

## Why Aren't Conservative Reformers Fighting for Innovative Prosecutors?

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The national movement to replace hardline incumbent prosecutors with those who love prison a bit less is gaining real traction.

George Soros, the FOX News conservative's favorite boogeyman, deserves much of the credit, as do groups like Real Justice PAC and the Justice Collaborative Engagement Project. Their efforts have resulted in the election of prominent reforms such as Philadelphia's new DA, Larry Krasner.

Soon enough, the next battleground will be smaller, rural, and more conservative counties.

As part of this movement for the past several years, I often wondered why there wasn't a conservative equivalent to the groups focusing on electing prosecutors who can serve as vehicles for justice reform.

After all, in many other areas of justice reform—such as mass incarceration—groups like Right on Crime, the Cato Institute and the Charles Koch Institute have made common cause with liberals and progressives.

Recently, I got my answer. When asked about prosecutorial elections, Derek Cohen, the director of Right on Crime, said in an Oct 25 *New York Times* story, "Electing a reform-minded prosecutor is good...But what is at risk of happening is getting a system where you have culture wars play out in the realm of prosecutorial discretion itself."

The answer did not impress me. To a certain extent, Cohen is right: "culture wars" have always been played out through prosecutorial discretion.

Perhaps the best example is abortion.

The "Wade" of *Roe v. Wade* fame was Mr. Henry Wade, the elected Dallas County, Texas, District Attorney from 1951 to 1987. Abortion prosecutions were rare, but Jane Roe (the anonymous name entered into the court case) wanted to obtain one safely, so she sued preemptively.

However, in the 1990s, a pregnant teenage girl named Kawana Ashley shot herself in the stomach, because her grandmother threatened to kick her out of her home if she got pregnant again. Elected Pinellas County, Fl., State Attorney Bernie McCabe charged her with murder. The Florida Supreme Court ruled that it would not "pit woman against fetus in criminal court."

The impact of another legal battle that aroused deep national passions —on assisted suicide — might also be evident in Oakland County, Michigan, where Jessica R. Cooper was elected the top local prosecutor in 2008. Nine years earlier, as a Oakland County Circuit Court judge, she sentenced Dr. Jack Kevorkian to ten-to-25 years in prison for assisting his patient's suicide in his quest for a death with dignity.

Then there is *Lawrence v. Texas*, a landmark 2003 Supreme Court ruling that voided laws against consensual sexual intercourse between persons of the same sex. Then-Harris County, Texas, District Attorney Chuck Rosenthal made the original decision to charge John Geddes Lawrence with sodomy, a decision that, on appeal, was found by the country's highest court to violate the Fourteenth Amendment guarantees of due process.

So yes, there were quite a few “culture wars” in which prosecutorial discretion about whether to charge a defendant played a large role. But frankly, there aren't many left that will be decided by litigation over criminal law.

One prominent example may be the “Stand-Your-Ground” debate which has become central to the larger controversy over the place of firearms in contemporary America. But in Florida, prosecutors largely opposed the state's stand-your-ground law, because they mostly want more successful prosecutions and prison time for all.

There is also marijuana. But again, even some tough-on-crime Republican elected prosecutors, like Hamilton County, Ohio, Prosecutor Joe Deters in Cincinnati, want to legalize cannabis.

So Derek Cohen's argument that the threat of getting caught up in cultural warfare by campaigning for modern prosecutorial reform doesn't really make sense.

The real struggle now is between prosecutors who are willing to take a central role in fixing our broken justice system, and those who are content to leave it as it is.