

Grumet: No bill? Not the end for election officials targeted by Texas AG



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If you watch too many TV legal dramas (like I do), you might think the case is closed once a grand jury decides not to indict somebody.

Not so.

Nothing in the law prevents a prosecutor from bringing the same case — with or without new evidence — to new grand juries, hoping one of them might bite.

The 2005 indictment of Tom DeLay is a famous example of this: One Travis County grand jury had declined to indict the former House majority leader before a different grand jury charged DeLay with money laundering. (DeLay was convicted at trial, then acquitted on appeal.)

I mention all of this because the lack of legal closure remains a source of concern for the two election officials I've written about in recent months.

Former Travis County Clerk Dana DeBeauvoir and Rob Icsezen, the former Democratic presiding judge of a Harris County elections board, separately told me about Attorney General Ken Paxton's failed efforts to indict them. In both cases, grand juries declined to charge them with obstructing a poll watcher during the 2020 election.

I am grateful both officials stepped forward to show how our state's deeply partisan attorney general is using weak allegations and his powerful office to intimidate certain election officials. It took courage for DeBeauvoir and Icsezen to speak out. They are poking the bear.

"They can convene a grand jury as many times as they want," Icsezen, who is also an attorney, told me. The two-year statute of limitations doesn't run out until October for him, November for DeBeauvoir.

Indeed, in Icsezen's case, Paxton's office has indicated that it's not over.

Last year, Icsezen submitted a public records request to the Secretary of State's Elections Division for emails and other records about his incident. Icsezen had turned away a Harris County poll watcher because the election code at the time did not say observers were allowed at the Signature Verification Committee, a bipartisan panel vetting mail-in ballots. Icsezen was curious how his case factored into the drafting of Texas' new elections law, which guarantees that access to poll watchers.

Icsezen filed his request in early August, about five weeks *after* a grand jury in Montgomery County declined to indict him.

When the Elections Division responded, Icsezen said, "they claimed an exemption, which was that there's an ongoing criminal investigation that the documents that I requested are part of, and so they can't give it to me."

An ongoing criminal investigation.

Then the attorney general's office got involved — not only as the entity that tried to prosecute Icsezen, but as the office that decides whether any government agency can withhold certain records requested by the public.

The attorney general's office ruled in September that documents about Icsezen's case should not be released.

“The (Office of Attorney General's) Election Fraud Section is currently conducting a criminal investigation into this complaint,” the office's Sept. 23 letter said. “Release of the information at issue at this time would interfere with the pending case.”

By this point, nearly three months had passed since the grand jury had declined to indict Icsezen.

“What that told me is that they're at least technically keeping it open,” he said, maintaining the possibility they might try again to charge him.

Paxton's office did not respond to my requests for comment.

Perhaps you're thinking: What about double jeopardy?

Speaking about the law in general, and no one's case in particular, retired Travis County Attorney David Escamilla told me that typically “double jeopardy does not attach unless someone, after trial, is found not guilty.”

In other words, you're in jeopardy for the first time during your trial, not during a grand jury proceeding on whether to charge you. So in theory, new grand juries can consider the same case that previous grand juries declined to pursue.

The Texas Court of Criminal Appeals has provided an important reprieve for Paxton's targets, ruling in December that the attorney general's office lacks the legal authority to prosecute violations of election law on its own. Such cases, the court said, are the purview of local district attorneys (who can still ask for the attorney general's assistance).

But as American-Statesman readers know, Paxton has waged an unseemly pressure campaign, summoning the listeners of right-wing podcasts to flood the all-Republican court with calls and letters urging the justices to reverse their ruling. In the meantime, at least one lawmaker has floated the idea of changing the law in the next legislative session to allow district attorneys to chase allegations of election fraud in *neighboring* counties, expanding the possibilities for politically motivated prosecutions.

Speaking out in the face of that, as DeBeauvoir and Icsezen have done, takes fortitude. It also takes hope — hope that enough lawmakers or voters will find these cases unacceptable and do something about it.

I hope they're right.

Grumet is the Statesman's Metro columnist. Her column, ATX in Context, contains her opinions. Share yours via email at bgrumet@statesman.com or via Twitter at [@bgrumet](https://twitter.com/bgrumet).