



Philadelphia District Attorney Larry Krasner reacts while being mentioned by Danielle Outlaw at a news conference announcing her as the new police commissioner on Dec. 30, 2019, in Philadelphia.

## POLITICS

### **A former Trump prosecutor wants to end prosecutor elections in Philadelphia because he doesn't like who voters picked**

State officials are pushing back against local DAs who win elections on reform messages.

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<https://www.grid.news/story/politics/2022/03/08/a-former-trump-prosecutor-wants-to-end-prosecutor-elections-in-philadelphia-because-he-doesnt-like-who-voters-picked/>

Bill McSwain, who was a U.S. attorney during the Trump administration and is now running for governor of Pennsylvania, has a flexible relationship with democracy.

Although he presents himself as an uncompromising voice for “law and order,” he has [provided fodder](#) for former president Donald Trump’s election lies, questioning Pennsylvania’s 2020 election results and even criticizing former attorney general Bill Barr with allegations — disputed by Barr — that he (McSwain) was not allowed to handle election-related investigations as he wished.

Now, in his run for governor, he doesn’t seem to believe in democracy at all. In [a speech](#) last month laying out his “plan to restore law and order,” McSwain announced an effort to end the election of the district attorney in Philadelphia — and only Philadelphia.

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“The governor should have the responsibility to appoint the chief law enforcement officer of the largest — and now, the deadliest — city in our commonwealth,” McSwain said, in announcing that he would “lead the effort to pass a state constitutional amendment that the district attorney of a city of the first class will be appointed by the governor.” In Pennsylvania, cities are organized by class, with first-class cities being those with more than 1 million residents. Even McSwain immediately acknowledged what that meant: “There is only one such city in our commonwealth, and it is Philadelphia.” (No other cities are even close to becoming “first class.” Pittsburgh, the state’s second-largest city, has a population of just over 300,000.)

During his time as a U.S. attorney, McSwain served as one of the most prominent Trump administration federal prosecutors fighting back against the growing number of local prosecutors elected — primarily starting in 2016 — on platforms of reforming prosecutors' offices to increase government accountability and reduce what they view as unnecessary incarceration or overincarceration. These prosecutors were elected in the wake of the nationwide protests after the police killings of Michael Brown in Ferguson, Mo., in 2014 and Freddie Gray in Baltimore the next year, among many others. Among their common policies have been those that look at the relationship between prosecutors' offices and police departments, consider what charges or sentences are necessary in any given case or type of case, and examine past decisions of the offices to determine whether wrongdoing had taken place.

In Philadelphia, McSwain constantly sparred with the city's reform prosecutor, Larry Krasner, throughout his time in office — up to and including even being [on opposite sides](#) of litigation. Krasner, a former public defender and criminal defense lawyer, is, to McSwain, the antithesis of law and order. In announcing his plans to oust Krasner, McSwain made no effort to hide his disdain.

"That is how we will rid the city of Larry Krasner and any future Larry Krasners," McSwain said in his speech. "Under my leadership as governor, Larry Krasner's days as district attorney will be numbered."

Although McSwain's proposal is an extreme one, it's a difference in degree — not type — from the reactions these reform prosecutors have been seeing across the country. This is despite the fact that [many of them](#) have been elected and reelected by their constituents on platforms of reform. And though policy disagreements between state and local officials are to be expected, efforts to limit the powers of prosecutors who are elected on reform-oriented platforms — mainly, though not exclusively, in urban centers — are increasingly common, calling into question the ability of those local officials to implement the changes their constituents are seeking.

This disconnect between local voters and state officials is all the more apparent given that McSwain's proposal came less than three months after Philadelphians [reelected](#) Krasner by a margin of more than 2 to 1. In a statement, Krasner told Grid that McSwain's proposal is "anti-democratic."

"Overturning the result of a decisively won election in the largest and most racially diverse county in Pennsylvania is part of a pattern of anti-democratic and fascist behavior running rampant through the Republican party," he said. "McSwain is like the Trump-supporting officials who colluded to overturn the 2020 presidential election results and the outrageous officials who are now trying to use every tool to suppress the vote — because it's the only way they can win."

Robert Saleem Holbrook is one of the people fighting for reforms like those Krasner is implementing. The [executive director](#) of the Abolitionist Law Center in Philadelphia, Holbrook has spent decades advocating for criminal justice reform and abolitionist changes, first from within Pennsylvania's prisons, where he [was serving a life sentence](#) for a juvenile conviction, and since his release from prison in 2018. He spoke with Grid about McSwain's proposal.

"The first thing for me: I look at this as a larger issue, and that is that the modern Republican movement, these conservatives seem content with democracy until it's a democracy that they don't like," he said.

Noting that the efforts are generally "disenfranchising cities that are predominantly Black or brown," Holbrook said that McSwain and his supporters are "really pissed off that they can no longer wield this tool [of the prosecutor's office] to lock more of us up, to have harsher sentences. It was always about controlling state power. The city of Philadelphia took it in a democratic fashion."

