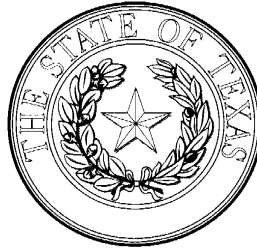


Opinion issued October 6, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-00209-CR

THE STATE OF TEXAS, Appellant

V.

ZENA COLLINS STEPHENS, Appellee

**On Appeal from the 344th District Court
Chambers County, Texas
Trial Court Case No. 18DCR0152**

and

NO. 01-19-00243-CR

EX PARTE ZENA COLLINS STEPHENS

Original Proceeding on Petition for Writ of Habeas Corpus

DISSENT FROM DENIAL OF EN BANC RECONSIDERATION

Zena Collins Stephens has moved for en banc reconsideration, and the court has denied her motion. These cases merit reconsideration. Setting aside the merits, the State describes these cases as presenting “an issue of first impression.” The issue—the extent to which the Attorney General may prosecute election-law violations—requires us to interpret the scope of that office’s authority under our constitution. The court’s resolution of this constitutional issue has statewide impact, as what is at stake is whether the Attorney General may initiate these election-law prosecutions in jurisdictions across Texas in lieu of local prosecutors. The far-reaching consequences of this court’s decision are evidenced by the filing of an amici curiae brief by the district attorneys or criminal district attorneys for Bexar, Dallas, Fort Bend, Nueces, and Travis Counties urging en banc reconsideration.

On the merits, the panel majority erred in holding that the Texas Constitution grants the Attorney General the authority to prosecute election-law violations because the Attorney General in Texas is part of the executive department while the prosecution of criminal activities in Texas is reserved to the judicial department as represented by local district and county attorneys. As explained in my dissenting opinion, the panel majority’s decision cannot be reconciled with the limited constitutional grant of authority to the Attorney General and violates the separation of powers mandated by our constitution. *See State v. Stephens*, Nos. 01-19-00209-

CR & 01-19-00243-CR, 2020 WL 3866654, at *7–12 (Tex. App.—Houston [1st Dist.] July 9, 2020, no pet. h.) (Goodman, J., dissenting).

If the circumstances presented by these cases are not extraordinary enough to merit reconsideration by the full court, then none are. *See* TEX. R. APP. P. 41.2(c). Thus, I respectfully dissent from the court’s decision not to reconsider them.

Gordon Goodman
Justice

En banc court consists of: Chief Justice Radack and Justices Keyes, Lloyd, Kelly, Goodman, Landau, Hightower, Countiss, and Adams.

Justice Goodman, dissenting.

Publish. TEX. R. APP. P. 47.2(b).