could not be fair to defendants who had either individually, or as part of an organization, endorsed or contributed financially to the District Attorney’s re-election campaign.

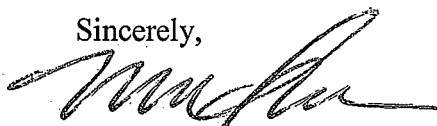
Your final question is, even if there was no legal conflict disabling the district attorney, would the Attorney General’s Office conduct a review of an officer-involved shooting simply to avoid an appearance of conflict? Sound policy counsels otherwise. The primary duty for enforcement of law in a particular county rests with the local district attorney, who is elected by the citizens of that county. Significant good cause is called for to warrant departure from the standard of Penal Code section 1424.

Additionally, the Attorney General’s unavoidable constraints of personnel, funds, and other resources require that the Penal Code section 1424 standard be taken seriously.

Assistant Chief Deputy District Attorney Michael Blazina
Sacramento District Attorney's Office
February 28, 2018
Page 4

Thank you for your letter. And, of course, you are always welcome to call me if you have questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Farrell", written over the printed name.

MICHAEL P. FARRELL
Senior Assistant Attorney General

For XAVIER BECERRA
Attorney General

Public Comment Form - DA Request

Commenting on behalf of an organization	Yes
Professional Affiliation	Citizen Creative LA
Name	Puno Puno
City	Los Angeles
State	California
Email address	punodostres@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>When will there NOT be a conflict of interest?</p> <p>While I have my own opinion, Jackie Lacey's inability to prosecute swiftly may or may not be due to the LAPPL. However, why leave it in gray area? At what point can we as citizens investigate the relationship between the union and the DA? There's never an opportunity, but yet the LAPPL continues to buy off politicians, intimidate critics and cover up the crimes of its members.</p> <p>This band of bullies is stalling progress, feeding bad behavior, and killing lives.</p> <p>Unions are supposed to leverage the power of the oppressed to protect workers' rights, not leverage the violence of the state to protect people who should be prosecuted.</p> <p>The only way to stop this nonsense is to leave them out of the election so we can ensure our elected DA can do their job without bias.</p> <p>#curetheconflict</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Evan Pitts
City	Los Angeles
State	California
Email address	evieempitts@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>The Police Union should not be able to express their support to candidates financially. It is one thing to speak an endorsement, but contributing money to a policial campaign for a position that directly involves the police does not set up any DA candidate for a fair vote. No DA similarly should feel in any way indebted to the police by accepting money from them. I support the state bar prohibiting the police union's financial involvement in any prosecutor's campaign.</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Samantha Honowitz
City	Los Angeles
State	California
Email address	sambempong@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>When will there NOT be a conflict of interest?</p> <p>While I have my own opinion, Jackie Lacey's inability to prosecute swiftly may or may not be due to the LAPPL. However, why leave it in gray area? At what point can we as citizens investigate the relationship between the union and the DA? There's never an opportunity, but yet the LAPPL continues to buy off politicians, intimidate critics and cover up the crimes of its members.</p> <p>This band of bullies is stalling progress, feeding bad behavior, and killing lives.</p> <p>Unions are supposed to leverage the power of the oppressed to protect workers' rights, not leverage the violence of the state to protect people who should be prosecuted.</p> <p>The only way to stop this nonsense is to leave them out of the election so we can ensure our elected DA can do their job without bias.</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Jordan S.
City	Los Angeles
State	California
Email address	jordansantos17@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>I demand that corruption and conflict of interest ends now. The LAPPL continues to buy off politicians, intimidate critics and cover up the crimes of its members.</p> <p>This encourages bad behavior and kills lives.</p> <p>Unions are supposed to leverage the power of the oppressed to protect workers' rights, not leverage the violence of the state to protect people who should be prosecuted.</p> <p>The only way to stop this nonsense is to leave them out of the election so we can ensure our elected DA can do their job without bias.</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	riley gibson
City	calabasas
State	California
Email address	rileygibson09@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>When will there NOT be a conflict of interest?</p> <p>While I have my own opinion, Jackie Lacey's inability to prosecute swiftly may or may not be due to the LAPPL. However, why leave it in gray area? At what point can we as citizens investigate the relationship between the union and the DA? There's never an opportunity, but yet the LAPPL continues to buy off politicians, intimidate critics and cover up the crimes of its members.</p> <p>This band of bullies is stalling progress, feeding bad behavior, and killing lives.</p> <p>Unions are supposed to leverage the power of the oppressed to protect workers' rights, not leverage the violence of the state to protect people who should be prosecuted.</p> <p>The only way to stop this nonsense is to leave them out of the election so we can ensure our elected DA can do their job without bias.</p> <p>#curetheconflict</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Elizabeth Peterson
City	Los Angeles
State	California
Email address	peterston.elizabethc@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>Jackie Lacey's inability to prosecute swiftly may or may not be due to the LAPPL. However, why leave it in gray area? At what point can we as citizens investigate the relationship between the union and the DA? There's never an opportunity, but yet the LAPPL continues to buy off politicians, intimidate critics and cover up the crimes of its members.</p> <p>This band of bullies is stalling progress, feeding bad behavior, and killing lives.</p> <p>Unions are supposed to leverage the power of the oppressed to protect workers' rights, not leverage the violence of the state to protect people who should be prosecuted.</p> <p>The only way to stop this nonsense is to leave them out of the election so we can ensure our elected DA can do their job without bias.</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
City	Los Angeles
State	California
From the choices below, we ask that you indicate your position. (This is a required field.)	Oppose
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	The police force does not need greater funding nor political power in endorsing a Distirct Attorney. What we need is reform and abolition of the police department and distributing wealth to our local communities.

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	CF
City	Los Angeles
State	California
Email address	cherilyn.farris@yahoo.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	Law enforcement unions should NOT be able to contribute to the campaign process. Allowing them to do so does not represent the wishes of the community and will skew any election to not represent the wishes of the general public.

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Andrew Borin
City	Los Angeles
State	California
Email address	chunksmcg@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	Law enforcement unions should not be able to provide financial support to the campaigns of people seeking a position of power in an election. In the last several weeks the county of Los Angeles has had to pay out millions in settlement money because member of law enforcement unions have been connected with illegal organized crime. Therefore, we know members of these unions are corrupt and corruption should have no place in elections.

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Katie Edgerton
City	Los angeles
State	California
Email address	katie.edgerton@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Oppose
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>When will there NOT be a conflict of interest?</p> <p>While I have my own opinion, Jackie Lacey's inability to prosecute swiftly may or may not be due to the LAPPL. However, why leave it in gray area? At what point can we as citizens investigate the relationship between the union and the DA? There's never an opportunity, but yet the LAPPL continues to buy off politicians, intimidate critics and cover up the crimes of its members.</p> <p>This band of bullies is stalling progress, feeding bad behavior, and killing lives.</p> <p>Unions are supposed to leverage the power of the oppressed to protect workers' rights, not leverage the violence of the state to protect people who should be prosecuted.</p> <p>The only way to stop this nonsense is to leave them out of the election so we can ensure our elected DA can do their job without bias.</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Amanda L
City	Los Angeles
State	California
Email address	amandapaigeleal@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>Who are the DAs trying to protect when it comes down to it? Money has by and large been proven to be influential in the decision making that affects the PUBLIC. Unions are meant to protect labor rights, not leverage the violence of the state to protect people who should be prosecuted.</p> <p>It is not wild to ask for fairness, it is not wild to ask for accountability. #curetheconflict</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Brett Andriesen
City	Los Angeles
State	California
Email address	brett.andriesen@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>Police Department / Union contributions to DA candidates is a major conflict of interest.</p> <p>Jackie Lacey's inability to prosecute swiftly may or may not be due to the LAPPL. Because police unions are donating to campaigns, even the appearance of a conflict of interest challenges the integrity of our justice system. At what point can we as citizens investigate the relationship between the union and the DA? There's never an opportunity, but yet the LAPPL continues to buy off politicians, intimidate critics and cover up the crimes of its members.</p> <p>This band of bullies is stalling progress, feeding bad behavior, and killing lives.</p> <p>Unions are supposed to leverage the power of the oppressed to protect workers' rights, not leverage the violence of the state to protect people who should be prosecuted. The only way to stop this asinine behavior is to leave them out of the election so we can ensure our elected DA can do their job without bias.</p> <p>Thank you for supporting this proposal to enact this new rule of behavior.</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Daniela Bustamante
City	Los Angeles
State	California
Email address	defaceme@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>It appears to me that there is a major ethical concern regarding district attorneys soliciting and accepting funds from law enforcement unions and I support a ban on this kind of activity. The very direct working relationship between a district attorney and law enforcement creates a major conflict of interest, as being directly beholden to law enforcement unions for funding can lead to bias and unfair support for law enforcement officials during trials and legal proceedings. The district attorney and the DA's office should maintain as close to an unbiased examination of evidence as possible in order to fairly try citizens, rather than aligning unquestioningly with law enforcement. Removing the financial relationship between these offices is key to helping maintain fair and just enforcement of the law in Los Angeles.</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Ellen Oh
City	Los Angeles
State	California
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>When will there NOT be a conflict of interest?</p> <p>While I have my own opinion, Jackie Lacey's inability to prosecute swiftly may or may not be due to the LAPPL. However, why leave it in gray area? At what point can we as citizens investigate the relationship between the union and the DA? There's never an opportunity, but yet the LAPPL continues to buy off politicians, intimidate critics and cover up the crimes of its members.</p> <p>This band of bullies is stalling progress, feeding bad behavior, and killing lives.</p> <p>Unions are supposed to leverage the power of the oppressed to protect workers' rights, not leverage the violence of the state to protect people who should be prosecuted.</p> <p>The only way to stop this nonsense is to leave them out of the election so we can ensure our elected DA can do their job without bias.</p> <p>#curetheconflict</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Emily Cox
City	Los Angeles
State	California
Email address	emlycx@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>When will there NOT be a conflict of interest?</p> <p>While I have my own opinion, Jackie Lacey's inability to prosecute swiftly may or may not be due to the LAPPL. However, why leave it in gray area? At what point can we as citizens investigate the relationship between the union and the DA? There's never an opportunity, but yet the LAPPL continues to buy off politicians, intimidate critics and cover up the crimes of its members.</p> <p>This band of bullies is stalling progress, feeding bad behavior, and killing lives.</p> <p>Unions are supposed to leverage the power of the oppressed to protect workers' rights, not leverage the violence of the state to protect people who should be prosecuted.</p> <p>The only way to stop this nonsense is to leave them out of the election so we can ensure our elected DA can do their job without bias.</p> <p>#curetheconflict</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Christina
City	San Jose
State	California
Email address	christina.h.luu@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	This is common sense. Financial contributions have historically been linked to power. The powerful police unions should have no say in an election decided by the people other than a verbal recommendation. We live in a democratic republic. The power should be afforded to the people not the police unions.

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Katherine Samano
City	Los Angeles
State	California
Email address	ksamano@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>It is an obscene conflict of interest to allow DAs to accept donations from police unions. This is a straightforward and simple issue to fix.</p> <p>It's beyond clear to me why Jackie Lacey hasn't prosecuted any wrongdoing in LAPD, and it makes me sick to think about.</p> <p>Let's protect and serve our communities. Support this initiative.</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Jennifer Martinez
City	Encino
State	California
Email address	jen.yvette.martinez@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>Police union money should not be used to fund the DA in any way. I live in Los Angeles, and Jackie Lacey has been in office for years and has chosen hundreds of times not to prosecute law enforcement officers who have killed citizens. These stories are egregious and numerous. How is that possible?? Jackie Lacey can claim to be unbiased, but judging by the money she has accepted from LAPPL, she appears to be motivated by that money and not fulfilling her duty to the citizens of this city. She can deny being swayed but how can we believe that until the money is out of the picture? We should not have to question the integrity and motives of our elected officials. I strongly urge you to disallow the LAPPL and other police unions in our state from donating to campaigns or offices of the DA. It's time for change and accountability.</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Theo Kirkham-Lewitt
City	Los Angeles
State	California
Email address	theo.lewitt@yahoo.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>When will there NOT be a conflict of interest?</p> <p>While I have my own opinion, Jackie Lacey's inability to prosecute swiftly may or may not be due to the LAPPL. However, why leave it in gray area? At what point can we as citizens investigate the relationship between the union and the DA? There's never an opportunity, but yet the LAPPL continues to buy off politicians, intimidate critics and cover up the crimes of its members.</p> <p>This band of bullies is stalling progress, feeding bad behavior, and killing lives.</p> <p>Unions are supposed to leverage the power of the oppressed to protect workers' rights, not leverage the violence of the state to protect people who should be prosecuted.</p> <p>The only way to stop this nonsense is to leave them out of the election so we can ensure our elected DA can do their job without bias.</p> <p>#curetheconflict</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	John Kordosh
City	Los Angeles
State	California
Email address	jakordosh@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>District attorneys seeking political or financial support from police unions is a clear conflict of interest as it will incentivize their offices to look the other way when the police are accused of brutalities or law breaking.</p> <p>Police brutality and flouting the laws they are supposed to uphold has been issue for a long time, not just in California, but across the country. This rule of professional conduct is a step in the right direction.</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Zachary Jenkins
City	Los Angeles
State	California
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>When will there NOT be a conflict of interest?</p> <p>While I have my own opinion, Jackie Lacey's inability to prosecute swiftly may or may not be due to the LAPPL. However, why leave it in gray area? At what point can we as citizens investigate the relationship between the union and the DA? There's never an opportunity, but yet the LAPPL continues to buy off politicians, intimidate critics and cover up the crimes of its members.</p> <p>This band of bullies is stalling progress, feeding bad behavior, and killing lives.</p> <p>Unions are supposed to leverage the power of the oppressed to protect workers' rights, not leverage the violence of the state to protect people who should be prosecuted.</p> <p>The only way to stop this nonsense is to leave them out of the election so we can ensure our elected DA can do their job without bias.</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Liela Crosset
City	Los Angeles
State	California
Email address	liela.crosset@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>As a citizen of Los Angeles I feel like I see my public officials being held captive to police unions and police authority.</p> <p>The police department targets people who oppose any part of their massive budget, which we're seeing now while they go after Mike Bonin and Nuri Martinez for opposing 150 million dollars of their BILLIONS of dollars. Police unions make it impossible for money to be reallocated from the people who sweep homeless encampments to the people and organizations that try to keep people from falling into homelessness. We can never shift our time and resources away from police while police unions bully our elected officials.</p> <p>This union doesn't protect it's workers so much as it defends a group of government employees who are allowed to murder without consequence. Police unions are a danger to our community and keep the department from ever being held accountable or reevaluated.</p>

Public Comment Form - DA Request

Commenting on behalf of an organization	Yes
Professional Affiliation	California Public Defender's Association
Name	Oscar Bobrow
City	Vallejo
State	California
Email address	obobrow@solanocounty.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	Please see attached
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	<ul style="list-style-type: none">• Response_Letter_to_CPDA_re_Sean_Monter_rosa_7.27.20.pdf (520k)• letter_to_AG_Becerra.pdf (937k)



CPDA

California Public Defenders Association
10324 Placer Lane
Sacramento, CA 95827
Phone (916) 362-1686
Fax (916) 362-3346
Email: cpda@cpda.org

A Statewide Association of Public Defenders and Criminal Defense Counsel

President

Oscar Bobrow
Solano County

1st Vice President

Jennifer Friedman
Los Angeles County

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Alameda County

July 10, 2020

Xavier Becerra
Attorney General of the State of California
1300 T Street
Sacramento, CA 95814

RE: The June 2, 2020 Shooting to Death of Unarmed Sean Monterrosa
by a Vallejo Police Officer from the back of a patrol car

Dear Attorney General Becerra:

I know you are aware Sean Monterrosa was shot and killed by a Vallejo police officer in Solano County on June 2, 2020, as he was walking in front of a Walgreens store. Please see the video link released by the Vallejo Police Department July 8, 2020: <https://vimeo.com/436510158>.

The Solano County District Attorney's office has refused to conduct the investigation in this matter due to what they perceive as a conflict of interest. Please see the recorded statement of the Solano DA here:

<https://youtu.be/QVdgg9MVZ6k>. Your office has also refused to investigate this matter. Considering both authorized investigative bodies in the State of California with jurisdiction over this event have declined to act, no investigation is currently being conducted by an investigative body with the authority to file charges, should such charges be warranted.

As President of The California Public Defender's Association, the largest association of criminal defense attorneys in the State of California, and as a board member that oversees the California Racial Identity Profiling Act I am writing to urge you to reverse your position and to investigate this shooting.

As the video released on Wednesday shows the officer who shot Mr. Monterrosa was seated in the back of an unmarked police vehicle at the time he fired the rifle that killed him. The audio on the video also establishes that the officer who fired asked the other officers in the car, *after he fired the fatal shot*, "what was it" that Mr. Monterrosa pointed at the officers before he was shot. The video further establishes that Mr. Monterrosa was unarmed when he was shot by the officer.

I know you are aware of the perception in this state and in this nation of the inequities in how people of color are treated by law enforcement, and the inequities in charging decisions made by prosecutors who file charges for violations of the law.



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Bart Sheela, 20
San Diego County

Matthew Sotorosen, 20
San Francisco County

Aimee Vierra, 20
Riverside County

Brendon Woods, 20
Alameda County

The decision of your office and the decision of the Solano County District Attorney not to investigate this matter has perpetuated these negative perceptions. The officer who shot Mr. Monterrosa has not only not been investigated or been charged with any crime, he hasn't even been placed on leave from his position in the Vallejo police department.

As President of CPDA, as a member of the RIPA board and as a concerned member of the public on behalf of the Monterrosa family and the citizens of the city of Vallejo I urge you to immediately take over the investigation of this shooting and killing of Mr. Monterrosa. If your office is unable to conduct such investigation I urge you to ask the United States Attorney on behalf of the federal government to conduct a complete investigation of this shooting. Without a proper investigation it seems certain that any future attempt to restore some sense of justice and integrity into the criminal justice system will be irreparably lost.

Sincerely,

Oscar Bobrow
CPDA President



1300 I Street
P.O. Box 944266
Sacramento, CA. 94244-2550
Telephone: (916) 210-6071
Fax: (916) 327-7154
E-Mail Address: philip.ferrari@doj.ca.gov

July 27, 2020

Oscar Bobrow
CPDA President
California Public Defenders Association
10324 Placer Lane
Sacramento, CA, 95827

Dear Mr. Bobrow:

Thank you for your letter dated July 10, 2020, requesting that the Department of Justice investigate the officer involved shooting of Sean Monterrosa. We understand and appreciate the concerns expressed in your letter, and the Attorney General has made it a priority to respond to the concerns about law enforcement that are being expressed by our communities. The Department of Justice is committed to doing all that we can to ensure that California's law enforcement officers are aware of and utilize best practices with respect to use of force policies and practices. We are further committed to the principle that no one is above the law and that there must be true accountability when individual officers commit unlawful acts.

As you know, the role of the Attorney General's office in intervening in a local criminal investigation and prosecution is limited. California's 58 district attorneys are charged with investigating and prosecuting criminal cases as the elected public prosecutors for each of our counties. Absent a conflict of interest, abuse of discretion or other exceptional circumstances, the Department of Justice generally does not assume responsibility for investigations or prosecutions of officer involved shootings. We are mindful of the important policy discussions underway concerning the future handling of officer involved shootings, and we intend to be a part of crafting a solution. However, at this time the Department has neither the funding nor the staffing to routinely enable us to conduct independent investigations of officer involved shooting incidents throughout the State. Because our resources are limited, we must be selective in deploying them where necessary and appropriate.

As you may know, the Department of Justice recently made a decision to deploy some of those resources by committing to perform a deep, comprehensive review of the Vallejo Police Department's policies, operations and practices. In addition, we have also agreed to perform an independent investigation into allegations that evidence was destroyed that was relevant to the investigation of Mr. Monterrosa's death.

With respect to the underlying investigation into the shooting, that investigation is already being conducted by local authorities. Your letter references Solano County District Attorney Krishna Abrams' announcement that she had recused herself from this matter. As we have informed the District Attorney's office, there is no legal basis for such an action. As you are aware, Penal Code section 1424(a) does not require recusal unless "the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial." Two elements are required to justify this standard under section 1424. (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711.) First, a conflict only exists where "the circumstances of a case evidence a reasonable possibility that the DA's office may not exercise its discretionary function in an evenhanded manner." (*Hambarian v. Superior Court* (2002) 27 Cal.4th 826, 833.) Second, the conflict must be "so grave as to render it unlikely that [any] defendant will receive fair treatment during all portions of the criminal proceedings." (*Ibid.*) In other words, "there must be 'an actual likelihood of unfair treatment'" of any possible defendants. (*People v. Cannedy* (2009) 176 Cal.App.4th 1474, 1485 (emphasis added), citing *Haraguchi*, at p. 719.) In this case, there is no apparent basis for finding that either element has been met.

District Attorney Abrams has publicly stated that she is confident that her office can conduct a fair and thorough review of any officer involved shooting, and she has not identified a conflict of interest or any other extraordinary circumstance that would require our office to assume the responsibilities of the District Attorney's office. As such, we must respectfully decline the request to conduct an additional investigation of the matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Ferrari", with a stylized flourish at the end.

Philip Ferrari
Special Assistant to the Attorney General

For XAVIER BECERRA
 Attorney General

Public Comment Form - DA Request

Commenting on behalf of an organization	No
Name	Emily Tong
City	Los Angeles
State	California
From the choices below, we ask that you indicate your position. (This is a required field.)	Support
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>When will there NOT be a conflict of interest?</p> <p>While I have my own opinion, Jackie Lacey's inability to prosecute swiftly may or may not be due to the LAPPL. However, why leave it in gray area? At what point can we as citizens investigate the relationship between the union and the DA? There's never an opportunity, but yet the LAPPL continues to buy off politicians, intimidate critics and cover up the crimes of its members.</p> <p>This band of bullies is stalling progress, feeding bad behavior, and killing lives.</p> <p>Unions are supposed to leverage the power of the oppressed to protect workers' rights, not leverage the violence of the state to protect people who should be prosecuted.</p> <p>The only way to stop this nonsense is to leave them out of the election so we can ensure our elected DA can do their job without bias.</p> <p>Please enact this Rule of Professional Conduct!</p>

BELL, McANDREWS & HILTACHK, LLP

Attorneys and Counselors at Law

455 CAPITOL MALL, SUITE 600
SACRAMENTO, CA 95814

(916) 442-7757
FAX (916) 442-7759

August 6, 2020

Alan Steinbrecher
Chair, Board of Trustees
State Bar of California
180 Howard Street
San Francisco, CA 94105

Donna Hershkowitz
Interim Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Rule to Prohibit Campaign Endorsements and Contributions

“If all mankind minus one were of one opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind.”

- John Stuart Mill

On behalf of a substantial number of Elected District Attorneys across California, the following written comment is submitted in response to the State Bar’s hearing on whether Elected District Attorneys or candidates for District Attorney should be prohibited from seeking endorsements or financial contributions from law enforcement unions.

The undersigned is a member in good standing of the California State Bar, has practiced campaign, election and constitutional law exclusively since 1980. I have represented numerous clients in litigation involving campaign finance and redistricting matters before federal and state courts, including the California Supreme Court and the United States Supreme Court. In 2010, I served as Co-Chair of Fair Political Practices Commission Chair Dan Schnur’s Task Force on Campaign Finance Reform. I have served as a member of the American Bar Association’s Standing Committee on Election Law (2015-2018) and currently serve as the Chair of the Advisory Committee of the Standing Committee. My views reflect those of my clients and do not represent the views of the Standing Committee.

I. The Proposed Rule Is Unconstitutional

A. Campaign Endorsements and Contributions are Protected by the First Amendment.

On June 1, 2020, the proponents of this rule change sent a letter to the State Bar asking them to prohibit “elected prosecutors-or prosecutors seeking election” from accepting endorsements or contributions from police unions. They claim there is a conflict of interest or appearance one, as District Attorneys work daily with law enforcement officers. Per their statement, “[p]rosecutors are in a unique position of having to work closely with law enforcement officers and evaluate whether some of those same officers have committed crimes.”

The proposed rule is patently unconstitutional and prohibited by the First Amendment. As the California Supreme Court stated in *Woodland Hills Residents Association, Inc. v. City Council of City of Los Angeles* (1980) 26 Cal.3d 938, 946:

“Political contributions involve an exercise of fundamental freedom protected by the First Amendment to the United States Constitution and article I section 2 of the California Constitution.”

In *Woodland Hills*, the court rejected the notion that elected city council members must be recused from voting on a development issue because developers had donated to the council members’ campaigns. In rejecting this claim, the Court went on to state,

“To disqualify a city council member from acting on a development proposal because the developer had made a campaign contribution to that member would threaten constitutionally protected political speech and association freedoms.”

Furthermore, while individual counties may, by state law or local ordinance, put campaign limits on direct contributions to candidates, there is no authority to limit what proportion of a candidate’s total contributions may be obtained from any individual, group or association. Any reliance on *Caperton v. A.T. Massey Coal, Co. Inc.* (2009) 556 U.S. 868 is misplaced. In that case, a party to a case *pending* in front of an appellate judge, donated \$3 million to the judge’s election campaign, equating to 300% more than the judge’s campaign committee had raised. The Supreme Court found that, given the disproportionately large donation, the judge should have *recused* himself. Nothing about the decision establishes that judges-or prosecutors-can be *prohibited* from accepting donations.¹

¹ The State Bar’s Committee on Professional Responsibility and Conduct posed several questions related to amount and percentage of contributions received. There is no legal authority for the government to impose a “proportionality” standard to the amount of contributions allowed.

