# Dems' Crusade To Disbar Texas AG Shows How Far They'll Go To Win Elections

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Law

## Democrats' Unconstitutional Crusade To Disbar Texas AG Ken Paxton Shows How Far They'll Go To Win Elections

By: Margot Cleveland
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Democrats are working overtime to make it so painful for attorneys to represent Republicans in election cases that the next candidate will be unable to find lawyers willing to battle on their behalf.

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A state court judge refused to halt the Texas Bar's assault on Attorney General Ken Paxton for his decision to challenge several swing states' execution of the 2020 election in *Texas v. Pennsylvania*, a little-noticed perfunctory order published in late January revealed.

While the partisan targeting of Paxton represents but one of the many attempts by Democrats to weaponize state bars to dissuade attorneys from representing Republicans, court documents obtained by The Federalist reveal that in the case of the Texas attorney general, the bar went nuclear.

In March of 2022, as Paxton prepared to face Land Commissioner George P. Bush in the May 2022 GOP runoff for attorney general, news leaked that the State Bar of Texas intended to advance an ethics complaint against the Republican attorney general. Then, soon after Paxton prevailed in the primary, on May 25, 2022, the Commission for Lawyer Discipline, which is a standing committee of the State Bar of Texas, filed a disciplinary complaint against Paxton in the Collin County, Texas district court.

While the Texas Bar's disciplinary complaint represents an outrageous and unconstitutional attack on the attorney general, as will be detailed shortly, the backstory is nearly as troubling — both the machinations underlying the charge against Paxton and, more broadly, the barrage of politicized bar complaints pursued against Republican lawyers who provided legal advice or litigated various issues in the aftermath of the November 2020 general election.

## Bars Gone Rogue

The D.C. Bar's investigation into former Trump administration Assistant Attorney General Jeff Clark based on a complaint from Sen. Dick Durbin, D-Ill., exemplifies the partisan co-opting of the various professional responsibility boards charged with overseeing attorneys' conduct.

In Clark's case, the ethics underline charge was both "demonstrably false and premised on the fraudulent narratives pushed by the partisan politicians running the Jan. 6 show trial and their partners in the press." Yet Clark has been forced to fight for his livelihood because the D.C. Bar allowed Democrats to convert a disagreement over Clark's legal opinion into a question of professional ethics. Clark has attempted to put a halt to the proceedings by moving to remove the case to the federal district court, but Clark's motion has been stalled there for several months.

More recently, the California State Bar joined in the political witch hunt when it filed a 35-page, 11-count disciplinary complaint against attorney and former law professor John Eastman. The California State Bar's complaint alleged Eastman's engagement "in a course of conduct to plan, promote, and assist then-President Trump in executing a strategy, unsupported by facts or law, to overturn the legitimate results of the 2020 presidential election by obstructing the count of electoral votes of certain states." As I wrote at the time:

> The 11 charges against Eastman prove troubling throughout, with the State Bar of California proposing to discipline Eastman for presenting legal analyses to his client, Trump, and for speaking publicly on his views about the election, with the bar even attempting to hold Eastman responsible for any violence that occurred on Jan. 6. The disciplinary complaint also misrepresents numerous arguments Eastman and others made concerning the 2020 election, falsely equating claims of violations of election law with fraud.

Eastman's long and costly battle against the California Bar is only beginning. And that is precisely the point of involving state bars: to make it so painful for attorneys to represent Republicans in election cases that the next presidential candidate — or senatorial or congressional candidate — will be unable to find lawyers willing to battle on their behalf.

## A Broader Campaign

These efforts are well-coordinated and well-funded, with the group 65 Project launching in March of 2022 ethics complaints against 10 lawyers who worked on election lawsuits following the 2020 presidential election. According to Influence Watch, "65 Project was 'devised' by Democratic consultant and former Clinton administration official Melissa Moss," and is managed by attorney Michael Teter, a former litigation associate with the DNC-connected law firm Perkins Coie. David Brock, of Media Matters fame, advises the group, and the advisory board includes, among others, the former U.S. Senate Majority Leader Tom Daschle, D-S.D.

The 65 Project reportedly "seeks to disbar 111 lawyers from 26 states in total," but is "not targeting any Democratic-aligned attorneys who have challenged election laws or results in the past." Rather, the project's sole aim is Republican lawyers, such as Eastman, with the group pushing for Eastman's disbarment from the Supreme Court Bar.

It is not merely private attorneys the Democrat project targets, however. In September, the 65 Project filed complaints against the attorneys general of 15 states, including Alabama, Arkansas, Florida, Indiana, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, Oklahoma, South Carolina, Tennessee, Utah, and West Virginia, advocating the bars in those states take disciplinary action against the attorneys general for conduct related to the 2020 election.

