

Satsy Daw

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

AUG 15 2023

CLERK OF THE COURT

IN THE MATTER OF
WARREN KENNETH
PAXTON, JR.

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HOUSE MANAGERS' RESPONSE TO
PAXTON'S MOTIONS TO DISMISS ARTICLES IX & X
(Constitutional Bribery)

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 Articles IX and X (“the Motion”) filed by Warren Kenneth Paxton Jr. (“Paxton”).

INTRODUCTION

From the dark ages to the internet age, skeptics have considered bribes as invisible grease that makes the wheels of politics spin. The drafters of the Texas Constitution responded emphatically: not in Texas. Here, bribery is a crime of constitutional magnitude. The Senate has the opportunity to reaffirm this foundation of good government. “Pay to play” will not be tolerated in Texas politics.

Several Articles of Impeachment against Warren Kenneth Paxton Jr. (“Paxton”) lead to Nate Paul (“Paul”). Articles IX and X answer the question Texans are asking: Why? The answer is as old as politics. Paul had valuable services and secrecy to offer Paxton. Paxton had power to assist Paul in the myriad of legal woes that were threatening to crumble his real estate empire and land him in prison. And that’s precisely what happened. Paul facilitated Paxton’s extramarital affair by employing Paxton’s mistress in Austin (and keeping their affair secret)¹ and provided renovations to the Paxtons’ Austin home.² Paxton afforded Paul favorable legal assistance and specialized access to the OAG for Paul’s personal benefit. This is about as *quid pro quo* as it gets under any legal concept of bribery, constitutional or otherwise. The Motions to Dismiss Articles

¹ Exhibit 94, HBOM00016648 at 66:13—67:7; 165:21—166:6; 166:18—167:11.

² Exhibit 19 at 35:3-9, 36:2-23, 58:4-24; 61:17-25; Exhibit 41.

IX and X should be denied, so the House Board of Managers (“House Managers”) can shine the light of day on this tale of corruption.

FACTUAL BACKGROUND

With an impeachment narrative surrounding Paxton’s inexplicable but undeniable beholdenness to donor Paul one might think to look for an out-sized campaign contribution. But Paxton’s campaign reports show a \$25,000 donation in 2018. That is not an insignificant contribution, of course, but could a statewide politician like Paxton, with acumen for fundraising, really be bought and controlled by such an amount? There must be more to the story.

Of course there is. While the House may never know the full depth of Paxton’s ties to Paul, the House learned enough to know that Paul was bribing Paxton to get Paxton’s office to make key decisions that would benefit Paul in a flurry of legal problems he was facing. Paul was afforded significant, continuous access to Paxton and the OAG’s power and resources. Both Paxton and Paul spoke with others about Paul’s use of the OAG for his personal litigation.³

The bribery allegation in Article IX involves evidence pertaining to Paxton’s mistress. Paxton began this affair sometime before 2018. Paxton’s wife discovered the affair in 2019, and it supposedly ended before Paxton’s 2018 re-election.⁴ But by 2020 the affair had resumed.⁵ Paxton worked to keep it private; it could harm both Paxton’s personal and professional relationships, as well as his standing with his base who believed him to be the consummate family man.⁶

³ See Exhibit 79, HBOM00271792 at 69:9—73:14; 84:18—86:6; 87:15-20.

⁴ See Exhibit 19 at 58:40—59:11.

⁵ See Exhibits 89, 89-A, 19 at 60:2—61:25.

⁶ So strong was the desire to keep the affair private that Paxton removed a long-time employee from the executive offices simply because the employee privately discussed the affair with Paxton, out of concern for him, his marriage, and his political mission.

The personal and political risk could not override Paxton’s desire to continue the affair. The problem? The woman lived in San Antonio. So, Paxton introduced her to Paul, who gave her a job in Austin. A single specific project the mistress worked on has never been identified. But the new job allowed the two to meet without the inconvenience of ditching Paxton’s security detail for the commute between Austin and San Antonio. This access was a significant benefit to a married, busy statewide official who wished to keep his affair secret.

The bribery allegation in Article X involves evidence pertaining to the Paxtons’ Austin home renovation in 2020. Paul had years of experience renovating (and flipping) residential and commercial properties in Austin. The Paxtons’ renovations actually began as repairs. Their home had suffered some water damage, but by summer of 2020 the home was under a full-scale renovation that can fairly be described as “floor to ceiling.”⁷ Part of this renovation included upgrades to the kitchen countertops and cabinets. An OAG employee was present with Paxton as he discussed his desired upgrades with the contractor. The contractor noted that the upgrades would be an additional \$20,000. Paxton told the contractor to proceed, and the contractor repeatedly responded: “I’ll have to check with Nate.” This was one of two similar conversations that the OAG employee overheard about Paul and the significant renovations to the Paxton home.

