

Ashley Daw

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CLERK OF THE COURT

THE SENATE OF THE STATE OF TEXAS
SITTING AS A HIGH COURT OF IMPEACHMENT

IN THE MATTER OF
WARREN KENNETH
PAXTON, JR.

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HOUSE MANAGERS'
MOTION TO RECONSIDER AND AMEND SENATE RULES 27 AND 30(a)

To the Honorable Dan Patrick, President of the Court of Impeachment:

The Texas House of Representatives Board of Managers (“House Managers”) file this Motion Requesting Reconsideration and Amendment of Rules 27 and 30 contained in Senate Resolution No. 35 (“the Senate Rules”) governing the impeachment of Warren Kenneth Paxton Jr. (“Paxton”), Attorney General of the State of Texas, and show the following.

INTRODUCTION

Senate Rule 27 rightly recognizes that if the Senate sustains any Article of Impeachment, Paxton is removed from office.¹ However, Senate Rules 27 and 30(a) do not mandate disqualification from holding future office if any Article of Impeachment is sustained. Instead, the Senate Rules treat removal separate and apart from disqualification from holding future office.² These Rules are inconsistent with the Texas Constitution and the purpose of impeachment, which require that a state official who is convicted of committing impeachable offenses be both removed *and* disqualified from holding future office.

¹ See Senate Rule 27 (“Sustaining an article of impeachment means that the impeached officer is removed from office for the term the officer was last elected.”).

² The House Managers recognize that Senate Rule 30 is consistent with the rules that were adopted in the O.P. Carrillo impeachment trial. However, the issue of whether separately deciding removal from disqualification violated the constitution never arose in that proceeding because O.P. Carrillo was removed *and* disqualified. Similarly, as discussed below, James Ferguson was likewise removed *and* disqualified from future office. Thus, the Texas Senate has never removed an impeached and convicted officer from office without also disqualifying him from holding future office.

ARGUMENTS & AUTHORITIES

I. The plain language of the Texas Constitution requires the Senate to not only remove, but also disqualify a state official from holding future office for committing impeachable conduct.

Under the Texas Constitution, removal is not the only consequence of a conviction in a Senate impeachment trial. Article XV, Section 4, which is titled “Judgment to remove *and disqualify*; punishment under other law permitted,” also requires that a person convicted by the Senate to be permanently removed from office and disqualified from holding future office:

Judgment in cases of impeachment shall³ extend only to removal from office, *and disqualification from holding any office of honor, trust or profit under this state*. A party convicted on impeachment shall also be subject to indictment trial and punishment according to law.⁴

This language is mandatory and does not provide for discretion.

In *Ferguson v. Wilcox*, the Texas Supreme Court confirmed that the Texas Constitution mandates disqualification of an official convicted of impeachable offenses, noting that “judgments of impeachment not only provided that the convicted officer be removed from office, *but decreed that he should thereafter be disqualified to hold any office of honor, trust, or profit under this state*.”⁵ The Court went on to explain that Article XV, Section 4’s requirement of disqualification was as binding as other constitutional provisions that affirmatively set forth requirements for office: “Disqualifications to hold office of honor, trust, or profit under the state have been fixed by

³ As a matter of constitutional or statutory construction, courts interpret the term “shall” as mandatory. *See City of Houston v. Houston Mun. Employees Pension Sys.*, 549 S.W.3d 566, 582 (Tex. 2018) (“Use of the word ‘shall’ in a statute evidences the mandatory nature of the duty imposed.”) (Internal quotations omitted).

⁴ TEX. CONST. art. XV, § 4.

