

*Ratsy Law*

AUG 15 2023

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

CLERK OF THE COURT

IN THE MATTER OF  
WARREN KENNETH  
PAXTON, JR.

§  
§  
§

HOUSE MANAGERS' RESPONSES TO PAXTON'S  
MOTION TO DISMISS ARTICLE I  
(Mitte Foundation Lawsuit Interference)

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

The Texas House of Representatives Board of Managers (“House Managers”) file this response to the Motion to Dismiss Article I (“the Motion”) filed by Warren Kenneth Paxton Jr. (“Paxton”).

**INTRODUCTION**

Article I states that Paxton violated his official duties by failing to protect a public charitable organization, the Roy F. & JoAnn Cole Mitte Foundation (“Mitte Foundation”), as required by Texas law.<sup>1</sup> Since 1846, the Texas Attorney General’s Office has acted as “the public protector of charities” in this state. In 2020, for the first time in history, the Texas Attorney General intervened in a lawsuit not to help a charity, but to harm it. Why? Because the charity was engaged in litigation with companies owned by Nate Paul, a close friend and political contributor to Paxton.

Paxton’s Motion claims that he did nothing wrong because his only alleged legal duty is to protect the public *from* abuses in the system of charitable trusts, not to protect the charitable trusts themselves. In doing so, Paxton simply ignores the many Texas cases holding just the opposite: specifically, that the Attorney General has an affirmative duty to ensure that a public charitable organization is protected *from* harm by third parties.<sup>2</sup>

Moreover, Paxton’s decision to force the Office of Attorney General (“OAG”) to intervene in the lawsuit to the detriment of the Mitte Foundation is even more outrageous considering it came after: (1) a thorough investigation, in which the OAG Charitable Trust Division determined there was no reason to ever intervene in the lawsuit; (2) the OAG already issued a waiver “not to

---

<sup>1</sup> Paxton Articles of Impeachment, Art. I.

<sup>2</sup> See, e.g., [\*Powers v. First Nat’l Bank of Corsicana\*](#), 161 S.W.2d 273, 284 (Tex. 1942) (holding that the Attorney General of Texas “is under a positive, continuing obligation to protect [a public trust] at any time such may become necessary”).

intervene,” and the OAG rarely overturned a waiver; (3) the OAG already determined it would not explore intervening unless new parties or new, causes of action were added, and no new parties or causes of action were added; and (4) Paxton insisted the OAG reconsider intervention, and all of the OAG lawyers recommended against intervening in the lawsuit.<sup>3</sup> But Paxton forged ahead to help his buddy out at the expense of the charitable organization Paxton had a duty to protect. His Motion must be denied.

### **FACTUAL BACKGROUND**

The Mitte Foundation is a charitable organization that provides millions of dollars in scholarships to Texas students every year. In 2011, the Mitte Foundation invested more than \$3 million in Paul’s real estate development companies, WC 1st and Trinity, LP, WC 1st and Trinity GP, LLC, WC, 3rd and Congress, LP, and World Class Capital Group, LLC (collectively “World Class”).<sup>4</sup> The reason the Mitte Foundation invested in World Class was to grow its money so it could provide more scholarships to Texas students.

As a limited partner of World Class, the Mitte Foundation was entitled to annual and quarterly financial reports regarding the operations of World Class.<sup>5</sup> From 2011 to 2018, World Class complied with its obligation to provide the financial reports. However, beginning in Q3 of 2018, World Class refused to provide the reports, forcing the Mitte Foundation to file a lawsuit to obtain the information to which they were legally entitled.<sup>6</sup>

---

<sup>3</sup> Exhibits 30, 31, 33, 36, 37. *See also* Exhibit 9 at 10:7-16:8. Exhibit 12 at 32:8—33:14; 36:13—37:17; 38:3—39:13.

