

Criminal prosecution of Governor Perry is an outrage

By James C. Ho and Prerak Shah - Special to the American-Statesman

A bipartisan coalition of leading legal experts filed a brief this week in the criminal case against Gov. Rick Perry to make a simple point: If Perry can be prosecuted for a crime, so can President Barack Obama, countless members of Congress, and numerous state legislators of both parties.

According to the special prosecutor, Perry committed a felony by “threatening to veto legislation” to “provide funding for the continued operation of the Public Integrity Unit of the Travis County district attorney’s office,” in order to “intentionally or knowingly influence” the district attorney to “resign from her official position as elected district attorney.”

In other words, the special prosecutor believes that a government official who threatens to do something lawful — like veto a bill — in order to persuade another official to do something lawful — like resign her office — is guilty of a crime.

It’s not a crime. It’s free speech. And as every student learns in civics class, it’s protected by the First Amendment of our United States Constitution.

Was it a crime — or freedom of speech — when House Democrats called for the resignation of Congressman Anthony Weiner, and threatened to strip him of committee assignments if he refused?

Or when Senate Republicans demanded the resignation of Sen. Larry Craig, and threatened to hold hearings against him if he refused?

Or when Texas legislators insisted on the resignation of members of the Texas Youth Commission, and threatened to defund the agency if they refused?

Or when President Obama, just days ago, renewed his threat to issue executive orders if congressional Republicans refused to pass comprehensive immigration reform?

Under the special prosecutor’s legal theory, all of these activities could be prosecuted as a crime.

Under our Constitution, however, all of these activities are protected freedom of speech. The First Amendment protects the right of public officials to threaten a legal act, in hopes of coercing another public official to take some other legal action.

If Obama can tell congressional Republicans, as he did just last week: “You send me a bill that I can sign, and those executive actions go away” — why can’t Perry tell a convicted official essentially the same thing: “You resign from your office, and my veto goes away?”

There is no legal difference between these political threats. The criminal prosecution of Perry is an outrage.

And that is why an ideologically diverse group of leading constitutional and criminal law experts have now called on the trial judge to end the prosecution of Perry — and to do so immediately.

The coalition includes former judges and solicitors general, prosecutors and criminal defense lawyers, and constitutional litigators and professors, from both sides of the aisle.

None of us have any personal or political stake in this case. Our only stake is our lifelong commitment to the Constitution and the rule of law. None of us wish to see the law perverted for purely partisan political purposes. But we fear that is precisely what is happening here.

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And make no mistake: The case must not only end — it must end immediately. After all, this is freedom of speech we are talking about.

If Perry is forced to endure a criminal trial, then the damage has already been done — even if he is ultimately acquitted. The message will be clear. And the message is chilling: If you speak out on a topic that we don't like, we may arrest you and put you through a criminal trial.

If prosecutors can do this to the governor of our state, they can do this to anyone.

Americans cherish freedom of speech. We don't criminalize it. The prosecution of Perry must end. And it must end now.

Ho and Shah are appellate and constitutional litigators at Gibson, Dunn & Crutcher in Dallas. Ho previously served as Solicitor General of Texas.