



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.

Candidate Name	Position for which Candidate is Running
Michelle Slaughter	Re-election as Judge, Texas Court of Criminal Appeals, PI. 8

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

1. 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:

- (1) I am a proven and uncompromising constitutional conservative and originalist judge. I will never be an activist judge regardless of public or political pressure or any outside influence. And I certainly will never judicially amend our Constitution, especially for political expediency.
- I strictly interpret and apply the law as written and as originally intended, even when I dislike the law or the outcome.
- (2) My opponent has no judicial experience, almost no appellate experience, and very limited criminal law experience. In addition, he claims to be conservative and have integrity, yet his actions speak otherwise. According to a Collin County court judgment and court records, he failed to pay his mortgage for several years, and now has an almost half-million-dollar judgment against him along with a foreclosure and forced sale of his home. This demonstrates a lack of integrity, personal responsibility, and accountability. Moreover, if he cannot manage his own finances how can voters trust him to manage an annual \$8 million Court budget and \$15 million education grant the Court manages? In stark contrast to my opponent, I have a proven and public track record of being efficient, effective, saving taxpayer dollars, demonstrating integrity, and being a true conservative and originalist.
- (3) I have the superior education, experience, and track record for this position. I have served in this role as a judge on the Court of Criminal Appeals (CCA) for the past five years. Since joining the Court on January 1, 2019, I have authored more than 80 published opinions and have participated in addressing more than 20,000 criminal law matters.
- Before joining the CCA, I served six years as a district court judge presiding over thousands of civil and felony criminal cases. I presided over more than 100 bench and jury trials. The district judge that preceded me on that bench was there for 12 years yet had the least efficient, least effective district court with the highest backlog in Galveston County. Within my first term in that court, I transformed the court into the most efficient, most effective district court with the lowest backlog. In my position as judge on each of the two courts on which I have served, in addition to adhering to the rule of law as a constitutional conservative and originalist, I have promoted transparency and saving taxpayer dollars through efficiency.

2. Please describe what you believe are the most significant issues in this race and why.
- Answer: The single most significant issue in this race is the misinformation about the Court of Criminal Appeals' *State v. Stephens* opinion. The Court did not strip from the Attorney General the power to prosecute voter fraud; the Constitution never gave him that power to begin with. The Legislature attempted to give the AG that authority through an Election Code statute, but the Texas Constitution's separation-of-powers provision prohibits it. I am attaching a summary of the legal analysis that provides clarity on the Court's opinion.**
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, Nov. 2004**
4. Do you have judicial experience? To what extent have you practiced in the area of Criminal law?
- Answer: Yes. I have served five years on the Court of Criminal Appeals and six years as a district court judge. I was never a criminal law practitioner before being elected as a trial judge. But, in my time as a trial judge about 70% of my time was spent on felony criminal law matters. I presided over thousands of felony criminal cases and presided over at least 75 felony criminal jury trials. In my current role as a judge on the Court of Criminal Appeals I have authored more than 80 published opinions and have participated in deciding well over 20,000 criminal law matters.**
5. What carries the greatest influence in your rulings: criminal case law, the Constitution, state statutes, or other?
- Answer: The Constitution is the superior law of the land.**
6. What has been your greatest accomplishment in your legal career and/or in your personal life?
- Answer: The greatest accomplishment in my legal career is being able to serve the Great State of Texas on the Court of Criminal Appeals. My greatest personal accomplishment is having two absolutely wonderful daughters. But I cannot take any credit for my accomplishments, all the glory is His.**

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

Judge Michelle Slaughter

Judge Michelle Slaughter is a constitutional conservative and originalist. She was elected to the Texas Court of Criminal Appeals in 2018. With more than 4.7 million votes, she was the top contested Republican vote-getter in the entire U.S. for the November 2018 general election.

Since joining the CCA, Judge Slaughter has authored more than 80 published opinions and has participated in addressing more than 20,000 criminal law matters. Her work on the Court earned her a position as an adjunct law professor for the quarterly Baylor Law School Criminal Law Bootcamp.



Immediately before joining the CCA, Judge Slaughter served six years as a district judge in the 405th District Court of Galveston County, where she presided over thousands of civil and felony criminal cases and more than 100 bench and jury trials.