B. The proposed rule is unconstitutional because it is content based

The proposed Rule of Professional Conduct prohibiting prosecutors from accepting political or financial support from police and “law enforcement” unions is not only violative of the First Amendment’s protection of freedom of speech through campaign expenditures, but constitutes an impermissible content-based restraint on speech as well.

The United States Supreme Court has long held that the First Amendment protects political and ideological speech, including campaign financing. *See West Virginia State Board of Education W. Va. State Bd. of Educ. v. Barnette* (1943) 319 U.S. 624, 642.; also, *NAACP v. Button* (1963) 371 U.S. 415, 428-429; *Citizens United v. FEC* (2010) 558 U.S. 310. As the Supreme Court stated in *Citizens United* at page 898:

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. *See Buckley v. Valeo* (1976) 424 U.S. 1, at 14-15, 96 S.Ct. 612 (“In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential”). The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment “‘has its fullest and most urgent application’ to speech uttered during a campaign for political office.” *Eu v. San Francisco County Democratic Central Comm.* (1989) 489 U.S. 214, 223, 109 S.Ct. 1013, 103 L.Ed.2d 271 (quoting *Monitor Patriot Co. v. Roy* (1971) 401 U.S. 265, 272, 91 S.Ct. 621, 28 L.Ed.2d 35); see *Buckley, supra*, at 14, 96 S.Ct. 612 (“Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution.”). For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are “subject to strict scrutiny,” which requires the Government to prove that the restriction “furthers a compelling interest and is narrowly tailored to achieve that interest.”

The proposed rule imposes restrictions on contributions and support from one particular group or presumed category of organizations based not on a legal conflict but on a disagreement with, and more pointedly, a disdain for, a particular philosophy. (See also Part III, *infra*, pp. 7-13.) The pretext for this proposed rule is to ensure and preserve the integrity of the legal profession and the role of the District Attorney in its oversight of police agencies. The real purpose of this proposed rule is to further an agenda designed to stifle and silence opposing viewpoints. This is antithetical to healthy political discourse.

The proposed rule is, by design, content based in its clear attempt to suppress the political speech of candidates supported by law enforcement unions. There can be little doubt that this effort is politically driven to silence and attempt to unseat District Attorneys who are supported by law enforcement.

II. Law enforcement endorsements and contributions do not create a conflict for a District Attorney.

The proponents claim that endorsements and contributions should be prohibited because there is a conflict or appearance of a conflict of interest since District Attorneys work daily with law enforcement officers. As they state, “Prosecutors are in a unique position of having to work closely with law enforcement officers and evaluate whether some of those same officers have committed crimes.”

The proponents fail to delineate what they mean by “law enforcement unions.” For instance, does this proposed rule ban *all* endorsements or contributions, irrespective of whether the union represents officers from the same jurisdiction as the individual Elected District Attorney? For instance, will this proposed rule prohibit:

- The Sacramento County or San Diego County District Attorney from seeking endorsements or contributions from the Los Angeles Police Protective League?
- The San Luis Obispo County District Attorney candidate from seeking the endorsement of the Hayward Police Officers Association (POA)? What if the Hayward POA gives endorsements but does not have a PAC to give financial contributions? Is the candidate still prohibited under this proposed rule?
- The candidate for Los Angeles County District Attorney from accepting endorsements from the Alameda Deputy Sheriffs Association?
- The Fresno County District Attorney from accepting contributions from the Riverside Police Officers Association?
- Elected District Attorneys or candidates for district attorney from receiving endorsements and/or contributions from law enforcement unions that represent officers from statewide agencies and have little or nothing to do with local prosecutions?²

² For instance, the California State Law Enforcement Association (CSLEA) represents DMV, Alcohol Beverage and Control, Fish and Wildlife, Fire Marshalls, DOJ criminalists, 911 dispatchers, and Bureau of Automotive Repair.

These questions are particularly relevant since the proponents' claim of conflict arises because District Attorneys "work closely" with these officers and evaluate whether some of these officers have committed crimes. Yet, this argument fails for several reasons:

- District Attorneys are bound by their prosecutorial ethics in making charging decisions. Those decisions are based upon the facts and the law.
- District Attorneys have in fact charged police officers with crimes when the facts and law support the prosecution. Just a few examples of such crimes include³:
 - Murder
 - Los Angeles Police Officer Stephanie Lazarus convicted of murder of Sherri Rasmussen
 - San Diego Sheriff's Deputy Aaron Russell: pending murder charges for an officer-involved fatal shooting
 - Riverside Sheriff Deputy Oscar Rodriguez: pending murder charges for an officer-involved fatal shooting
 - Rape
 - Sacramento Police Officer Darrell Rosen convicted of rape committed on duty; sentenced to state prison.
 - West Sacramento Police Officer convicted of multiple counts of rape while on duty; sentenced to 205 years to life
 - Excessive Force
 - Elk Grove Police Officer currently pending felony charges for excessive force (*People v. Bryan Schmidt*)
 - Placer County: in 2018, three correctional deputies were prosecuted and convicted of excessive force
 - Los Angeles: LAPD Officer Frank Hernandez currently pending charges of felony assault under color of authority (Case No. BA487734)
 - Public Integrity
 - El Dorado Deputy Sheriffs Association President Donald Atkinson convicted of embezzling over \$400,000 from the DSA; Atkinson was sentenced to 5 years in prison
- Endorsements and contributions by law enforcement unions outside the District Attorney's jurisdiction have a First Amendment right to do so⁴
- Officer-involved use of force cases represent a tiny fraction of all cases reviewed by a District Attorney

³ These examples are just a fraction of crimes prosecuted by District Attorneys against police officers in California. If the State Bar wants more information on the number and types of cases involving police officers, I can provide that upon request.

⁴ For instance, in the 2018 Election, the Sacramento District Attorney received over 80% of her law enforcement contributions either from statewide unions or those from associations outside Sacramento County.

To further demonstrate the absurdity of the claimed “conflict” as the reason to adopt the rule are the following questions:

- Should District Attorneys be prohibited from accepting endorsements or donations from Crime Victims associations? After all, by the very nature of their jobs, “work closely” with crime victims.
- Should District Attorneys be prohibited from accepting donations from criminal defense attorneys? After all, by the very nature of their jobs, “work closely” with defense attorneys.
- Should District Attorneys be prohibited from accepting endorsements or donations from Real Estate Associations? After all, District Attorneys often investigate and prosecute real estate cases.
- Should District Attorneys be prohibited from accepting endorsements or donations from Insurance Associations? After all, District Attorneys often investigate and prosecute insurance fraud cases.

There can be little doubt that one of the underlying reasons for this proposed rule is the baseless claim that District Attorneys cannot fairly review use of force cases. However, these cases represent a miniscule number of cases reviewed each year by a District Attorney. In mid-large counties, thousands of cases are reviewed each year by a District Attorney’s Office for charging decisions. The number of use of force cases is less than 1%. For instance:

- In 2019, the Sacramento District Attorney’s Office reviewed approximately 33,000 cases for charging decisions. Of these 33,000 cases, only *six* fatal use of force cases were submitted for review. This represents .018% of all cases.
- The Riverside District Attorney’s Office reviews approximately 122,000 cases per year. In 2018, 173 of these cases involved use of force or police misconduct. This represents .014% of all cases.
- The Los Angeles District Attorney’s Office reviews approximately 65,000-70,000 felony cases per year. Of these, approximately 95-115 cases involve use of force. This represents .017% of all cases.

Even with this overly broad attempt to restrict the First Amendment right to accept endorsements and contributions, there is no authority to outright *prohibit* such constitutionally protected actions. (See, *Woodland Hills Residents Association, Inc., supra.*) In fact, in 2018, several months prior to the June elections, California Attorney General Xavier Becerra found that “the mere fact of a campaign endorsement and financial contributions to a campaign does not create a conflict of interest for a district attorney.” In his analysis, the Attorney General went on to state, “Case law makes clear that a conflict of interest stems from the district attorney’s perspective, not the public’s perception, and is rooted in the ability of a district attorney to wield discretion in a way to ensure that the defendant will receive a fair trial.” (Attorney General’s Letter attached.)

Furthermore, there are adequate protections in place to ensure the fair administration of justice and addressing either actual or perceived conflicts of interest. This includes the State Bar's Rules of Professional Conduct, the American Bar Association's Standards for Criminal Justice, and Penal Code section 1424 authorizing recusal of the District Attorney.

Finally, it cannot be understated that the Attorney General has the Constitutional authority to review any case, including decisions regarding allegations of police misconduct. It is unclear if this proposed rule would apply to the Attorney General. Whether or not it applies, the inherent authority of the Attorney General authorizes him or her to step in where there is an actual or perceived conflict. Given the Constitutional rights implicated by this proposed rule, the current safeguards are adequate to ensure impartiality in decisions being made by district attorneys.

III. The proposed rule applies only to some, not all.

Glaringly omitted from the proposed rule is any prohibition on any other organization or group posing an equally compelling conflict from providing similar contributions, endorsements or independent expenditures. Yet even more alarming is the absence of any analysis into other such organizations and their contributions and expenditures. Logic dictates and fairness demands that *any* group or organization with such a perceived conflict significant enough to warrant a prescription on contributions, independent expenditures and endorsements would be faithfully vetted and critically examined. The conspicuous absence of any such analysis provides clarity into the true motivation behind this proposed solution.

Engaging in a holistic and comprehensive examination of potential conflicts makes it readily apparent that there are a number of organizations whose contributions to and endorsements of the campaigns of District Attorney candidates would rise to the same level of conflict as with police unions that warrant this drastic proposal.

This effort to suppress the First Amendment rights of candidates supported by law enforcement unions is evidenced by the fact that the proponents are supported by individuals and organizations that promote anti-law enforcement agendas. No such attempt to limit contributions from groups who support the proponents demonstrates the glaring hypocrisy of this proposal.

Moreover, a one-sided ban on the contributions on one side also runs up against two issues: (1) violation of equal protection of the laws under the First and Fourteenth Amendments, which is related to but somewhat different than the prohibition on content-based regulation of speech (*Buckley v. Valeo*, *supra*, 424 U.S. at 48-49; *McConnell v. FEC*, (2003) 540 U.S. 93, 227, and *Davis v. FEC* (2008) 554 US 724, 741-742) ["the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment."]), and (2) ignores the constitutional prohibition against limitations on independent expenditures by the very organizations the proposed rule purports to prohibit. (*Citizens United*, *supra*; and *Long Beach Chamber of Commerce v. City of Long Beach*, 603 F.3d 684 (9th Cir. 2010).)

A review of the proponents' financial supporters, advocates and own endorsers reveals they are on the "political payroll" of those who support these agendas. These agendas include the prosecution of police officers irrespective of the facts or law.

Examples of these agenda driven groups include:

- George Soros and his network of foundations that he financially supports, including:
 - Open Society Foundations
 - California Justice and Public Safety PAC
 - Tides Foundation
 - Fair and Just Prosecution
 - Color of Change
 - ACLU (\$50 million in grants awarded in 2014)
 - The Justice Collaborative
- Shaun King, Real Justice PAC/Black Lives Matter

In the recent 2018 election cycle, Soros and his network of foundations and supporters poured nearly \$3 million into California candidates who support his platforms. These include races in San Diego, Sacramento, and Alameda counties.

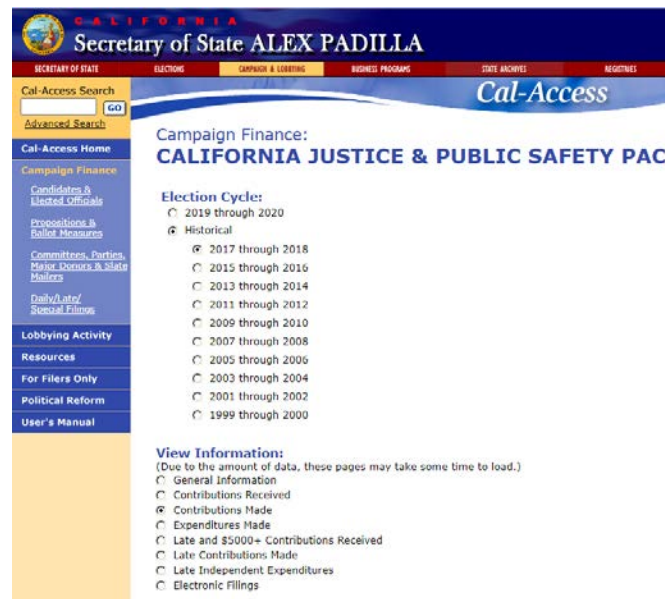
Similarly, Shaun King's Real Justice PAC has poured large amounts of money into candidates who support his progressive agendas. This organization actively recruits and endorses progressive candidates to defeat sitting District Attorneys who do not share his agendas. (<https://realjusticepac.org/>) It is also well-known that Shaun King, who has a social media following of millions of people, has made false accusations against police officers. In fact, in 2018 he falsely accused a Texas Trooper of kidnapping and rape on his various social media platforms. His twitter post, including naming the trooper, was as follows:



These accusations were later proven false by bodycam videos and a confession by the woman who made the false allegation.

The candidates endorsed and supported by these groups often made campaign promises to “prosecute killer” cops,⁵ and often citing cases that had been found justified by the sitting District Attorney.⁶

A brief review of the Secretary of State’s campaign finance reports demonstrates the volume of money funneled into these races by Soros funded super PACs:



⁵ Examples of campaign mailers include:



⁶ Many District Attorney’s Offices post the police use of force reports online detailing the facts and legal analysis of each incident. Often, anti-law enforcement groups *demand* that police officers be prosecuted for murder. In these demands, these groups often make false claims about the true facts of these incidents.

Who did the committee give contributions to, and how much?					
DOWNLOAD THESE RESULTS: MICROSOFT EXCEL					
DATE	PAYEE	CONTEST	POSITION	PAYMENT TYPE	AMOUNT
05/29/2018	PRICE, PAMELA	DISTRICT ATTORNEY	SUPPORT	IND	\$218,215.44
05/22/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$209,055.00
05/08/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$198,750.00
05/11/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$198,750.00
05/03/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$194,884.00
05/22/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$124,035.79
05/19/2018	PRICE, PAMELA	DISTRICT ATTORNEY	SUPPORT	IND	\$121,250.00
05/23/2018	STEPHAN, SUMMER	DISTRICT ATTORNEY	OPPOSE	IND	\$111,968.05
05/29/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$111,781.00
05/29/2018	STEPHAN, SUMMER	DISTRICT ATTORNEY	OPPOSE	IND	\$111,781.00
05/29/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$108,963.30
05/08/2018	PHILLIPS, NOAH	DISTRICT ATTORNEY	SUPPORT	NON-MONETARY	\$101,475.00
05/04/2018	JONES-WRIGHT, GENEVIEVE	DISTRICT ATTORNEY	SUPPORT	IND	\$101,377.12
05/03/2018	PHILLIPS, NOAH	DISTRICT ATTORNEY	SUPPORT	NON-MONETARY	\$77,648.48
05/14/2018	PRICE, PAMELA	DISTRICT ATTORNEY	SUPPORT	IND	\$75,676.22
05/21/2018	O'MALLEY, NANCY	DISTRICT ATTORNEY	OPPOSE	IND	\$73,424.11
05/01/2018	PRICE, PAMELA	DISTRICT ATTORNEY	SUPPORT	IND	\$66,196.84
05/07/2018	PRICE, PAMELA	DISTRICT ATTORNEY	SUPPORT	IND	\$65,163.69
05/30/2018	O'MALLEY, NANCY	DISTRICT ATTORNEY	OPPOSE	IND	\$64,931.95
05/29/2018	PRICE, PAMELA	DISTRICT ATTORNEY	SUPPORT	IND	\$54,035.53

<http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1402586&view=contributions&session=2017>

For instance, in San Diego county, Soros funneled \$2 million in his effort to unseat District Attorney Summer Stephan. The shocking amounts donated include the following: Outside of California, Soros has poured many more millions into “Soros-minded” candidates. This includes over \$1,000,000 to Philadelphia District Attorney Larry Krasner. Prior to being elected, Krasner was a criminal defense attorney with a reputation for having suing police officers 75 times. (<https://www.nytimes.com/2017/06/17/us/philadelphia-krasner-district-attorney-police.html>)

Several articles document the amount of money being funneled to these candidates, either directly or indirectly, as well as who is supporting them.

- <http://contracostaherald.com/05271801cch/>
- <https://www.politico.com/states/california/story/2019/11/07/california-da-race-a-major-test-for-criminal-justice-reform-movement-1226372>
- <https://apnews.com/0aa7d76876c24be7a8a9d4cab737342b/Big-money-Soros-contributions-change-prosecutor-campaigns>

Furthermore, a brief review of the Secretary of State's campaign finance reports demonstrates the volume of money funneled into these races by Shaun King's Real Justice PAC:

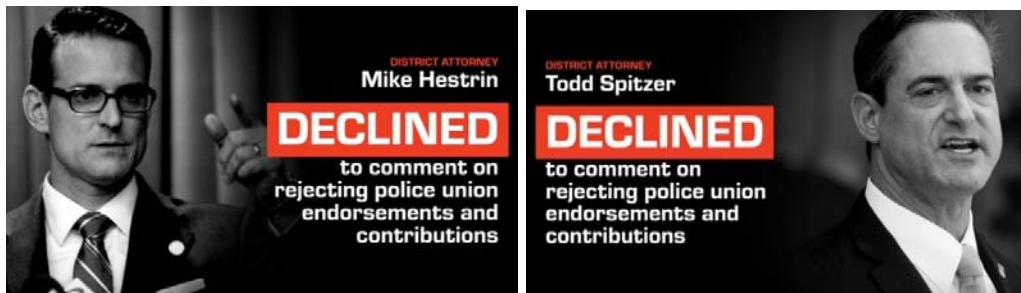
CALIFORNIA Secretary of State ALEX PADILLA					
SECRETARY OF STATE	ELECTIONS	CAMPAIGN & LBBING	BUSINESS PROGRAMS	STATE ARCHIVES	REGISTRARS
Cal-Access Search					
GO					
Advanced Search					
Cal-Access Home					
Campaign Finance					
Candidates & Elected Officials					
Propositions & Ballot Measures					
Committees, Parties, Major Donors & State Mailers					
Daily Filings / Special Filings					
Lobbying Activity					
Resources					
For Filers Only					
Political Reform					
User's Manual					
Campaign Finance: REAL JUSTICE PAC (FED PAC ID #C00632554)					
Election Cycle: <input checked="" type="radio"/> 2019 through 2020 <input type="radio"/> Historical					
View Information: (Due to the amount of data, these pages may take some time to load.)					
<input type="radio"/> General Information					
<input type="radio"/> Contributions Received					
<input checked="" type="radio"/> Contributions Made					
<input type="radio"/> Expenditures Made					
<input type="radio"/> Late and \$5000+ Contributions Received					
<input type="radio"/> Late Contributions Made					
<input type="radio"/> Late Independent Expenditures					
<input type="radio"/> Electronic Filings					
Who did the committee give contributions to, and how much?					
DOWNLOAD THESE RESULTS: MICROSOFT EXCEL					
DATE	PAYEE	CONTEST	POSITION	PAYMENT TYPE	AMOUNT
02/03/2020	RUN, GEORGE, RUN: GEORGE GASCON FOR LA DA 2020		SUPPORT	MONETARY	\$250,000.00
02/19/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$35,000.00
02/13/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$13,375.00
12/09/2019	GASCON, GEORGE	OTHER	SUPPORT	MONETARY	\$4,666.00
03/18/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$4,666.00
01/25/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$4,666.00
01/15/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$4,666.00
04/29/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$4,166.00
06/08/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$4,166.00
03/10/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$3,333.00
01/25/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$2,632.72
02/28/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$2,532.44
03/02/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$2,263.90
05/29/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$2,150.46
03/18/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$1,754.40
03/02/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$1,633.48
06/30/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$1,302.14
02/12/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$1,272.48
03/05/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$1,114.78
04/14/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$750.00
06/29/2020	GASCON, GEORGE	OTHER	SUPPORT	IND	\$600.00
03/18/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$577.32
04/14/2020	LACEY, JACKIE	OTHER	OPPOSE	IND	\$560.40
06/30/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$511.29
02/28/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$491.87
06/30/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$231.04
06/30/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$209.14
03/31/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$144.72
03/31/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$142.69
03/19/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$74.84
02/28/2020	ROSSI, RACHEL	OTHER	SUPPORT	IND	\$58.33
02/28/2020	GASCON, GEORGE	OTHER	SUPPORT	IND	\$58.33
06/25/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$58.28
02/12/2020	ROSSI, RACHEL	OTHER	SUPPORT	IND	\$50.00
02/12/2020	GASCON, GEORGE	OTHER	SUPPORT	IND	\$50.00
02/28/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$32.34
03/03/2020	GASCON, GEORGE	OTHER	SUPPORT	IND	\$29.25
03/03/2020	ROSSI, RACHEL	OTHER	SUPPORT	IND	\$29.25
03/02/2019	SCHUBERT, ANN MARIE	OTHER	OPPOSE	IND	\$22.62
02/28/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$15.44
06/30/2019	LACEY, JACKIE	OTHER	OPPOSE	IND	\$5.56

<http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1404289&view=contributions>

To further demonstrate the viewpoint driven effort underway in this proposed rule is the fact that within just weeks of the proponents' June 1, 2020 letter, the Soros funded Justice Collaborative emailed Elected District Attorneys across California, demanding they "reject police union contributions and endorsements" and aggressively threatening: **"We will be publishing whether you respond "yes," "no," or "declined to answer" by Tuesday, July 7th."**

This email was followed a week later with a threat to publish non-compliance: "When [The Appeal](#) publishes the final list of responses, they will use the attached graphic."





Perhaps most ironic is the Justice Collaborative’s statement in their email, “Campaign endorsements and contributions send a message to constituents. They tell voters that a candidate aligns with the values and interests of the donor.”

The irony is that this very email demonstrates the core values of the First Amendment and the fundamental protection of political and ideological speech. As poignantly stated in *Citizens United*, “speech is the essential mechanism of democracy” ... and “For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence.”

Revealing all these viewpoint driven candidates begs the obvious question: Should these candidates and Elected District Attorneys be prohibited from accepting endorsements and contributions from these groups, or let alone any other group that “aligns with the values and interests” of the candidate? As divided the values may be among the candidates, the answer to the obvious question is clear: The First Amendment wins.

IV. Conclusion

It is as logically incongruous as it is intellectually disingenuous to assert that law enforcement contributions and endorsements to a District Attorney candidate create an intolerable conflict yet a contribution by an organization requiring a District Attorney candidate to decide to prosecute or not to prosecute a case in conformity with its stated beliefs and mission does not.

The proponents ignore the natural and logical extension of the purpose of the very rule they suggest. If this particular perceived conflict is so egregious as to warrant this proposed remedy, *all* contributions from any organization presenting a perceived conflict should also be prohibited. Moreover, the prohibition on contributions should be extended to *any* lawyer seeking to hold an elected office in order to preserve the integrity of the profession.

Fundamental to our democracy is the notion that the government cannot regulate speech based on its content or viewpoint. Content-based restrictions on speech are presumptively invalid and the United States Supreme Court and the California Supreme Court have held that campaign donations are protected political speech and that a donation in and of itself does not give rise to a conflict of interest. Likewise, California’s Attorney General reached the same conclusion in 2018.

The proponents' proposed rule is unconstitutional, content driven and politically motivated to silence District Attorneys and candidates who are supported by law enforcement. It is a flawed attempt to stifle opposing viewpoints and chill political discourse. There is no conflict of interest that would authorize a *prohibition* on endorsements and contributions. This proposed rule violates the fundamental principles of democracy and should be wholly rejected.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Charles H. Bell, Jr.", written in a cursive style.

Charles H. Bell, Jr.

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7687
Facsimile: (916) 324-2960
E-Mail: Michael.Farrelle@doj.ca.gov

RECEIVED

MAR 05 2018

ANNE MARIE SCHUBERT
District Attorney

February 28, 2018

Assistant Chief Deputy District Attorney Michael Blazina
Sacramento District Attorney's Office
901 G Street
Sacramento, CA 95814

RE: Conflict of Interest Analysis – Campaign Contributions

Dear Mr. Blazina:

In your letter, dated February 5, 2018, you asked whether campaign endorsements and contributions from an individual or an organization present a conflict that bars the District Attorney from impartially deciding whether to prosecute a case in which that individual is a potential defendant. Your questions focused on an officer-involved-shooting case in which an officer being prosecuted was a member of a labor union that had endorsed and financially contributed to the district attorney's campaign. The short answer to these questions is that there is no conflict.

Under Penal Code section 1424, recusal of a district attorney's office requires proof of a conflict of interest that makes it unlikely that the defendant could receive a fair trial if the district attorney's office prosecutes the case. A conflict has been described as "a structural incentive for the prosecutor to elevate some other interest over the interest in impartial justice, should the two diverge." (*People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 754.) "[A] prosecutor's interest should coincide with the interest of the public in bringing a criminal to justice and should not be under the influence of third parties who have a particular axe to grind against the defendant." (*People v. Parmar* (2001) 86 Cal.App.4th 781, 797 (*Parmar*)).

Published cases in which a disabling conflict has been found are few and generally fall into the following three categories: an employee of the district attorney's office is a crime victim (see *People v. Conner* (1983) 34 Cal.3d 141, *Lewis v. Superior Court* (1997) 53 Cal.App.4th 1277; *People v. Jenan* (2006) 140 Cal.App.4th 782); the district attorney represented the defendant previously (*People v. Lepe* (1985) 164 Cal.App.3d 685); or the district attorney's

office received money for investigative costs from a victim (see *People v. Eubanks* (1996) 14 Cal.4th 580). As stated in *Parmar*, "...*Eubanks* and virtually every other disqualification case has been concerned with situations in which the prosecutor has either had a personal interest or been claimed to be under the influence of a private party with a personal interest in the prosecution of the particular defendant, usually by virtue of having been a victim." (*People v. Parmar*, *supra*, 86 Cal.App.4th at p. 795.)