Now, he said, “People like McSwain want to strip Philadelphians of that right.” And McSwain isn’t alone.

In Florida, then-Gov. Rick Scott used his authority to reassign cases in the “interest of justice” to [take](#) murder cases from a local prosecutor, Aramis Ayala, who decided not to seek the death penalty in her jurisdiction, and reassign them to a prosecutor who would try them as capital cases. He did so despite the fact that death penalty prosecutions are down across the country and many prosecutors choose not to bring capital cases for a variety of reasons. (Florida’s current governor, Ron DeSantis, made [a similar threat](#) regarding enforcement of the state’s aggressive law criminalizing aspects of protests that turn violent.)

In a discussion with Grid, Ayala — who chose not to run for reelection as state attorney in 2020 and announced a run for Florida attorney general last week — noted when and against whom these concerns about discretion and enforcement have been raised.

Ayala said that such opposition comes when prosecutors “choose to use their discretion in a way that benefits people ... and empowers them.” Before reform prosecutors like her began getting elected, she said, “All the studies were talking about the unfettered discretion that prosecutors have, and ... the government at that time was supporting it because their job requires that level of discretion.” But “when you start having Black or brown prosecutors, or those like Mr. Krasner, who has a heart for Black and brown and poor people,” Ayala said, “now [statewide officials] want to strip us out of our power” because those local officials aren’t using that discretion in a way that others, like Scott, support.

“I think it is important for us to recognize that [it was] not until we showed up that they wanted to change the rules,” Ayala said.

Similar situations have arisen across the country as local prosecutors have sought reform. In Missouri, Attorney General Eric Schmitt [fought](#) an effort by St. Louis Circuit Attorney Kim Gardner to do what a wide range of prosecutors’ offices have done through what are called conviction integrity units: review old cases when there are questions about actual innocence or prosecutorial wrongdoing, and, if innocence or wrongdoing is found, seek to have the conviction and charges thrown out or a new trial ordered.

It’s not just a “Democratic local official against Republican statewide official” dispute, either. Krasner, a Democrat, himself faced [opposition](#) at times from his state’s Democratic attorney general, Josh Shapiro, who is now running for governor and could face off against McSwain if McSwain wins the Republican nomination. In New York, newly elected Manhattan District Attorney Alvin Bragg, a Democrat, faced harsh criticism for [an early memo](#) he sent to staff prosecutors in the office about how and when certain charges would be sought. The critics included Democratic Gov. Kathy Hochul, who [talked about](#) the powers she had to take action against him (up to removal) — although the two officials later met and Hochul [backed](#) Bragg publicly, saying that he had only been on the job a short time.

Carissa Byrne Hessick, a criminal law professor and the director of the Prosecutors and Politics Project at the University of North Carolina at Chapel Hill School of Law, said that some aspects of these disputes are nothing new.

Disagreements over the “balance of power between state and local governments” come up in all manner of topics, she noted. While prosecutors don’t need to be elected locally — and aren’t in all states — most states have a history of electing prosecutors, a subject of Hessick’s [research and writing](#). The move to elect prosecutors came out of the “turn toward populism, toward local democracy” around the turn of the last century, Hessick told Grid.

“The consequence of local elections is local control,” she said.

And yet, state officials — and state lawmakers — are pushing back.

In Utah, a bill (H.B. 257) passed by the state legislature and awaiting the governor's decision whether to sign would **prevent prosecutors** from charging certain allegations as misdemeanors if felony charges are possible — a move that would limit reform prosecutors in particular from being able to seek lower sentences in affected cases.

In an **op-ed** opposing the legislation, Jason Groth, the deputy legal director at the ACLU of Utah wrote, "HB257 tramples the existing authority behind our criminal legal system: the voters," who he noted elect their "county's top prosecutor ... every four years in Utah."

In Florida, conservative Republican State Sen. Manny Diaz Jr. introduced legislation in the state's Senate that would allow the governor to go further than take cases away from a local prosecutor, as happened with Ayala. Under the legislation, which has not advanced in either chamber, the governor **would be authorized** to suspend a prosecutor for creating blanket policies to decline any type of prosecution (as opposed to making decisions on a case-by-case basis).

Noting that "blanket decisions" are made by prosecutors "every single day across this state and across the country," Ayala said the bill "shows a lack of understanding of a prosecutor's job."

Hessick said that America's history with criminal justice politics leaves her unsurprised that some state officials (and would-be state officials) are "setting up the candidates who run on criminal justice reform platforms as the foil." While it might not be surprising, she did note that — in keeping with what Krasner, Ayala and Holbrook said — "The irony of all of this is that we have democratic accountability in big cities" in terms of contested elections for prosecutor "and yet those are the prosecutors who are facing the pushback."

For now, McSwain is traveling Pennsylvania as part of that pushback — fighting for Republican votes for governor in part on taking away Philadelphians' ability to elect their own prosecutor.

"I don't think he's an outlier; I think he's the tip of the spear," Holbrook said.

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