Judge Slaughter earned her J.D. *cum laude* (top 15%) from the University of Houston Law Center in 2004. In law school, she served as President of the Hispanic Law Students Association, traveled as part of the moot court team, and was on the Board of Directors for The Advocates. She interned for two federal district judges and for the Texas First Court of Appeals. She also became a certified mediator and mediated numerous cases for local justice of the peace courts. Through her advocacy involvement and academic success, she earned the distinction of being named to the Order of the Barristers and Order of the Barons.

After law school, Judge Slaughter worked as a litigation attorney for two large international law firms and had her own successful law practice until she took the bench as a district judge in 2013. Her work as an attorney earned her the distinction of being named a "Rising Star" by the *Super Lawyers Edition of Texas Monthly* magazine.

Judge Slaughter was born and raised in Fort Worth, attended high school in Houston, and now lives in League City. She is married to her college sweetheart, best friend, and NASA engineer, Ed Walsh. Together they have two beautiful daughters, Hazel (age 16) and Laila (age 13); two German Shepherd Dogs, Pixie and Luna; and a fat, fluffy, black-and-white cat, Sal (a.k.a. Bear).

JUDGE MICHELLE M. SLAUGHTER

PROFILE

Judge Michelle M. Slaughter currently serves on the Texas Court of Criminal Appeals. She was elected to this position in November 2018 and received more than 4.7 million votes—the largest number of votes of any contested Republican candidate in the United States for the November 2018 general election. As a member of the Court, from January 1, 2019 through the present, Judge Slaughter has authored more than 80 published opinions. Before being elected to the Court of Criminal Appeals, Judge Slaughter served six years as judge of the 405th District Court where she presided over thousands of civil and felony criminal cases.

Judge Slaughter is happily married to her best friend and college sweetheart, Ed Walsh, a NASA engineer. Together they have two wonderful daughters, Hazel (16) and Laila (13). They live in League City, Texas with their two German Shepherd Dogs (Pixie and Luna) and a fat, fluffy, black and white rescue cat, Sal.

JUDICIAL EXPERIENCE

JUDGE, TEXAS COURT OF CRIMINAL APPEALS, AUSTIN, TX – JAN. 2019-PRESENT

Judge Slaughter is one of nine judges serving on the court of last resort for criminal cases. During her time on the Court, she has authored more than 80 published opinions and has participated in addressing more than twenty thousand criminal law matters. Judge Slaughter serves as the Court's liaison for the Appellate Section of the State Bar of Texas and has given a number of presentations across the state on various topics related to the Court.

JUDGE, 405TH DISTRICT COURT, GALVESTON COUNTY, TX –

JAN. 2013-DEC. 2018

Serving on this general jurisdiction bench, Judge Slaughter presided over a wide variety of civil and felony criminal cases. She reviewed and signed hundreds of search warrants and volunteered for on-call rotations for remote blood search warrants for driving while intoxicated cases. Before Judge Slaughter was elected to this position, the 405th District Court was the least efficient and had the highest backlog of any district court in Galveston County. Through hard work, the implementation of various policies and procedures, holding hearings and ruling promptly, and by presiding over more jury trials than any other district court during that time period, Judge Slaughter transformed the court into the most efficient and most effective district court in the county with the lowest backlog of cases.

LAW PRACTICE EXPERIENCE

FOUNDER/MANAGING MEMBER/ATTORNEY/MEDIATOR,

THE SLAUGHTER LAW FIRM, PLLC – 2010-2013

In 2010, Ms. Slaughter founded The Slaughter Law Firm, PLLC as a solo civil litigation practice. Through hard work, she quickly grew the practice into a busy and highly successful law firm in the Clear Lake

area of Houston. The firm represented businesses and individuals in all types of civil litigation and appellate law. Ms. Slaughter also served as a mediator in civil (non-family) cases.

ATTORNEY, LOCKE LORD, LLP – 2005-2010

Ms. Slaughter served as an attorney for the Houston office of this large international law firm representing businesses of all sizes, including Fortune 500 companies, in labor/employment matters, bankruptcy, business litigation, and complex commercial litigation. Her work here earned her the title of “Rising Star” in the *Super Lawyers* Edition of *Texas Monthly* magazine.