In many instances, cases with conflicts of interest can be handled by a district attorney's office after an ethical wall has been established around the affected employee. (See *Stark v. Superior Court* (2011) 52 Cal.4th 368; *People v. Gamache* (2010) 48 Cal.4th 347; *People v. Hamilton* (1985) 41 Cal.3d 211; *People v. Sy* (2014) 223 Cal.App.4th 44; *Hambarian v. Superior Court* (2002) 27 Cal.4th 826; *People v. Lopez* (1984) 155 Cal.App.3d 813; and *Trujillo v. Superior Court* (1983) 148 Cal.App.3d 368.) That focus on fair adjudication of a case is borne out by the fact that failure to recuse a district attorney's office can be harmless on appeal when the district attorney's office "did not infringe upon defendants' state or federal rights to due process of law." (*People v. Vasquez* (2006) 39 Cal.4th 47, 66.) An ethical wall ensures that a defendant receives a fair trial.

The few published cases ordering recusal, as well as courts' acceptance of ethical walls in lieu of recusal, demonstrate that recusal is a disfavored remedy that appellate courts have cautioned should be exercised with "particular caution." (*People v. Lopez* (1984) 155 Cal.App.3d 813, 821-822.) The policy reasons for this position were set out in *Lopez*:

'when the entire prosecutorial office of the district attorney is recused and the Attorney General is required to undertake the prosecution or employ a special prosecutor, the district attorney is prevented from carrying out the statutory duties of his elected office and, perhaps even more significantly, the residents of the county are deprived of the services of their elected representative in the prosecution of crime in the county. The Attorney General is, of course, an elected state official, but unlike the district attorney, is not accountable at the ballot box exclusively to the electorate of the county. Manifestly, therefore, the entire prosecutorial office of the district attorney should not be recused in the absence of some substantial reason related to the proper administration of criminal justice.'

(*Id.*, at p. 822, quoting *Younger v. Superior Court* (1978) 86 Cal.App.3d 180.)

As to whether political contributions create a conflict of interest, it was claimed in another case that city council members should have been disqualified from voting on a subdivision map because developers had donated to the council members' campaigns. The Supreme Court stated, "Political contribution involves an exercise of fundamental freedom

protected by the First Amendment to the United States Constitution and article I, section 2 of the California Constitution.” (*Woodland Hills Residents Association, Inc. v. City Council of City of Los Angeles* (1980) 26 Cal.3d 938, 946.) “To disqualify a city council member from acting on a development proposal because the developer had made a campaign contribution to that member would threaten constitutionally protected political speech and associational freedoms.” (*Ibid.*) The Court further found that law governing disclosure of campaign contributions “provides for disclosure of campaign contributions by recipients of contributions rather than disqualification of recipients from acting in matters in which the contributor is interested.” (*Ibid.*)

While the act precludes an elected official from participating in a decision in which he has ‘a financial interest’ (Gov. Code, § 87100), it expressly excludes from definition of ‘financial interest’ the receipt of campaign contributions. (Gov. Code, §§ 87103, subd. (c), 82030, subd. (b). Thus, the Political Reform Act -- dealing comprehensively with problems of campaign contribution and conflict of interest -- does not prevent a city council member from acting upon a matter involving the contributor.

(*Id.*, at pp. 946-947; see also *Caperton v. A.T. Massey Coal, Co. Inc.* (2009) 129 S.Ct. 2252, 2263 [“exceptional case” where campaign contributions required recusal of a judge]. Disqualification rules applicable to adjudicators are even more stringent than those that govern the conduct of prosecutors. (*County of Santa Clara v. Superior Ct.* (2010) 50 Cal.4th 25, 56 FN 12.)

Accordingly, the mere fact of campaign endorsements and financial contributions to a campaign does not create a conflict of interest for a district attorney. Case law makes clear that a conflict of interest stems from the district attorney’s perspective, not the public’s perception, and is rooted in the ability of a district attorney to wield discretion in a way to ensure that the defendant will receive a fair trial. The factual hypotheticals posed in your letter do not suggest that the District Attorney could not be fair to defendants who had either individually, or as part of an organization, endorsed or contributed financially to the District Attorney’s re-election campaign.

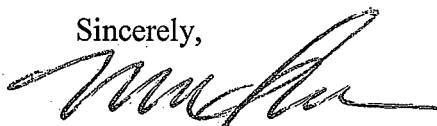
Your final question is, even if there was no legal conflict disabling the district attorney, would the Attorney General’s Office conduct a review of an officer-involved shooting simply to avoid an appearance of conflict? Sound policy counsels otherwise. The primary duty for enforcement of law in a particular county rests with the local district attorney, who is elected by the citizens of that county. Significant good cause is called for to warrant departure from the standard of Penal Code section 1424.

Additionally, the Attorney General’s unavoidable constraints of personnel, funds, and other resources require that the Penal Code section 1424 standard be taken seriously.

Assistant Chief Deputy District Attorney Michael Blazina
Sacramento District Attorney's Office
February 28, 2018
Page 4

Thank you for your letter. And, of course, you are always welcome to call me if you have questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Farrell", written over the printed name.

MICHAEL P. FARRELL
Senior Assistant Attorney General

For XAVIER BECERRA
Attorney General



EARL B. GILLIAM BAR ASSOCIATION

P.O. Box 124527, San Diego, CA 92112 • (858) 792-6366
ebgba.org • ebgbassociation@gmail.com

August 5, 2020

Chair Alan Steinbrecher
Director Donna Hershkowitz
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Dear Chair Alan Steinbrecher and Interim Executive Director Donna Hershkowitz:

We, of the Earl B. Gilliam Bar Association, write to urge the State Bar to adopt a new rule of professional responsibility to reduce the possibility that law-enforcement unions will exert, or will be perceived as exerting, political influence over prosecutorial decision making.

Across California, including in San Francisco, there are dozens of law-enforcement unions representing rank-and-file police officers, sheriff's deputies, and correctional officers. These unions play a major role in local, state, and even national politics. They are well-funded and purport to represent the interests and positions of law enforcement in elections and on issues before the voters and the legislature. Their political endorsements are provided only to candidates whom they believe share their particular vision of public safety and whom they believe will advance their interests. When the unions endorse a candidate, they often also provide financial support to that candidate.

Prosecutors are in a unique position of having to work closely with law-enforcement officers and to evaluate whether some of those same officers have committed crimes. When a prosecutor initiates an investigation or prosecution of an officer, law-enforcement unions often finance their members' legal representation. Yet the same unions may have contributed to the prosecutor's campaign.

This is worse than unseemly: it corrodes public trust in an institution whose legitimacy hinges on the public's trust in its fairness and impartiality. Prosecutors, like

judges, are charged with public duties that transcend those of ordinary advocates; and it is therefore of paramount importance that the public trusts prosecutors to carry out those duties fairly and impartially. A prosecutor is the "representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." (*Berger v. United States* (1935) 295 U.S. 78, 88.) "The prosecutor is an administrator of justice, an advocate, and an officer of the court"; she "must exercise sound discretion in the performance of his or her functions"; and her duty "is to seek justice, not merely to convict." (ABA Criminal Justice Standards: Prosecution Function, Standard 3-1.2, subds. (b) & (c).) Because a prosecutor exercises vast discretion when deciding whether to investigate, whether to charge, and how to charge, she "should have, as nearly as possible, a detached and impartial view of all groups in his community." (Robert H. Jackson, "The Federal Prosecutor," speech delivered at the Second Annual Conference of United States Attorneys, Great Hall, Department of Justice Building, Washington, D. C., April 1, 1940.1)

Receiving endorsements and campaign contributions from unions that finance opposing counsel creates, at a minimum, the appearance of a conflict of interest for elected prosecutors. District Attorneys undoubtedly will review use-of-force incidents involving union members. When they do, the financial and political support of those unions should not influence, or appear to influence, the District Attorneys' decision making.

The State Bar's Rules of Professional Conduct generally prohibit a lawyer from representing a client when, "the lawyer has ... a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter" (California Rules of Professional Conduct, rule 1.7, Conflict of Interest [2018]). Further, the California Court of Appeal has found that "a 'conflict,' for purposes of California Penal Code § 1424, 'exists whenever the circumstances of a case evidence a reasonable possibility that the DA's office may not exercise its discretionary function in an evenhanded manner.'" (*People v. Vasquez* (2006) 39 Cal.4th 47, 74, fn.2, 45 Cal.Rptr.3d 372, 137 P.3d 199 [italics omitted].) Thus, there is no need to determine whether a conflict is "actual" or only gives an "appearance" of conflict. Similarly, the American Bar Association's conflicts-of-interest rules provide that "a prosecutor who has a significant personal, political, financial, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who

Chair Alan Steinbrecher
Director Donna Hershkowitz
August 5, 2020
Page 3

is represented by the other lawyer." (Am Bar Assn. Criminal Justice Standards for the Prosecution Function, Standard 3-1.7, subd. (h), Conflicts of Interest [2017].)

These rules and decisions ostensibly were crafted to avoid the conflict, or the appearance of a conflict, that arises when an attorney or prosecutor has a political or financial relationship with opposing counsel. They suggest that an elected prosecutor either should avoid soliciting financial contributions and support from an attorney representing an accused officer, or should recuse their office from a 1 Available at <https://www.justice.gov/sites/default/files/ag/legacy/2011/09/16/04-01-1940.pdf>. prosecution where the prosecutor has received financial or political support from such an attorney.

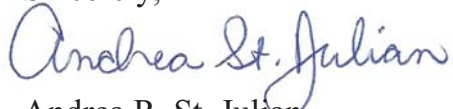
But these rules do not preclude the attorney or prosecutor from soliciting or receiving financial support from an individual or organization that is financing opposing counsel. It is illogical that the rules prohibit a prosecutor from soliciting and benefiting from financial and political support from an accused officer's advocate when the prosecutor is carrying out his duties, but enable the prosecutor when campaigning to benefit financially and politically from an entity that funds the accused's advocate.

To cure this conflict, or the appearance of conflict, and to maintain public confidence in the fairness and impartiality of prosecutors, ethical rules must explicitly preclude elected prosecutors, prosecutors seeking election, and their campaign committees from seeking or from accepting political or financial support from law-enforcement unions. Such a rule would not only help to avoid conflicts and ensure the independence of elected prosecutors, it also would enhance trust in our criminal-justice system at a time when trust is sorely needed. And the rule would survive First Amendment scrutiny, as it is narrowly tailored to further the state's compelling interest in maintaining public confidence in the integrity of prosecutors. (Cf. *Williams-Yulee v. Florida Bar* (2015) 575 U.S. 433 [upholding state ethical ban on personal campaign solicitations by judicial candidates]).

Chair Alan Steinbrecher
Director Donna Hershkowitz
August 5, 2020
Page 4

Whether the State Bar takes action in the form of a new rule of professional conduct or an ethics opinion, our goal is the same: to protect the integrity of the prosecutorial function, the fair administration of justice, and restore public trust in law enforcement. Given the urgent national situation, we request an expedited review of this request. We appreciate your consideration of this time-sensitive and important matter.

Sincerely,



Andrea R. St. Julian
President, Earl B. Gilliam Bar Association



EAST BAY LA RAZA LAWYERS ASSOCIATION

1010 Grayson Street, Suite 2
Berkeley, CA 94710-2611
Ph: 510-525-4243
Fax: 510-665-4036
eblarazalawyers@gmail.com
www.eblrla.org

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August 10, 2020

VIA EMAIL

Chair Alan Steinbrecher
Director Donna Hershkowitz
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: New Rule of Professional Responsibility or Ethics Opinion for Prosecutors

Dear Chair Steinbrecher and Director Hershkowitz:

On behalf of the East Bay La Raza Lawyers Association (EBLRLA), I write to urge the State Bar of California to adopt a new rule of professional responsibility to reduce the possibility that law-enforcement unions will exert, or will be perceived as exerting, political influence over prosecutorial decision making.

Founded in 1978, the EBLRLA is the county bar association of Latina/o and Latinx lawyers in Alameda and Contra Costa counties. As such, we are dedicated to expanding legal access and justice in our communities.

Across California, including in the Bay Area, there are dozens of law-enforcement unions representing rank-and-file police officers, sheriff's deputies, and correctional officers. These unions play a major role in local, state, and even national politics. They are well-funded and purport to represent the interests and positions of law enforcement in elections, as well as on issues before the voters and the legislature. Their political endorsements are provided only to candidates whom they believe share their particular vision of public safety and whom they believe will advance their interests. When the unions endorse a candidate, they often also provide financial support to that candidate.

Prosecutors are in a unique position of having to work closely with law-enforcement officers and to evaluate whether some of those same officers have committed crimes. When a prosecutor initiates an investigation or prosecution of an officer, law-enforcement unions often finance their members' legal representation. Yet the same unions may have contributed to the prosecutor's campaign.

This is worse than unseemly: it corrodes public trust in an institution whose legitimacy hinges on the public's trust in its fairness and impartiality. Prosecutors, like judges, are charged with public duties that transcend those of ordinary advocates. It is therefore of

paramount importance that the public trusts prosecutors to carry out those duties fairly and impartially.

A prosecutor is the “representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.” (Berger v. United States (1935) 295 U.S. 78, 88.) “The prosecutor is an administrator of justice, an advocate, and an officer of the court”; she “must exercise sound discretion in the performance of his or her functions”; and her duty “is to seek justice, not merely to convict.” (ABA Criminal Justice Standards: Prosecution Function, Standard 3-1.2, subds. (b) & (c).)

Because a prosecutor exercises vast discretion when deciding whether to investigate, whether to charge, and how to charge, she “should have, as nearly as possible, a detached and impartial view of all groups in his community.” (Robert H. Jackson, “The Federal Prosecutor,” speech delivered at the Second Annual Conference of United States Attorneys, Great Hall, Department of Justice Building, Washington, D. C., April 1, 1940.1)

Receiving endorsements and campaign contributions from unions that finance opposing counsel creates, at a minimum, the appearance of a conflict of interest for elected prosecutors. District Attorneys undoubtedly will review use-of-force incidents involving union members. When they do, the financial and political support of those unions should not influence, or appear to influence, the District Attorneys’ decision making.

The State Bar’s Rules of Professional Conduct generally prohibit a lawyer from representing a client when, “the lawyer has ... a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter” (California Rules of Professional Conduct, rule 1.7, Conflict of Interest [2018]). Further, the California Court of Appeal has found that “a ‘conflict,’ for purposes of California Penal Code § 1424, ‘exists whenever the circumstances of a case evidence a reasonable possibility that the DA’s office may not exercise its discretionary function in an evenhanded manner.’” (People v. Vasquez (2006) 39 Cal.4th 47, 74, fn.2, 45 Cal.Rptr.3d 372, 137 P.3d 199 [italics omitted].) Thus, there is no need to determine whether a conflict is “actual” or only gives an “appearance” of conflict.

Similarly, the American Bar Association’s conflicts-of-interest rules provide that “a prosecutor who has a significant personal, political, financial, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer.” (Am Bar Assn. Criminal Justice Standards for the Prosecution Function, Standard 3-1.7, subd. (h), Conflicts of Interest [2017].)

These rules and decisions ostensibly were crafted to avoid the conflict, or the appearance of a conflict, that arises when an attorney or prosecutor has a political or financial relationship with opposing counsel. They suggest that an elected prosecutor either should avoid soliciting financial contributions and support from an attorney representing an accused officer, or should recuse their office from a prosecution where the prosecutor has received financial or political support from such an attorney.

But these rules do not preclude the attorney or prosecutor from soliciting or receiving financial support from an individual or organization that is financing opposing counsel. It is illogical that the rules prohibit a prosecutor from soliciting and benefiting from financial and political support from an accused officer's advocate when the prosecutor is carrying out his duties, but enable the prosecutor *when campaigning* to benefit financially and politically from an entity that funds the accused's advocate.

To cure this conflict, or the appearance of conflict, and to maintain public confidence in the fairness and impartiality of prosecutors, ethical rules must explicitly preclude elected prosecutors, prosecutors seeking election, and their campaign committees from seeking or from accepting political or financial support from law-enforcement unions. Such a rule would not only help to avoid conflicts and ensure the independence of elected prosecutors, it also would enhance trust in our criminal-justice system at a time when trust is sorely needed. Moreover, the rule would survive First Amendment scrutiny, as it is narrowly tailored to further the state's compelling interest in maintaining public confidence in the integrity of prosecutors. (Cf. *Williams-Yulee v. Florida Bar* (2015) 575 U.S. 433 [upholding state ethical ban on personal campaign solicitations by judicial candidates]).

Whether the State Bar takes action in the form of a new rule of professional conduct or an ethics opinion, our goal is the same: to protect the integrity of the prosecutorial function, the fair administration of justice, and restore public trust in law enforcement. Given the urgent national situation, we request an expedited review of this request.

Thank you for your consideration of this time-sensitive and important matter.

Sincerely,

A handwritten signature in blue ink that reads "Ana Flores". The signature is written in a cursive, flowing style.

Ana I. Flores, Esq.
President

Executive Committee

Karen Suri &
Gilbert Saucedo
Co-Presidents

Kath Rogers
Executive Director

Dickran Sevljan
Secretary

Jay Shin
Treasurer



July 27, 2020

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180 Howard St.
San Francisco, CA 94105

Donna Hershkowitz
Interim Executive Director
State Bar of California
180 Howard St.
San Francisco, CA 94105

RE: Ethics rule change request to reduce conflicts of interest for prosecutors.

Dear Chair Alan Steinbrecher and Interim Executive Director Donna Hershkowitz:

On behalf of the National Lawyers Guild of Los Angeles, we write to you in the wake of the recent killings of George Floyd, Ahmaud Arbery, Breonna Taylor, and countless others in California and beyond to strongly urge the State Bar to implement a new rule of professional responsibility to reduce the possibility of political influence from law enforcement unions over prosecutorial decision making.

Across California, including in San Francisco, there are dozens of law enforcement unions representing rank-and-file police officers, sheriff's deputies and correctional officers who play a major role in local, state and even national politics. They are well-funded, and purport to represent the interests and positions of law enforcement in elections and on issues before the voters and the legislature. Their political endorsements are provided only to candidates whom they believe share their particular vision of public safety and whom they believe will advance their interests. When the unions grant an endorsement, they often also provide financial support to their endorsed candidate.

Recent tragedies have illustrated the importance of independent prosecutors to assess wrongdoing of police officers. Prosecutors work closely with law enforcement officers and are often tasked with evaluating whether some of those same officers have committed crimes. When prosecutors initiate an investigation or prosecution of an officer, police unions often finance officers' representation. This creates the appearance of a conflict of interest. District Attorneys will undoubtedly review use of force incidents involving their members. When they do, the financial and political support of police unions should not be allowed to influence that decision making.

The State Bar's Rules of Professional Conduct generally prohibit a lawyer from representing a client when, "the lawyer has ... a legal, business, financial, professional, or

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personal relationship with or responsibility to a party or witness in the same matter” (“Rule 1.7, Conflict of Interest,” 2018). The American Bar Association’s rules governing conflicts of interest reference a slew of responsibilities related to financial or political interests for prosecutors. Specifically, “a prosecutor who has a significant personal, *political*, *financial*, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer” [emphasis added] (“Standard 3-1.7 Conflicts of Interest,” 2017).

These rules were crafted for the purpose of avoiding a conflict, or the appearance of a conflict, that exists when an attorney, or prosecutor, has a political or financial relationship with opposing counsel. These rules therefore suggest an elected prosecutor should either avoid soliciting financial contributions and support from an attorney representing an accused officer, or to recuse their office from a prosecution where the prosecutor has received financial or political support therefrom. These rules, however, do not preclude the attorney or prosecutor from soliciting or receiving financial support from an individual or organization that is financing opposing counsel. It is illogical that the rules prohibit prosecutors from soliciting and benefiting from financial and political support from an accused officer’s advocate in court, while enabling the prosecutor to benefit financially and politically from the accused’s advocate in public.

In order to cure this conflict, or the appearance of a conflict, the rules must therefore explicitly preclude elected prosecutors—or prosecutors seeking election—from seeking or accepting political or financial support from law enforcement unions. Such a rule change will not only help to avoid conflicts and ensure independence on the part of elected prosecutors, it will also enhance act to build trust from the public in our criminal justice system at a time when it is lacking due to the recent events around police violence.

Whether the State Bar takes action in the form of a new rule of professional conduct or an ethics opinion, our goal is the same: to cure the conflict of interest inherent in allowing police unions to support prosecutors and ensure the independence of prosecutors in investigating and prosecuting police. We appreciate your consideration of this incredibly time sensitive and important matter.

Sincerely,



Kath Rogers

Executive Director, National Lawyers Guild of Los Angeles, NLG-LA.org

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"Empowering Our Future"



July 27, 2020

Alan Steinbrecher
Chair, Board of Trustees
State Bar of California
180 Howard St.
San Francisco, CA 94105

Donna Hershkowitz
Interim Executive Director
State Bar of California
180 Howard St.
San Francisco, CA 94105

RE: Ethics rule change request to reduce conflicts of interest for prosecutors.

Dear Chair Alan Steinbrecher and Interim Executive Director Donna Hershkowitz:

On behalf of Charles Houston Bar Association, we write to you in the wake of the recent killings of George Floyd, Ahmaud Arbery, Breonna Taylor, and countless others in California and beyond to strongly urge the State Bar to implement a new rule of professional responsibility to reduce the possibility of political influence from law enforcement unions over prosecutorial decision making.

Across California, including in San Francisco, there are dozens of law enforcement unions representing rank-and-file police officers, sheriff's deputies and correctional officers who play a major role in local, state and even national politics. They are well-funded, and purport to represent the interests and positions of law enforcement in elections and on issues before the voters and the legislature. Their political endorsements are provided only to candidates whom they believe share their particular vision of public safety and whom they believe will advance their interests. When the unions grant an endorsement, they often also provide financial support to their endorsed candidate.

*Representing the Interests of African-American Attorneys throughout Northern California
An Affiliate of the National Bar Association
"Celebrating Over 50 Years of Excellence"*

Recent tragedies have illustrated the importance of independent prosecutors to assess wrongdoing of police officers. Prosecutors work closely with law enforcement officers and are often tasked with evaluating whether some of those same officers have committed crimes. When prosecutors initiate an investigation or prosecution of an officer, police unions often finance officers' representation. This creates the appearance of a conflict of interest. District Attorneys will undoubtedly review use of force incidents involving their members. When they do, the financial and political support of police unions should not be allowed to influence that decision making.

The State Bar's Rules of Professional Conduct generally prohibit a lawyer from representing a client when, "the lawyer has ... a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter" ("Rule 1.7, Conflict of Interest," 2018). The American Bar Association's rules governing conflicts of interest reference a slew of responsibilities related to financial or political interests for prosecutors. Specifically, "a prosecutor who has a significant personal, *political*, *financial*, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer" [emphasis added] ("Standard 3-1.7 Conflicts of Interest," 2017).

These rules were crafted for the purpose of avoiding a conflict, or the appearance of a conflict, that exists when an attorney, or prosecutor, has a political or financial relationship with opposing counsel. These rules therefore suggest an elected prosecutor should either avoid soliciting financial contributions and support from an attorney representing an accused officer, or to recuse their office from a prosecution where the prosecutor has received financial or political support therefrom. These rules, however, do not preclude the attorney or prosecutor from soliciting or receiving financial support from an individual or organization that is financing opposing counsel. It is illogical that the rules prohibit prosecutors from soliciting and benefiting from financial and political support from an accused officer's advocate in court, while enabling the prosecutor to benefit financially and politically from the accused's advocate in public.

In order to cure this conflict, or the appearance of a conflict, the rules must therefore explicitly preclude elected prosecutors—or prosecutors seeking election—from seeking or accepting political or financial support from law enforcement unions. Such a rule change will not only help to avoid conflicts and ensure independence on the part of elected prosecutors, it will also enhance and act to build trust from the public in our criminal justice system at a time when it is lacking due to the recent events around police violence.

Whether the State Bar takes action in the form of a new rule of professional conduct or an ethics opinion, our goal is the same: to cure the conflict of interest inherent in allowing police unions to support prosecutors and ensure the independence of prosecutors in investigating and prosecuting police.

Representing the Interests of African-American Attorneys throughout Northern California
An Affiliate of the National Bar Association
"Celebrating Over 50 Years of Excellence"

We appreciate your consideration of this incredibly time sensitive and important matter.

Signed,



Nichelle N. Holmes
President,
Charles Houston Bar Association

CC: Alan Steinbrecher, Chair
Sean M. SeLegue, Vice-Chair
Mark Broughton, Trustee
Hailyn Chen, Trustee
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Juan De La Cruz, Trustee
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ALMA

ASSOCIATION OF LATINO MARIN ATTORNEYS

August 2, 2020

Alan Steinbrecher
Chair, Board of Trustees
State Bar of California
180 Howard St.
San Francisco, CA 94105

Donna Hershkowitz
Interim Executive Director
State Bar of California
180 Howard St.
San Francisco, CA 94105

RE: Ethics rule change request to reduce conflicts of interest for prosecutors.

Dear Chair Alan Steinbrecher and Interim Executive Director Donna Hershkowitz:

On behalf of the Association of Latino Marin Attorneys, we write to you in the wake of the recent killings of George Floyd, Ahmaud Arbery, Breonna Taylor, and countless others in California and beyond to strongly urge the State Bar to implement a new rule of professional responsibility to reduce the possibility of political influence from law enforcement unions over prosecutorial decision making.