<sup>4</sup> Exhibit 109.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Shortly after filing the lawsuit, the parties attended arbitration.<sup>7</sup> Paul and his attorneys participated and Paul agreed to pay \$10.5 million to buy out the Mitte Foundation's partnership interest in World Class.<sup>8</sup> While the Mitte Foundation believed their ten-year investment was worth more than \$10.5 million, it agreed to settle and forgo prolonged litigation.<sup>9</sup> Despite his promise to pay and personally signing the binding settlement agreement, Paul breached the settlement agreement he signed and refused to pay.<sup>10</sup>

As a result, the Mitte Foundation was forced back into contentious litigation with World Class.<sup>11</sup> During the course of litigation, World Class and Paul did everything in their power to hide evidence, prevent witness depositions, and delay trial.<sup>12</sup> The parties "were a long way from trying the case, largely based on the litigation tactics of World Class. Their tactics throughout the entirety of the case had been to frustrate and delay and obfuscate as much as they can."<sup>13</sup> World Class refused to comply with its basic discovery obligations,<sup>14</sup> requiring the Mitte Foundation to move to compel and, ultimately, seek sanctions. The trial court sanctioned World Class \$12,000 initially for "noncompliance with valid discovery orders,"<sup>15</sup> and then another "\$105,346 for "their failure

---

<sup>7</sup> Exhibit 23.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Exhibit 114.

<sup>12</sup> Exhibits 37, 132.

<sup>13</sup> Exhibit 12 at 52:25—53:4.

<sup>14</sup> Exhibit 38.

<sup>15</sup> Exhibits 117, 120.

to comply with this Court's Orders."<sup>16</sup> Further delaying the litigation, over a two-year period, **seven** different law firms were forced to withdraw because Paul stopped paying their bills.<sup>17</sup>

After receiving notice of the litigation, and consistent with its duty, the OAG Charitable Trust Division considered whether it needed to intervene.<sup>18</sup> After a thorough investigation, the OAG "determined not to intervene," but said it would reconsider if a subsequent pleading "adds additional parties or causes of action."<sup>19</sup> Intervention was unnecessary given "there were no critical state interests at play," the Mitte Foundation was "well-represented by counsel," and "the trust was well diversified," such that "this particular investment dispute would not critically impact the trust's charitable distributions for the coming year."<sup>20</sup>

For any other Texas litigant this would be the end of the story. The lawsuit would continue until a judgment was entered or the parties settled. But Paul is not a normal Texas litigant—he is good friends with Paxton.<sup>21</sup> Paul believed that Paxton, as the top lawyer for the State, was in a unique position to benefit Paul in his litigation against the Mitte Foundation. And he was right.

After Paul contacted Paxton, Paxton personally got involved in the case and ordered the OAG to open a second investigation.<sup>22</sup> For three weeks, the lawyers in the OAG Charitable Trust Division, along with Paxton, reviewed the allegations, interviewed the parties' lawyers,

---

<sup>16</sup> Exhibits 117, 120.

<sup>17</sup> Exhibit 133.

<sup>18</sup> Exhibit 109.

<sup>19</sup> Exhibit 31.

<sup>20</sup> Exhibit 33.

<sup>21</sup> Exhibit 19 Wicker at 15:23—18:7; 30:14—31:6.

<sup>22</sup> Exhibit 12 at 25:3-23.

interviewed Paul, and interviewed the court-appointed receiver.<sup>23</sup> Paxton personally attended meetings and participated in telephone calls with the defense and witnesses.<sup>24</sup> According to Joshua Godbey (“Godbey”), the Division Chief of the Charitable Trust Division, this was the first, and only, charitable trust case, out of the hundreds reviewed every year, that Paxton ever got personally involved in.<sup>25</sup> After fully investigating, lawyers in the Charitable Trust Division, including the Division Head, advised Paxton of their recommendation that OAG not intervene in the case.<sup>26</sup>

That was not the answer Paxton wanted. So, he took the matter to Blake Brickman, the Deputy Attorney General for Policy and Strategy Initiatives, and asked Brickman to look into the matter.<sup>27</sup> Brickman also determined the OAG should not intervene.<sup>28</sup> This was again not the answer Paxton wanted. In their discussions, Paxton “shocked” Brickman with his “obsession with anything related to Nate Paul.”<sup>29</sup> Paxton talked about Paul and Paxton’s desire to intervene in the Mitte Foundation lawsuit *because of* Paul.<sup>30</sup> As Brickman explained:

But the first time where General Paxton and I really talked about Nate Paul directly was when he wanted me to get involved in this Mitte Foundation case, which, again, for the Attorney General to get involved in, you know, a civil dispute between a charity and a local investor is extremely uncommon, especially when the line lawyers in that case declined to intervene in January of 2020, which, in my opinion, was the right decision.