ATTORNEY, HAYNES AND BOONE, LLP – 2004-2005

Ms. Slaughter served as an attorney for the Houston office of this large international law firm representing businesses of all sizes, including Fortune 500 companies, in labor/employment matters.

OTHER LEGAL EXPERIENCE

- Adjunct Professor, Baylor Law School - assist in teaching the Voir Dire Boot Camp and the quarterly Criminal Law Boot Camp (2023 - Present)
- Intern, Justice Tim Taft, First Court of Appeals, Houston Texas - conducted research and wrote legal opinions/memos on family, civil, and criminal appeals.
- Intern, Judge David Hittner, United States District Court for the Southern District of Texas - conducted research and wrote legal opinions/memos on federal civil and criminal cases.
- Intern, Judge Sim Lake, United States District Court for the Southern District of Texas - conducted research and wrote legal opinions/memos on writs of *habeas corpus* pending before the court.
- Summer Associate, Haynes and Boone, LLP (Houston)
- Summer Associate, Ware Snow Fogel & Jackson, LLP (Houston)
- Law Clerk, Nelkin & Nelkin, P.C. (Houston)

BAR ADMISSIONS

- Texas (State Courts)
- United States District Court for the Northern, Southern, Eastern and Western Districts of Texas
- United States Court of Appeals for the Fifth Circuit

EDUCATION

UNIVERSITY OF HOUSTON LAW CENTER – J.D., *CUM LAUDE* (TOP 15%)

A.A. WHITE DISPUTE RESOLUTION CENTER, MEDIATION CERTIFICATION

UNIVERSITY OF HOUSTON – B.A., *MAGNA CUM LAUDE*

Judge Slaughter's 2024 Republican Primary Current Endorsements

- Texas Right to Life, PAC
- Texas Alliance for Life, PAC
- Texas Values Action PAC
- Hispanic Republicans of Texas, PAC
- Link Letter (Terry Lowry)
- Republican National Committeeman and Galveston County Commissioner, Dr. Robin Armstrong
- Texas Railroad Commissioner Jim Wright
- Texas State Senator Mayes Middleton
- Former Texas State Senator Larry Taylor
- State Representative Valoree Swanson
- State Representative Briscoe Cain
- State Representative Dr. Greg Bonnen
- State Representative Terri Leo Wilson
- State Representative Matt Shaheen
- State Representative Cody Vasut
- Collin County Judge, Chris Hill (where my opponent lives)
- Galveston County Commissioner Darrell Apffel
- Galveston County Commissioner Joe Giusti
- State Republican Executive Committee Member Scott Bowen, SD 6, SREC Resolutions Committee Chairman, Precinct Chair (Harris County) Pct. 416 and HCRP Local Government Committee Chairman, Clear Creek ISD Trustee At-Large
- State Republican Executive Committee Member Gaylyn Devine, SD 11
- State Republican Executive Committee Member Dale Gibble, SD 13
- State Republican Executive Committee Member, Jan Duncan, SD 14
- State Republican Executive Committee Member, Fernando Trevino, SD 14
- State Republican Executive Committee Member Thomas Warren, SD 31
- Former State Republican Executive Committee Member, SD 1 and current Gregg County Republican Precinct Chair, Rhonda Anderson
- Former State Republican Executive Committee Member, Summer Wise, SD 24
- Former State Republican Executive Committee Member, Terry Harper, SD 21
- Harrison County Republican Party Chair, Lee Lester
- Galveston County Republican Party Chair, Dr. Pat McGinnis
- Bandera County Republican Party Chair, Conrad Striegl
- Calhoun County Republican Party Chair, Russell Cain
- Former Maverick County Republican Party Chair, Alfredo Arellano
- Bexar County GOP Precinct Chair, Monica Rojas

LAW ENFORCEMENT:

- C.L.E.A.T. (Combined Law Enforcement Association of Texas)
- Houston Police Officers Union
- Galveston Municipal Police Association
- Nassau Bay Police Chief Tim Cromie
- Galveston County Constable Pct. 2, Paul Edinburgh
- Former Galveston County Constable, Pct. 2, Jimmy Fullen
- Galveston County Constable, Pct. 4, Justin West



KEEP REPUBLICAN

Judge

MICHELLE
Slaughter

for Texas Court of Criminal Appeals • Place 8

Conservative. Effective. Experienced.

