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Travis County District Attorney Ronald Earle today released the following statement:

The Travis County District Attorney's Office has filed a motion for rehearing asking the Texas Court of Criminal Appeals to reconsider its decision in the criminal conspiracy cases against Tom DeLay, James Ellis and John Colyandro. All three were charged with conspiracy to violate the Texas Election Code prohibition against corporate political contributions.

Saying that by its decision the Court had "created a schism in the law between what are essentially blue-collar crimes and white-collar crimes," Earle urged the Court to avoid creating a "separate—but not necessarily equal—system of justice" for white-collar crimes. (A copy of the motion is attached.)

On June 27th, a sharply divided Court of Criminal Appeals held in a 5-4 decision that the Texas criminal conspiracy statute did not apply to the crime of making a corporate contribution because that offense is not in the Penal Code.

That decision means that individuals can be involved in an ongoing conspiracy to commit certain felony crimes and their conspiracy is perfectly legal.

Crimes in Texas may be found either in the Penal Code or in any of a number of other codes that regulate conduct, primarily business activity. The crime of making a corporate contribution is found in the Election Code, and various crimes that involve financial wrongdoing are found in the Finance Code, to cite just two examples. These crimes are felonies; they are just found in different books.

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“Because of the important policy considerations involved in protecting the public from criminal conspiracies of all kinds, we are seeking a rehearing of this matter before the Court,” Earle said.

Under the rationale of the Court’s opinion, conspiracies to commit these crimes would not be illegal as long as the felony the conspirators agree to commit is not physically located in the Penal Code.

For example, under the Court’s opinion, it would be legal to:

- Conspire to falsify records related to pollution of our water because that felony crime is in the Water Code.
- Conspire to conceal and destroy bank records because that felony crime is in the Finance Code.
- Conspire to generate unlawful oil and gas “waste” because that felony crime is in the Natural Resources Code.
- Conspire to lie on motor vehicle tax forms because that felony crime is in the Tax Code.
- Conspire to falsify vehicle serial numbers because that felony crime is in the Transportation Code.

The public policy considerations surrounding this decision are far greater than this one case. Criminal conspiracy prosecutions allow for the prevention of crime before it occurs. If the Court’s opinion stands, law enforcement will be powerless to intercept certain felonies before they are actually committed.