

Three court of criminal appeal judges up for reelection targeted by Ken Paxton's political revenge machine

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BY [PATRICK SVITEK](#) DEC. 13, 2023 3 PM CENTRAL

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Attorney General [Ken Paxton](#) is turning up the heat in the Republican primary for Texas' highest criminal court, where three judges are up for reelection.

Paxton has long made clear he would be going after the Republican judges over their 2021 ruling that struck down the attorney general's ability to unilaterally prosecute voter fraud, saying that his office must get permission from local county prosecutors to take on such cases. The three judges up for reelection next year — [Sharon Keller](#), Barbara Hervey and [Michelle Slaughter](#) — were all in the 8-1 majority.

Now, Paxton's plan to unseat the judges is coming into focus. Primary challengers to all three judges filed Saturday, two days before the deadline. And in an announcement first shared with The Texas Tribune, Paxton's allies have started a new political action committee, Texans for Responsible Judges, that will work to defeat the incumbents.

"Despite Texas' reputation for conservative leadership, the Court of Criminal Appeals remains plagued by judges who've abandoned their conservative roots," the PAC's executive director, Sam Vrana, said in a statement. "Their decision to strip the Texas Attorney General of the power to prosecute voter fraud has left Texas undefended against liberal district attorneys."

The attack on the judges dovetails with Paxton's more recent commitment for political revenge targeting Texas House members who voted to impeach him in May. Paxton was acquitted of abuse-of-office charges by the Senate after a trial in September.

Keller, the presiding judge who has served on the court since her first election in 1994, is being challenged by David Schenk, a former state appeals court judge. Hervey's challenger is Gina Parker, a Waco attorney. And Slaughter's opponent is Lee Finley, a lawyer from Paxton's native Collin County.

Both Schenk and Parker have run competitive races for statewide judicial office before. Schenk ran against Texas Supreme Court Justice Evan Young in the 2022 primary and got 45% of the vote. Parker challenged another Court of Criminal Appeals judge, Bert Richardson, in the 2020 primary and received 48%.

The judges serve six-year staggered terms, and their races usually do not draw much attention outside the legal community. Two of the three judges who were up for reelection last year ran uncontested in the primary, and the third defeated a primary challenger by a comfortable margin. The court has not had a Democrat on the bench since 2013, when Lawrence Meyers, who was elected as a Republican, [switched parties](#).

Two of the judges on the ballot next year — Keller and Hervey — are currently 70 years old and would reach the mandatory retirement age of 75 during their next terms if reelected. The governor would get to appoint

their replacements at that point.

The 2021 ruling came just days after the filing deadline for the 2022 primary, so Paxton was unable to recruit challengers back then.

In the 2021 opinion, the court said the law had violated the separation of powers in the Texas Constitution, letting the executive branch intrude on the judicial branch by attempting to prosecute election cases without being asked by a local prosecutor.

Paxton attacked the ruling, saying the court handed “Soros-funded district attorneys” the exclusive power to determine whether to prosecute voter fraud. And he called for the electoral defeat of all eight judges who supported the ruling.

“We got to make sure the next round that we pay attention to those people and get rid of everybody but Kevin Yeary,” Paxton said while campaigning for reelection last year, referring to the lone dissenting judge in the opinion.

The case stems from when Jefferson County’s district attorney declined to prosecute Sheriff Zena Stephens over campaign-finance allegations related to the 2016 election. Paxton’s office stepped in and obtained an indictment from a grand jury in neighboring Chambers County.

Paxton has not endorsed any of the 2024 primary challengers yet, but the PAC has ties to him. Vrana, the executive director, works for Fundraising Solutions, LLC, a firm that counts Paxton among its clients.

A spokesperson for the group said it has “raised six figures already” but declined to comment further on fundraising details. Its next campaign finance report is due to the Texas Ethics Commission by Jan. 16.

Asked for comment on the efforts to unseat the judges, Slaughter touted her record.

“As a constitutional conservative and originalist judge with over a decade of judicial experience, I am confident that the people of Texas will reelect me to the Court of Criminal Appeals,” Slaughter said in an email.

Harvey also responded with a statement pitching herself for reelection, saying has been on the court for 23 years and has “consistently followed the Constitution.”

“I have also run the Judicial Education Grant for more than 20 years and am the co- chair of the Judicial Commission on Mental Health,” Hervey said. “I hope my dedication to the citizens of Texas speaks for itself.

Keller provided a brief response when asked about Paxton’s focus on the 2021 ruling.

“We just followed the Constitution,” she wrote in an email.

The primaries have an additional layer of intrigue because two other statewide officials — Gov. Greg Abbott and Lt. Gov. Dan Patrick — had expressed opposition to the 2021 ruling. The Texans for Responsible Judges website prominently features quotes from Abbott and Patrick urging the court to reconsider its decision at the time. Patrick called the decision “completely unacceptable.”

The court upheld its ruling in September 2022, declining to rehear the case. Two judges dissented, including Yeary and Slaughter. Slaughter said she stood by the original ruling but believed there was a way to interpret the law in question in a “very narrow manner to find it constitutional in some circumstances.”

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