“The Court of Criminal Appeals is the supreme court for criminal cases in Texas. This is why it is critical to keep Constitutional Conservatives and Originalists like me on this Court. I have proven myself to be hardworking and tough but fair. Given my track record, I hope that I have earned your support and vote for another term. Let’s continue working together to safeguard the future of Texas.”

- Judge Michelle Slaughter

In 2018, voters across Texas recognized Judge Slaughter’s hard work, accomplishments, proven conservative values, and “tough-but-fair” reputation and overwhelmingly elected her to the Texas Court of Criminal Appeals with more than 4.7 million votes. In the general election, Judge Slaughter received more votes than any other November 2018 Republican contested candidate in the nation. Since that time, Judge Slaughter has proven that voters made the right decision.



Judge Slaughter has served as a Judge on the Texas Court of Criminal Appeals since Jan. 2019. Before being elected statewide to her current

position, Judge Slaughter served six years as a trial court judge in Galveston County's 405th District Court.

In the 405th District Court, Judge Slaughter:

- Transformed the 405th from the least efficient, least effective court with the biggest backlog into the most efficient and effective district court with the lowest backlog in Galveston County;
- Resolved thousands of felony criminal cases;
- Dispensed justice in every case whether that was deferred adjudication for first-time, non-violent offenders capable to rehabilitation or assessing life in prison for violent or repeat offenders and child predators;
- Presided over more jury trials than any other Galveston County district judge during the six years she served there;
- Saved tax payers thousands of dollars every year through efficiency and by implementing cost-saving measures.

In the Texas Court of Criminal Appeals, Judge Slaughter has:

- Strictly adhered to the original language and intent of the U.S. and Texas Constitutions;
- Interpreted and applied our Texas laws, the way our Legislature intended;
- Promoted efficiency and effectiveness in the Court;
- Authored more than 80 published opinions;
- Participated in deciding more than 18,000 criminal law matters;
- Ensured that justice is served in the great State of Texas.

Judge Slaughter's Constitutional Conservative Values:

- Lifetime NRA member and strong advocate for our 2nd Amendment rights;
- Board member of Adria Women's Health, a Galveston County pregnancy center that actively works to protect the lives and rights of children and unborn babies;
- Advocates for transparency at all government levels, including the courts;
- Promotes preservation of our history and learning from it;
- Believes in personal responsibility and accountability;
- Puts her faith in God.

About Judge Slaughter:

Judge Slaughter is a native Texan, born in Fort Worth. She is happily married to her best friend and college sweetheart, Ed Walsh, a NASA engineer. Together they have two beautiful daughters, Hazel and Laila, two German Shepherd Dogs, Pixie and Luna, and a fat, fluffy black and white rescue cat, Sal. The family lives in Galveston County and attends church at Citymark Church in League City.

Education and Honors

- J.D., cum laude (top 15%), University of Houston Law Center
- Mediation Certification, A.A. White Dispute Resolution Center
- B.A., magna cum laude, University of Houston
- Baylor Law School Adjunct Professor
- "Rising Star," Super Lawyers edition of Texas Monthly Magazine
- Rotary Club Paul Harris Fellow
- Lion's Club Century Club Key Holder

Judge Slaughter believes in being very active in serving her community on and off the bench.

For more information, visit Judge Michelle Slaughter on Facebook or

JudgeMichelleSlaughter.com 

pd pol ad Michelle Slaughter Campaign, Holly Rumbaugh, Treasurer, P.O. Box 54, League City, TX 77574, in voluntary compliance with the Fair Campaign Practices Act

Judge Michelle Slaughter's Statement on *State v. Stephens*:

I am law and order judge. I am just as concerned about voter fraud as you are. Voter fraud should be prosecuted to the fullest extent of the law. In fact, my job depends on reliable elections.