---

<sup>23</sup> *Id.* at 36:10—37:17.

<sup>24</sup> *Id.* at 27:13—28:25.

<sup>25</sup> *Id.* at 15: 8-21.

<sup>26</sup> *Id.* at 21:4—37:17; 38:3-13.

<sup>27</sup> Exhibit 9 at 11:14—14:6.

<sup>28</sup> *Id.* at 10:7—11:5.

<sup>29</sup> *Id.* at 10:7–11:5.

<sup>30</sup> Exhibit 12 at 10:7–11:13.

I mean, the whole point of the charity division at the A.G.'s Office is to protect charities. The charity in the case was the plaintiff seeking to protect itself, so it just never made any sense.

Only two people wanted the OAG to intervene in the Mitte Foundation lawsuit: Paxton and his good friend and campaign donor Nate Paul.<sup>31</sup> Paxton ordered the OAG to intervene. So, it did.<sup>32</sup>

### **ARGUMENTS & AUTHORITIES**

#### **I. Paxton’s Motion to Dismiss improperly attacks the House’s decision to impeach him.**

The Texas Constitution Article XV, § 1 grants the House the sole authority to charge a person and prefer articles of impeachment to the Senate.<sup>33</sup> It is the House’s role to determine “whether one of the people’s servants has done an official wrong worthy of impeachment,” and to decide “whether or not there is sufficient ground to justify the presentment of charges” to the Senate.

As the Senate recognized in Senate Rule 13(b), the issues before the Senate are whether “the allegation in each article presented to you has been proven beyond a reasonable doubt, and if so, shall the article of impeachment be sustained which would result in removal of office.”<sup>34</sup> Accordingly, Paxton has no basis for asking the Senate to summarily dismiss the House’s finding that (1) sufficient evidence supported preferring the Articles of Impeachment to the Senate for trial,

---

<sup>31</sup> *Id.* at 36:13–38:13.

<sup>32</sup> Exhibit 36.

<sup>33</sup> TEX. CONST. [art. XV, § 1](#) (“The power of impeachment shall be vested in the House of Representatives.”); *see also* [Record of Proceedings of the High Court of Impeachment on the Trial of O.P. Carrillo, Judge, 229<sup>th</sup> District Court](#), at 239.

<sup>34</sup> [Senate Rule 13\(b\)](#).

and (2) the conduct rose to the level of impeachable offense such that the Senate should proceed to try the Articles preferred.<sup>35</sup> Regardless, Paxton’s Motion to Dismiss lacks merit.

## **II. Paxton violated his legal duty to act as protector of charitable organizations.**

The OAG intervened in the Mitte Foundation lawsuit pursuant to Section 123.002 of the Texas Property Code.<sup>36</sup> As acknowledged by the OAG, Chapter 123 of the Texas Property Code is “essentially a notice statute” that allows “the Attorney General to fulfill his obligations under the Constitution of the State of Texas and the common law relating to the protection of charities and charitable trusts.”<sup>37</sup> When intervening in a charitable trust lawsuit pursuant to Chapter 123, the OAG’s common law duty is to act as the “public protector” of such charities, as a long line of Texas cases holds.<sup>38</sup> Not only does Paxton’s motion disclaim this duty, but it fails to address any of the long-standing Texas cases recognizing this affirmative duty.

---

<sup>35</sup> The House Managers have further addressed why the following complaints are improper: (1) the Articles are allegedly vague, *see* House Managers’ Response to Paxton’s Motion to Quash; (2) the Articles somehow lack evidentiary support, *see* House Managers’ Response to Paxton’s No Evidence Motion for Summary Judgment; and (3) the Articles purportedly fail to allege an impeachable offense, *see* House Managers’ Response to Paxton’s Request for Bill of Particulars.

