

A top Texas judge, running for state Supreme Court, campaigns against a pay-for-play culture

Watchdog Dave Lieber asks: Is this why Gov. Greg Abbott refuses to support his former lawyer?



5th District Court of Appeals Justice David Schenck, a Republican candidate for Texas Supreme Court, stands outside Dallas' Old Red Courthouse. He is challenging the foundation of the Texas court system by pushing for stronger rules on campaign donations to judges.

By [Dave Lieber](#)
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Most Texans, including me, don't usually pay close attention to judicial races. But there's one race coming up that's worth watching because it shines light on the sacred concept of judicial impartiality.

Is justice blind at the Texas Supreme Court, as it's supposed to be? Or are some justices tainted by the legal practice of accepting campaign contributions from lawyers and their representatives who argue cases before them?

That's the basic question being asked by a state Supreme Court candidate with a lot of credibility.

David Schenck, a Republican, is a judge on the Dallas-based 5th District Court of Appeals. He's also chair of the Texas State Commission on Judicial Conduct, the chief disciplinary panel for judges accused of wrongdoing.

Before becoming a judge seven years ago, he was chief legal counsel to Gov. Greg Abbott when Abbott was state attorney general.

That's quite a pedigree for any judicial candidate. But it wasn't enough to get Abbott's support when a Texas Supreme Court vacancy opened last year. Abbott appointed someone else. His pick, Evan Young, had never served as a judge.

Young, who has sat on the state's highest court since November, gets to run against Schenck in the March 1 Republican primary as an unelected, unconfirmed, appointed incumbent. Abbott has announced his support for Young.

Why not Schenck?

Why wasn't Schenck's pedigree enough to get selected? He is running a campaign that is rare for a judicial candidate. He is pointing out that Texas law allows law firms to give donations to judges who hear their cases.

Schenck points to studies that show lawyers from top firms who donate to Supreme Court justices are more likely to get their cases heard and win than if they did not donate. That's legal, but other states have enacted rules to prevent the appearance of conflicts. Texas has not.

He told me, "I'm not saying anyone is violating the rules here. The problem is the rules and the inaction by those who set them. With all our courts, and especially our state Supreme Court, even the appearance that outcomes are correlated to contributions is intolerable."

Courts are supposed to be impartial and nonpartisan, and that gives them their credibility. Judges are supposed to decide on reason and facts, not favors and contributions.

"We have great courts and great people on them," he said. "But the appearance problem has been with us for 20 years. The state has the power and the obligation to eliminate this appearance. Other states have acted."

Young is unavailable

Schenck explained his campaign premise in several interviews with The Watchdog. His primary opponent declined to speak to me.

Instead, Young's campaign spokesperson released a statement: "As a justice on the Texas Supreme Court, I can make only one promise: to follow the law in every case that comes before me. I have a great deal of respect for my colleagues, which has only grown since I have joined the bench because I've personally seen how much time, effort and research goes into each and every case, whether it involves business, family law, or anything else.

He ended, "You can look at the record, read the opinions and see that justices are basing decisions on the law and the arguments before them."

Although he's never served as a judge, Evan Young was appointed by Gov. Greg Abbott to a vacant seat on the Texas Supreme Court. Abbott refused to appoint and now endorse his former chief legal counsel David Schenck.

If I could have, I would have asked Young what his stand is on pushing for a new state law to change the Texas Constitution and limit campaign donations to judges.

I would have put the same question to Abbott. But from his campaign I received only a statement of endorsement for Young: “Justice Evan Young has a fine legal mind with a record of public service. When I appointed him to the Supreme Court of Texas last year, I knew he would be a fair jurist who strictly interpreted our Constitution. I hope all Texans join me in sending Justice Young back to Austin for a full term on our state’s Supreme Court.”

Among Young’s qualifications is that he served as a clerk to former U.S. Supreme Court Justice Antonin Scalia. Another qualification: He previously worked at the Baker Botts law firm. Schenck says that firm, along with another, Vinson & Elkins, are among the top players in what critics call a “pay-to-play” culture.

Representatives from both firms declined to comment for this story.

Schenck’s donor rules

Young’s campaign sent me a list of Schenck’s record of accepting contributions from law firms. They date back to 2015 and 2016 when he was running for the appeals court.

Schenck says for this campaign, he is not accepting any contributions from top firms or their political action committees that have been cited in several studies about the Texas pay-to-play judicial culture. If any of his campaign aides solicit money from those firms, he said, he’ll fire them.

Campaign donation records show a Vinson & Elkins PAC gave Young’s campaign \$20,000. A Baker Botts PAC gave Young’s campaign \$15,000.

Lawyers as well as judges defending the practice usually explain that judicial opinions are not affected by campaign contributions. But a couple of studies and even some court rulings claim otherwise.

Earlier evidence that pay-to-play has been a longstanding problem comes in the form of a 21-year-old study from Texans for Public Justice. The study found that the more money a state Supreme Court justice received, the more likely she or he was to decide to hear the donor’s case and rule in their favor.

But there is a more recent study that bolsters this argument.

Studied 10,000 cases

After losing a Supreme Court case against an oil company, Texas millionaire Salem Abraham told me, he assigned two mathematicians to examine 10,000 Supreme Court cases looking for patterns. In the study, released two years ago, Abraham shared recent numbers, which you can find on his website, [Texans for Cash Free Courts](#).

Abraham told me he first got a clue that something was amiss when an oil company lawyer he was battling in court confidently told him the oil company would likely lose in several courts before winning in the Supreme Court. Abraham wondered how he’d know that.

His study found that a typical billion-dollar company represented by donating lawyers faced a 50% chance of winning in the Texas Supreme Court.

“Those are odds any gambler would take,” he says.

But if you happened to be a Texas citizen not represented by the top donating firms, your chances of winning drop to 9%.

After he lost a case in the Texas Supreme Court, Salem Abraham hired researchers to scour records of 10,000 Texas Supreme Court cases. He says he found favored treatment for big donors with cases before the state high court.

How to fix this

Changes in Texas would come through the Legislature and then be approved by voters in a state constitutional election.

Among Schenck’s cleanup proposals:

— Prohibit judges from hearing cases if they have accepted “excessive” donations from one of the parties.

— Require lawyers and parties represented by them to disclose any amount given to the judge.

Ironically, Abraham says he supports Schenck’s reform campaign, but he won’t give him any money because he doesn’t want to donate to judges.

Schenck says, “We should fix this. It’s way past time. Appearances count, especially for judges.”

Note: The winner of the GOP primary race faces Democrat Julia Maldonado in the general election for the seat on the all-Republican Texas Supreme Court. She is a district court judge in Harris County. Records show she accepts donations from lawyers.

She told me, “Unfortunately, we have to have campaign contributions to run. Otherwise, we would not be able to run. But you have to be very ethical and not let it affect your rulings.”