Then why would I join the opinion finding unconstitutional Tex. Elec. Code § 273.021: "The attorney general may prosecute a criminal offense prescribed by the election laws of this state?"

Because I am an originalist; I am not an activist judge. It is my job to strictly interpret the 1876 Texas Constitution the way the ratifying voters in 1876 understood it and intended it to be applied.

The following provides a more readily digestible summary of originalist opinion in *State v. Stephens*.

What does our Texas Constitution Say?

The Texas Constitution has always had an express separation of powers. That means that one branch of government cannot interfere with another branch's exercise of its expressly assigned constitutional duties unless the Constitution itself allows for it.

The [Government's] powers . . . shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: those which are Legislative to one, those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted. Tex. Const. Art. II, Sec. 1

The Attorney General is assigned to the Executive Branch. District Attorneys are assigned to the Judicial Branch. Therefore, under separation of powers the Attorney General cannot conduct the duty that the Constitution assigns to the District Attorneys.

District Attorneys, as judicial branch officers, have the express constitutional duty to represent the State of Texas in ALL cases in the TRIAL COURTS.

Since 1836, District Attorneys have ALWAYS had the duty to represent the State of Texas in ALL criminal prosecutions. That duty has never changed.

The Attorney General, as an executive branch officer, has the express constitutional duty to represent the State of Texas in the TEXAS SUPREME COURT. He also has other enumerated duties that all involve CIVIL LAW matters.

District Attorney's Express Constitutional Duty	Attorney General's Express Constitutional Duties
<p>Art. V, Sec. 21: Express & Exclusive Duty</p>	<p>Art. VI, Sec. 22: More restricted than in previous constitutions & specifically enumerated</p>
<p>“shall represent the State in all cases in the District and inferior courts”</p> <p>This means the DAs are responsible for representing the State in ALL criminal prosecutions.</p> <p>This has been duty of Texas DAs since 1836 & has NEVER changed</p>	<ul style="list-style-type: none"> • “shall represent the State in . . . the [TX] Supreme Court” • “shall especially inquire into the charter rights of all private corporations” • “take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law” • shall, “seek a judicial forfeiture of such charters” • “give legal advice in writing to the Governor and other executive officers, when requested by them” • “perform such other duties as may be required by law” <p>None of these duties involve criminal law.</p>

What have the courts said?

For OVER 160 YEARS, the Texas Supreme Court and the Court of Criminal Appeals have ALWAYS held that the District Attorneys (and County Attorneys) have the express and exclusive constitutional duty to prosecute ALL criminal cases.

- **1859:** It’s “the duty of the [DA] to . . . ‘conduct all prosecutions for crimes and offenses.’” *State v. Southern Pacific R.R. Co.*, 24 Tex. 80, 117 (ultimately holding that it is the DA’s and not the AG’s duty to represent the State in the trial court).