ARGUMENTS & AUTHORITIES

Paxton offers the Senate quite the history of Texas bribery law. The history lesson’s legal relevance appears to be only that the Articles should be dismissed for vagueness and lack of specificity. That argument is wrong. But the motion contains two other inaccurate implications worth addressing. First, there is no authority for Paxton’s contention that the constitutional prohibition against bribery (Article 16, Section 41) is not self-executing—meaning, a “stand

⁷ See Exhibit 19 at 32:4-15.

alone” offense (separate and apart from bribery under the Texas Penal Code). Second, Paxton is adamant that the House Managers have no evidence to prove bribery. Of course, they do,⁸ and the House Managers look forward to presenting it to the Senate at trial.

I. Articles IX and X provide specific information about Paxton’s alleged bribery.

The entire basis for Paxton’s motion is a meritless attack on the specificity complained within these Articles. These arguments are refuted in the House Managers’ Responses to Paxton’s Motion to Quash and Request for Bill of Particulars, both of which are incorporated by reference herein and the substance of which will not be repeated here. Suffice it to say that Articles IX and X are more than sufficient under the law to identify Paxton’s wrongdoing and support their preferment to the Senate. Similar arguments did not carry the day in *In re Carillo*, and the Articles presented here provide even more detail than those preferred in *Carillo*.⁹ There is no reason for the Senate to afford Paxton the special treatment his motion seeks.

II. Paxton can, and should, be tried for bribery under the Texas Constitution.

According to Paxton, the constitutional prohibition on bribery can only be asserted by pleading and proving the bribery statutes under the Texas Penal Code. Paxton cites no legal authority for that proposition because it is not true. Paxton echoes the same theme in multiple motions, that this is a criminal proceeding constrained by the intricacies of criminal statutes and procedures. He could not be more wrong, as explained in detail in the House Managers’ Responses to Paxton’s Motion to Quash and Request for Bill of Particulars. To be sure, the misdeeds Articles IX and X describe violate the Constitution’s prohibition of bribery—and that is enough. But the

⁸ See House Managers’ Response to Paxton No Evidence Summary Judgment Motion and Response to Motion to Dismiss based on forgiveness.

⁹ See House Managers’ Response to Paxton’s Request for Bill of Particulars, App. B (comparison chart).

facts underlying those same allegations would support a bribery finding under any iteration of the law, including the Penal Code.

Under the Texas Constitution, an executive officer cannot “solicit, demand, or receive . . . directly or indirectly, for himself, or for another” any “thing of value” or “of personal advantage or promise thereof” for the officer’s “official influence.”¹⁰ This provision is broad enough, intentionally so,¹¹ to cover many types of conduct.¹² It also provides the consequence for bribery under Section 41: The convicted officer “shall incur the disabilities provided for said offenses, with a forfeiture of the office they may hold, and such other additional punishment as is or shall be provided by law.”¹³ In other words, the officer loses his job and may also suffer “additional punishment” provided by statutory law.

Thus, Section 41’s plain words show that it is self-executing—meaning, a “stand-alone” offense, separate and apart from bribery as defined in the Texas Penal Code. A provision of the Constitution is self-executing “if it supplies a sufficient rule by means of which . . . the duty imposed may be enforced . . .”¹⁴ A constitutional provision is not self-executing when the language

¹⁰ TEX. CONST. art. [XVI, § 41](#).

¹¹ While “[t]here is no recorded debate on the section but apparently its detail is a result both of the widespread corruption in the Reconstruction government and of the intense pressures exerted by railroad lobbyists on members of the 1875 Convention.” GEORGE BRADEN, ET AL., THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS [781](#) (1977). This suggests that the drafters did not want a future legislature to water-down the offense of bribery.

¹² As the Court of Criminal Appeals once noted, Section 41 “clearly furnish adequate warning to anyone of ordinary intelligence that the kind of conduct embarked on by appellants would constitute an offense.” [Mutscher v. State](#), 514 S.W.2d 905, 916 (Tex. Crim. App. 1974).

¹³ TEX. CONST. art. [XVI, § 41](#).