Texas AG Paxton didn't make the list, though, because local Democrats had already taken up the charge. And here, the backstory reveals the troubling politicization of state bars is not limited to Democratic-connected groups like the 65 Project or to the bars in leftist locales such as D.C. and California.

## Anti-Paxton Crusade

In Paxton's case, the state bar received at least 85 complaints about Paxton related to *Texas v. Pennsylvania.* The Office of Chief Disciplinary Counsel reviewed the complaints and dismissed them, finding "the information alleged did not demonstrate Professional Misconduct." But then four attorneys appealed the dismissal, including one who, according to court filings, was the president of the Galveston Island Democrats and a friend of a Democrat seeking to run against Paxton for attorney general in the then-upcoming 2022 election.

An appeals body within the Texas State Board reversed the dismissal of the complaints, and later a fifth complaint was added to the charges against Paxton. Paxton was then forced to respond to the allegations, which itself proved difficult because they consisted of vague rhetoric, such as claims that Paxton "violated his duty and obligations as a Texas attorney" and "filed an utterly frivolous lawsuit," bringing "shame and disrespect to the State of Texas and the legal community of Texas."

Nonetheless, Paxton filed a detailed response, expanded on the theories Texas asserted in the *Texas v. Pennsylvania* case, and provided the bar with an extensive discussion of the factual and legal basis underpinning the court filings. The Texas Bar then handed the complaints over to what Paxton described as "an investigatory panel comprised of six unelected lawyers and activists from Travis County."

As Paxton's later court filings would stress, "as a group, the panel donated thousands of dollars to federal, state, and local candidates and causes opposed to Attorney General Paxton." "What's more," Paxton argued in opposing the bar's case against him, "members of the panel voted consistently in Democratic primaries for over a decade. Several have maintained highly partisan social media accounts hostile to Paxton."

Unsurprisingly, the partisan panel found "just cause" existed to believe that Paxton had violated a catch-all provision of the Rules of Professional Conduct, namely the canon prohibiting attorneys from engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation."

But in making this finding and filing a disciplinary petition in the state court, the Texas Bar wholly ignored the fundamental flaw in its crusade against Paxton — and one of constitutional dimension: The state bar, as a bureaucratic arm of the judicial branch, violates the Texas Constitution's guarantee of separation of powers by challenging Paxton's execution of his duties as attorney general.

## Separation of Powers

Paxton concisely exposed this reality in his briefing, first quoting Texas precedent that teaches: "The Texas Separation of Powers provision is violated … when one branch unduly interferes with another branch so that the other branch cannot effectively exercise its constitutionally assigned powers." "The Commission's suit against the Attorney General violates the Separation-of-Powers doctrine," Paxton continued, because the "decision to file *Texas v. Pennsylvania* is committed entirely to the Attorney General's discretion. No quasi-judicial body like the Commission can police the decisions of a duly elected, statewide constitutional officer of the executive branch."

In seeking the dismissal of the state bar complaint against him based on separation-of-powers principles, Paxton's argument shows the politicization process becomes nuclear when the target is the state's attorney general, writing: "Unelected administrarors from the judicial branch attempting to stand in judgment of the elected attorney general who is the sole executive officers with the authority to represent the State of Texas in the Supreme Court of the United States."

While it is bad enough that the state bar has been used as a sword to attack political enemies, such as Eastman in California and Clark in D.C., to deter attorneys in the future from representing unpopular cases or parties, the weaponization of the state bar against a state's attorney general is not a difference in degree, but a difference in kind. As Paxton wrote:

> No other attorney in Texas, no one else on the planet can bring a lawsuit on behalf of the State … but we've got an administrative arm of the judicial branch, unelected state bureaucrats telling the chief legal officer of the State of Texas how he can exercise his sole prerogative and his exclusive authority to bring a civil lawsuit on behalf of the State of Texas.

Yet unelected bureaucrats — many of whom are political enemies of Paxton — have put the attorney general literally on trial for exercising the executive function with which he was constitutionally charged. And while Paxton fully briefed his position — that as a matter of constitutional law and the doctrine of separation of powers, the court lacked jurisdiction to proceed on the bar's complaint against him — the trial judge summarily rejected Paxton's motion, merely stating the motion was "denied."

Paxton has yet to state publicly whether he plans to appeal the denial of his motion to dismiss to the Texas Court of Appeals. But as a matter of principle he should; this case represents not merely an attack on him personally, but on the position of attorney general.

*The Federalist obtained copies of the relevant court filings and they are available here, here, here, here, here, and here.*

*Update: Since publication, Attorney General Paxton's office has confirmed he has appealed the state court's order.*

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