Across California, including in Marin County, law enforcement unions representing rank-and-file police officers, sheriff's deputies and correctional officers play a major role in local, state and even national politics. The unions are well-funded and purport to represent the interests and positions of law enforcement in elections and on issues before the voters and the legislature. They provide political endorsements only to candidates whom they believe share their particular vision of public safety and will advance their interests. When the unions grant an endorsement, they often also provide financial support to their endorsed candidate.

Recent tragedies have illustrated the importance of independent prosecutors to assess wrongdoing of police officers. Prosecutors work closely with law enforcement officers and are often tasked with evaluating whether some of those same officers have committed crimes. When a prosecutor initiates an investigation or prosecution of an officer, that officer's union often finances that officer's legal representation. This creates the appearance of a conflict of interest. District Attorneys will undoubtedly review use of force incidents involving their members. When they do, the financial and political support of police unions should not be allowed to influence that decision-making.

August 2, 2020

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The State Bar's Rules of Professional Conduct generally prohibit a lawyer from representing a client when, "the lawyer has ... a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter" ("Rule 1.7, Conflict of Interest," 2018). The American Bar Association's rules governing conflicts of interest reference a slew of responsibilities related to financial or political interests for prosecutors. Specifically, "a prosecutor who has a significant personal, *political, financial*, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer" [emphasis added] ("Standard 3-1.7 Conflicts of Interest," 2017).

These rules were crafted for the purpose of avoiding a conflict, or the appearance of a conflict, that exists when an attorney, or prosecutor, has a political or financial relationship with opposing counsel. These rules suggest that an elected prosecutor should not solicit financial contributions and support from an attorney representing an accused officer and should recuse their office from a prosecution where the prosecutor has received financial or political support from an attorney representing an accused officer. However these rules do not preclude the attorney or prosecutor from soliciting or receiving financial support *from an individual or organization that is financing opposing counsel*. It is illogical that the rules prohibit prosecutors from soliciting and benefiting from financial and political support from an accused officer's advocate in court, while enabling the prosecutor to benefit financially and politically from the accused's advocate while campaigning for office.

In order to cure this conflict, or the appearance of a conflict, the rules must therefore explicitly preclude elected prosecutors—or prosecutors seeking election—from seeking or accepting political or financial support from law enforcement unions or any entity that funds the legal defense of police officers charged with misconduct. Such a rule change will help to avoid conflicts and ensure independence on the part of elected prosecutors. It will also strengthen public trust in our criminal justice system at this crucial time in United States history.

Whether the State Bar takes action in the form of a new rule of professional conduct or an ethics opinion, our goal is the same: to cure the conflict of interest inherent in allowing police unions to support prosecutors and ensure the independence of prosecutors in investigating and prosecuting police.

We appreciate your consideration of this incredibly time sensitive and important matter.

Signed,

Anna Pletcher
President, Association of Latino Marin Attorneys
atletcher@gmail.com

cc: Sean M. SeLegue, Vice-Chair
Mark Broughton, Trustee

August 2, 2020

Page 3

Hailyn Chen, Trustee
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August 10, 2020

Chair Alan Steinbrecher
Director Donna Hershkowitz
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Dear Chair Alan Steinbrecher and Interim Executive Director Donna Hershkowitz:

We, of the Contra Costa Defender Association, write to urge the State Bar to adopt a new rule of professional responsibility to reduce the possibility that law-enforcement unions will exert, or will be perceived as exerting, political influence over prosecutorial decision making.

Across California, including in San Francisco, there are dozens of law-enforcement unions representing rank-and-file police officers, sheriff's deputies, and correctional officers. These unions play a major role in local, state, and even national politics. They are well-funded and purport to represent the interests and positions of law enforcement in elections and on issues before the voters and the legislature. Their political endorsements are provided only to candidates whom they believe share their particular vision of public safety and whom they believe will advance their interests. When the unions endorse a candidate, they often also provide financial support to that candidate.

Prosecutors are in a unique position of having to work closely with law-enforcement officers and to evaluate whether some of those same officers have committed crimes. When a prosecutor initiates an investigation or prosecution of an officer, law-enforcement unions often finance their members' legal representation. Yet the same unions may have contributed to the prosecutor's campaign.

This is worse than unseemly: it corrodes public trust in an institution whose legitimacy hinges on the public's trust in its fairness and impartiality. Prosecutors, like judges, are charged with public duties that transcend those of ordinary advocates; and it is therefore of paramount importance that the public trusts prosecutors to carry out those duties fairly and impartially. A prosecutor is the "representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." (*Berger v. United States* (1935) 295 U.S. 78, 88.) "The prosecutor is an administrator of justice, an advocate, and an officer of the court"; she "must exercise sound discretion in the performance of his or her functions"; and her duty "is to seek justice, not merely to convict." (ABA Criminal Justice Standards: Prosecution Function, Standard 3-1.2, subds. (b) & (c).) Because a prosecutor exercises vast discretion when deciding whether to investigate, whether to charge, and how to charge, she "should have, as nearly as possible, a detached and impartial view of all groups in his community." (Robert H. Jackson, "The Federal Prosecutor," speech delivered at the Second Annual Conference of United States Attorneys, Great Hall, Department of Justice Building, Washington, D. C., April 1, 1940.1)

Receiving endorsements and campaign contributions from unions that finance opposing counsel creates, at a minimum, the appearance of a conflict of interest for elected prosecutors. District Attorneys undoubtedly will review use-of-force incidents involving union members. When they do, the financial and political support of those unions should not influence, or appear to influence, the District Attorneys' decision making.

The State Bar's Rules of Professional Conduct generally prohibit a lawyer from representing a client when, "the lawyer has ... a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter" (California Rules of Professional Conduct, rule 1.7, Conflict of Interest [2018]). Further, the California Court of Appeal has found that "a 'conflict,' for purposes of California Penal Code § 1424, 'exists whenever the circumstances of a case evidence a reasonable possibility that the DA's office may not exercise its discretionary function in an evenhanded manner.'" (People v. Vasquez (2006) 39 Cal.4th 47, 74, fn.2, 45 Cal.Rptr.3d 372, 137 P.3d 199 [italics omitted].) Thus, there is no need to determine whether a conflict is "actual" or only gives an "appearance" of conflict. Similarly, the American Bar Association's conflicts-of-interest rules provide that "a prosecutor who has a significant personal, political, financial, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer." (Am Bar Assn. Criminal Justice Standards for the Prosecution Function, Standard 3-1.7, subd. (h), Conflicts of Interest [2017].)

These rules and decisions ostensibly were crafted to avoid the conflict, or the appearance of a conflict, that arises when an attorney or prosecutor has a political or financial relationship with opposing counsel. They suggest that an elected prosecutor either should avoid soliciting financial contributions and support from an attorney representing an accused officer, or should recuse their office from a 1 Available at <https://www.justice.gov/sites/default/files/ag/legacy/2011/09/16/04-01-1940.pdf>. prosecution where the prosecutor has received financial or political support from such an attorney.

But these rules do not preclude the attorney or prosecutor from soliciting or receiving financial support from an individual or organization that is financing opposing counsel. It is illogical that the rules prohibit a prosecutor from soliciting and benefiting from financial and political support from an accused officer's advocate when the prosecutor is carrying out his duties, but enable the prosecutor *when campaigning* to benefit financially and politically from an entity that funds the accused's advocate.

To cure this conflict, or the appearance of conflict, and to maintain public confidence in the fairness and impartiality of prosecutors, ethical rules must explicitly preclude elected prosecutors, prosecutors seeking election, and their campaign committees from seeking or from accepting political or financial support from law-enforcement unions. Such a rule would not only help to avoid conflicts and ensure the independence of elected prosecutors, it also would enhance trust in our criminal-justice system at a time when trust is sorely needed. And the rule would survive First Amendment scrutiny, as it is narrowly tailored to further the state's compelling interest in maintaining public confidence in the integrity of prosecutors. (Cf. Williams-Yulee v. Florida Bar (2015) 575 U.S. 433 [upholding state ethical ban on personal campaign solicitations by judicial candidates]).

Whether the State Bar takes action in the form of a new rule of professional conduct or an ethics opinion, our goal is the same: to protect the integrity of the prosecutorial function, the fair administration of justice, and restore public trust in law enforcement. Given the urgent national situation, we request an expedited review of this request. We appreciate your consideration of this time-sensitive and important matter.

Sincerely,

s/ ali saidi

Ali Saidi, President
Contra Costa Defender Association

2020 OFFICERS

Sophia Román
President
The Gap, Inc.
2 Folsom Street, 13th Floor
San Francisco, CA 94105
(415) 427-9076
sophia_roman@gap.com

Alice Anne Purdy
First Vice President
Flicker, Kerin, Kruger & Bissada LLP
20-B Santa Margarita Avenue
Menlo Park, CA 94025
(650) 289-1400
apurdy@fkkblaw.com

Beverly Brand
Second Vice President
Lesser Law Group
(415) 613-6450
beverlyanbrand@gmail.com

Michelle Dylan
Treasurer
Law Office of Michelle Dylan
214 Duboce Avenue
San Francisco, CA 94103
(415) 548-1882
md@michelledylanlaw.com

Kimiko Akiya
Secretary
Bartko Zankel Bunzel & Miller
One Embarcadero Center, Suite 800
San Francisco, CA 94111
(505) 385-2543
kimiko.akiya@gmail.com

Josephine K. Petrick
Assistant Secretary/Newsletter Editor
Hanson Bridgett LLP
425 Market St., 26th Fl.
San Francisco, CA 94105
(415) 995-5099
JPetrick@hansonbridgett.com

2020 DIRECTORS

Andrea Carlise
IANGEL
660 13th Street, Suite. 200
Oakland, CA 94612
(510) 205-1255
andrea@iangel.org

Angel L. Garrett
Trucker Huss
One Embarcadero Center, 12th Floor
San Francisco, CA 94111
(415) 788-3111
agarrett@truckerhuss.com

Kara Wild
Ericksen Arbuthnot
2300 Clayton Road, Suite 350
Concord, CA 94520
(510) 832-7770
kwild@ericksenarbuthnot.com

Lisa A Villaseñor-Volosing
The Hassell Law Group
4079 19th Avenue
San Francisco, CA 94132
(T) (415) 518-8479
(F) (415) 469-9885
lisav744@gmail.com

Sara Craig
Levin Simes Abrams LLP
1700 Montgomery Street, Suite 250
San Francisco, CA 94111
(T) (415) 426-3000
(F) (415) 426-3001
scraig@levinsimes.com

Elisha Jussen-Cooke
Cooperative Restraining Order Clinic
3543 18th Street, Box #5
San Francisco, CA 94110
(808) 250-2554
elisha@roclinic.org

Hana Hardy
Immediate Past President
City of San José,
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San José, CA 95113
(415) 663-6510
hananhardy@gmail.com



Founded 1921

Queen's Bench Bar Association

of the San Francisco Bay Area

August 11, 2020

Chair Alan Steinbrecher
Director Donna Hershkowitz
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Dear Chair Alan Steinbrecher and Interim Executive Director Donna Hershkowitz:

We, the Board of Directors of the Queen's Bench Bar Association of the San Francisco Bay Area, write to urge the State Bar to adopt a new rule of professional responsibility to eliminate any conflict of interest by reducing the possibility that law-enforcement unions will exert, or will be perceived as exerting, political influence over prosecutorial decision making.

Receiving endorsements and campaign contributions from law enforcement unions that finance opposing counsel in their own discipline or review proceedings creates, at a minimum, the appearance of a conflict of interest for elected prosecutors. Even worse, a successful candidate, once in office, may feel a sense of obligation or indebtedness to her or his campaign contributors, thereby increasing the risk that the prosecutor may act partially, whether consciously or not, in matters involving or connected to those contributors.

We believe that law-enforcement officers serve a vital, important and noble function in safeguarding the public. Law-enforcement officers are, first and foremost, employees of government - and, in a broader sense, employees of the citizens - who are paid to enforce the local and State laws in the public interest. As with any other employee, if an officer fails to perform his or her job, then he or she will be investigated and ultimately disciplined. The discipline process must be conducted in a fair and impartial manner.

Prosecutors are in a unique position of having to work closely with law enforcement officers and to evaluate whether some of those same officers have committed crimes or otherwise mishandled a case. When a prosecutor initiates an investigation or prosecution of an officer, law enforcement unions often finance their members' legal representation. Yet the same unions may have contributed to the prosecutor's campaign which creates a clear conflict of interest by opening a prosecutor up to influence by the law enforcement union with respect to how and if an officer will be disciplined. District Attorneys undoubtedly will review use-of-force incidents involving union members. When they do, the financial and political support of those unions should not influence, or appear to influence, the District Attorneys' decision making.

This is worse than unseemly: it corrodes public trust in the institution of judicial prosecution whose legitimacy hinges on the public's trust in its fairness and impartiality. Prosecutors, like judges, are charged with public duties that transcend those of ordinary advocates; and it is therefore of paramount importance that the public trusts prosecutors to carry out those duties fairly and impartially. A prosecutor is the "representative not of an

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ADMINISTRATIVE OFFICE

360 1st Ave. #105
San Mateo, CA 94401
Tel: (415) 249-9280
admin@queensbench.org
www.queensbench.org

ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.” (Berger v. United States (1935) 295 U.S. 78, 88.) “The prosecutor is an administrator of justice, an advocate, and an officer of the court”; she “must exercise sound discretion in the performance of his or her functions”; and her duty “is to seek justice, not merely to convict.” (ABA Criminal Justice Standards: Prosecution Function, Standard 3-1.2, subds. (b) & (c).) Because a prosecutor exercises vast discretion when deciding whether to investigate, whether to charge, and how to charge, she or he “should have, as nearly as possible, a detached and impartial view of all groups in his community.” (Robert H. Jackson, “The Federal Prosecutor,” speech delivered at the Second Annual Conference of United States Attorneys, Great Hall, Department of Justice Building, Washington, D. C., April 1, 1940.1)

The State Bar’s Rules of Professional Conduct generally prohibit a lawyer from representing a client when, “the lawyer has ... a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter” (California Rules of Professional Conduct, rule 1.7, Conflict of Interest [2018]). Further, the California Court of Appeal has found that “a ‘conflict,’ for purposes of California Penal Code § 1424, ‘exists whenever the circumstances of a case evidence a reasonable possibility that the DA’s office may not exercise its discretionary function in an evenhanded manner.’” (People v. Vasquez (2006) 39 Cal.4th 47, 74, fn.2, 45 Cal.Rptr.3d 372, 137 P.3d 199 [italics omitted].) Thus, there is no need to determine whether a conflict is “actual” or only gives an “appearance” of conflict. Similarly, the American Bar Association’s conflicts-of-interest rules provide that “a prosecutor who has a significant personal, political, financial, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer.” (Am Bar Assn. Criminal Justice Standards for the Prosecution Function, Standard 3-1.7, subd. (h), Conflicts of Interest [2017].)

These rules and decisions ostensibly were crafted to avoid the conflict, or the appearance of a conflict, that arises when an attorney or prosecutor has a political or financial relationship with opposing counsel. They suggest that an elected prosecutor either should avoid soliciting financial contributions and support from an attorney representing an accused officer or should recuse their office from a prosecution where the prosecutor has received financial or political support from such an attorney.

But these rules do not preclude the attorney or prosecutor from soliciting or receiving financial support from an individual or organization that is financing opposing counsel. It is illogical that the rules prohibit a prosecutor from soliciting and benefiting from financial and political support from an accused officer’s advocate when the prosecutor is carrying out his duties but enable the prosecutor when campaigning to benefit financially and politically from an entity that funds the accused’s advocate.

To cure this conflict, or the appearance of conflict, and to maintain public confidence in the fairness and impartiality of prosecutors, ethical rules must explicitly preclude elected prosecutors, prosecutors seeking election, and their campaign committees from seeking or from accepting political or financial support from law enforcement unions. Such a rule would not only help to avoid conflicts and ensure the independence of elected prosecutors, it also would enhance trust in our criminal-justice system. And the rule would survive First Amendment scrutiny, as it is narrowly tailored to further the state’s compelling interest in maintaining public confidence in the integrity of prosecutors. (Cf. Williams-Yulee v. Florida Bar (2015) 575 U.S. 433 [upholding state ethical ban on personal campaign solicitations by judicial candidates]).

Whether the State Bar takes action in the form of a new rule of professional conduct or an ethics opinion, our goal is the same: to protect the integrity of the prosecutorial function, the fair administration of justice, and restore public trust in law enforcement. Given the urgent national situation, we request an expedited review of this request. We appreciate your consideration of this time-sensitive and important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sophia Roman', written in a cursive style.

Sophia Roman, President
Queen’s Bench Bar Association of the San Francisco Bay Area



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Hon. Tara C. Doss

* DECEASED

August 10, 2020

Chair Alan Steinbrecher
Director Donna Hershkowitz
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Dear Chair Alan Steinbrecher and Interim Executive Director Donna Hershkowitz:

Black Women Lawyers Association of Los Angeles writes to urge the State Bar to adopt a new rule of professional responsibility to reduce the possibility that law-enforcement unions will exert, or will be perceived as exerting, political influence over prosecutorial decision making.

Across California, including in San Francisco, there are dozens of law-enforcement unions representing rank-and-file police officers, sheriff's deputies, and correctional officers. These unions play a major role in local, state, and even national politics. They are well-funded and purport to represent the interests and positions of law enforcement in elections and on issues before the voters and the legislature. Their political endorsements are provided only to candidates whom they believe share their particular vision of public safety and whom they believe will advance their interests. When the unions endorse a candidate, they often also provide financial support to that candidate.

Prosecutors are in a unique position of having to work closely with law-enforcement officers and to evaluate whether some of those same officers have committed crimes. When a prosecutor initiates an investigation or prosecution of an officer, law-enforcement unions often finance their members' legal representation. Yet the same unions may have contributed to the prosecutor's campaign.

This is worse than unseemly: it corrodes public trust in an institution whose legitimacy hinges on the public's trust in its fairness and impartiality. Prosecutors, like judges, are charged with public duties that transcend those of ordinary advocates; and it is therefore of paramount importance that the public trusts prosecutors to carry out those duties fairly and impartially. A prosecutor is the "representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." (Berger v. United States (1935) 295 U.S. 78, 88.) "The prosecutor is an administrator of justice, an advocate, and an officer of the court"; she "must exercise sound discretion in the performance of his or her functions"; and her duty "is to seek justice, not merely to convict." (ABA Criminal Justice Standards: Prosecution

Function, Standard 3-1.2, subds. (b) & (c).) Because a prosecutor exercises vast discretion when deciding whether to investigate, whether to charge, and how to charge, she “should have, as nearly as possible, a detached and impartial view of all groups in his community.” (Robert H. Jackson, “The Federal Prosecutor,” speech delivered at the Second Annual Conference of United States Attorneys, Great Hall, Department of Justice Building, Washington, D. C., April 1, 1940.1)

Receiving endorsements and campaign contributions from unions that finance opposing counsel creates, at a minimum, the appearance of a conflict of interest for elected prosecutors. District Attorneys undoubtedly will review use-of-force incidents involving union members. When they do, the financial and political support of those unions should not influence, or appear to influence, the District Attorneys’ decision making.

The State Bar’s Rules of Professional Conduct generally prohibit a lawyer from representing a client when, “the lawyer has ... a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter” (California Rules of Professional Conduct, rule 1.7, Conflict of Interest [2018]). Further, the California Court of Appeal has found that “a ‘conflict,’ for purposes of California Penal Code § 1424, ‘exists whenever the circumstances of a case evidence a reasonable possibility that the DA’s office may not exercise its discretionary function in an evenhanded manner.’” (People v. Vasquez (2006) 39 Cal.4th 47, 74, fn.2, 45 Cal.Rptr.3d 372, 137 P.3d 199 [italics omitted].) Thus, there is no need to determine whether a conflict is “actual” or only gives an “appearance” of conflict. Similarly, the American Bar Association’s conflicts-of-interest rules provide that “a prosecutor who has a significant personal, political, financial, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer.” (Am Bar Assn. Criminal Justice Standards for the Prosecution Function, Standard 3-1.7, subd. (h), Conflicts of Interest [2017].)

These rules and decisions ostensibly were crafted to avoid the conflict, or the appearance of a conflict, that arises when an attorney or prosecutor has a political or financial relationship with opposing counsel. They suggest that an elected prosecutor either should avoid soliciting financial contributions and support from an attorney representing an accused officer, or should recuse their office from a 1 Available at <https://www.justice.gov/sites/default/files/ag/legacy/2011/09/16/04-01-1940.pdf>. prosecution where the prosecutor has received financial or political support from such an attorney.

But these rules do not preclude the attorney or prosecutor from soliciting or receiving financial support from an individual or organization that is financing opposing counsel. It is illogical that the rules prohibit a prosecutor from soliciting and benefiting from financial and political support from an accused officer’s advocate when the prosecutor is carrying out his duties, but enable the prosecutor **when campaigning** to benefit financially and politically from an entity that funds the accused’s advocate.

To cure this conflict, or the appearance of conflict, and to maintain public confidence in the fairness and impartiality of prosecutors, ethical rules must explicitly preclude

elected prosecutors, prosecutors seeking election, and their campaign committees from seeking or from accepting political or financial support from law-enforcement unions. Such a rule would not only help to avoid conflicts and ensure the independence of elected prosecutors, it also would enhance trust in our criminal-justice system at a time when trust is sorely needed. And the rule would survive First Amendment scrutiny, as it is narrowly tailored to further the state's compelling interest in maintaining public confidence in the integrity of prosecutors. (Cf. *Williams-Yulee v. Florida Bar* (2015) 575 U.S. 433 [upholding state ethical ban on personal campaign solicitations by judicial candidates]).

Whether the State Bar takes action in the form of a new rule of professional conduct or an ethics opinion, our goal is the same: to protect the integrity of the prosecutorial function, the fair administration of justice, and restore public trust in law enforcement. Given the urgent national situation, we request an expedited review of this request. We appreciate your consideration of this time-sensitive and important matter.

Sincerely,

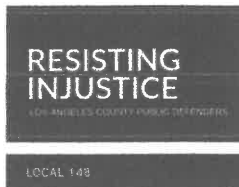


President, Black Women Lawyers Association of Los Angeles, Inc.

Sincerely,



Rosezetta E. Upshaw
President – Black Women Lawyers Association of Los Angeles, Inc.



LOS ANGELES COUNTY PUBLIC DEFENDERS LOCAL 148

July 24, 2020

Alan Steinbrecher
Chair, Board of Trustees
State Bar of California
180 Howard St.
San Francisco, CA 94105

Donna Hershkowitz
Interim Executive Director
State Bar of California
180 Howard St.
San Francisco, CA 94105

RE: ETHICS RULE CHANGE REQUEST TO REDUCE CONFLICTS OF INTEREST FOR PROSECUTORS

Dear Chair Alan Steinbrecher and Interim Executive Director Donna Hershkowitz:

On behalf of nearly 700 public defenders represented by the Los Angeles County Public Defenders Union Local 148, we write to you to strongly urge the State Bar to implement a new rule of professional responsibility to reduce the possibility of political influence from law enforcement unions over prosecutorial decision making. In the wake of the recent killings of George Floyd, Ahmaud Arbery, Breonna Taylor, and countless others victimized by law enforcement, we need to ensure that our judicial system provides a fair and impartial process for all.

Across California, including in Los Angeles, there are dozens of law enforcement unions representing rank-and-file police officers, sheriff's deputies and correctional officers who play a major role in local, state and even national politics. Often when the unions grant an endorsement, they also provide financial support to their endorsed candidate. In Los Angeles, law enforcement unions have donated millions of dollars to support candidates for the District Attorney's Office over the past several election cycles.

Recent tragedies have illustrated the importance of independent prosecutors to assess wrongdoing of police officers. Prosecutors work closely with law enforcement officers and are often tasked with evaluating whether some of those same officers have committed crimes. When prosecutors initiate an investigation or prosecution of an officer, police unions often finance officers' representation. This creates the appearance of a conflict of interest. District Attorneys will undoubtedly review use of force incidents involving their members. When they do, the financial and political support of police unions should not be allowed to influence that decision making.

The State Bar's Rules of Professional Conduct generally prohibit a lawyer from representing a client when, "the lawyer has ... a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter" ("Rule 1.7, Conflict of Interest," 2018). The

American Bar Association's rules governing conflicts of interest reference a slew of responsibilities related to financial or political interests for prosecutors. Specifically, "a prosecutor who has a significant personal, *political*, *financial*, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer" [emphasis added] ("Standard 3-1.7 Conflicts of Interest," 2017).

These rules were crafted for the purpose of avoiding a conflict, or the appearance of a conflict, that exists when an attorney, or prosecutor, has a political or financial relationship with opposing counsel. These rules therefore suggest an elected prosecutor should either avoid soliciting financial contributions and support from an attorney representing an accused officer, or to recuse their office from a prosecution where the prosecutor has received financial or political support therefrom. These rules, however, do not preclude the attorney or prosecutor from soliciting or receiving financial support from an individual or organization that is financing opposing counsel. It is illogical that the rules prohibit prosecutors from soliciting and benefiting from financial and political support from an accused officer's advocate in court, while enabling the prosecutor to benefit financially and politically from the accused's advocate in public.

In order to cure this conflict, the rules must explicitly preclude elected prosecutors—or prosecutors seeking election—from seeking or accepting political or financial support from law enforcement unions. Such a rule change will not only help to avoid conflicts and ensure independence on the part of elected prosecutors, it will also enhance act to build trust from the public in our criminal justice system at a time when it is lacking due to the recent events around police violence.