- **1868:** The DA is “the officer appointed by the state authorities to conduct its causes [and is therefore] the one, and the only one, who can assume the power to dismiss a criminal cause.” *State v. McClane*, 31 Tex. 260, 261.
- **1876:** In a criminal prosecution, the State “speaks and acts through its appropriate [DA] . . . This power is embraced in the authority expressly conferred on him ‘to conduct all prosecutions for crimes and offenses cognizable in [the trial courts].” *Davis v. State*, 44 Tex. 523, 524.
- **1882:** “[U]nder all the constitutions of this state, none of which defined the duties of the attorney general or of district or county attorneys so specifically as does the present [Constitution], it will be seen that it was always contemplated that the district attorneys should represent the state in all cases in the district and inferior courts, except certain actions which were [expressly] designated” by the Constitution itself. *State v. Moore*, 57 Tex. 307 (ultimately holding that it was the right and duty of the county attorney to represent the State in cases at issue in the trial courts to the exclusion of the AG).
- **1905:** “The main purpose of section 21 of article 5 being manifestly to make it the duty of the county attorney or district attorney, as the case might be, to prosecute the pleas of the state, it may be gravely doubted whether it was within the power of the Legislature to deprive them of that function, by conferring it in whole or in part upon another officer.” *Brady v. Brooks*, 89 S.W. 1052 (Tex.)
- **1918:** The Constitution “lodges with the county [and district] attorneys the duty of representing the State in all cases in the district and inferior courts,” and gives the “duty as to suits and pleas in the Supreme Court . . . to the Attorney General.” *Maud v. Terrell*, 200 S.W. 375, 376 (Tex.) (concluding that “the powers thus conferred by the Constitution upon these officials are exclusive.”).
- **1955:** Recognizing that the Constitution gives to county attorneys and DAs the duty to represent the State in the trial courts. *Garcia v. Laughlin*, 285 S.W.2d 191, 195 (Tex.).
- **1957:** “It has always been the principal duty of the district and county attorneys to investigate and prosecute the violation of all criminal laws, including the election laws, and these duties cannot be taken away from them by the Legislature and given to others. If [] the Election Code should be construed as giving such powers exclusively to the Attorney General, then it would run afoul of [the Texas Constitution.]” *Shepperd v. Alaniz*, 303 S.W.2d 846 (Tex. Civ. App.—San Antonio 1957, no writ). **Note:** this is a court of appeals opinion but dealt directly with the Election Code provision at issue in *State v. Stephens*.
- **1987:** “[U]nder the separation of powers doctrine, the Legislature may not remove or abridge a district or county attorney’s exclusive prosecutorial function, unless authorized by an express constitutional provision.” *Meshell v. State*, 739 S.W.2d 246, 254-55 (Tex. Crim. App.).

- **1994:** “Under our state law, only county and district attorneys may represent the state in criminal prosecutions . . . The Attorney General, on the other hand, has no criminal prosecution authority. Rather, he is generally limited to representing the State in civil litigation.” *State ex rel. Hill v. Pirtle*, 887 S.W.2d 921, 930 (Tex. Crim App.).
- **2002:** “The office of the attorney general of Texas has never had authority to initiate a criminal prosecution.” *Saldano v. State*, 70 S.W.3d 873, 878 (Tex. Crim. App.).
- **2013:** “[Th]e attorney general is, with a few exceptions in Texas trial courts, not authorized to represent the State in criminal cases.” *Ex parte Lo*, 424 S.W.3d 10, 30 n.2 (Tex. Crim. App.) (citing to various statutory provisions which limit the AG’s role in criminal cases only upon request by the DA for assistance).
- **2020:** “[T]he State correctly observes that the Attorney General cannot bring . . . a criminal prosecution without the participation of a district attorney.” *In re Abbott*, 601 S.W.3d 802, 812 (Tex.).

What has the Legislature said?

The Legislature has enacted numerous statutes codifying the exclusive authority of the District and County Attorneys to prosecute criminal law violations.

- “Each district attorney shall represent the State in **all** criminal cases in the district courts of his district and in appeals therefrom.” Tex. Code Crim Pro. Art. 2.01.
- For over 100 counties, the Texas Legislature has enacted statutes providing that the district and county attorneys have the right to control **all** criminal prosecutions in the trial courts of their counties. See Tex. Govt. Code Chapter 44.
- Under Govt. Code Chapter 43, there are 35 other statutes, many covering multiple counties, that provide that the DA represents the State in **all** criminal matters.
- Under Govt. Code Chapter 45, there are several statutes covering various counties that specify that the county attorney represents the State in **all** matters in the district court (which would include all criminal prosecutions).
- For a full list, please see Appendix A starting on Page 60 of my *State v. Stephens* Dissenting Opinion on Rehearing. You can access the opinion by clicking [HERE](#).

What has the Attorney General said?

For over 40 years, the Attorney General’s office has said that District and County Attorneys have the exclusive duty to prosecute criminal law violations and have discretion in what they prosecute.