¹⁴ [Mitchell Cnty. v. City Nat’l Bank](#), 43 S.W. 880, 883–84 (Tex. 1898).

requires further legislative action to give it effect.¹⁵ In fact, when a constitutional provision is only meant to authorize or require the Legislature to enact particular laws, the Constitution says so.¹⁶ If a constitutional provision is meant to merely urge legislative action, that intent is expressed as well.¹⁷ That is not the case with constitutional bribery.

Paxton’s argument that there is only a statutory offense for bribery, not a constitutional one, is patched together not with case law but with unsupported sound bites. And it is wrong. Further, it makes sense that constitutional bribery and statutory bribery co-exist. Section 41 applies only to “any member of the Legislature or executive or judicial officer.”¹⁸ Penal Code Section 36.02 applies to “a person,”¹⁹ so it has broader application than the constitutional bribery offense.

III. The evidence will show that Paxton committed bribery in violation of the Constitution.

Paxton’s pearl-clutching about impeachment for bribery would border on humorous—in light of the known facts about the bewildering Paxton-Paul, mutually beneficial relationship—had it not pained the House to vote on such serious charges. According to Paxton, “[a]ll Articles IX and X allege is that the Attorney General received a benefit and that Nate Paul benefited from some official action the Attorney General took.” That is an outlandish misreading. The Articles

¹⁵ *E.g.*, [Taylor v. State](#), 197 S.W. 196, 197 (Tex. Crim. 1917) (holding that a constitutional provision authorizing courts to grant changes of venue “only in such manner as shall be provided by law” was not self-executing because it was “necessary for the Legislature to pass suitable laws and provide necessary rules of procedure to carry into effect” the constitutional language)

¹⁶ *E.g.*, TEX. CONST. art. [III, § 47](#) (“The Legislature *shall pass laws prohibiting* lotteries and gift enterprises in this State other than those authorized by” the Constitution itself) (emphasis added).

¹⁷ *E.g.*, TEX. CONST. art. [XVI, § 23](#) (The Legislature *may pass* laws for the regulation of livestock and the protection of stock raisers in the stock raising portion of the State”) (emphasis added).

¹⁸ TEX. CONST. art. [XVI, § 41](#).

¹⁹ TEX. PENAL CODE [§ 36.02](#).

allege that “[w]hile holding office as attorney general, Warren Kenneth Paxton engaged in bribery in violation of Section 41, Article XVI, Texas Constitution” by “benefit[ing] from Nate Paul’s employment of a woman with whom Paxton was having an extramarital affair” (Article IX) and “benefit[ing] from Nate Paul providing renovations to Paxton’s home” (Article X), for which “Paul received favorable legal assistance from, or specialized access to, the [OAG].” This is bribery plain and simple.

Paxton seems to believe the House Managers will be unable to prove that Paxton and Paul had an *understanding* that Paul would provide these benefits to Paxton in exchange for, or with the expectation of, something in return. Relying on a relatively recent U.S. Supreme Court case (*McDonnell*),²⁰ Paxton attempts to discount any inference the Senate might make from Paul’s *access* to Paxton and his staff. *McDonnell* does hold that mere meetings, calls, and other actions do not themselves qualify as “official acts” under federal corruption statutes (a holding not relevant to the Articles against Paxton). But the opinion emphasizes that evidence of these interactions remains relevant and admissible, and *the jury can infer from those acts that the official **agreed** to perform a qualifying official act.*²¹ It also reaffirms two other core principles of public corruption law: (1) An “agreement” can be inferred from circumstantial evidence, including, in part, the

²⁰ [*McDonnell v. United States*](#), 579 U.S. 550 (2016).

²¹ *Id.* at 573.

timing of the payment, that is, the agreement need not be “explicit,”²² and (2) “The public official need not specify the means that he will use to perform his end of the bargain.”²³

The evidence will show that Paul had unprecedented access to Paxton: calls and meetings at the very time Paxton was using his office for Paul’s benefit; communications about legal matters pending in OAG and directly involving Paul; and, direct access to high-ranking state officials. Paul did not simply benefit indirectly from Paxton’s general, business-oriented policies. Just the opposite, Paxton’s general policies bended to Paul’s business needs, over and over. The *quid* (price) for Paxton’s *pro quo* (actions taken on Paul’s behalf) was an off-the-books, fully-remodeled home; a new job closer to home for his mistress; and secrecy about matters that threatened Paxton’s marriage and political career. Bribery.

CONCLUSION

The Motion to Dismiss Articles IX and X should be summarily denied.

Respectfully submitted,



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²² *Id.* at 572.

²³ *Id.*

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on the following counsel
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