We appreciate your consideration of this incredibly time sensitive and important matter. Thank you for your urgent attention to this matter. If you have any questions please contact me at (424) 307-4285 or via email at lapubdefunion@gmail.com.

Sincerely,

Nikhil Ramnaney

Nikhil Ramnaney
President Local 148

cc: Alan Steinbrecher, Chair
Sean M. SeLegue, Vice-Chair
Mark Broughton, Trustee
Hailyn Chen, Trustee
José Cisneros, Trustee
Juan De La Cruz, Trustee
Sonia T. Delen, Trustee
Ruben Duran, Trustee
Chris Iglesias, Trustee
Renée LaBran, Trustee
Debbie Y. Manning, Trustee
Joshua Perttula, Trustee
Brandon N. Stallings, Trustee



**Asian Pacific American
Women Lawyers Alliance
(APAWLA)**

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Leana Taing
Eleanor Sun
Lynn Whitcher
Mia Frances Yamamoto
Joyce Yu

Mailing Address

P.O. Box 711016
Los Angeles, CA 90071

August 18, 2020

Alan Steinbrecher
Chair, Board of Trustees
State Bar of California
180 Howard Street
San Francisco, CA 94105

Donna Hershkowitz
Interim Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105

**RE: Ethics rule change request to reduce conflicts of interest for
Prosecutors.**

Dear Chair Alan Steinbrecher and Interim Executive Director Donna Hershkowitz:

On behalf of the Asian Pacific American Women Lawyers Alliance, we write to you, in the wake of the recent killings of George Floyd, Ahmaud Arbery, Breonna Taylor, and countless others in California and beyond, to strongly urge the State Bar to implement a new rule of professional responsibility to reduce the possibility of political influence from law enforcement unions over prosecutorial decision making.

Across California, including in Los Angeles, there are dozens of law enforcement unions representing rank-and-file police officers, sheriff's deputies and correctional officers who play a major role in local, state and even national politics. They are well funded and purport to represent the interests and positions of law enforcement in elections and on issues before the voters and the legislature. Their political endorsements are provided only to candidates whom they believe share their particular vision of public safety and whom they believe will advance their interests. When the unions grant an endorsement, they often also provide financial support to their endorsed candidates.

Recent tragedies have illustrated the importance of independent prosecutors to assess wrongdoing by police officers. Prosecutors work closely with law enforcement officers and are often tasked with evaluating whether some of those same officers have committed crimes. When prosecutors initiate an investigation or prosecution of an officer, police unions finance officers' representation. This creates the appearance of a conflict of interest. District Attorneys will undoubtedly review use of force incidents involving their members. When they do, the financial and political support of police unions should not be allowed to influence that decision-making.

The State Bar's Rules of Professional Conduct generally prohibit a lawyer from representing a client when, "the lawyer has . . . a legal business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter." (Rule 1.7 "Conflict of Interest" 2018).



**Asian Pacific American
Women Lawyers Alliance
(APAWLA)**

President

Calimay Pham

President-Elect

Sandy Yu

Vice President (Membership)

Esther Ro

Vice President (Historian) Diane

M.L. Tan

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Katrina Rayco
Hon. Jana Seng
Leana Taing
Eleanor Sun
Lynn Whitcher
Mia Frances Yamamoto
Joyce Yu

Mailing Address

P.O. Box 711016
Los Angeles, CA 90071

The American Bar Association's rules governing conflicts of interest reference a slew of responsibilities related to financial or political interests for prosecutors. Specifically, "a prosecutor who has a significant personal, *political* or *financial*, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer." [emphasis added] ("Standard 3-1.7 Conflicts of Interest, "2017)

These rules were crafted for the purpose of avoiding a conflict, or the appearance of a conflict, that exists when an attorney, or prosecutor, has a political or financial relationship with opposing counsel. These rules therefore suggest an elected prosecutor should either avoid soliciting financial contributions and support from an attorney representing an accused officer, or recuse their office from a prosecution where the prosecutor has received financial or political support therefrom. These rules, however, do not preclude the attorney or prosecutor from soliciting and benefiting from financial and political support from an accused officer's advocate in court, while enabling the prosecutor to benefit financially and politically from the accused's advocate in public.

In order to cure this conflict, or the appearance of a conflict, the rules must therefore explicitly preclude elected prosecutors – or prosecutors seeking election – from seeking or accepting political or financial support from law enforcement unions. Such a rule change will not only help to avoid conflicts and ensure independence on the part of elected prosecutors, it will also act to build trust from the public in our criminal justice system at a time when it is lacking due to the recent events around police violence.

Whether the State Bar takes action in the form of a new rule of professional conduct or an ethics opinion, our goal is the same: to cure the conflict of interest inherent in allowing police unions to support prosecutors, and ensure independence of prosecutors in investigating and prosecuting police.

Thank you for your consideration of this matter.

Sincerely,

Calimay Pham
President
Asian Pacific American Women Lawyers Alliance



CALIFORNIA
DISTRICT
ATTORNEYS
ASSOCIATION

2495 Natomas Park Drive, Suite 575
Sacramento, CA 95833
916.443.2017
www.cdaa.org

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Santa Clara County

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Mark Zahner

August 5, 2020

Alan Steinbrecher
Chair, Board of Trustees
State Bar of California
180 Howard St.
San Francisco, CA 94105

Donna Hershkowitz
Interim Executive Director
State Bar of California
180 Howard St.
San Francisco, CA 94105

Re: Proposed change to ethics rules for prosecutors

Dear Mr. Steinbrecher and Ms. Hershkowitz:

On behalf of the Board of Directors the California District Attorneys Association, we reach out to voice our strong opposition to the proposed amendment to the ethics rules prohibiting prosecutors from accepting political donations from police unions.

The proposed rule intentionally discriminates against law enforcement unions to the exclusion of any other criminal-justice-oriented organizations and violates their First Amendment rights. The result is the complete muting of the voice of law enforcement professionals thereby amplifying, by design, an often-times opposing political perspective and as such, is unconstitutional.

Campaign Endorsements and Contributions are Protected Speech

The proposed rule is patently unconstitutional, and the speech involved is protected by the First Amendment. As the California Supreme Court stated in *Woodland Hills Residents Association, Inc. v. City Council of City of Los Angeles* (1980) 26 Cal.3d 938, 946: "Political contributions involve an exercise of fundamental freedom protected by the First Amendment to the United States Constitution and article I section 2 of the California Constitution."

In *Woodland Hills*, the court rejected the notion that elected city council members must be recused from voting on a development issue because developers had donated to the council members' campaigns. In rejecting this claim, the Court went on to state: "To disqualify a city council member from

acting on a development proposal because the developer had made a campaign contribution to that member would threaten constitutionally protected political speech and association freedoms.”

On June 1, 2020, the proponents of this rule change sent a letter to the State Bar asking them to prohibit “elected prosecutors” or “prosecutors seeking election” from accepting endorsements or contributions from police unions. They claim there is a conflict or appearance of a conflict since district attorneys work daily with law enforcement officers. As they state, “Prosecutors are in a unique position of having to work closely with law enforcement officers and evaluate whether some of those same officers have committed crimes.”

Stated simply, the proposal assumes that if a police union were to contribute to a district attorney’s campaign, the elected official would be so beholden to that law enforcement organization and fail to hold their members accountable for criminal malfeasance in violation of their oath, the ethics of the profession and the law. It is not without consequence that the proposed rule applies only to law enforcement unions. It does not include any other individual, political interest, criminal justice organization, advocacy group, or political action committee – all of which could be the subject of criminal inquiry – only police unions and their membership.

Evidently, the elected prosecutor is assumed vulnerable to such unethical decision-making only as it relates to members of law enforcement but impervious to such perceived conflicts involving any other donor to their campaign or re-election bids. Fortunately, the law does not subscribe to this logic nor is as dismissive of the free speech implications.

Silencing a Particular Political Position is Unconstitutional

The United States Supreme Court has long held that the First Amendment protects political and ideological speech, including campaign financing and any limitation is subject to strict scrutiny. (See *West Virginia State Board of Education W. Va. State Bd. of Educ. v. Barnette*, (1943) 319 U.S. 624, 642.; also, *NAACP v. Button* (1963) 371 U.S. 415, 428-429; *Citizens United v. FEC* (2010) 558 U.S. 310.) As the United States Supreme Court has stated:

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. See *Buckley, supra*, at 14-15, 96 S.Ct. 612 (“In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential”). The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment “‘has its fullest and most urgent application’ to speech uttered during a campaign for political office.” *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 223, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272, 91 S.Ct.

621, 28 L.Ed.2d 35 (1971)); see *Buckley, supra*, at 14, 96 S.Ct. 612 (“Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution”).

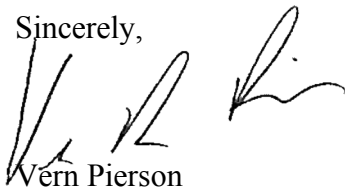
For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are “subject to strict scrutiny,” which requires the Government to prove that the restriction “furthers a compelling interest and is narrowly tailored to achieve that interest.”

(*Citizens United, supra*, at 339–340.)

To pass the high standard of strict scrutiny, the law must be narrowly tailored to achieve a compelling government interest. (*United States v. Playboy Entertainment Group, Inc.* (2000) 539 U.S. 803, 813.) The coalition presents the issue as though district attorneys across this state do not regularly recuse themselves from cases where there exist actual or perceived conflicts. They further fail to account for district attorneys who take personal responsibility for the refusal or acceptance of political contributions.

The proposed rule is overbroad, speculative, and fails to genuinely address the issue of a conflict.

Sincerely,

A handwritten signature in black ink, appearing to read 'Vern Pierson', with a stylized flourish at the end.

Vern Pierson

El Dorado County District Attorney
2020-21 CDAAL President



June 16, 2020

Sent Via U.S. Mail

Alan Steinbrecher
Chair, Board of Trustees
State Bar of California
180 Howard St.
San Francisco, California 94105

Donna Hershkowitz
Interim Executive Director
State Bar of California
180 Howard St.
San Francisco, California 94105

Re: Response to the request to change ethics rules for prosecutors

Dear Chair Alan Steinbrecher and Interim Executive Director Donna Hershkowitz:

On June 1, 2020, a coalition of four current and former District Attorneys sent a letter urging the California State Bar to pass a Rule of Professional Conduct prohibiting prosecutors from accepting political donations from police unions. Peace Officers Research Association of California ("PORAC") strongly opposes the proposed rule, which is an overt attempt to muzzle the political speech of organizations opposed to these candidates of so-called criminal justice reform. The pretextual basis for the proposed rule-potential conflicts in the prosecutions of peace officers-are easily managed under the existing Rules of Professional Conduct. The true motivation for the rule change is to silence their political opponents while imposing no constraints on the political participation of organizations conditioning their support for District Attorney candidates on predetermined charging decisions, a reduction of incarceration through lower sentences, refusal to seek the death penalty, and hinging prosecutorial decisions on immigration status.

The proposed rule intentionally discriminates against law enforcement unions and violates their First Amendment rights. Moreover, the proposal is a political ploy designed to increase the electoral prospects of its authors by silencing the political voice of their opponents who advocate for victims' rights and justice. The proponents' insincerity is demonstrated by the omission of any constraints on the organizations representing criminal defendants and prisoners, who not only have an direct interest in the District Attorneys' exercise of their discretion but also condition support on a predetermination of cases that will come before them. The establishment of a partisan political advantage has no place in the rules that govern the ethical duties of the legal profession.

Brian R. Marvel
President

Damon Kurtz
Vice President

Timothy Davis
Treasurer

Randy Beintema
Secretary



I. The Proposed Rule is Unconstitutional

A. The First Amendment protects campaign endorsements and expenditures.

It is well established that unions have the right to freedom of speech under the First Amendment. (*Citizens United v. Federal Election Commission* (2010) 588 U.S. 310 (*Citizens United*)). This includes the right to make campaign expenditures. (*Buckley v. Valeo* (1976) 424 U.S. 1.) In *Woodland Hills Residents Association, Inc. v. City Council of City of Los Angeles* (1980) 26 Cal.3d 938, 946, the California Supreme Court affirmed that campaign donations are protected political speech, and that a donation in itself does not give rise to a conflict of interest. The court determined that city council members could not be disqualified from voting on a subdivision map for a conflict of interest merely because developers had donated to the council members' campaigns. (*Ibid.*) The court stated, "Political contribution involves an exercise of fundamental freedom protected by the First Amendment..." (*Ibid.*) "To disqualify a city council member from acting on a development proposal because the developer made a campaign contribution to that member would threaten constitutionally protected political speech and associational freedoms." (*Ibid.*) In *Caperton v. A.T. Massey Coal, Co., Inc.* (2009) 556 U.S. 868, 884, the U.S. Supreme Court found that a judge should have recused himself from a case where one of the parties had contributed significantly to his campaign. However, the Court noted that this was "an exceptional case," and there was a "serious risk of actual bias" because of the disproportionately large donation. (*Ibid.*) Further, disqualification rules applicable to adjudicators are even more stringent than those that govern the conduct of prosecutors. (*County of Santa Clara v. Superior Ct.* (2010) 50 Cal.4th 25, 56 fn.12.) This case law makes clear that campaign endorsements and financial contributions to a campaign are forms of protected political speech, and do not create a conflict of interest.

B. The proposed rule violates the First Amendment because it is viewpoint-based.

Perhaps the most important principle of the First Amendment is that the government cannot regulate speech based on its content or viewpoint. (See, e.g., *Police Department of Chicago v. Mosley* (1972) 408 U.S. 92, 95; *R.A.V. v. City of Saint Paul* (1992) 505 U.S. 377, 382.) Content based restrictions on speech are "presumptively invalid." (*R.A.V. v. City of Saint Paul, supra*, 505 U.S. at p. 382.) Thus, courts use strict scrutiny when evaluating laws or regulations that discriminate against speech because of the viewpoint it espouses. (*Turner Broadcasting System v. Federal Communication Commission* (1994) 512 U.S. 622; see also *United States v. Playboy Entertainment Group, Inc.* (2000) 539 U.S. 803.)

The proposed rule is undeniably viewpoint based. It prohibits campaign contributions and endorsements by law enforcement unions alone and does nothing to prevent other organizations from contributing to D.A. campaigns. It is no accident that the members of the coalition are not supported by their local law enforcement unions. Adopting such a rule would allow the coalition's

Brian R. Marvel
President

Damon Kurtz
Vice President

Timothy Davis
Treasurer

Randy Beintema
Secretary



supporters to contribute to their campaigns while silencing their opponents. It is a political maneuver masquerading as an ethics rule, and it cannot withstand constitutional muster.

The proposed rule is overbroad, speculative, and fails to genuinely address the issue of a conflict. To pass the high standard of strict scrutiny, the law must be narrowly tailored to achieve a compelling government interest. (*United States v. Playboy Entertainment Group, Inc.*, *supra*, 539 U.S. at p. 813.) The coalition claims that the rule is justified to prevent any conflict of interest that might arise if a D.A. was forced to prosecute a member of the police union that had contributed to that D.A.'s election. Ensuring the integrity of the legal profession and effectively dealing with conflicts of interest is undoubtedly a compelling government interest. However, this proposed conflict is speculative and attenuated. The authors of this proposed rule are assuming that an individual officer may be charged, that the police union may fund their defense, that the union may have supported the D.A. who is handling the case, and that the D.A. will not recuse themselves in light of the conflict. This sort of speculation does not meet the high standard that strict scrutiny requires.

A blanket rule restricting police unions' participation in prosecutor elections is not a necessary or even effective solution. Attorney General Xavier Becerra has already analyzed the issue and came to the same conclusion: D.A. campaign contributions alone do not give rise to a conflict of interest. (See Enclosure A.) Should a true conflict of interest arise, the D.A. can simply recuse themselves from the case and ask another attorney to handle it. A hypothetical future conflict should not be used as justification to suppress the rights of one class of people.

II. The True Purpose for the Rule is to Promote the Authors' Political Agenda

This proposal is not only unconstitutional, it is disingenuous. It is not surprising that the D.A.s advocating for this rule are opposed by their local law enforcement unions. Forbidding union participation in elections would take money and resources away from their opponents. Meanwhile, the coalition would remain free to accept contributions from their own supporters. A sincere proposal would eliminate contributions and endorsements to D.A. races from all organizations, regardless of their viewpoint or politics. In short, it makes little sense to forbid police unions from contributing to elections, but continue to allow progressive groups like the American Civil Liberties Union (ACLU), California Attorneys for Criminal Justice, or the National Association for Criminal Defense Lawyers to do so.

Review of police use of force makes up less than 1 percent of a D.A.'s duties. 99 percent of their time is spent prosecuting and charging accused criminals. The coalition's supporters have political agendas that create a much more direct and reoccurring conflict. For example, the ACLU's Campaign for Smart Justice seeks to "empower a new generation of prosecutors committed to reducing incarceration." (ACLU, *ACLU Launches New Initiative to Overhaul Prosecutorial Practices* (April 26, 2017) <<https://www.aclu.org/press-releases/aclu-launches-new-initiative->

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[overhaul-prosecutorial-practices](#)>.) The Equal Justice Initiative advocates for ending mandatory minimum sentences and habitual offender statutes. (Equal Justice Initiative, *Criminal Justice Reform* <<https://eji.org/criminal-justice-reform/>> [as of June 12, 2020].) Billionaire George Soros has channeled millions of dollars into D.A. campaigns with the goal of expanding drug diversion programs and reducing sentences. (Bland, *George Soros' quiet overhaul of the U.S. justice system*, Politico (August 30, 2016) <<https://www.politico.com/story/2016/08/george-soros-criminal-justice-reform-227519>>.) These policies go to the heart of the D.A.'s job. Electing D.A.'s who promise to implement these sorts of policies will affect how 99 percent of the D.A.'s duties are carried out. This certain conflict is far broader than the hypothetical conflict with police unions that the rule is designed to address.

In a clear example of this conflict, the ACLU of California sends out a questionnaire to all D.A. candidates to help their affiliates determine which candidate to back. (ACLU of Cal., *California District Attorney Candidate Questionnaire* (2018) <<https://www.cdca.org/wp-content/uploads/ACLU-California-District-Attorney-Candidate-Questionnaire.pdf>> [as of June 8, 2020].) Some of these questions include:

- Will you commit to implementing practices that will reduce the jail population and reduce state prison commitments by a specific percentage by the end of your first term? (Question 2.)
- Do you commit to ending the use of money bail in this County? (Question 12.)
- Will you pledge to adopt a written policy and training which encourages prosecutors to consider the unintended immigration-related consequences of prosecutorial decisions at all stages of a case and to use their discretion to reach immigration-safe dispositions for noncitizens whenever it is possible and appropriate? (Question 17.)
- Will you commit to keeping all children out of adult court by pledging not to prosecute any minors as adults and by expanding the use of informal diversion and pre-filing diversion in juvenile cases? (Question 20.)

Not only does this questionnaire condition support on pre-determining cases that have not yet arisen, it also constitutes a commitment to deny individuals equal protection in violation of the Fourteenth Amendment. The advocates of criminal defendants and convicted individuals call for the D.A. to charge and treat individuals differently based on immigration status. If a state or local legislature were to enact a law that made distinctions on who to prosecute based on race, ethnicity, or immigration status, it would be promptly invalidated on constitutional grounds. D.A.'s, by contrast, can achieve a similarly discriminatory result under the guise of prosecutorial discretion.

In sum, if the Bar is inclined to implement policies that bar speech due to a conflict of interest, the ACLU and other criminal justice reform groups have a much larger conflict. The questions posed

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President

Damon Kurtz
Vice President

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in the questionnaire and the policies they advocate for involve the core functions of the D.A.'s Office. The way a D.A. answers these questions will have a huge impact on their community. Allowing progressive organizations to have a say in electing D.A.'s but barring police unions from doing so creates an uneven playing field. It allows one side to impose the candidates and policies they support while stifling competing viewpoints. Adopting such a rule would be unconstitutional and unjust.

III. There are Already Effective Systems in Place to Deal with Conflicts of Interest

As the coalition's letter mentions, there are already Rules of Professional Conduct that address how attorneys should respond when faced with a conflict of interest. Rule 1.7 prohibits a lawyer from representing a client when, "the lawyer has...a legal business, financial, professional, or personal relationship with or to a party or witness in the same matter." (State Bar Rules Prof. Conduct 1.7.) Further, the American Bar Association has outlined standards for prosecutors. These standards include that prosecutors should not allow their "professional judgement or obligations to be affected by the prosecutor's personal, political, financial, professional, business, property or other interests or relationships." (3 ABA Stds. for Crim. Justice (4th ed. 2017), The Prosecution Function standard 3-1.7(f).) When such a conflict exists, "the prosecutor should recuse from further participation in the matter." (*Id.* at standard 3-1.7(a).)

Penal Code section 1424 also deals with recusal of a D.A.'s office due to a conflict of interest. Under section 1424, recusal of a D.A.'s office requires proof of a conflict of interest that makes it unlikely that the defendant could receive a fair trial if that D.A.'s office prosecutes the case. A conflict has been described as "a structural incentive for the prosecutor to elevate some other interest over the interest in impartial justice, should the two diverge." (*People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 754.) "[A] prosecutor's interest should coincide with the interest of the public in bringing a criminal to justice and should not be under the influence of third parties who have a particular axe to grind against the defendant." (*People v. Parmar* (2001) 86 Cal.App.4th 781, 797 (*Parmar*).)

There are very few published cases in which a disabling conflict has been found. These cases generally only arise when an employee of the D.A.'s office is a victim of a crime, the D.A. represented the defendant previously, or the D.A.'s office received money for investigative costs from a victim. (See *People v. Conner* (1983) 34 Cal.3d 141 [D.A. employee victim of the crime]; *People v. Lepe* (1985) 164 Cal.App.3d 685 [D.A. previously represented the defendant]; *People v. Eubanks* (1996) 14 Cal.4th 580 [D.A. received money from the victim]). As stated in *Parmar*, "... *Eubanks* and virtually every other disqualification case has been concerned with situations in which the prosecutor has either had a personal interest or been claimed to be under the influence of a private party with a personal interest in the prosecution of the particular defendant, usually by virtue of having been a victim." (*People v. Parmar, supra*, 86 Cal.App.4th at p. 795.)

Brian R. Marvel
President

Damon Kurtz
Vice President

Timothy Davis
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In the rare case that there is a true conflict of interest, D.A.'s have a myriad of ways to resolve the conflict. In many instances, conflicts of interest can be handled by establishing an ethical wall around the affected employee. (See *Stark v. Superior Court* (2011) 52 Cal.4th 368; *People v. Gamache* (2010) 48 Cal.4th 347; *People v. Hamilton* (1985) 41 Cal.3d 211; *People v. Sy* (2014) 223 Cal.App.4th 44; *Hambarian v. Superior Court* (2002) 27 Cal.4th 826; *People v. Lopez* (1984) 155 Cal.App.3d 813; and *Trujillo v. Superior Court* (1983) 148 Cal.App.3d 368.) If there is a conflict with the office as a whole, another D.A.'s office, the Attorney General, or the U.S. Attorney can take over the case. If their impartiality is questioned after the fact, they can ask the Attorney General or U.S. Attorney to review their work. These measures can, and do, cure conflicts of interest in the small number of cases that they arise.

IV. Conclusion

This proposed rule is frankly inappropriate and exploitative. It is a poorly disguised attempt to silence the author's opponents and amplify the voices of their supporters. There are already rules and systems in place to deal with any legitimate conflicts of interest that might arise between prosecutors and police unions. It makes little sense to bar the participation of police unions but allow progressive groups that have a much more direct conflict to continue bankrolling D.A. elections. Arguably, under the rationale advanced by the coalition, *all* contributions or endorsements to *any* attorney who runs for elected office should be prohibited. Ultimately, this is not about true conflicts of interest. It is a political issue. It should be dealt with at the ballot box and not in the Rules of Professional Conduct.

Very Truly Yours,
BOARD OF DIRECTORS
Peace Officers Research Association of California

Brian R. Marvel
President

Enclosure(s)

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President

Damon Kurtz
Vice President

Timothy Davis
Treasurer

Randy Beintema
Secretary

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7687
Facsimile: (916) 324-2960
E-Mail: Michael.Farrelle@doj.ca.gov

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MAR 05 2018

ANNE MARIE SCHUBERT
District Attorney

February 28, 2018

Assistant Chief Deputy District Attorney Michael Blazina
Sacramento District Attorney's Office
901 G Street
Sacramento, CA 95814

RE: Conflict of Interest Analysis – Campaign Contributions

Dear Mr. Blazina:

In your letter, dated February 5, 2018, you asked whether campaign endorsements and contributions from an individual or an organization present a conflict that bars the District Attorney from impartially deciding whether to prosecute a case in which that individual is a potential defendant. Your questions focused on an officer-involved-shooting case in which an officer being prosecuted was a member of a labor union that had endorsed and financially contributed to the district attorney's campaign. The short answer to these questions is that there is no conflict.

Under Penal Code section 1424, recusal of a district attorney's office requires proof of a conflict of interest that makes it unlikely that the defendant could receive a fair trial if the district attorney's office prosecutes the case. A conflict has been described as "a structural incentive for the prosecutor to elevate some other interest over the interest in impartial justice, should the two diverge." (*People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 754.) "[A] prosecutor's interest should coincide with the interest of the public in bringing a criminal to justice and should not be under the influence of third parties who have a particular axe to grind against the defendant." (*People v. Parmar* (2001) 86 Cal.App.4th 781, 797 (*Parmar*)).

