

Candidate's rulings didn't favor victims; Former justice who touts activism against sex assault defends record on high court The Dallas Morning News April 20, 2002, Saturday



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AUSTIN - GOP attorney general nominee Greg Abbott has been touring the state touting himself as a strong advocate for sexual assault victims. But case records show that during his tenure on the Texas Supreme Court, Mr. Abbott rarely rallied to the side of those victims.

In the court cases, victims sought to show that churches and companies had negligently hired sexual predators or allowed their property - despite dire warnings - to become invitations for rapists.

In four of the five cases reviewed by The Dallas Morning News, Mr. Abbott found that the victims couldn't sue for damages.

Mr. Abbott said he was doing as he was obligated to do as a Supreme Court justice.

"What I was doing as a judge was applying the law," he said.

But others say he was following a philosophical belief that businesses should be shielded from lawsuits. In addition, many of his large campaign donors are supporters of tort reform, or limiting lawsuits.

"There's a lot to be done for victims," said crime victims advocate Ellen Halbert, a former member of the Texas Board of Criminal Justice. "I'd just rather that it be with someone who has history of working with crime victims and has them in their heart, as opposed to someone who just has them on the tip of their tongue."

Ms. Halbert, who survived a violent crime, is working as a victims advocate in district attorneys' offices. She supports Democrat Kirk Watson in the race for attorney general.

Plans to provide help

Mr. Abbott said the plan he has touted to help sexual assault victims is based on a heartfelt conviction. His plan includes development of a statewide database to share information across county lines and to prevent sexual abuse.

His plan also includes safeguarding in the attorney general's office grant money that flows to crime victims, and requiring law firms doing business with the office to provide 15 hours of free legal work to domestic violence and sexual assault victims' groups.

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"What we're trying to do here is protect victims - and protecting and preventing people from becoming victims - not lining the pockets of lawyers," Mr. Abbott said.

"All these lawsuits were mechanisms for suing for money against people who didn't commit the crime," he said.

Foe: Suits send message

Mr. Watson, a former Austin mayor and lawyer who often represents plaintiffs in lawsuits, said that suing companies that are woefully negligent does prevent crime by sending a message to businesses that they are responsible for their property and employees.

"The facts show that Greg has ruled over and over again against women victims in cases of sexual assaults," Mr. Watson said.

"I think women should be suspicious about his claims that he'll protect women as attorney general when the fact is that while he was on the bench, he ruled against those women," he said.

Mr. Abbott served as a justice on the Texas Supreme Court, which handles only civil cases, from 1995 until 2001.

In the cases for which records could be obtained between 1996 and 1999, the majority of the court found in two of five cases that the women had a right to sue property owners or employers over their alleged negligence. Mr. Abbott dissented in one of those cases, finding the right to sue only once.

In 1996, he joined the 8-1 majority in saying that a parent had the right to sue the local Boy Scouts of America council after the council heard a report - but failed to thoroughly investigate - that a Scoutmaster was abusing boys. The local council then recommended the Scoutmaster to a church that was forming a new troop.

The Scoutmaster subsequently was tried and found guilty of child molestation.

Mr. Abbott disagreed with his colleagues in a 1998 case where the majority found that the victim had a right to sue the Kirby vacuum company.

Kirby has its distributors agree to detailed contracts, which include a mandate to sell through in-home demonstrations.

In San Antonio, a Kirby distributor hired a salesman for the demonstrations, but failed to perform a cursory background check that would have shown he had a history of sexual abuse.

The salesman later raped a woman during an in-home demonstration, and the victim wanted Kirby held partly responsible because its policy failed to insist on rudimentary background checks.

In the most controversial case, Mr. Abbott wrote an opinion that was widely discussed in legal circles and drew pointed criticism from legal scholars.

'Decision haunts me'

In the 1999 case, a rape victim attempted to sue a downtown Houston parking garage where she was assaulted by a police officer for three hours late one night. She sought to show that the company that owned the garage refused to secure it despite protests from its employees and an epidemic of violent crimes having been committed within a two-block radius.

Mr. Abbott wrote a plurality opinion that threw out the victim's suit by introducing higher standards for filing such a liability suit.

Houston attorney Kenneth Morris, who represented the victim, said he has no doubt that legal precedent was ignored so the judges could reach a result to protect the property owner from a suit.

"That decision haunts me," he said. "I consider it intellectually dishonest to the highest degree."

Mr. Morris said a lawsuit could have told that garage owner and others to do something as simple as putting a chain across its open, unsecured entrances to protect future potential victims.

"There is a lady who got raped in that garage and they [the owners] knew it was an unreasonable risk to keep that garage open. She was entitled to win on the law, and so to pour her out, they had to create a brand-new doctrine," Mr. Morris said of the justices.

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All about prevention

Mr. Abbott said such criticism by trial lawyers points to a key difference between him and Mr. Watson.

"His reaction and his knee-jerk reaction is to sue somebody," Mr. Abbott said of Mr. Watson. "Suing somebody doesn't prevent a future victim."

Mr. Abbott said he intends to use the attorney general's office to serve sexual assault victims, and, he hopes, to prevent future attacks.

Mr. Watson "can be concerned about lining his pockets, and I'm concerned about preventing another woman from being raped," Mr. Abbott said.

**GRAPHIC:** PHOTO(S): 1. Greg Abbott. 2. Kirk Watson. CHART(S): ABBOTT'S RECORD ON FIVE CASES.

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