



JUN 16 2023

CLERK OF THE COURT

June 16, 2022

The Honorable Dan Patrick

Via Electronic Mail

Re: Impeachment Trial of Warren Kenneth Paxton, Jr.

Dear Lieutenant Governor Patrick:

We are writing on behalf of the Board of House Managers, who have been charged with the responsibility of presenting articles of impeachment against Warren Kenneth Paxton, Jr. to the Senate. The House preferred twenty articles of impeachment and bears the evidentiary burden to support conviction. On June 10, Mr. Paxton's legal counsel sent you a letter claiming that the House of Representatives does not have the authority to prepare for the impeachment trial—an assertion that is not only legally baseless but would turn the concept of a fair and impartial trial on its head.

Mr. Paxton's letter suggests that the House does not have the power to issue subpoenas, talk with witnesses, or further investigate Mr. Paxton. They allege that the impeachment vote somehow divested the House of its constitutionally granted impeachment powers. There is no basis for these claims. As detailed below, the law clearly permits the House to continue to investigate wrongdoing by Mr. Paxton and it further permits the House to fully prepare to present the articles of impeachment during trial before the Senate.

At the outset, it would violate the most basic tenets of constitutional law if Mr. Paxton were allowed to interfere with the House's exercise of its constitutionally provided power and duty to investigate Mr. Paxton's wrongdoing. The Texas Supreme Court found that the Texas Constitution gives the House and the Senate "[e]ach, in the plainest language . . . separate plenary power and jurisdiction in relation to matters of impeachment." *Ferguson v. Maddox*, 114 Tex. 85, 93–94 (1924). Mr. Paxton's attorneys nonsensically contend that once the House voted for impeachment, it had no authority to "do *anything* regarding the impeachment until the Senate established the rules," and the General Investigating Committee ("the Committee") was stripped of its powers. (emphasis in original). The law states otherwise. The House and its institutions unequivocally have the authority to investigate and take actions that are necessary to present the articles of impeachment, as well as the authority to investigate any other or further wrongdoing. As the Texas Supreme Court recognized, "[t]he powers of the House and Senate in relation to impeachment exist at all times." *Ferguson*, 114 Tex. at 94.

First, Article XV, section 1, of the Texas Constitution vests the House with the power of impeachment. The comments to the Texas Constitution specifically note that, pursuant to this power, the House is to "investigate the conduct of officials against whom complaints are made," and to "prosecute the charges before the senate." These powers and duties are simply not in dispute. In investigating and preparing to present the articles of impeachment before the Senate, the House is a constitutional actor exercising constitutionally conferred power, which may not be infringed by a co-equal body of

government. There is nothing to suggest that an impeachment vote ends the House's constitutional authority to continue to investigate and prosecute the charges.

Second, HR 2377, the articles of impeachment the House voted to adopt, specifically reserves to the House the right to "offer[] proof to sustain each of the above articles and to any other articles which may be preferred." And HR 2547, which appoints a House Board of Managers to fulfill the House's obligation to present the articles of impeachment to the Senate, recognizes that the Board maintains the same powers set forth in Government Code Chapters 301 and 665.

Third, the House has been granted statutory authority to collect documents and interview witnesses in fulfillment of its constitutional duties, including preparing to present articles of impeachment during a Senate trial and continuing to investigate possible additional articles of impeachment. Pursuant to Texas Government Code section 301.020, the Committee has the authority to inspect the records, documents, and files of state departments and agencies, and the charge to examine "the duties, responsibilities, and activities" of state agencies, departments, and officers. Section 301.024 gives the Committee the ability to issue subpoenas in order to fulfill their investigatory obligations.

Far from restricting the House's Chapter 301 powers, Texas Government Code Chapter 665 confirms that the House retains these same, if not broader, powers with regard to impeachment proceedings. Section 665.005 states that "when conducting an impeachment proceeding," the House or a House committee may "(1) send for persons or papers; (2) compel the giving of testimony; and (3) punish for contempt[.]" Section 665.001 defines the term "impeachment proceeding" to include: "(1) presenting an article of impeachment; (2) investigating a matter relating to a contemplated impeachment; and (3) acting on an article of impeachment." Mr. Paxton's restrictive interpretation of the authority granted under Chapter 665, subchapter A, violates the statute's plain language. The House's actions are clearly being conducted as part of an impeachment proceeding—it is actively preparing to present articles of impeachment. And its overall power and duty to "initiate or continue inquiries" within Section 301.020's broad grant is ongoing and beyond dispute.

It is becoming increasingly apparent that Mr. Paxton would like to avoid an open, fair, and transparent Senate trial. But such a trial is the only proper mechanism for providing Mr. Paxton with what he claims he is seeking: a chance to present "public evidence and witness testimony, including an opportunity for cross-examination by counsel." Of course, Mr. Paxton could enhance public transparency by choosing to appear and testify at trial. As previously related to the Texas Senate Special Committee on Rules for Procedure for Impeachment, the Board of House Managers are hoping that the Rules adopted for the impeachment trial permit counsel for the parties to fully present evidence and witnesses so that the Senate members, along with the public, can judge for themselves the merits of the charges presented. The House and the Board of Managers will promptly abide by any obligation of disclosure set up by the Senate Rules committee, as soon as those rules are established.

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In the end, the lawyers for Mr. Paxton are encouraging you to take the unprecedented step of attempting to prevent the House from fulfilling its constitutional and statutory obligations. We respectfully request that you not take the bait.

Please let us know if we can provide you or the Senate with any further information.

Sincerely,



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