Published cases in which a disabling conflict has been found are few and generally fall into the following three categories: an employee of the district attorney's office is a crime victim (see *People v. Conner* (1983) 34 Cal.3d 141, *Lewis v. Superior Court* (1997) 53 Cal.App.4th 1277; *People v. Jenan* (2006) 140 Cal.App.4th 782); the district attorney represented the defendant previously (*People v. Lepe* (1985) 164 Cal.App.3d 685); or the district attorney's

office received money for investigative costs from a victim (see *People v. Eubanks* (1996) 14 Cal.4th 580). As stated in *Parmar*, "...*Eubanks* and virtually every other disqualification case has been concerned with situations in which the prosecutor has either had a personal interest or been claimed to be under the influence of a private party with a personal interest in the prosecution of the particular defendant, usually by virtue of having been a victim." (*People v. Parmar*, *supra*, 86 Cal.App.4th at p. 795.)

In many instances, cases with conflicts of interest can be handled by a district attorney's office after an ethical wall has been established around the affected employee. (See *Stark v. Superior Court* (2011) 52 Cal.4th 368; *People v. Gamache* (2010) 48 Cal.4th 347; *People v. Hamilton* (1985) 41 Cal.3d 211; *People v. Sy* (2014) 223 Cal.App.4th 44; *Hambarian v. Superior Court* (2002) 27 Cal.4th 826; *People v. Lopez* (1984) 155 Cal.App.3d 813; and *Trujillo v. Superior Court* (1983) 148 Cal.App.3d 368.) That focus on fair adjudication of a case is borne out by the fact that failure to recuse a district attorney's office can be harmless on appeal when the district attorney's office "did not infringe upon defendants' state or federal rights to due process of law." (*People v. Vasquez* (2006) 39 Cal.4th 47, 66.) An ethical wall ensures that a defendant receives a fair trial.

The few published cases ordering recusal, as well as courts' acceptance of ethical walls in lieu of recusal, demonstrate that recusal is a disfavored remedy that appellate courts have cautioned should be exercised with "particular caution." (*People v. Lopez* (1984) 155 Cal.App.3d 813, 821-822.) The policy reasons for this position were set out in *Lopez*:

'when the entire prosecutorial office of the district attorney is recused and the Attorney General is required to undertake the prosecution or employ a special prosecutor, the district attorney is prevented from carrying out the statutory duties of his elected office and, perhaps even more significantly, the residents of the county are deprived of the services of their elected representative in the prosecution of crime in the county. The Attorney General is, of course, an elected state official, but unlike the district attorney, is not accountable at the ballot box exclusively to the electorate of the county. Manifestly, therefore, the entire prosecutorial office of the district attorney should not be recused in the absence of some substantial reason related to the proper administration of criminal justice.'

(*Id.*, at p. 822, quoting *Younger v. Superior Court* (1978) 86 Cal.App.3d 180.)

As to whether political contributions create a conflict of interest, it was claimed in another case that city council members should have been disqualified from voting on a subdivision map because developers had donated to the council members' campaigns. The Supreme Court stated, "Political contribution involves an exercise of fundamental freedom

protected by the First Amendment to the United States Constitution and article I, section 2 of the California Constitution.” (*Woodland Hills Residents Association, Inc. v. City Council of City of Los Angeles* (1980) 26 Cal.3d 938, 946.) “To disqualify a city council member from acting on a development proposal because the developer had made a campaign contribution to that member would threaten constitutionally protected political speech and associational freedoms.” (*Ibid.*) The Court further found that law governing disclosure of campaign contributions “provides for disclosure of campaign contributions by recipients of contributions rather than disqualification of recipients from acting in matters in which the contributor is interested.” (*Ibid.*)

While the act precludes an elected official from participating in a decision in which he has ‘a financial interest’ (Gov. Code, § 87100), it expressly excludes from definition of ‘financial interest’ the receipt of campaign contributions. (Gov. Code, §§ 87103, subd. (c), 82030, subd. (b). Thus, the Political Reform Act -- dealing comprehensively with problems of campaign contribution and conflict of interest -- does not prevent a city council member from acting upon a matter involving the contributor.

(*Id.*, at pp. 946-947; see also *Caperton v. A.T. Massey Coal, Co. Inc.* (2009) 129 S.Ct. 2252, 2263 [“exceptional case” where campaign contributions required recusal of a judge]. Disqualification rules applicable to adjudicators are even more stringent than those that govern the conduct of prosecutors. (*County of Santa Clara v. Superior Ct.* (2010) 50 Cal.4th 25, 56 FN 12.)

Accordingly, the mere fact of campaign endorsements and financial contributions to a campaign does not create a conflict of interest for a district attorney. Case law makes clear that a conflict of interest stems from the district attorney’s perspective, not the public’s perception, and is rooted in the ability of a district attorney to wield discretion in a way to ensure that the defendant will receive a fair trial. The factual hypotheticals posed in your letter do not suggest that the District Attorney could not be fair to defendants who had either individually, or as part of an organization, endorsed or contributed financially to the District Attorney’s re-election campaign.

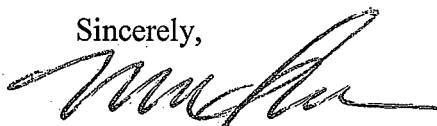
Your final question is, even if there was no legal conflict disabling the district attorney, would the Attorney General’s Office conduct a review of an officer-involved shooting simply to avoid an appearance of conflict? Sound policy counsels otherwise. The primary duty for enforcement of law in a particular county rests with the local district attorney, who is elected by the citizens of that county. Significant good cause is called for to warrant departure from the standard of Penal Code section 1424.

Additionally, the Attorney General’s unavoidable constraints of personnel, funds, and other resources require that the Penal Code section 1424 standard be taken seriously.

Assistant Chief Deputy District Attorney Michael Blazina
Sacramento District Attorney's Office
February 28, 2018
Page 4

Thank you for your letter. And, of course, you are always welcome to call me if you have questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Farrell", written over the printed name.

MICHAEL P. FARRELL
Senior Assistant Attorney General

For XAVIER BECERRA
Attorney General


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AB-1506 Police use of force. (2019-2020)

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Date Published: 06/17/2020 09:00 PM

AMENDED IN SENATE JUNE 17, 2020

AMENDED IN ASSEMBLY JANUARY 15, 2020

AMENDED IN ASSEMBLY JANUARY 06, 2020

AMENDED IN ASSEMBLY MAY 17, 2019

AMENDED IN ASSEMBLY APRIL 11, 2019

AMENDED IN ASSEMBLY APRIL 01, 2019

AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE— 2019-2020 REGULAR SESSION

ASSEMBLY BILL

NO. 1506

Introduced by Assembly ~~Member McCarty~~ **Members McCarty, Bauer-Kahan, Berman, Bloom, Bonta, Burke, Carrillo, Chiu, Chu, Eggman, Friedman, Gabriel, Cristina Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Jones-Sawyer, Kalra, Kamlager, Levine, Medina, Muratsuchi, Quirk, Reyes, Luz Rivas, Robert Rivas, Santiago, Mark Stone, Ting, Weber, and Wicks**
 (Principal coauthors: Senators Allen, Beall, Bradford, Durazo, Lena Gonzalez, Hueso, Mitchell, Pan, Stern, Wieckowski, and Wiener)

February 22, 2019

An act to ~~amend Sections 42649.1, 42649.2, 42649.8, 42649.81, and 42649.82 of the Public Resources Code, relating to solid waste, and declaring the urgency thereof, to take effect immediately.~~ *add Section 12525.3 to the Government Code, relating to the Department of Justice.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1506, as amended, McCarty. ~~Solid waste: commercial and organic waste: recycling bins.~~ *Police use of force.*

Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

Existing law requires law enforcement agencies to report to the Department of Justice, as specified, any incident in which a peace officer is involved in a shooting or use of force that results in death or serious bodily injury.

This bill would create a division within the Department of Justice to, upon the request of a law enforcement agency, review the use-of-force policy of the agency and make recommendations, as specified.

The bill would also create a division within the Department of Justice to, upon the request of a law enforcement agency, conduct an independent investigation of any officer-involved shooting or other use of force that resulted in the death of a civilian and would authorize the Department of Justice to criminally prosecute any officer that, pursuant to such an investigation, is found to have violated state law.

The bill would provide that, if no appropriation is made by the Legislature to fund these programs, the programs shall operate using existing Department of Justice funds.

~~Existing law requires a business that generates 4 cubic yards or more of commercial solid waste or organic waste per week to arrange for recycling services, as specified. Existing law requires a business subject to either of those requirements to provide, on or before July 1, 2020, customers with a recycling bin or container for that waste stream that complies with prescribed requirements. Existing law exempts full service restaurants, as defined, from the requirement to provide customers with a recycling bin or container if the full service restaurant, on or before July 1, 2020, provides its employees a recycling bin or container for that waste stream to collect material purchased on the premises and implements a program to collect that waste stream.~~

~~This bill would specify that, with respect to a theme park, amusement park, water park, resort or entertainment complex, zoo, attraction, or similar facility that is subject to either of those requirements, the requirement to provide customers with a recycling bin or container only applies to permanent, nonmobile food service facilities with dedicated seating areas that are not full service restaurants. The bill would authorize such a facility subject to the organic waste recycling services requirement to alternatively implement a process for recycling organic waste from customers that yields results comparable to or greater in volume and quality to results attained by providing an organic waste recycling bin or container. The bill would also make other revisions to these provisions, including revising the definition of "full service restaurant," as specified, deleting obsolete provisions, and making conforming changes.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: ~~two-thirds~~majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 12525.3 is added to the Government Code, to read:*

12525.3. *(a) (1) There is hereby established within the Department of Justice, an independent division to investigate incidents of officer-involved use of force resulting in the death of a civilian.*

(2) The division created pursuant to this subdivision shall be known as the Statewide Officer-Involved Deadly Force Investigation Division. The division shall consist of three separate teams: one located in northern California, one in central California, and one in southern California.

(3) The division created pursuant to this subdivision shall do all of the following:

(A) Upon request from a local law enforcement agency or the district attorney, investigate and gather facts in incidents involving the use of force by a peace officer that result in the death of a civilian.

(B) Prepare and submit a written report to the entity requesting the independent review and, as applicable, a copy to the district attorney or law enforcement agency involved. The written report shall include, at a minimum, the following information:

(i) A statement of the facts.

(ii) A detailed analysis and conclusion for each investigatory issue.

(iii) Recommendations to modify the policies and practices of the law enforcement agency, as applicable.

(C) If criminal charges against the involved officer are found to be warranted, initiate and prosecute a criminal action against the officer.

(4) The Attorney General shall post and maintain on the Department of Justice's internet website each written report prepared by the division pursuant to this subdivision, appropriately redacting any information in the report

that is required by law to be kept confidential.

(b) (1) Commencing on July 1, 2023, the Attorney General shall operate a Police Practices Division within the Department of Justice to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency.

(2) The program described in this subdivision shall make specific and customized recommendations to any law enforcement agency that requests a review pursuant to this section, based on those policies identified as recommended best practices.

(c) This section does not limit the Attorney General's authority under the California Constitution or any applicable state law.

(d) If an appropriation is not made by the Legislature to fund this section, the Department of Justice shall implement the requirements of this section using existing department funding.

From: [Matt Wait](#)
To: [Lee, Mimi](#)
Subject: #curetheconflict
Date: Tuesday, August 11, 2020 12:20:08 PM

Good afternoon,

I am writing to support banning prosecutors from taking police union money. It is an obvious conflict of interest, creates perverse incentives, and results in innocent people being locked up.

--

Cheers,

Matt
(323) 505-8869
Organizer, [Ground Game LA](#)



From: [Bobrow, Oscar](#)
To: [Lee, Mimi](#)
Subject: attached letters relevant to the state bar discussion
Date: Tuesday, August 11, 2020 11:17:07 AM
Attachments: [letter to AG Becerra.pdf](#)
[Response Letter to CPDA re Sean Monterrosa 7.27.20.pdf](#)

Please distribute to the participants of the discussion.
Thank you.

Oscar Bobrow
Chief Deputy Public Defender
Solano County
Vallejo Branch Office
355 Tuolumne Street, Vallejo CA 94590
Direct line: (707) 553 5009
OBobrow@solanocounty.com

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1300 I Street
P.O. Box 944266
Sacramento, CA. 94244-2550
Telephone: (916) 210-6071
Fax: (916) 327-7154
E-Mail Address: philip.ferrari@doj.ca.gov

July 27, 2020

Oscar Bobrow
CPDA President
California Public Defenders Association
10324 Placer Lane
Sacramento, CA, 95827

Dear Mr. Bobrow:

Thank you for your letter dated July 10, 2020, requesting that the Department of Justice investigate the officer involved shooting of Sean Monterrosa. We understand and appreciate the concerns expressed in your letter, and the Attorney General has made it a priority to respond to the concerns about law enforcement that are being expressed by our communities. The Department of Justice is committed to doing all that we can to ensure that California's law enforcement officers are aware of and utilize best practices with respect to use of force policies and practices. We are further committed to the principle that no one is above the law and that there must be true accountability when individual officers commit unlawful acts.

As you know, the role of the Attorney General's office in intervening in a local criminal investigation and prosecution is limited. California's 58 district attorneys are charged with investigating and prosecuting criminal cases as the elected public prosecutors for each of our counties. Absent a conflict of interest, abuse of discretion or other exceptional circumstances, the Department of Justice generally does not assume responsibility for investigations or prosecutions of officer involved shootings. We are mindful of the important policy discussions underway concerning the future handling of officer involved shootings, and we intend to be a part of crafting a solution. However, at this time the Department has neither the funding nor the staffing to routinely enable us to conduct independent investigations of officer involved shooting incidents throughout the State. Because our resources are limited, we must be selective in deploying them where necessary and appropriate.

As you may know, the Department of Justice recently made a decision to deploy some of those resources by committing to perform a deep, comprehensive review of the Vallejo Police Department's policies, operations and practices. In addition, we have also agreed to perform an independent investigation into allegations that evidence was destroyed that was relevant to the investigation of Mr. Monterrosa's death.

With respect to the underlying investigation into the shooting, that investigation is already being conducted by local authorities. Your letter references Solano County District Attorney Krishna Abrams' announcement that she had recused herself from this matter. As we have informed the District Attorney's office, there is no legal basis for such an action. As you are aware, Penal Code section 1424(a) does not require recusal unless "the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial." Two elements are required to justify this standard under section 1424. (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711.) First, a conflict only exists where "the circumstances of a case evidence a reasonable possibility that the DA's office may not exercise its discretionary function in an evenhanded manner." (*Hambarian v. Superior Court* (2002) 27 Cal.4th 826, 833.) Second, the conflict must be "so grave as to render it unlikely that [any] defendant will receive fair treatment during all portions of the criminal proceedings." (*Ibid.*) In other words, "there must be 'an actual likelihood of unfair treatment'" of any possible defendants. (*People v. Cannedy* (2009) 176 Cal.App.4th 1474, 1485 (emphasis added), citing *Haraguchi*, at p. 719.) In this case, there is no apparent basis for finding that either element has been met.

District Attorney Abrams has publicly stated that she is confident that her office can conduct a fair and thorough review of any officer involved shooting, and she has not identified a conflict of interest or any other extraordinary circumstance that would require our office to assume the responsibilities of the District Attorney's office. As such, we must respectfully decline the request to conduct an additional investigation of the matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Ferrari", with a stylized flourish at the end.

Philip Ferrari
Special Assistant to the Attorney General

For XAVIER BECERRA
 Attorney General



CPDA

California Public Defenders Association
10324 Placer Lane
Sacramento, CA 95827
Phone (916) 362-1686
Fax (916) 362-3346
Email: cpda@cpda.org

A Statewide Association of Public Defenders and Criminal Defense Counsel

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Alameda County

July 10, 2020

Xavier Becerra
Attorney General of the State of California
1300 T Street
Sacramento, CA 95814

RE: The June 2, 2020 Shooting to Death of Unarmed Sean Monterrosa
by a Vallejo Police Officer from the back of a patrol car

Dear Attorney General Becerra:

I know you are aware Sean Monterrosa was shot and killed by a Vallejo police officer in Solano County on June 2, 2020, as he was walking in front of a Walgreens store. Please see the video link released by the Vallejo Police Department July 8, 2020: <https://vimeo.com/436510158>.

The Solano County District Attorney's office has refused to conduct the investigation in this matter due to what they perceive as a conflict of interest. Please see the recorded statement of the Solano DA here:

<https://youtu.be/QVdgg9MVZ6k>. Your office has also refused to investigate this matter. Considering both authorized investigative bodies in the State of California with jurisdiction over this event have declined to act, no investigation is currently being conducted by an investigative body with the authority to file charges, should such charges be warranted.

As President of The California Public Defender's Association, the largest association of criminal defense attorneys in the State of California, and as a board member that oversees the California Racial Identity Profiling Act I am writing to urge you to reverse your position and to investigate this shooting.

As the video released on Wednesday shows the officer who shot Mr. Monterrosa was seated in the back of an unmarked police vehicle at the time he fired the rifle that killed him. The audio on the video also establishes that the officer who fired asked the other officers in the car, *after he fired the fatal shot*, "what was it" that Mr. Monterrosa pointed at the officers before he was shot. The video further establishes that Mr. Monterrosa was unarmed when he was shot by the officer.

I know you are aware of the perception in this state and in this nation of the inequities in how people of color are treated by law enforcement, and the inequities in charging decisions made by prosecutors who file charges for violations of the law.



CPDA

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Sacramento, CA 95827
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San Diego County

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San Francisco County

Aimee Vierra, 20
Riverside County

Brendon Woods, 20
Alameda County

The decision of your office and the decision of the Solano County District Attorney not to investigate this matter has perpetuated these negative perceptions. The officer who shot Mr. Monterrosa has not only not been investigated or been charged with any crime, he hasn't even been placed on leave from his position in the Vallejo police department.

As President of CPDA, as a member of the RIPA board and as a concerned member of the public on behalf of the Monterrosa family and the citizens of the city of Vallejo I urge you to immediately take over the investigation of this shooting and killing of Mr. Monterrosa. If your office is unable to conduct such investigation I urge you to ask the United States Attorney on behalf of the federal government to conduct a complete investigation of this shooting. Without a proper investigation it seems certain that any future attempt to restore some sense of justice and integrity into the criminal justice system will be irreparably lost.

Sincerely,

Oscar Bobrow
CPDA President

From: [Marissa Chapman](#)
To: [Lee, Mimi](#)
Subject: Ban Police Union Funding DA Races
Date: Tuesday, August 11, 2020 12:34:22 PM

To whom it may concern:

My name is Marissa Chapman and I support the proposal to ban police union funding towards DA races. This is a clear conflict of interest and the law should reflect that.

Sincerely,

Marissa Chapman

From: [Kyle Helf](#)
To: [Lee, Mimi](#)
Subject: Ban Police Union Funding toward DA races
Date: Wednesday, August 12, 2020 4:23:21 PM

Hello I am Kyle Helf from Los Angeles.

I SUPPORT the proposal to BAN POLICE UNION FUNDING towards DA elections. It's an indisputable conflict of interest. Thank you.

Kyle Helf

From: [Seth Oritano](#)
To: [Lee, Mimi](#)
Subject: Ban police union funding
Date: Tuesday, August 11, 2020 12:40:22 PM

Cheers! My name is Seth Oritano. I love in Los Angeles and I support the proposal to ban police union funding towards DA races.

From: [Eric Sheehan](#)
To: [Lee, Mimi](#)
Subject: Ban Prosecutors from taking Police Union Money
Date: Tuesday, August 11, 2020 12:28:17 PM

Greetings,

I'd like to express my support for banning prosecutors from taking campaign money from police unions.

95% of elected prosecutors took money from or was endorsed by a Police Union.

That's clearly an issue. Prosecutors should have no bias towards police, or they will never be able to hold them accountable.

Make it clearly illegal to seek the support of Police Unions, We can't stop them from raising their voice, but we can stop prosecutors from pandering to them.

Act with conscience, follow the moment. The murder of George Floyd has got people demanding this type of reform, be on the right side of history.

Thanks

Eric Sheehan
650.766.7299
eric@ericsheehan.com

From: [Pamela Price](#)
To: [Lee, Mimi](#)
Cc: chesa@sfgov.org
Subject: Prohibitions on Elected Prosecutors from Seeking Political or Financial Support from Law Enforcement Unions - SUPPORT
Date: Tuesday, August 11, 2020 3:41:35 PM
Attachments: [STATE BAR COMMENT.pdf](#)

Ms. Lee, please accept the attached comments in support of the proposed rule or ethics opinion. Thank you.

Pamela Y. Price, Attorney at Law
California SuperLawyer (2004-2020)
National Lawyers Guild Champion of Justice (2016)
California Assembly District 18 Woman of the Year (2017)
P.O. Box 5843
Oakland, CA 94605
pamela@pypesq.com
www.pypesq.com

Phone: (510) 452-0292

Fax: (510) 452-5625

"Injustice anywhere is a threat to justice everywhere." -- Martin Luther King, Jr.

Have you seen our website? Check out our site at pypesq.com and Pamela's blog at pamelaspape.com!



This communication and the information contained herein is confidential and privileged by among other doctrines, the attorney-client, attorney work product and privacy privileges. If you are not the intended recipient of the communication, please take the following steps: immediately 1) notify Attorney Pamela Y. Price by email and phone that you have inadvertently received the communication; and 2) delete the communication from your email folder, hard drive, server and/or any other means by which the communication is stored on your behalf. If you are neither the intended recipient nor the employee or agent responsible for delivering this electronic message to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of the content of this electronic message is strictly prohibited. Thank you.



PAMELA Y. PRICE, ATTORNEY AT LAW

P.O. Box 5843

Oakland, California 94605

www.pypesq.com

E-mail: pamela@pypesq.com

Voice: 510-452-0292

Fax: 510-452-5625

August 11, 2020

The State Bar of California
Committee on Professional Responsibility and Conduct
180 Howard Street
San Francisco, CA 94105

Re: Proposed Rule or Ethics Opinion Regarding Prohibitions on Elected
Prosecutors from Seeking or Accepting Political or Financial Support from
Law Enforcement Unions - SUPPORT

Dear Committee Members:

Thank you for allowing me to submit these written comments and for listening to me and other members of the public on this important issue. The perception of bias of local district attorneys across California is pervasive. The testimony we heard on August 11, 2020 was painful and insightful. As you heard, statewide, our communities are being adversely impacted by the historic relationship between police and prosecutors. The fact that prosecutors are perceived as protectors of the police instead of lawyers seeking justice undermines the administration of justice in every community.

As I advised you, I have been a member of the bar since 1983. I am a Black woman who lives and works in Oakland. Alameda County is a case study for this rule. I ran for District Attorney in Alameda County 2018. I am the first person to challenge an incumbent prosecutor in Alameda County since 1963 - in 55 years. I am an elected member of the Alameda County Democratic Party Central Committee and we recently voted unanimously to urge all local politicians, including the District Attorney to pledge not to take any contributions from law enforcement unions in the future.

In the 2018 District Attorney race, police unions spent more than \$400,000 to support the incumbent. "In May, the San Jose Police Officers' Association and the Los Angeles Police Protective League unions established the "Californians United for Safe Neighborhoods and Schools opposing Pamela Price for District Attorney 2018" committee. It was seeded with \$105,000 from the LAPD officers' union, \$75,000 from the California Correctional Peace Officers Association, which represents state prison guards, and \$40,000 from the Oakland police union. As of June 5, eleven other police unions had chipped in for a total of \$317,000."

<https://www.eastbayexpress.com/oakland/police-union-money-flooded-the-east-bays-district-attorneys-races/Content?oid=16716753>

A second police union committee, "Forward Alameda in support of Alameda County District Attorney Nancy O'Malley 2018" was also formed to which the elected Sheriff of Alameda County, donated \$50,000.00.

<https://ebcitizen.com/2018/05/27/sheriff-aherns-campaign-just-gave-50000-to-a-committee-supporting-da-omalley/>

The Sheriff's support for O'Malley was shocking but not surprising. The Sheriff operates Santa Rita County Jail, renowned as one of the worst jails in California, if not the nation. Santa Rita Jail has been labeled "the most dangerous place to be in Alameda County" yet, nothing that has happened there has been the subject of any type of prosecution by our elected District Attorney.

<https://www.eastbayexpress.com/oakland/the-most-dangerous-place-in-alameda-county/Content?oid=26245173>

This lack of accountability has been devastating to our community. Santa Rita Jail is six times smaller than Los Angeles County jail system, the largest in the nation, but it has a 50-percent higher jail death rate: there were 13.6 deaths per 1,000 inmates at Santa Rita compared to 8.9 deaths in LA over a five-year period.

<https://www.ktvu.com/news/death-rate-at-santa-rita-exceeds-nations-largest-jail-system-as-critics-call-for-reform>

The most blatant display of a conflict of interest in our race which I spoke about in my remarks to you involves the case of Elena "Ebbie" Mondragon. District Attorney Nancy O'Malley accepted a \$10,000 contribution directly to her campaign for re-election from the Fremont Police Officers Association. She received it at the same time she was investigating Fremont officers – including the union president – for the murder of 16-year-old Ebbie, as well as an earlier case where a Fremont police officer killed an unarmed man. DA O'Malley cleared all of the officers of any wrongdoing after she got the contribution. This saga of unethical conduct was widely reported in our community.

<https://www.eastbaytimes.com/2018/03/20/da-accepted-10000-donation-from-fremont-cops-while-investigating-them/>

In 2018, in a very similar scenario, Sacramento District Attorney Anne Marie Schubert accepted \$13,000 in campaign contributions from the Sacramento police union while she investigated officers involved in the killing of Stephon Clark. Needless to say, her office did not charge any of the officers involved in that case. That case also received widespread attention in

the community and led to the passage of AB 1421 which changed the use of force standards in California.