<sup>36</sup> [TEX. PROP. CODE. § 123.002.](#)

<sup>37</sup> Exhibit 36; *see also* [Ethan Shaw v. Toshiba](#), 2005 WL 4123168 (E.D. Tex November 23, 2005).

<sup>38</sup> *See* [Powers v. First Nat’l Bank of Corsicana](#), 161 S.W.2d 273, 284 (Tex. 1942) (holding that the Attorney General of Texas “is under a positive, continuing obligation to *protect* [a public trust] at any time such may become necessary”) (emphasis added); [Hill v. Lower Colo. River Auth.](#), 568 S.W.2d 473, 478 (Tex. Civ. App.—Austin 1978, writ ref’d n.r.e.) (“A public charity trust, as opposed to a private trust, may be properly *protected* by the attorney general, such being a function belonging to his office under the Constitution and laws of the state.”) (Emphasis added and internal quotations omitted); [Ozee v. Am. Council on Gift Annuities, Inc.](#), 110 F.3d 1082, 1096 (5th Cir.1997) (noting the attorney general’s status as “public *protector* of charities and charitable trusts”) (emphasis added), *vacated on other grounds sub nom Am. Bible Soc. v. Richie*, 522 U.S. 1011 (1997), *on remand Ozee v. Am. Council on Gift Annuities, Inc.*, 143 F.3d 937 (1998); John W. Vinson, *The Charity Oversight Authority of the Texas Attorney General*, [35 St. Mary’s L.J. 243](#), 245 (2004) (“Charitable interests, however, having no stockholders or specifically identifiable



Paxton’s backup argument is the same absurd position that he took when forcing his lawyers to intervene—that the intervention helped the Mitte Foundation by seeking to end “the exorbitantly expensive legal fees that the foundation paid” and “to avoid a charity incurring legal fees for excessive, protracted litigation.” This argument fails for several reasons.

**First**, the Mitte Foundation was forced to incur more legal fees, not less, *because of* the OAG’s intervention into the lawsuit. When the OAG intervened, the Mitte Foundation was pressing the case towards a resolution at trial.<sup>39</sup> The OAG forced the Mitte Foundation to stop litigating the case, attend a worthless mediation (with two mediators), and respond to frivolous motions asking the court to stay discovery.

**Second**, the only reason the Mitte Foundation was paying “exorbitantly expensive legal fees” is because of the improper actions of Paul. Paul’s tactics in the litigation were “to frustrate and delay and obfuscate as much as they can.”<sup>40</sup> If the OAG wanted to help the Mitte Foundation, it had a legal obligation to pressure Paul to pay the amount he agreed to pay and end litigation.

**Third**, the Mitte Foundation’s lawsuit against World Class was brought pursuant to Section 153.552.<sup>41</sup> The remedy available for the Mitte Foundation in the lawsuit is “attorney’s fees incurred in enforcing the partner’s or assignee’s rights under Section 153.552.”<sup>42</sup> Therefore, the Mitte Foundation was incurring attorneys’ fees that World Class was required to pay at the conclusion

---

owners, are *protected* and enforced by the Attorney General on behalf of the public—charity’s ultimate beneficiary.”) (Emphasis added).

<sup>39</sup> Exhibit 12 at 47:1–49:2.

<sup>40</sup> *Id.* at 52:10–53:15.

<sup>41</sup> Exhibit 109.

<sup>42</sup> [TEX. BUS. ORGS. CODE § 153.5521](#).

of litigation. As the top lawyer for the State, Paxton certainly knew that “legal fees for excessive, protracted litigation” incurred by the Mitte Foundation would be paid by Paul.