⁵ *Ferguson v. Wilcox*, 28 S.W.2d 526, 534 (Tex. 1930).

the plain constitutional provisions named. Those disqualifications are just as certainly binding when stated (as they are) in a negative way as to the positive qualifications for the office of Governor of this state.”⁶ Indeed, the Court concluded that, “[i]t is equally necessary for [the people’s] protection that the offender should be denied an opportunity to sin against them a second time.”⁷

II. The purposes of the impeachment process would be frustrated if a convicted official could avoid disqualification.

The requirement that an impeached and convicted officer be subject to disqualification “is in keeping with the governmental policy of this and the other states of the United States.”⁸ The purpose of impeachment in Texas is to “protect the public and not punish the offender.”⁹ As such, the Constitution is clear that a “party convicted on impeachment shall also be subject to indictment trial and punishment according to law.” Indeed, when the Constitution stated that judgment extended “only” to removal and disqualification it was not providing the option to do either, but instead it was clarifying that an impeachment judgment could not result in any additional punishment:

Th[e] limitation on the nature of the judgment following impeachment distinguishes it from the traditional criminal prosecution. The accused may be removed and disqualified from ever again holding government office but cannot otherwise be deprived of life, liberty, or property. Conversely, the judgment does

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 536.

⁹ *Ferguson v. Maddox*, 14 Tex. 85, 263 S.W. 888, 892 (1924).

not bar criminal prosecution or civil suit based on the conduct for which impeached.¹⁰

The Constitution's requirement that the offending officer be both removed and disqualified from holding future office, is also consistent with the fact that the Texas Constitution, beyond what is required by the U.S. Constitution,¹¹ mandates the temporary suspension of an officer who has been impeached by the House until after the Senate tries the Articles of Impeachment: "All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office during the pendency of such impeachment."¹² This provision was included in the Texas Constitution "[b]ecause one being impeached stands accused of serious misconduct *in office*, however, suspension is desirable to protect the public from continuing misdeeds."¹³ Thus, the Framers firmly believed that the only way to protect the public from abuses

¹⁰ GEORGE BRADEN, ET AL., THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS 711 (1977).

¹¹ Notably, it is clear from Federalist Papers No. 65—which is considered one of the most important sources for interpreting and understanding the original intent of the U.S. Constitution—that a conviction of impeachment, was intended to result in an officer being both removed from office and disqualified from holding future office. *See* THE FEDERALIST NO. 65 (noting that an officer who was impeached would be "sentenced to a perpetual ostracism from the esteem and confidence, and honors and emoluments of his country"); *Ferguson v. Maddox*, 114 Tex. 85, 96-97, 263 S.W. 888, 892 (1924) (noting that "When the Constitution of Texas was adopted, it was done in the light of, and with a full knowledge and understanding of, the principles of impeachment as theretofore established in English and American parliamentary procedure. The Constitution in this matter of impeachment created nothing new. By it, something existing and well understood was simply adopted.").

¹² TEX. CONST. art. XV, § 5.

¹³ GEORGE BRADEN, ET AL., THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS 712 (1977) (emphasis in original).

by a impeached and convicted state official is to prevent such official from holding office by both removal and disqualification.¹⁴

As such, a plain reading of the Texas Constitution requires both removal and disqualification, and is consistent with the very purpose of impeachment.

III. The Senate should amend Rules 27 and 30(a) to require removal and disqualification if the jury sustains any Article of Impeachment.

A. Senate Rule 27

Because the Texas Constitution requires a judgment of removal and disqualification, the House Managers' request that Rule 27 be amended as follows to track the precise language set forth in Texas Constitution, Article XV, § 4:

Before deliberation commences, the presiding officer shall read the following to the members of the court: "Sustaining an article of impeachment means that the impeached officer shall be remov[ed] from office, and disqualify[ed] from holding any office of honor, trust or profit under this State. ~~removed from office for the term the officer was last elected.~~ ... You are to determine if the allegation in each article presented to you has been proved beyond a reasonable doubt and if so, shall the article of impeachment be sustained which would result in the removal of office and disqualification from holding any office of honor, trust, or profit under this State."

B. Senate Rule 30(a)

Similarly, Senate rule 30(a) should be amended as follows to include as part of the judgment of conviction both the removal and disqualification from holding future office:

(a) If any article of impeachment is sustained, the presiding officer of the court shall prepare a final judgment disposing of all issues in accordance with the decisions of the court. ~~Upon motion by the House Board of Managers to extend the judgment to include disqualification from holding any office of honor, trust, or profit under this State, counsel for each party may present arguments. Upon conclusion of the arguments, the question is put:~~

¹⁴ Similarly, interpreting article XV, article four as requiring both removal and disqualification, is consistent with the fact that section six, which applies to district judges, only permits removal.

