



Questions for Candidates for Court of Criminal Appeals Conservative Coalition of Harris County

This questionnaire will be posted onto the Conservative Coalition of Harris County website for public voter viewing.

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| Candidate Name | Position for which Candidate is Running |
| David J Schenck | Presiding Judge Court of Criminal Appeals |

Please give your answer to each of the following questions and please include your rationale with each answer. Please be concise & clear.

- Please describe the qualifications and experience that make you the best candidate for the office for which you are running. What differentiates you from your opponent (s)?

Answer: I have a clear record of constitutional and appellate service, including 8 years on an appellate court bench. No one currently serving on the court came with any experience as an appellate judge or major constitutional matters--and I fear it shows it some of its recent holdings, including the Stepens case on prosecuting election fraud, the merits of which I can't opine on right now – though I urge you to read it. I served as Chair of the Texas State Commission on Judicial Conduct (overseeing the behavior of all Texas judges), as Deputy Attorney General for Legal Counsel, as lead counsel for the Governor and Texas in the 2011 redistricting litigation, culminating in a 9-0 victory in SCOTUS. I served as lead counsel to TSRA and 42 other state associations in the Heller 2d amendment case; I graduated first in my law school class at Baylor and have argued and won major criminal and civil appellate matters across the country.

I am also the only candidate in the race who is constitutionally eligible to serve the term – my opponent is running despite the voters overwhelming rejection of a constitutional amendment to extend the mandatory retirement age and would thus have to leave office in the middle of the term, leaving the seat to whoever is Governor at that point. I am also the only candidate who has not been sanctioned for casting “public discredit on the judiciary” or the record sanction from the ethics commission for non-disclosure of property holdings or owned (or served as landlord to) an adult business operating as “the doll house.”

<https://www.texastribune.org/2017/11/09/sharon-keller-faces-primary-opponent/>

2. Please describe what you believe are the most significant issues in this race and why.

Answer: Judicial activism, competence, fairness, work ethic and efficiency. I do not agree with the court's evolving and current practices under its current presiding judge of: (1) granting petitions for criminal appeals on its own motion and without the criminal defendant seeking an appeal, (2) rejecting petitions and adding--without notice--new issues not raised by the defendant and granting victory to them without any opportunity for the state to respond, (3) its treatment of the separation of powers notions that result in a concentration of power in itself; again, without saying how I would rule on a particular case, see *Stephens* and *Ex Parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013). Both suggest an understanding of the concept that at a minimum needs greater understanding and coherent expression to make informed readers comfortable. In *Lo*, the Court declared for itself that the Legislature lacked authority to require it (the Court) to give the state notice and an opportunity to appear and be heard when considering whether to declare a state law is unconstitutional. Thus, an effort by the state to be heard in its own courts is unconstitutional?! Meanwhile, (4) the court is taking for itself the power to declare who will represent the state in cases before it, by pushing out DA's and appointing the State Prosecuting Attorney when it so chooses. Thus, the court is picking the issues for the defendants, ruling in agreement with itself, not telling the state when its constitution may be deployed to invalidate its own laws and picking its lawyers for it. In addition, (1) the court is producing a total number of opinions each year that is about what I and other appellate judges produced by our selves in a year – and there are 9 of them!; (2) it's taking them more than a year on average to get the cases out—last week they released 5 opinions—3 of which had been pending since 2019 or 2020 (the federal Fifth Circuit recently noted exasperation in a constitutional case to the Court's failure to decide the issue presented there though it heard arguments years before); and (3) the opinions often leave readers, including lower court judges and lawyers baffled; and (1) the state in the past has been left with the embarrassment and delay of major criminal cases being tried by appointed counsel who were asleep or incompetent (i.e., sanctioned or suspended by the bar) and a court --or at least presiding judge--that declares that “actual innocence” is not sufficient to support relief and a new trial – requiring the Governor (google the Criner case) or the federal courts (sleeping lawyer) to step in; and (2) despite insisting that local DA's are under their purview in the judiciary, the legislature has been forced this immediate past session to step in and pass a law last session telling the Harris County DA to actually try its murder cases.