### **III. Paxton’s forcing the OAG to intervene in the Mitte Foundation lawsuit, as described in Article I, is impeachable conduct.**

Paxton ignores that legally permissible acts are impeachable when performed with an improper purpose that results in a private benefit, whether to the officeholder or another. Misconduct can support impeachment whether or not it constitutes an indictable crime.<sup>43</sup> The Texas Supreme Court explained that “*the wrongs justifying impeachment need not be statutory offenses or common-law offenses, or even offenses against any positive law.*”<sup>44</sup>

Impeachment is not meant to punish the wrongdoer. Rather, it seeks to protect the State and its citizens against conduct that undermines the integrity of the office, disregards constitutional duties and oaths of office, abuses government process and power, and adversely impacts the system of government.<sup>45</sup> The conduct alleged in Article I (failing to act as a protector of charitable organizations) is precisely the type that the Framers were concerned about when they included impeachment in the Constitution:

In framing the impeachment provisions, the concern of the framers was not limited to crimes of which private citizens and public officials could be equally guilty. Had that been their concern, impeachment might not have been necessary, as such offenses could be handled by the ordinary courts. What the framers seemed greatly concerned about during their discussion of impeachment was the abuse or betrayal

---

<sup>43</sup> See RAOUL BERGER, IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS xii, 70-71 (1974) (noting that history shows that “indictable crimes are not a prerequisite to impeachment.”); CHARLES L. BLACK, JR. & PHILLIP BOBBITT, IMPEACHMENT: A HANDBOOK, NEW EDITION 35 (2018) (concluding that based on the language of the U.S. Constitution, impeachable offenses should include “those offenses which are rather obviously wrong, whether or not ‘criminal,’ and which so seriously threaten the order of political society as to make pestilent and dangerous the continuance in power their perpetrator.”).

<sup>44</sup> [\*Ferguson v. Maddox\*](#), 263 S.W. 888, 892 (Tex. 1924).

<sup>45</sup> [Report of the Texas House Select Committee on Impeachment](#) at 8, July 23, 1975.

of a public trust, offenses peculiar to public officials.... The debates reveal that the framers were heavily motivated in fashioning the impeachment provisions by the possibility of tyrannical, oppressive, corrupt and willful use of the power connected with a public office. Offenses of this character, involving as they do the highest officers of the country, required a special forum.”<sup>46</sup>

### CONCLUSION

Thus, the conduct alleged in Article I clearly rises to the level of an impeachable offense and the Senate should deny Paxton’s Motion.

Respectfully submitted,



---

Rusty Hardin  
State Bar No. 08972800  
Lara Hudgins Hollingsworth  
State Bar No. 00796790  
Jennifer Brevorka  
State Bar No. 24082727  
Daniel Dutko  
State Bar No. 24054206  
Megan Moore  
State Bar No. 24054322  
Leah M. Graham  
State Bar No. 24073454  
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](mailto:rhardin@rustyhardin.com)  
[lhollingsworth@rustyhardin.com](mailto:lhollingsworth@rustyhardin.com)  
[jbrevorka@rustyhardin.com](mailto:jbrevorka@rustyhardin.com)  
[ddutko@rustyhardin.com](mailto:ddutko@rustyhardin.com)  
[mmoore@rustyhardin.com](mailto:mmoore@rustyhardin.com)

---

<sup>46</sup> John D. Feerick, *Impeaching Federal Judges: A study of the Constitutional Provisions*, 39 [FORDHAM L. REV. 1](#), 53 (1970).

[lgraham@rustyhardin.com](mailto:lgraham@rustyhardin.com)  
[alewis@rustyhardin.com](mailto:alewis@rustyhardin.com)  
[adennis@rustyhardin.com](mailto: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](mailto:ddeguerin@aol.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@harrietoneilllaw.com](mailto:honeill@harrietoneilllaw.com)

and

Erin M. Epley  
State Bar No. 24061389  
**EPLEY LAW FIRM**  
[erin@epley-law.com](mailto: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](mailto:Mark@psd.law)

and

Donna Cameron  
State Bar No. 03675050

and

Terese Buess  
State Bar No. 03316875  
[Buesster@gmail.com](mailto: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](mailto: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](mailto: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 August 15, 2023:

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



---

Lara Hudgins Hollingsworth