~~"Shall judgment extend to disqualification from holding any office of honor, trust, or profit under this State?"~~,

~~and each member of the court, as his or her name is called, shall rise in his or her place and answer yea or nay, which vote shall be entered on the record. The motion shall be adopted if approved by two thirds of the members of the court present.~~ Upon pronouncement of judgment by the court, a certified copy of the judgment is to be deposited in the office of the Texas Secretary of State. The judgment must extend to removal from office and ~~may extend~~ to disqualification from holding any office of honor, trust, or profit under this State.

CONCLUSION

Accordingly, the House Managers request that the Senate reconsider and amend Rules 27 and 30(a) as set forth herein.

Respectfully submitted,



Rusty Hardin
State Bar No. 08972800
Lara Hudgins Hollingsworth
State Bar No. 00796790
Jennifer Brevorka
State Bar No. 24082727
Joe Roden
State Bar No. 00794549
Daniel Dutko
State Bar No. 24054206
Leah M. Graham
State Bar No. 24073454
Megan Moore
State Bar No. 24054322
Armstead Lewis
State Bar No. 24102089
Aisha Dennis
State Bar No. 24128655
RUSTY HARDIN & ASSOCIATES, LLP
1401 McKinney Street, Suite 2250
Houston, Texas 77010
Telephone: (713) 652-9000
Facsimile: (713) 652-9800
rhardin@rustyhardin.com

lhollingsworth@rustyhardin.com
jbrevorka@rustyhardin.com
jroden@rustyhardin.com
ddutko@rustyhardin.com
mmoore@rustyhardin.com
lgraham@rustyhardin.com
alewis@rustyhardin.com
adennis@rustyhardin.com

and



Dick DeGuerin
State Bar No. 05638000
Mark White, III
State Bar No. 24008272
DEGUERIN AND DICKSON
1018 Preston
Houston, Texas 77002
Telephone: 713-223-5959
ddeguerin@aol.com
markwhite@deguerin.com

and



Harriet O'Neill
State Bar No. 00000027
LAW OFFICE OF HARRIET O'NEILL, PC
919 Congress Ave., Suite 1400
Austin, Texas 78701
honeill@harrietonelllaw.com

and

Erin M. Epley
State Bar No. 24061389
EPLEY LAW FIRM
erin@epley-law.com

and

Mark E. Donnelly
State Bar No. 24032134
PARKER, SANCHEZ, & DONNELLY, PLLC
700 Louisiana, Suite 2700
Houston, Texas 77002
Mark@psd.law

and

Donna Cameron
State Bar No. 03675050

and

Terese Buess
State Bar No. 03316875
Buesster@gmail.com

and

Ross Garber
D.C. Bar No. 438838
THE GARBER GROUP LLC
1300 I Street, N.W., Suite 400E
Washington, D.C. 20005
rgarber@thegarbergroup.com

and

Lisa Bowlin Hobbs
State Bar No. 24026905
KUHN HOBBS PLLC
3307 Northland Drive, Suite 310
Austin, Texas 78731
lisa@kuhnhobbs.com

*Counsel for the Texas House of
Representatives Board of Managers*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on the following counsel
for Paxton on September 13, 2023:

Judd E. Stone II (judd.e.stone@proton.me)
Christopher D. Hilton (christopher.d.hilton@proton.me)
Allison M. Collins (allison.collins23@proton.me)
Amy S. Hilton (amy.s.hilton@proton.me)
Kateland R. Jackson (kateland.jackson@proton.me)
Joseph N. Mazzara (joseph.mazzara86@proton.me)
Dan Cogdell (dan@cogdell-law.com)
Tony Buzbee (tbuzbee@txattorneys.com)



Lara Hudgins Hollingsworth