3. List the state(s) in which you are or have been licensed to practice law, and the date(s) you received such licenses.

Answer: Texas -1992, D.C. (inactive) 1993

4. Do you have judicial experience? To what extent have you practiced in the area of Criminal law?

Answer: Yes, 8 years on the states largest appellate court and 1 year as a law clerk to the Chief Judge of the Fifth Circuit. I handled criminal work in my clerkship and as an appellate judge. Also, I argued and prevailed in several major criminal appellate matters in private practice and worked on the state side as Deputy Attorney General for Legal Counsel.

5. What carries the greatest influence in your rulings: criminal case law, the Constitution, state statutes, or other?

Answer: Constitution first. Statutes second, and to the extent consistent with the constitution. Caselaw is a distant third and to the extent consistent with the first 2. Some considerations go into rejecting past decisions, including reliance public concerns, but are generally insufficient on their own account to support leaving an unconstitutional construction in place.

6. What has been your greatest accomplishment in your legal career and/or in your personal life?

Answer: Career it's either the state's award for pro bono service or securing justice for Dr. Wen Ho Lee from the Clinton Administration and the major media outlets for violating the Privacy Act and leaking fake news about him.

Personal life, birth of my kids!

BY RETURNING THIS QUESTIONNAIRE, THE CANDIDATE ASSUMES FULL RESPONSIBILITY FOR ALL ANSWERS TO THIS QUESTIONNAIRE. THE ANSWERS ON THE FOREGOING REFLECT THE CANDIDATE'S BEST EFFORTS TO ANSWER THIS QUESTIONNAIRE HONESTLY AND DIRECTLY.

PLEASE SAVE YOUR COMPLETED QUESTIONNAIRE TO YOUR LOCAL MACHINE IN THE EVENT THAT THERE ARE ANY TECHNICAL PROBLEMS WHEN YOU ATTEMPT TO EMAIL IT BACK.

Once this questionnaire has been completed, please email it to:

alex@cchc-pac.org

* **Please note:** You **must** return your questionnaire from the email address to which it was sent. Questionnaires returned from any other email address will be considered fraudulent and will **not** be recorded and no answers will be published in the voter's guide. CCHC-PAC deems a return from the proper email address as authentication of the correct respondent.

JUSTICE DAVID J. SCHENCK
6239 Lupton Drive
Dallas, Texas 75225

Experience

JUSTICE, TEXAS FIFTH DISTRICT COURT OF APPEALS AT DALLAS (JAN. 2015-)
Appointed (1/15) and elected to term through 2022.

CHAIRMAN & COMMISSIONER, TEXAS STATE COMMISSION ON JUDICIAL CONDUCT (2019-)

DYKEMA COX SMITH – Dallas, Texas (2012-Jan. 2015)
Partner in charge of national complex litigation practice.

DEPUTY ATTORNEY GENERAL FOR LEGAL COUNSEL– Austin, Texas (2010-2012)
Chief Legal Counsel to Attorney General Greg Abbott, responsible for management of six divisions: Opinions, General Counsel, Public Finance, Open Records, Grants Administration, and Redistricting.

JONES DAY – Dallas, Texas & Washington D.C. (2004-10 & 1993-95)
Partner in charge of Dallas Issues & Appeals practice; previously associate in same practice in Washington, D.C.

HUGHES & LUCE - Dallas, Texas (1995-2004)
Associate and later partner in charge of the firm's appellate practice.

CHIEF JUDGE HENRY A. POLITZ, FIFTH CIRCUIT COURT OF APPEALS – Law Clerk (1992-93)

COMMISSIONER – TEXAS LOTTERY COMMISSION (2007-10)

Professional Awards and Activities

AMERICAN LAW INSTITUTE, MEMBER (2019 -)
BOARD CERTIFIED IN CIVIL APPELLATE LAW (2006 –)
STATE BAR OF TEXAS PRESIDENT'S AWARD 1998
TEXAS "SUPERLAWYER" TEXAS MONTHLY MAGAZINE, APPELLATE
"AV" RATED, MARTINDALE HUBBELL
D MAGAZINE BEST LAWYER'S LIST
RECOGNITION ON ADMISSION – Second highest score on Texas Bar Exam
FIFTH CIRCUIT RULES ADVISORY COMMITTEE – Texas Representative 2003-06
MASTER AND BARRISTER – PATRICK HIGGINBOTHAM INN OF COURT
OUTSTANDING LEAD ARTICLE TEXAS TECH LAW REVIEW 2010

