

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

Astley Dawson

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
MOTION FOR NOTICE OF BRADY MATERIAL

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

After filing numerous motions asserting there is insufficient, or no, evidence to support the Articles of Impeachment, Warren Kenneth Paxton Jr. (“Paxton”) now argues that the Texas House of Representatives Board of Managers (“House Managers”) have provided him with *too much* evidence such that he cannot determine what materials are mitigating and exculpatory. His solution? The Senate should require the House Managers to set out in writing all *Brady* material.¹ Not only does *Brady* not apply to this impeachment proceeding, if it did such a request would be unheard of and would exceed the requirements of *Brady* itself. Once again, in a familiar refrain, Paxton’s Motion for Notice of Brady Materials (“Motion”)² turns on the faulty premise that the impending Senate trial is a criminal proceeding. It is not, and the Motion should be summarily denied.

ARGUMENTS & AUTHORITIES

Putting aside that an impeachment trial before the Senate is not a criminal proceeding,³ and that *Brady* in no way applies, Paxton’s request that the House Managers provide him with a *written* list of what is known as *Brady* material is unheard of. To be clear, Paxton is not complaining that the House Managers are not complying with the Senate’s July 12, 2023 Discovery Order.⁴ Quite the opposite. Paxton is complaining that the House Managers have produced *too many* documents,

¹ Pursuant to [Brady v. Maryland](#), 373 U.S. 83, 87 (1963) a criminal prosecutor is obligated to *disclose* evidence that is favorable to the criminal defendant.

² The Senate’s recent order requiring the parties to exchange exhibits on August 22, 2023, mooted Paxton’s second request for a list of exhibits.

³ The House Managers’ Response to Paxton’s Motion to Quash details why an impeachment proceeding is neither a criminal nor civil proceeding.

⁴ This is precisely what Paxton asked for. In fact, his legal counsel repeatedly, though wrongly, complained that the House Managers were not complying with the order.

which production includes any material that would come within *Brady*'s scope even if it did apply (it does not). Thus, Paxton is asking the Senate to force the House Managers to do his homework for him by providing him with a list. There is no precedent for this. Paxton does not and cannot cite any example of a past Texas Senate ordering house managers to provide a list of any materials, much less under *Brady*. Paxton cites not a single Texas case where a court ordered a prosecutor to provide a written list of *Brady* material. Even if it did apply, that is not what *Brady* requires. *Brady* created a *disclosure* requirement, not a "do the other sides' work for them" requirement.

Paxton argues that *In re State ex. rel. Skurka*⁵ supports his request. *Skurka*, however, does not concern *Brady* or any other type of exculpatory material. The defendant did not ask the court to require the State to prepare a list of any *Brady* material.⁶ The only issue was whether the trial court could require the State to more specifically identify information it intended to use for trial.⁷ Thus, *Skurka* has no application whatsoever in this non-criminal impeachment proceeding.

Paxton's request seeks relief no Texas respondent has ever been afforded. Once again, Paxton is not entitled to the special treatment he seeks. The Senate should summarily deny his Motion.

CONCLUSION

Disturbingly, Paxton's request that the Senate force the House Managers to create and provide him with a written list of all *Brady* evidence is yet another example of Paxton putting his own personal interest above that of his former office. The relief he seeks would make the job of the attorneys at the OAG wildly more complicated. Indeed, he is asking for relief that no

⁵ [512 S.W.3d 444](#) (Tex. App.—Corpus Christi-Edinburg 2016, no pet.)

⁶ *Id.* at 447-450.

⁷ *Id.* at 449-453.

respondent in any court is entitled to. Paxton's request is illogical, has no support in the law, and should be denied.

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CERTIFICATE OF SERVICE

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