In Oakland, our police department has been under federal oversight for 17 years. According to 68th Report of the independent federal monitor, filed on May 22, 2020, Black and Brown residents are still five (5) times more likely to be stopped by police than white residents. As the murder of George Floyd displayed, any contact for Black or Brown people with police can quickly turn deadly. Our District Attorney has never prosecuted any police officer for the use of excessive force against a resident of our County. Local activists regularly picket and demonstrate at her office because of her dismal record on police accountability.

Our District Attorney routinely clears officers and issues her “independent” review report in collaboration with the involved law enforcement agency. A glaring example is the case of Joshua Pawlik, a homeless man shot to death by Oakland police officers in March 2018. The District Attorney released a report a year later, on the same day that OPD released its report with the same conclusion – no fault. The fallout from Mr. Pawlik’s murder ultimately led to the firing of former OPD Chief Anne Kirkpatrick. The federal monitor rejected Chief Kirkpatrick’s findings and the City of Oakland paid Mr. Pawlik’s family \$1.4 million.

The District Attorney’s collaboration with Chief Kirkpatrick was widely reported in our community:

<https://www.kqed.org/news/11729878/federal-judge-appoints-outside-attorney-to-examine-oakland-police-shooting>

The case of Jody Woodfox is similarly disturbing. In that case, an OPD officer shot an unarmed Black man running away from him after a traffic spot. The OPD internal review board found that the officer’s actions were not justified. The DA issued her report six (6) years later, exonerating the officer with no mention of the OPD’s finding that the shooting was not justified. Their role in covering up the officer’s misconduct was widely reported in our community:

<https://www.mercurynews.com/2020/07/19/new-records-in-oakland-police-shooting-raise-questions-about-das-role-in-investigating-cops/>

Our District Attorney’s office routinely issues reports a year or more after an officer-involved shooting. Families members impacted by any officer-involved death have to wait indefinitely for any explanation about how their loved ones died. Some never receive it as there is no statewide requirement that District Attorneys investigate in-custody deaths, and the Alameda County District does not as a matter of policy or practice investigate in-custody deaths that do not involve the use of a firearm.

The State Bar of California

August 11, 2020

Page -4-

Similarly, there are no statewide standards for addressing conflicts of interest for elected District Attorneys. All of these policies work to benefit and protect the police. Both the appearance of bias, the implicit bias and the explicit blatant favoritism that police officers receive from elected District Attorneys is an affront to the communities they serve and a stain on the fair administration of justice.

I urge you to take this first step to address the conduct of this oft-overlooked category of attorneys that have a huge impact on all of our lives. Thank you for your attention to this matter.

Very truly yours,



PAMELA Y. PRICE

cc: Hon. Chesa Boudin
Hon. Diana Becton
Hon. Tori Salazar
Hon. George Gascon

PYP:ap/SBEL200

From: [Alexandra Malek](#)
To: [Lee, Mimi](#)
Subject: Proposal to Ban Police Union Funding
Date: Tuesday, August 11, 2020 10:54:19 AM

Alexandra Malek <a@alexandramalek.com>

10:47 AM (7 minutes ago)



to mimi.lee



Good morning,

I'm writing in support of banning police union funding for any DA race. This is an enormous conflict of interest. The current system is a gross misuse of Citizens United in elections. All campaign funding from organizations that could stand to benefit from their chosen candidate's election should be banned, and this is a meaningful first step. This is a chance to change technicalities that allow powerful organizations to influence elections unfairly, and to bring the law around to what is right and just for all people.

Thank you,
Alexandra Malek
GroundGame Los Angeles
831.238.4066

From: [Jason Redlitz](#)
To: [Lee, Mimi](#)
Subject: Proposal to ban police union funding
Date: Tuesday, August 11, 2020 12:20:45 PM

To Whom it may concern,

I support the proposal to ban police union funding towards DA races.

Thank you for your time.

Sincerely,
Jason Redlitz

From: [Jordan Blakeman](#)
To: [Lee, Mimi](#)
Subject: Proposal to ban prosecutors from taking campaign money
Date: Tuesday, August 11, 2020 1:01:01 PM

Hi all,

The stronghold the police union has on our communities is unjust. We have way too many problem officers who are able to skirt the line as the form of kickbacks for heavy political donations made to candidates. Enough is enough.

We **MUST** quit allowing these mafioso-like organizations to inflict harm on the rest of us.

I am enthusiastically in support of the ban. Thank you.

Best,
Jordan Blakeman
4053 Marathon St., Apt. #11
Los Angeles, CA 90029

From: [Bill Przylucki](#)
To: [Lee, Mimi](#)
Subject: Prosecutors should not take contributions from Law Enforcement Unions
Date: Tuesday, August 11, 2020 1:05:33 PM

To Whom It May Concern:

Prosecutors should be prohibited from taking contributions from Law Enforcement Unions, benevolent associations, and others. Prosecutors have to interact with LEOs in court regularly and rely on their testimony, and more importantly, prosecutors have to decide whether and how to hold LEOs accountable for violations of civil rights, criminal activity, and other abuses.

Please reject LEO money for DAs and prosecutors.

From: [Teagan Thompson](#)
To: [Lee, Mimi](#)
Subject: Public Comment - Ban Police Union Donations to Prosecutors
Date: Tuesday, August 11, 2020 4:19:36 PM

Hello,

My name is Teagan Thompson, and I live in San Francisco, CA.

I'm writing to ask that the California Bar bans elected prosecutors (and individuals running to be prosecutors) from seeking or accepting political or financial support from law enforcement unions.

I urge you to support the ethics proposal to cure the conflict of interest that arises when prosecutors accept law enforcement union money and support.

Prosecutors have incredible power in the criminal legal system. When prosecutors accept political/financial support from law enforcement unions, and then can choose how/if the justice system prosecutes the law enforcement officers who belong to those unions, a **SERIOUS** conflict of interest exists. This must be addressed and fixed!

Prosecutors must be independent in deciding when and who to prosecute. To do this, they must be free of influence from special interest groups. We need a rule to explicitly preclude prosecutor candidates from accepting donations from police unions. It will enhance trust in our criminal justice system at a time when it is seriously needed.

Thank you for your time, and I hope you will support this important proposal.

Best regards,
Teagan Thompson

From: [Anna W Yohannes](#)
To: [Lee, Mimi](#)
Subject: Public Comment on CA State Bar's Committee on Professional Responsibility and Conduct
Date: Tuesday, August 11, 2020 11:33:35 AM

Hello,

My name is Anna Wolde-Yohannes. I am a resident and voter in San Francisco, California.

I am writing to support the ethics proposal to cure the conflict of interest that arises when prosecutors accept law enforcement union money and support.

Prosecutors must be independent in deciding when and who to prosecute. To do this, they must be free of influence from special interest groups. When California's prosecutors are indebted to law enforcement unions that finance their campaigns, endorse their candidacy, and underwrite their political support, a conflict of interest exists. It becomes impossible to trust prosecutors to make decisions regarding officers fairly.

95% of all elected prosecutors receive donations and support from law enforcement unions. And over the past ten years, 98.5% of police that kill in the line of duty are not prosecuted. We need a rule to explicitly preclude prosecutor candidates from accepting support from law enforcement unions as it is the only way we can ensure independence on the part of our elected prosecutors.

I hope you will support this important proposal. Thank you for your consideration.

Sincerely,
Anna Wolde-Yohannes

From: [Caitlin Charos](#)
To: [Lee, Mimi](#)
Subject: Written Statement of Support for Ethics Proposal
Date: Tuesday, August 11, 2020 11:29:58 AM

Dear Ms. Lee,

I am currently participating in the Zoom Webinar Public Comment meeting but must hop off to attend another meeting. My name is Caitlin Charos, and I am a Ph.D. candidate finishing my doctorate degree at Princeton University from afar, and I am a resident of Oakland, California.

I am writing in support of the ethics proposal to address the conflict of interest that arises when prosecutors accept law enforcement union money and support. Ms. Price, the civil rights lawyer who spoke during the public comment, put it best: Alameda County's history demonstrates that district attorneys are beholden to the interests of police unions and less likely to prosecute officers guilty of abusing their power when they receive police union contributions. This abuse disproportionately affects black and brown people of color, particularly in Oakland. Mistrust of the fairness of the legal system is high here in Oakland. Instituting the proposed ethics rule would go a long way toward restoring confidence in the legal system.

The lawyer who spoke against the proposal, Vern Peterson (I am unsure whether I spelled his name correctly), suggested that this new rule might be unconstitutional because it bars certain groups from "participating in the political process." But there are many rules that govern campaign financing across our country at the federal and state levels. His threat, that the proposal would be the center of a legal battle for years to come, seemed intended to discourage the CA Bar from doing what it has the right to do via its authority through the CA Supreme Court: implement regulations that protect the public, regulation and discipline attorneys, and advance the ethical practice of law.

Thank you for your time and for your thorough work on this issue,
Caitlin Charos

From: [Marie Elliott](#)
To: [Lee, Mimi](#)
Subject: Written Submission - Cure the Conflict proposal
Date: Tuesday, August 11, 2020 11:32:06 AM

Hello,

My name is Marie Elliott, I'm a resident of San Francisco. I'm a concerned citizen. Thank you for giving the public a chance to comment on the proposal to Cure the Conflict between Police Unions and Prosecutors. I was unable to make my comment before I had to leave the meeting, so I am sending it in via email.

I support the ethics proposal to Cure the Conflict. I support Mr Boudin & Miss Price's comments from the call.

Law Enforcement Unions shouldn't be able to buy their way into having influence over Prosecutors.

1 - Prosecutors need to be independent, and if bodies they are supposed to be able to prosecute in use of force incidents have given them financial support or public endorsements, that independence is, at the very least, questionable, and at worst, deeply compromised. This financial connection calls objectivity into question. We desperately need officers to be held accountable, as evidenced by so many incidents of police brutality that are never prosecuted.

2 - Law Enforcement Unions exist to protect their members. Their members have sworn to protect the public. If a member of the public is harmed by a member of a Law Enforcement Union, we need prosecutors to be able to independently act. The instances of police brutality in this country are shocking, and they are too many. We rely on prosecutors as a line of defense and justice - so we should do all we can to ensure prosecutors are acting objectively and independently.

For these reasons, I support this ethics proposal.

Thank you for the time.

-Marie

--

Marie Elliott
melliott930@gmail.com

Date: July 20, 2020

To: Committee on Professional Responsibility and Conduct (COPRAC)

From: Working Group re District Attorney Letter Request

Subject: Issues Related to District Attorneys Request for New Rule of Professional Conduct or Ethics Opinion related to Campaign Contributions and Prosecutorial Conflicts

INTRODUCTION:

By letter to the State Bar dated June 1, 2020, three current elected district attorneys (Contra Costa, San Francisco, and San Joaquin) and one former district attorney (San Francisco, now a candidate in Los Angeles) (the “DAs”) requested that the State Bar enact a new Rule of Professional Conduct—or issue an ethics opinion – that would prohibit an elected prosecutor, or a candidate for that office, from seeking or accepting political or financial support from law enforcement public employee unions.

The letter’s premise is that law enforcement unions play an important role in prosecutorial elections, both by making endorsements and donating funds. At the same time, elected prosecutors work closely with law enforcement officers but must also sometimes evaluate whether those officers have committed crimes. Further, when prosecutors initiate an investigation or prosecution of a law enforcement officer, the union often pays the officer’s legal fees. DAs maintain that this creates an actual conflict—or at least the appearance of one—that should be addressed by a proposed rule or ethics opinion prohibiting such political or financial support.

By return letter dated July 2, 2020, the State Bar identified several concerns with the proposal, including constitutional concerns related to First Amendment and equal protection issues, as well as potential conflicts with other state laws. The State Bar also expressed similar concerns with solutions that, rather than barring contributions, would declare that a prosecutor had a per se conflict of interest in investigating an officer when the officer or the officer’s union had contributed to or supported the prosecutor’s campaign. At the same time, the State Bar acknowledged that the policy issue was “deserving of thoughtful attention and analysis,” and referred the matter to the Committee on Professional Responsibility and Conduct (“Committee” or “COPRAC”) “for a more in depth comprehensive analysis.” The expedited schedule for consideration of the issues involves a public hearing on August 11, 2020. Further work is expected to take place later this summer and in early fall, leading to a report being submitted to the Board of Trustees.

This memorandum identifies several potential issues that the Committee may need to consider in reviewing this request.

DISCUSSION:

I. Constitutional Concerns

A Rule of Professional Conduct is subject to the same constitutional analysis as is a statute or regulation. (*See Berry v. Schmitt* (6th Cir. 2012) 688 F.3d 290, 302-303 [Kentucky Rule of Professional Conduct prohibiting attorneys from making false or reckless statements about the integrity of a judge, adjudicatory officer, or public legal officer, unconstitutional as applied to attorney's speech].)

A. First Amendment Issues

1. Does the proposal limit free speech in the form of a campaign contribution in violation of the First Amendment?
 - a. Does the proposed change restrict protected speech? (*See Citizens United v. Federal Election Comm'n* (2010) 558 U.S. 310 [political spending is protected speech, and the government may not restrict independent expenditures for political communications by corporations or unions; striking down the provisions of campaign-finance law barring independent expenditures for electioneering communications, but leaving the ban on direct contributions to candidates in place].)
 - b. What is the standard of justification for a restraint of the type proposed?
 - i. Does this restriction call for a showing of a compelling state interest for the proposed change required under strict scrutiny? (*See Williams-Yulee v. Florida Bar* (2015) 575 U.S. 433 [in upholding Florida State Bar rule banning personal solicitation of campaign funds by judicial candidates, concluding that Florida's interest in preserving public confidence in the integrity of its judiciary was sufficiently compelling to survive strict scrutiny].)
 - ii. Or is the standard more similar to restrictions on campaign contributions, which is that the regulation must be "closely drawn" to match a "sufficiently important interest." *Buckley v. Valeo* (1976) 424 U. S. 1, 25 (per curiam).
 - c. In *Williams-Yulee*, the majority found that the State may conclude that judges, charged with exercising strict neutrality and independence, cannot supplicate campaign donors without diminishing public confidence in judicial integrity, and that because public perception of judicial integrity served a "state interest of the highest order," the First Amendment permitted the restrictions on speech. (556 U.S. at p. 889.)

- d. The majority in *Williams-Yulee* also rejected the comparison of the State Bar's rule to campaign finance restrictions in political elections: "Judges are not politicians, even when they come to the bench by way of the ballot. And a State's decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office." (556 U.S. at p. 437.) *See also id.* at pp. 446-47 ["a State's interest in preserving public confidence in the integrity of its judiciary extends beyond its interest in preventing the appearance of corruption in legislative and executive elections States may regulate judicial elections differently than they regulate political elections, because the role of judges differs from the role of politicians. Politicians are expected to be appropriately responsive to the preferences of their supporters The same is not true of judges. In deciding cases, a judge is not to follow the preferences of his supporters, or provide any special consideration to his campaign donors. A judge instead must observe the utmost fairness, striving to be perfectly and completely independent, with nothing to influence or control him but God and his conscience."] (internal marks and citations omitted.)
 - e. Does the reasoning of *Williams-Yulee* and the Court's analysis regarding judges apply to district attorneys? (See New York State Bar Ass'n, Comm. On Prof'l Ethics, Opn. 683 (1996) ["In light of their duty to seek justice, individual prosecutors have a responsibility . . . to exercise their discretion in a disinterested, nonpartisan fashion"])
 - f. Is the proposed change to the CRPC narrowly tailored to advance the state's interest through the least restrictive means? (See *United States v. Playboy Entertainment Group, Inc.* (2000) 529 U.S. 803.) When determining whether a law satisfies the narrow-tailoring test, courts look for a fit between the government's ends and the means chosen to accomplish those ends that is reasonable, "that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served." [*Bd. of Trustees v. Fox* (1989) 492 U.S. 469, 480 (quotation marks omitted).]
2. Is there a potential for constitutional challenge on the grounds that the proposed change to the CRPC constitutes viewpoint-based or content-based regulation of speech in violation of the First Amendment? (See, e.g., *Police Department of Chicago v. Mosley* (1972) 408 U.S. 92, 95; *R.A.V. v. City of Saint Paul* (1992) 505 U.S. 377, 382.)
 3. Does this proposal raise the potential for a vagueness challenge? (See, e.g., *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030 [U.S. Supreme Court reversed Nevada Supreme Court's attorney discipline of a prosecutor who made extrajudicial statements concerning a criminal proceeding, reasoning that the Nevada Supreme Court's disciplinary rule was unconstitutionally vague].)

B. Equal Protection Issues

1. Does the proposed rule change raise a possible equal protection clause concern by imposing a prohibition on political contributions to district attorney candidates by law enforcement unions when a comparable prohibition is not imposed on other similarly situated groups/individuals? [*See, e.g., Protect My Check, Inc. v. Dilger* (E.D. Ky. 2016) 176 F.Supp.3d 685 (Kentucky's ban on direct contributions to political candidates from corporations, but not LLCs and unions, likely violated Equal Protection Clause; political speech is a fundamental right to which corporations are entitled).]
2. A law will be sustained in the face of an equal protection challenge if it can be said to advance a legitimate government interest. This is true even if the law seems unwise or works to the disadvantage of a particular group or if the rationale for it seems tenuous.

II. Conflict with State Law

The State Bar has preliminarily identified two potential ways in which a ban on soliciting or accepting law enforcement union contributions or a conflict of interest rule disqualifying prosecutors who have accepted them from conducting police investigations might conflict with state law.

A. Assembly Bill 571 (“AB 571”)

1. Statutory Background

Recent amendments to California state campaign finance laws, scheduled to take effect in January 2021, will establish state law limits on political contributions to candidates running for a local or county office, unless the locality has itself enacted such limitations. *See* AB 571. The relevant provisions are amendments to the Political Reform Act of 1974, and are largely contained in the Government Code. A professional rule barring a contribution that, while capped, would still be permissible under the provisions of the Government Code (or a qualifying local enactment) might be inconsistent with, or even barred by such provisions.

Before AB 571, state law imposed no limits on contributions to countywide offices such as district attorneys. But it expressly allowed local governments to enact such ordinances, and many counties have done so.¹ *E.g.*, Los Angeles County Code of Ordinances 2190.040 (\$300 per person per elections); San Diego County Code of Regulatory Ordinances Section 32.923 (\$500

¹ For a full listing, see the Fair Political Practices Commission website at <http://www.fppc.ca.gov/learn/campaign-rules/local-campaign-ordinances.html>.

per person per election); Orange County Codified Ordinance 1-6-5 (a) (\$2000); San Bernardino Campaign Reform Ordinance 12.4305 (adopting limits established under state law for state senate and assembly races, now \$4700); Santa Clara Ordinance NS 19.40 (\$500 per person per election); San Francisco Campaign and Governmental Conduct Code Section 1.114 (a) (\$500). A notable outlier is Alameda County, which currently sets its limit at \$40,000. Alameda County Ordinance No. 2010-67, Section 1.07.030.

A significant number of counties (though among the larger ones, only Riverside) have no campaign contribution limits. The effect of AB 571 will be to cap contributions in those counties at the level set for State Senate and Assembly races (currently \$4700), while leaving the limits that already exist in other localities in place. Localities remain permitted to modify existing limits, and to establish new ones that differ from those set by state law—that is, they may be higher or lower than the default backup limits that will apply in counties which have not adopted any contribution limits.

2. Would a rule barring specific contributions to a District Attorney conflict with ABA 571 or any local government ordinances that have imposed similar restrictions?

Whether a rule barring specific contributions to a District Attorney would conflict with this scheme appears to turn in the first instance on Government Code Section 81013:

Nothing in this Title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title. If any act of the Legislature conflicts with the provisions of this title, this Title shall prevail.

The case law interpreting this section is sparse and not directly on point. But the general view expressed is that rules that are more restrictive than those in the statute are permitted, so long as they do not interfere with compliance, which appears to mean so long as they do not require or encourage a non-complying act. *Major v. Silna* (2005) 134 Cal.App.4th 1485, 1502 (local outright ban on non-cash contributions permitted by state law not barred by PRA); *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1229 (provision barred if “it interferes with compliance”); see also the unreported decision in *Scheuplein v. City of West Covin* (Ct. of App. 2009) 2009 WL 3087343, *18 (applying mandatory fee award provision under Anti-Slapp statute when PRA would not award attorney’s fees, does not impose any additional requirements that would prevent person subject to the PRA from complying with it). This preliminary analysis suggests that a ban on contributions permitted, but not required, by the PRA would not conflict with the PRA because the PRA does not require the soliciting or making of a particular contribution. Accordingly, a person who made no contribution would not be prevented from complying with the Act.

3. Is the setting of local campaign contribution limits by the State Bar and the State Supreme Court consistent with the division of authority contemplated by the Act?

An initial question would be whether the Supreme Court and the State Bar would be a “state or local agency” within the meaning of Government Code Section 81013. Very preliminary review of this question discloses that the question of whether the Supreme Court and the State Bar are “state agencies” may not be an easy question to answer. Again, more research is required. But it bears noting that the focus of the existing cases is on local jurisdictions that clearly qualify as agencies. It is also relevant that the focus of both the existing and new local campaign contribution regulation is on local control of campaign limits by the jurisdictions whose citizens, institutions, and elected officials are directly involved. The current statutory structure clearly contemplates that, if local governments choose to adopt local ordinances that balance the risks of constraining free expression and risking corruption in accord with perceived local needs and values, that choice should be honored. A statewide rule promulgated by the Supreme Court and the State Bar would appear to be in some tension with this set of legislative choices.

B. Penal Code Section 1424

The second potential site of conflict with state law is Penal Code section 1424, providing for the disqualification of prosecutors when a conflict exists that “would render it unlikely that the defendant would receive a fair trial.” Case law interpreting the statute holds that disqualification requires that the defendant show “*an actual likelihood of unfair treatment*, not a subjective perception of impropriety.” *Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 719 (emphasis in original). In addition, the statute does not provide for disqualification in situations where the prosecutor’s conflict would benefit the defendant, whether at trial or in an investigation.

Clearly, section 1424 does not expressly forbid conflict rules that seek to protect against conflicts that unjustly benefit actual or prospective defendants. Nor does it expressly forbid conflict rules based on the appearance of impropriety. Hence the question would be whether an intent to bar regulation of defendant favoring conflicts, or the appearance of them, can be implied based on other features of the statute, its legislative history, or its judicial construction. This question deserves further research.

The real lesson of section 1424 may be that if the route chosen is new disqualification rules, rather than a restriction on contributions, such rules can only be effectively accomplished by legislation. Recall that disqualification is a matter for the courts, not the disciplinary process. Then add in the difficulties, in terms of doctrines like standing, of a doctrine that allows disqualification based upon a demonstrated risk of favoring a defendant. Then add to that the complication of prosecuting such a motion at the investigative stage of a potential criminal prosecution. Taken together, these factors and others might suggest that any rule that provided

for disqualification should be made in a forum with broader expertise that is accessible to a broader group of interested constituencies.

See more discussion of Penal Code section 1424 below.

III. Analysis of Rules of Professional Conduct and other Relevant California Statutes

The substance of the DA's request is for a rule or opinion precluding elected prosecutors, or prosecutors seeking election, from seeking or accepting political or financial support from law enforcement unions. The primary concern for making this request is to "reduce the possibility of political influence from law enforcement unions over prosecutorial decision making."

In order to analyze this request, we must examine the current rules or statutes that govern conflicts of interests and disqualification to determine if any are adequate to address the relevant issues, and if not, consider whether a new rule or opinion adequately address this problem.

A. Rule 1.7 [Conflicts of Interest: Current Clients]

The current conflict of interest rules apply to all lawyers, including prosecutors. Rule 1.11(d)(1). Unlike the Code of Judicial Conduct, however, the rules regulating lawyer conduct do not prohibit appearances of a conflict.

Rule 1.7, states, in relevant part:

(b) A lawyer shall not, without informed written consent* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person,* or by the lawyer's own interests.

(c) Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without written* disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the lawyer has, or knows* that another lawyer in the lawyer's firm* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or

1. What is the appropriate conflict analysis for a prosecutor accepting political or financial support under rule 1.7?

Under rule 1.7(b), absent informed written consent, an elected prosecutor would be prohibited from prosecuting a matter if there is a significant risk the prosecutor's ability to carry out its duties will be materially limited as a result of the prosecutor's other interests or relationships, which could include receiving financial or political support from an organization that is supporting the defense of an accused police officer. This is an objective standard and is not measured by an elected prosecutor's subjective belief whether receiving financial or political support from a law enforcement union would influence his/her/their prosecutorial discretion. The critical question in analyzing the conflict is the likelihood that the financial or political support the elected prosecutor received from an organization supporting the defendant would materially interfere with the prosecutor's professional judgment. *See* rule 1.7, Comment [4]. Relevant circumstances may include the amount of financial and political support the elected prosecutor received and the financial and political support the accused officer is receiving from that organization in the case at issue; in addition to, perhaps, the passage of time.

Under rule 1.7(c), even when a significant risk requiring a prosecutor to comply with paragraph (b) is not present, an elected prosecutor that has a "legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter," must disclose said relationship in writing to the client in order to move forward with the representation.

- a. Does the scope of rule 1.7 encompass all acts by an elected prosecutor in considering, recommending, or carrying out an appropriate course of action related to investigating, charging and prosecuting an accused police officer?
- b. Should the amount of the campaign contribution, or the passage of time from when a contribution was made, be a factor in analyzing the conflict of interest? For example, what if a District Attorney received a \$5 contribution? Would a *de minimis* contribution warrant a per se conflict? If not, what dollar amount would warrant a per se conflict and how would it be determined?
- c. How would "political support" be analyzed for the purpose of determining if a conflict exists? Is it more than just an endorsement by the police union?
- d. Does an elected prosecutor's current or former financial relationship with a police union who is funding a party in the same matter require a disclosure under 1.7(c)? Is the police union a "party" under the rule?