- 1981: “Texas law places the responsibility for representing the state in prosecutions of criminal cases in the district and inferior courts in the hands of county and district

attorneys.” (citing Tex. Const. Art. V Sec. 21). “Our courts have held that officers who are responsible for representing the state in court may . . . be assisted . . . providing that such assistance is rendered in a subordinate capacity and the officer remains in control of the litigation.” AG Op. No. MW-340 (AG Mark White)

- 1987: “[I]t has been held that: ‘It has always been the principal duty of the district and county attorneys to investigate and prosecute the violation of all criminal laws, including the election laws, and these duties cannot be taken away from them by the Legislature and given to others.’” AG Op. JM-661 (AG Jim Mattox)
- 2002: The Department of Agriculture has no “authority, express or implicit, to prosecute a criminal action or to investigate an alleged violation” **because “the Texas Constitution places the authority to prosecute with county, district, and criminal district attorneys.”** The opinion also noted that a “county or criminal district attorney may request the attorney general’s assistance in prosecution.” AG Op. JC-0539 (AG John Cornyn)
- 2010 & 2012: “A district attorney’s prosecutorial determination regarding the initiation of criminal proceedings is within the prosecutor’s substantial discretion.” AG Op. GA-0765, GA-0967 (AG Greg Abbott)

Does the Constitution’s catchall provision of “perform such other duties as may be required by law” allow the Legislature to take part of the DA’s constitutional duty away and give it to the AG?

NO. “Perform such other duties as may be required by law” does not allow for the Legislature to violate the Express Separation of Powers provision to take power from the DAs express Constitutional duty that they “*shall* represent the State in *all* cases in the” trial courts.

The meaning of this catchall phrase was established before the ratification of the 1876 Constitution.

The 1876 Constitution ratifying voters knew this because it had already been decided by the Texas Supreme Court in 1874. And back then, Supreme Court opinions were published in the newspapers and most literate people actually read the paper.

In 1874, Texas Supreme Court Chief Justice Oran Milo Roberts said that this catchall phrase of “perform such other duties. . .” means that Legislature can only assign duties that:

(1) are of the same character of the officer’s department (i.e. must be an executive department duty);

(2) properly pertain to the business of that particular office (i.e. must be part of the AG’s business); AND

(3) cannot interfere with a duty expressly assigned by the Constitution to an officer in a different department (i.e. cannot interfere with the DA’s express constitutional duty that it *shall* represent the State in *all* cases in the trial courts).

Kuechler v. Wright, 40 Tex. 600, 657-59 (1874).

The meaning of this catchall phrase did not change after the ratification of the 1876 Constitution.

Then in 1882, only six years after the 1876 Constitution was ratified, The Texas Supreme Court again reiterated that the catchall phrase (“perform such other duties as may be required by law”) does not allow the Legislature to assign to the AG the ability to unilaterally prosecute criminal cases.

Justice John William Slayton, later Chief Justice, who served in the 1875 Constitutional Convention; participated in debates & helped draft 1876 Constitution stated:

- This catchall phrase does not “confer . . . power upon the legislature to give to the attorney general power to perform those acts which the constitution itself conferred upon [district and] county attorneys[.]”
- Instead, phrase was intended only “to give the legislature power to confer upon the attorney general such powers as might be deemed necessary in regard to matters which had not been expressly conferred by the constitution upon some other officer.”
- It “must be presumed that the constitution, in selecting the depositories of a given power . . . intended that the depository should exercise an **exclusive** power, with which the legislature could not interfere by appointing some other officer to the exercise of that power.”
- “Any other construction would lead to the doctrine that the constitution had empowered the legislature to alter the constitution itself, without an express grant of such power.” “[T]he power must be given in express terms, and it cannot be implied.”

State v. Moore, 57 Tex. 307 (1882).

Therefore, this catchall phrase does not save Tex. Elec. Code § 273.021.

Conclusion:

The Texas Constitution gives the Attorney General authority to represent the State in the trial courts only for matters involving or related to his express and enumerated constitutional duties. Those currently involve ONLY civil matters. Specifically:

- (1) “the charter rights of corporations,”
- (2) the “prevent[ion of] any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage, not authorized by law,” and
- (3) “judicial forfeiture of such [corporate] charters.”

None of these involve prosecuting criminal laws.

Only the District and County Attorneys have the express constitutional duty to represent the State of Texas in all criminal prosecutions, including criminally prosecuting Election Code violations.

If the voters want to give the Attorney General the authority to criminally prosecute Election Code violations, they will have to vote for a constitutional amendment.