Education

BAYLOR LAW SCHOOL – WACO, TEXAS – Juris Doctor with highest honors (1992)
Valedictorian
Editor-in-Chief, Baylor Law Review
Highest grade and corresponding American Jurisprudence awards in 9 subjects
Vinson & Elkins Full Academic Scholarship
Fulbright & Jaworski Outstanding First Year Student Award
TYLA Moot Court Team

STATE UNIVERSITY OF NEW YORK ALBANY – B.A. *magna cum laude*, Criminal Justice & Economics (1989)
First Place, ABA National Writing Competition
Alpha Phi Sigma Honor Society

Civic Endeavors

CO-CHAIR, TEXAS LAWYERS FOR MCCAIN (2008) AND ROMNEY (2012)

Admissions

Texas (1992), District of Columbia (1994), U.S. Supreme Court, and federal courts of appeal for the First, Fourth, Fifth, Tenth, Eleventh and D.C. Circuits, and numerous federal district courts, including U.S. Court of International Trade.

Publications

Are We Finally Ready To Reshape Texas Appellate Courts for the 21st Century? 41 TEXAS TECH L REV. 221 (2009).

Conundra on the Tundra Will the U.S. Supreme Court Exercise Liberty and Give Justice to All in Polar Tankers v. City of Valdez, Alaska? Jones Day State Tax Return (March 2009).

Technical “Foot Fault” Over the Commerce Clause May Cost the Texas Comptroller Big Time – Texas “Throw Back” Provision Struck Down As Unduly Burdening Interstate Commerce As Applied, Even Though No Real Additional Burden Was Show. Jones Day State Tax Return (2005).

The King Has Been Known to Err: Saterfield & Pontikes v. Irving I.S.D. TEXAS SCHOOL LAW REPORT (2004).

Exceptions to Chevron Administrative Law News (Jan. 1993).

Reasonable Accommodation for the Disabled Worker: A Job for the Man or a Man for the Job? 44 BAYLOR L. REV. 279 (1992).

Remedies for Environmental Liability: Rights of the Toxic Grantee, 42 Baylor L. Rev. 761 (1991).

Litigation with the Sovereign in Texas, 61 THE ADVOCATE 31 (2012).

Private Practice Representations

Perry v. Perez, 132 S. Ct. 934 (2012), No. SA-11-CA-360 (W.D. Tex. 2012) & *Texas v. United States*, No. 1:11-CV-01303 (D.D.C. 2012). Lead Counsel for Texas and Gov. Perry in three-judge panel redistricting cases brought under sections 2 and 5 of the Voting Rights Act, respectively.

Ford v. Castillo, 444 S.W.3d 616 (Tex. 2014). Counsel to Ford in reversal of major products liability matter.

Heller v. District of Columbia, 554 U.S. 570 (2008). Lead counsel to 40 NRA affiliated state organizations as amicus urging recognition of individual right under Second Amendment. Represented TSRA previously in first Fifth Circuit decision to recognize the individual right.

In re Volkswagen, 371 F.3d 201 (5th Cir. 2003). Lead counsel in original successful mandamus action to compel venue transfer of cases brought in federal districts unrelated to the facts of the underlying claims.

Wen Ho Lee v. U.S. Dep’t of Justice, 413 F.3d 53 (D.C. Cir. 2006). Counsel to former Los Alamos scientist wrongly accused of espionage by Clinton administration. Obtained and secured affirmance of contempt sanctions against leading media organizations in Privacy Act suit and secured first ever monetary payment by same and federal government.

Ballard v. Commissioner, 544 U.S. 40 (2005). Successful petition to U.S. Supreme Court challenging U.S. Tax Court’s off-the-record reversal of trial judge’s original decision in favor of taxpayer.

Marathon Oil v. Ruhrgas, 526 U.S. 574 (1999). Argued multi-billion dollar North Sea gas dispute to panel and en banc Fifth Circuit, successfully securing remand to Texas state court. Following grant of certiorari, appeared on briefs urging affirmance in Supreme Court.

Recent Media

Texas Lawyer (July 2016). “Republican Justice David Schenck is arguably the most qualified justice who has ever sat on the Fifth Court of Appeals.”

Endorsed by Dallas Morning News for Texas Supreme Court in 2022 & 5th Court of Appeals in 2016 (“Schenck is a solid conservative but not an ideologue”; quoting former Democratic Party chair acknowledging “almost too qualified for the court of appeals.”)