- e. How are conflicts of interest typically handled inside a DA's office? Who typically evaluates potential conflicts? Individual attorneys? Committee? The DA? Are ABA or national standards followed or is each office different?
2. Can the consent and disclosure requirements of rule 1.7 be met when a conflict involves a prosecutor?
- a. Assuming there is a threshold determination that the elected prosecutor has a conflict under 1.7(b) or 1.7(c), is it possible for the elected prosecutor to obtain informed written consent or properly disclose such a conflict? If so, to whom would that request or disclosure be made?
 - b. Who is the client of an elected District Attorney? Is it the constituents/people or the entity itself acting on behalf of the people?
 - i. *See*, State Bar Formal Opn. No. 2001-156, in which COPRAC considers a city attorney's representation and opines that "[w]hether a conflict of interest arises under [former] rule 3-310(C) of the California Rules of Professional Conduct ordinarily depends on a determination of the city attorney's client," and describes CA case law discussing who is a governmental entity's client.
 - ii. *See also*, rule 3.7 that, in part, requires a client's informed written consent for an advocate in a trial to also act as a witness and includes the concept that "[i]f the lawyer represents the People or a governmental entity, the consent shall be obtained from the head of the office . . . by which the lawyer is employed." Is this analogous? Who would provide such consent if DA is head of the office?
 - c. If it is the constituents/people that are considered the client, how would such consent be obtained? Should the people address this issue during an election by ballot with an informed electorate knowing who has donated, and in what amount, to each candidate, as opposed to through a Rule of Professional Conduct?
 - d. If there is no practical way for an elected District Attorney to obtain consent, or disclose a conflict under rule 1.7, and a conflict existed under the relevant facts, or a per se conflict standard was established, would mandatory withdrawal be required by Rule of Professional Conduct 1.16(a)(2)? (Rule 1.16(a)(2) provides, in pertinent part, that a lawyer shall withdraw if the lawyer knows or reasonably should know that the representation will result in a violation of the rules.)

3. What disciplinary standard would apply?

- a. The rules are disciplinary in nature, as opposed to aspirational. [The rules “are intended to regulate professional conduct of lawyers through discipline.” Rule 1.0(a).]
- b. What is the current disciplinary standard for violating rule 1.7? If a new rule or rule revision was to be considered, what would be the disciplinary standard?
- c. Is attorney discipline the best way to address the issue of prosecutorial influence from campaign contributions? How would any potential misconduct be managed and reported when many of the acts of the DA in investigating and considering charges, including some grand jury proceedings, take place outside of the public eye or courtroom?

B. Rule 1.10 [Imputation of Conflicts of Interest: General Rule]

Rule 1.10(a)(1) states that: “While lawyers are associated in a firm,* none of them shall knowingly* represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9, unless (1) the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm”

1. Assuming the prosecutor has a conflict under rule 1.7(b), based on the prosecutor’s financial, business, professional or personal relationship with a law enforcement union, is that conflict imputed to other prosecutors in the office?
 - a. It depends on whether the conflict presents a significant risk of materially limiting the representation of the public by the other prosecutors in the office. Rule 1.10(a)(1).
 - b. Standards for imputation and screening to avoid imputation are also governed by statutes and case law, including Penal Code section 1424. See rule 1.10, Comment [6].
 - c. Is vicarious disqualification of prosecutors governed exclusively by Penal Code section 1424?
 - d. Vicarious disqualification of an entire district attorney’s office requires a heightened and “especially persuasive” showing that the conflict is so grave that it will make a fair trial unlikely. See, e.g., *People v. Hamilton* (1988) 46 Cal.3d 123, 139, *disagreed with on another ground in People v. Eubanks*, (1996) 14 Cal.4th 580, 590; *People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 373

(“If a defendant seeks to recuse an entire office, the record must demonstrate ‘that the conduct of any deputy district attorney assigned to the case, or of the office as a whole, would likely be influenced by the personal interest of the district attorney or an employee.’ [Citation.]” (*Id.* at p. 373.); *People v. Hernandez* (1991) 235 Cal.App.3d 674, 680, opinion modified, (October 24, 1991) (motions to disqualify the entire staff are disfavored absent a substantial reason related to the proper administration of justice).)

- e. Recusing an entire prosecutorial office “is a disfavored remedy that should not be applied unless justified by a substantial reason related to the proper administration of justice.” *Millsap v. Superior Court* (1999) 70 Cal.App.4th 196, 201; *People v. Cannedy* (2009) 176 Cal.App.4th 1474, 1482 (Recusal of an entire prosecutorial office is a “disfavored,” “drastic” remedy and “there must be ‘no other alternative available.’”).
- f. Courts have indicated that there is a more flexible approach to vicarious disqualification in the public sector context.
 - i. The California Supreme Court has noted that vicarious disqualification in the public sector imposes different burdens on the affected public entities, lawyers and clients, including the additional expense to the government of retaining private counsel, the delay and possible loss of specialized experience resulting from substitution, which is borne by the public, and the difficulty public law offices would otherwise have hiring competent lawyers. *City & County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 851-852.
- g. Does a prosecutor’s conflict based on a political endorsement and significant financial support received from a law enforcement union warrant disqualification of an entire district attorney’s office?
 - i. Is the conflict likely to influence the conduct of other deputy district attorneys assigned to the case? See *People v. Vasquez* (2006) 39 Cal.4th 47 (although not reversible error, entire district attorney’s office should have been disqualified because one of defendant’s parents worked for office); Compare *People v. Petrisca* (2006) 138 Cal.App.4th 189 (disqualification of a deputy district attorney who was the son of the murder victim did not require disqualification of the entire office absence a showing that defendant would receive unfair treatment); *People v. Hernandez, supra*, 235 Cal.App.3d at p. 680 (when the defendant in an assault case was himself assaulted by the victim, the victim became the defendant in a subsequent case, and both were prosecuted by the same office consisting of 900 deputies, there was not sufficient evidence that information obtained from the defendant in the

second case had affected the entire office); *Millsap, supra*, 70 Cal.App.4th 196 (defendant's solicitation of murder of deputy district attorneys disqualified targeted deputy district attorneys from handling the case, but did not warrant recusing the entire office).

- ii. Is there another substantial reason relating to the fair administration of justice? *See, e.g., People v. Jenan* (2006) 140 Cal.App.4th 782, 793 (affirming recusal of entire district attorney's office based on the "likelihood of unfairness" to the defendants if other prosecutors of a relatively small district attorney's office "were to argue to a jury the credibility of two colleagues who witnessed the charged crimes."); *Lewis v. Sup.Ct. (People)* (1997) 53 Cal.App.4th 1277, 1285-1286 (the district attorney's office had a conflict of interest because it was both victim and possible malfeasant; disqualification of the entire office warranted because the conflict of interest was so grave that it was unlikely the auditor-controller would get a fair trial).
- iii. Does the conflict create a "divided loyalty" or "structural incentive" that interferes with the district attorney's office's duty to prosecute the case fairly and exercise its discretion impartially? *See People v. Dekraai* (2016) 5 Cal.App.5th 1110, 1145-1148 (institutional interests and structural incentives between district attorney's office and sheriff's department relating to district attorney's office involvement in a custodial confidential information program prevented prosecutors from discharging their constitutional and statutory duties to fairly present case against defendant and warranted recusal of entire district attorney's office).

2. Would a timely ethical wall be sufficient to avoid imputation?

- a. It depends on a number of factors, including the nature and extent of the conflict, the size of the District Attorney's office, the position and duties of the conflicted prosecutor and other general factors regarding the efficacy of an ethical wall (see, e.g., *Kirk v. First American Title Ins. Co* (2010) 183 Cal.App.4th 776, 807-808).
- b. Ethical walls have been approved to avoid imputation of conflicts to other deputy district attorneys. *See, e.g., Melcher v. Superior Court* (2017) 10 Cal.App.5th 160 (denial of motion to recuse the district attorney's office based on fact that one of the alleged victims of assault was married to the district attorney where effective ethical wall was implemented); *People v. Gamache* (2010) 48 Cal.4th 347, 365-366, (denial of motion to recuse upheld in part because the district attorney established an ethical wall between office that employed the crime victim and office that would prosecute the crime); *Compare People v. Choi* (2000) 80 Cal.App.4th 476, 481-483 (recusal of district attorney's

office upheld where evidence showed ethical wall failed to prevent the conflicted district attorney from discussing the case with the press and with others in the office).

- c. Whether the public office may avoid vicarious disqualification in civil cases by using screening procedures to isolate a conflicted senior supervising attorney has not been decided by the California Supreme Court. *City & County of San Francisco v. Cobra Solutions, Inc.*, *supra*, 38 Cal.4th at 850, fn. 2.
 - i. The California Supreme Court noted that trial courts addressing this issue consider:
 - (1) the actual duties of the supervising attorney in regard to the attorneys to be ethically screened, and the supervisor's responsibility for setting policies that might bear on the subordinate attorneys' handling of the litigation;
 - (2) whether public awareness of the case, the conflicted supervisor's role in the litigation, or another circumstance, is likely to cast doubt on the integrity of the office's continued participation in the matter. *Id.*
- d. The public law office may not avoid vicarious disqualification in civil cases by using screening procedures to isolate the conflicted head attorney from matters involving his or her former clients. *City & County of San Francisco v. Cobra Solutions, Inc.*, *supra*, 38 Cal.4th at 852-854.

C. Business and Professions Code Section 6131

1. Statutory Background

Section 6131 "is aimed at the formerly widespread practice of part-time prosecutors who carried on private law practices in addition to their public service." *Chadwick v. Superior Court* (1980) 106 Cal.App.3d 108, 119-120.

2. Substance of Section 6131

Section 6131(a) prohibits the private law partners of district attorneys or other public prosecutors from assisting in any way in the defense of a criminal defendant where the prosecution is being carried out by the district attorney or public prosecutor who is the partner. *People v. Rhodes* (1974) 12 Cal.3d 180, 183 n.3. This subdivision does not address the issues implicated by the district attorney request under consideration.

Section 6131(b) provides that a prosecutor who, having prosecuted (or "aided or promoted") any court action or proceeding as a district attorney or public prosecutor may not thereafter

take part in the defense of that action or proceeding or obtain valuable consideration from or on behalf of any defendant in that matter. *Price v. State Bar of Cal.* (1982) 30 Cal.3d 537, 541. The subdivision essentially addresses attorney side-switching.

3. Policy and Analysis of Section 6131

Although section 6131 is an example of a specific conflict of interest disciplinary standard applicable only to the prosecutorial function, as a legal ethics concept, section 6131 appears distinguishable from the proposal because section 6131 is consistent with well-settled conflict of interest standards generally applicable to all lawyers under the rules and case law – namely: (i) direct adversity conflicts that can arise when a lawyer attempts to represent both sides of a litigated matter (compare *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893 [recognizing a limited exception where the conflict was only a potential conflict and both sides of the case gave informed consent]); and (ii) classic side-switching conflicts where substantial relationship and possession of confidential information is presumed for any lawyer who jumps from one side of a case to the opposing side. (See State Bar Formal Op. No. 1998-152 where COPRAC opines that the California courts repeatedly have disqualified lawyers in civil cases from representing a new client against the opposing party formerly represented by the lawyers in the same case when the opposing party actually communicated confidential information about the case in the prior consultation.) No similar well-settled basis or case law has been presented to the State Bar in the letter conveying the proposal.

In addition, the policy behind section 6131, as well as the specific language and scope of its two subdivisions, does not appear to be relevant to the concerns of examining how to address the possibility that a district attorney's prosecutorial decisions might be influenced by campaign funding.

D. Penal Code Section 1424

1. Statutory Background.

Section 1424 was enacted in 1980. *People v. Eubanks* (1996) 14 Cal.4th 580, 590. The statute was a legislative response to an earlier Supreme Court case, *People v. Superior Court (Greer)* (1977) 19 Cal.3d 255, and other criminal cases that previously stressed the importance of the "appearance of impropriety" and other "apparent" conflicts as bases for prosecutorial disqualification. *Id.* at p. 591. The statute is a legislative response to an increase in the number of prosecutorial recusals under the "appearance of conflict" standard set forth in *Greer*. *People v. Petrisca* (2006) 138 Cal.App.4th 189.

2. Standard for Recusal under Section 1424.

Section 1424 "established both procedural and substantive requirements for a motion to disqualify the district attorney." *Eubanks*, 14 Cal.4th at p. 591. Substantively, the statute

provides the following standard: “The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial.” *Id.*; Penal Code section 1424(a)(1). However the conflict is characterized, it warrants recusal “only if so grave as to render it unlikely that defendant will receive fair treatment during all portions of the criminal proceedings.” *Id.* at 592 (citing *People v. Conner* (1983) 34 Cal.3d 141. The concern surrounding section 1424 is “the likelihood that the defendant will not receive a fair trial[.]” *Id.*

3. Summary

Section 1424 addresses whether a defendant would receive a fair trial. The District Attorneys’ concern, in contrast, is whether a defendant may receive special treatment or whether a prosecution may not proceed in the first instance because of such special treatment. A defendant or target of an investigation who is receiving special treatment is not likely to move to disqualify those providing such treatment.

4. Legislative Amendment

The statute is fairly interpreted to mean that a defendant would have standing to seek prosecutorial recusal. That is because a motion under section 1424 “may not be granted unless” there is a conflict that “would render it unlikely that *the defendant* would receive a fair trial.” Section 1424 would have to be amended to allow other “interested” parties to challenge prosecutorial decisions. Otherwise, practically-speaking, section 1424 may be irrelevant here because a defendant receiving special treatment is not likely to challenge the prosecutor providing such treatment. Legislative amendment to section 1424 might receive resistance. Among other reasons, the statute itself was a reaction to an increase in the number of prosecutorial recusals. An amendment with the effect of broadening the ability to seek recusals would arguably run contrary to the statute’s legislative intent.

Is an amendment to Penal Code section 1424 required before any changes could be made to the California Rules of Professional Conduct to address prosecutor’s conflicts of interest and vicarious disqualification?

E. Other Rules, Statutes or Standards

1. ABA Judicial Standards for the Prosecution Function

- a. Standard 3.17(f) states that a “prosecutor should not permit the prosecutor’s professional judgment or obligations to be affected by the prosecutor’s personal, political, financial, professional, business, property, or other interests or relationships.” This is similar in substance to portions of rule 1.7(b) & (c).

- b. Role of ABA Standards in governing conflicts of interest. According to the ABA, these standards are meant to provide “guidance for the professional conduct and performance of prosecutors.” “They are aspirational or describe ‘best practices,’ and are not intended to serve as the basis for the imposition of professional discipline, to create substantive or procedural rights for accused or convicted persons, to create a standard of care for civil liability, or to serve as a predicate for a motion to suppress evidence or dismiss a charge.” [See Standard 3-1.1(b)].
- 2. National District Attorneys Association (“NDAA”) National Prosecution Standards
 - a. NDAA Standard 1-3.3(c), which provides: “The prosecutor should excuse himself or herself from the investigation and prosecution of any person who is represented by a lawyer related to the prosecutor as a parent, child, sibling, spouse, or domestic partner, or who has a significant financial relationship with the prosecutor.”
 - b. NDAA Standard 1-3.3(d), which provides: “The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor’s neutrality, judgment, or ability to administer the law in an objective manner may be compromised.”
 - c. NDAA standards are “intended to be an aspirational guide to professional conduct in the performance of the prosecutorial function.”
- 3. Others?

IV. Additional Issues to Consider

The Committee has identified numerous potential issues that it might consider in reviewing this request. Are there additional issues, rules, statutes, or standards that merit analysis and consideration?

V. Proposed Questions for Public Commenters

After our meeting on July 24, 2020, the Committee expects to post and to circulate to potential commenters this memorandum, accompanied by a list of specific questions that commenters are invited to address. A list of potential questions follows. We expect to refine and add to this list at the meeting.

1. What is the problem exactly and what is its extent?
 - a. How big are the contributions that police unions are making to local district attorney races, both in terms of absolute amounts and what percentage of total contributions they represent? Is there any data on that question? Are their particular local jurisdictions where the problem appears to be especially severe?
 - b. Does the importance of union contributions differ by jurisdiction within the state? In many counties, it appears, union contributions would be limited to relatively modest levels—\$300 to \$500 per election. Do restrictions such as those in effect in those counties eliminate the risk or appearance of impropriety?
 - c. In counties which currently have no contribution limits, AB 571 will, starting in January, impose state law limitations on contributions to county and municipal elections. Will those provisions reduce or eliminate the problem?
 - d. Are you aware of incidents involving actual favoritism shown to law enforcement personnel based on campaign contributions?
2. Given the nature of the problem, would an outright ban on campaign contributions by law enforcement unions be consistent with the United States and California constitutions? In particular:
 - a. Political contributions are a form of protected political speech. What standard of justification must be met for a speech restriction of this kind and why would it be met here? Can you point us to what you think is the Federal and state case law that speaks most directly to the validity of such a restraint?
 - b. The proposed rule does not bar all contributions, but only those from a single type of donor, public employee unions. Does this raise any additional issues, under either Free Speech or Equal Protection principles?
 - c. What is the relevance, if any, to the Constitutional analysis that a restriction might be imposed by the Supreme Court, rather than by the legislature?
 - d. Can you point to any cases where similar restrictions have been enacted and upheld in this or other jurisdictions?
3. Would the proposed restrictions be consistent with other California statutes regulating local government campaign contributions, such as the Political Reform Act of 1974 and the recent amendments thereto in AB 571 and with section 81013

- of the Government Code? Is the Supreme Court a state agency who is empowered to enact further contribution restrictions on local government elections under section 81013? More generally, those statutes appear to establish a principle that where local communities have established campaign contribution limits, those limits, and not statewide limits, should control. Given the legislative preference for localism, does the Supreme Court have the power to displace campaign contribution limits set at the county level, and what is the source of that power?
4. To the extent that the problem is one of conflict of interest, why are existing conflict of interest rules, including Rules of Professional Conduct 1.7 and 1.10 and Penal Code section 1424 inadequate to address the problem? Would an ethics opinion construing existing law be adequate to address the problem? If existing law is inadequate to address the problem, are there ways of addressing the conflict problem through changes to the Rules of Professional Conduct or statutory disqualification standards that would not involve restrictions on political speech? To the extent that the problem would call for standards different from those in Penal Code section 1424, should those changes be made by legislation, rather than by a rule?
 5. Would a Rule of Professional Conduct, or an ethics opinion, be an efficacious authority for seeking the non-disciplinary remedy of lawyer disqualification when that remedy is reserved as a judicial function and involves the exercise of judicial discretion on a case-by-case basis?

CONCLUSION:

The DA's proposal summarizes the essence of their request by saying: "Whether the State Bar takes action in the form of a new rule of professional conduct or an ethics opinion-the goal is the same: to protect the integrity of the prosecutorial function, the fair administration of justice, and restore public trust in law enforcement."

In a recent open letter to the legal community, Alan Steinbrecher, Chair, State Bar Board of Trustees and Donna S. Hershkowitz, Interim Executive Director, stated:

The legal profession bears a special responsibility to guarantee the equal treatment of all persons and to ensure remedies for those subjected to unfair, unequal, and unjust treatment. Many in the legal community have worked for years to reduce bias, support access to justice, and foster diversity and inclusion, but there is much more to do. Each instance of injustice is one too many.

While the DAs proposal has been assigned to COPRAC for analysis as the State Bar's legal ethics experts, we also view it as an opportunity for COPRAC to contribute to the State Bar's effort to discharge the profession's responsibility for guaranteeing fairness, equality and justice.

AMENDED IN SENATE AUGUST 25, 2020
AMENDED IN SENATE AUGUST 17, 2020
AMENDED IN SENATE JUNE 17, 2020
AMENDED IN ASSEMBLY JANUARY 15, 2020
AMENDED IN ASSEMBLY JANUARY 6, 2020
AMENDED IN ASSEMBLY MAY 17, 2019
AMENDED IN ASSEMBLY APRIL 11, 2019
AMENDED IN ASSEMBLY APRIL 1, 2019
AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1506

Introduced by Assembly Members McCarty, Bauer-Kahan, Berman, Bloom, Bonta, Burke, Carrillo, Chiu, Chu, Eggman, Friedman, Gabriel, Cristina Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Levine, Medina, Muratsuchi, Quirk, Reyes, Luz Rivas, Robert Rivas, Santiago, Mark Stone, Ting, Weber, and Wicks

(Coauthor: Assembly Member Low)

(Principal coauthors: Senators Allen, Beall, Bradford, Dodd, Durazo, Lena Gonzalez, Hueso, Mitchell, Pan, Stern, Wieckowski, and Wiener)

February 22, 2019

An act to add Section 12525.3 to the Government Code, relating to the Department of Justice.

LEGISLATIVE COUNSEL'S DIGEST

AB 1506, as amended, McCarty. Police use of force.

Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

Existing law requires law enforcement agencies to report to the Department of Justice, as specified, any incident in which a peace officer is involved in a shooting or use of force that results in death or serious bodily injury.

This bill would create a division within the Department of Justice to, upon the request of a law enforcement agency, review the use-of-force policy of the agency and make recommendations, as specified.

The

~~This bill would also require a state prosecutor to investigate incidents of officer-involved use of force resulting in the death of an unarmed civilian, and would require the state prosecutor to conduct an investigation upon request from a local law enforcement agency, district attorney, city council, or county or city and county board of supervisors, on an incident involving the use of force by a peace officer that resulted in the death of a civilian. an officer-involved shooting resulting in the death of an unarmed civilian, as defined. The bill would make the Attorney General the state prosecutor unless otherwise specified or named. The bill would authorize the state prosecutor to prepare a written report, and would require the state prosecutor to post any reports made on a public internet website. The bill would authorize the state prosecutor to seek reimbursement, in full or in part, from the local entity for appropriate costs associated with the investigation, thereby imposing a state-mandated local program.~~

~~The bill would provide that, if no appropriation is made by the Legislature to fund these programs, the programs shall operate using existing Department of Justice funds.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,~~

reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The bill would require, commencing July 1, 2023, the Attorney General to operate a Police Practices Division within the department to review, upon the request of a local law enforcement agency, the use of deadly force policies of that law enforcement agency and make recommendations, as specified.

The bill would require the department to implement these provisions subject to an appropriation for this purpose.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12525.3 is added to the Government
2 Code, to read:

3 12525.3. (a) ~~(1) A~~ *For purposes of this subdivision, the*
4 *following definitions apply:*

5 (1) *“Deadly weapon” includes, but it not limited to, any loaded*
6 *weapon from which a shot, readily capable of producing death or*
7 *other serious physical injury, may be discharged, or a switchblade*
8 *knife, pilum ballistic knife, metal knuckle knife, dagger, billy,*
9 *blackjack, plastic knuckles, or metal knuckles.*

10 (2) *“Unarmed civilian” includes anyone who is not in*
11 *possession of a deadly weapon.*

12 (b) (1) *A state prosecutor shall investigate incidents of*
13 ~~officer-involved use of force~~ *an officer-involved shooting resulting*
14 *in the death of an unarmed civilian. The Attorney General is the*
15 *state prosecutor unless otherwise specified or named.*

16 ~~(2) The state prosecutor shall also conduct an investigation upon~~
17 ~~request from a local law enforcement agency, district attorney,~~
18 ~~city council, or county or city and county board of supervisors, on~~
19 ~~an incident involving the use of force by a peace officer that~~
20 ~~resulted in the death of a civilian.~~

21 ~~(3)~~

22 (2) *The state prosecutor is authorized to do all of the following:*

23 (A) *Investigate and gather facts in—incidents an incident*
24 ~~involving the use of force~~ *a shooting by a peace officer that result*
25 *results in the death of an unarmed civilian.*

~~(B) Investigate and gather facts in an incident involving the use of force by a peace officer that results in the death of a civilian upon request from a local law enforcement agency, district attorney, a city council, or county or city and county board of supervisors.~~

~~(C)~~

(B) For all investigations conducted, prepare and submit a written report. The written report shall include, at a minimum, the following information:

(i) A statement of the facts.

(ii) A detailed analysis and conclusion for each investigatory issue.

(iii) Recommendations to modify the policies and practices of the law enforcement agency, as applicable.

~~(D)~~

(C) If criminal charges against the involved officer are found to be warranted, initiate and prosecute a criminal action against the officer.

~~(4) Reimbursement may be sought, in full or in part, from the local entity for appropriate costs associated with the investigation.~~

~~(5)~~

(3) The state prosecutor shall post and maintain on a public internet website each written report prepared by the state prosecutor pursuant to this subdivision, appropriately redacting any information in the report that is required by law to be kept confidential.

~~(b)~~

(c) (1) Commencing on July 1, 2023, the Attorney General shall operate a Police Practices Division within the Department of Justice to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency.

(2) The program described in ~~this subdivision~~ *paragraph (1)* shall make specific and customized recommendations to any law enforcement agency that requests a review pursuant to ~~this section, paragraph (1)~~, based on those policies identified as recommended best practices.

~~(e)~~

(d) This section does not limit the Attorney General's authority under the California Constitution or any applicable state law.

1 ~~(d) If an appropriation is not made by the Legislature to fund~~
2 ~~this section, the Department of Justice shall implement the~~
3 ~~requirements of this section using existing department funding.~~

4 ~~(e) Subject to an appropriation for this purpose by the~~
5 ~~Legislature, the department shall implement this section.~~

6 ~~SEC. 2. If the Commission on State Mandates determines that~~
7 ~~this act contains costs mandated by the state, reimbursement to~~
8 ~~local agencies and school districts for those costs shall be made~~
9 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
10 ~~4 of Title 2 of the Government Code.~~