

**THE SENATE OF THE STATE OF TEXAS
COURT OF IMPEACHMENT**

Alicia Shaw

JUL 21 2023

CLERK OF THE COURT

IN THE MATTER OF

WARREN KENNETH PAXTON, JR.

**WARREN KENNETH PAXTON, JR.'S
MOTION CHALLENGING JURORS FOR CAUSE**

A basic principle of due process is that the accused is entitled to an unbiased jury. Like numerous courts around the country, the Texas Court of Criminal Appeals has held for almost a century that potential jurors with a bias or prejudice against the accused are disqualified from serving on his jury as a matter of law. Jurors José Menendez, Roland Gutierrez, and Nathan Johnson have such a bias and have proclaimed it loudly, time and again. Gutierrez, for example, has said that the evidence against the Attorney General “could not be refuted.” But that is the purpose of a defense—to attempt to refute the prosecution’s evidence—and the function of a trial—to determine whether that evidence has proven charges beyond a reasonable doubt. No one who has publicly declared the charges against a defendant irrefutable can even play at impartiality, let alone serve in an impartial manner. And Menendez and Johnson are no better.

This Court has already determined the appropriate status for a recused or disqualified juror: the restrictions of Rule 31 as applied, at present, to Senator Angela Paxton. This Court should disqualify Senators Menendez, Gutierrez, and Johnson, and order that they are subject to Rule 31’s restrictions for the remainder of these proceedings.

Even if the Court held that one or more of these challenged jurors had not demonstrated prejudice or bias as a matter of law, the evidence against each is sufficient to require voir dire examination of these jurors, consistent with the Attorney General’s constitutional rights. A limited voir dire will permit the Court to make a fully informed decision regarding whether the apparent bias and prejudice of these jurors precludes each from sitting in judgment of the Attorney General at the upcoming trial. The Court should at a minimum order that jurors Menendez, Gutierrez, and Johnson cannot participate in deliberations or vote on any matter or motion until after the requested voir dire is conducted.

STANDARD OF LAW

A juror may be challenged for cause if he has a bias or prejudice against the accused. Tex. Code. Crim. Proc. art. 35.16(a)(9); Tex. Gov't Code § 62.105(4); *Gardner v. State*, 306 S.W.3d 274, 295 (Tex. Crim. App. 2009). The proponent of a challenge for cause bears the initial burden of establishing that the challenge is proper. *Gardner*, 306 S.W.3d at 295. The test is whether the bias or prejudice substantially impairs the prospective juror's ability to carry out his oath and follow the Court's instructions. *Davis v. State*, 329 S.W.3d 798, 807 (Tex. Crim. App. 2010).

“[B]ias and prejudice form a trait common in all men,” but to disqualify a juror “certain degrees thereof must exist.” *Compton v. Henrie*, 364 S.W.2d 179, 181-182 (Tex. 1963).¹ Bias is an inclination toward one side of an issue rather than to the other. *Hyundai Motor Co.*, 189 S.W.3d at 750. To be disqualified for bias, a juror's state of mind must appear to create a natural inference that he or she will not act with impartiality. *Id.* at 750-51 (citing *Compton*, 364 S.W.2d at 182). A juror is prejudiced if he has made a prejudgment about the case. *Id.* Neither bias nor prejudice is presumed. *Sosa v. Cardenas*, 20 S.W.3d 8, 11 (Tex. App.—San Antonio 2000, no pet).

If evidence conclusively establishes that a juror would not act with impartiality, the juror should be disqualified as a matter of law. *Garza v. Tan*, 849 S.W.2d 430, 432 (Tex. App.—Corpus Christi 1993, no writ). “Evidence is conclusive only if reasonable people could not differ in their conclusions, a matter that depends on the facts of each case.” *Aerotek, Inc. v. Boyd*, 624 S.W.3d 199, 204 (Tex. 2021). While a juror is statutorily disqualified when bias or prejudice is conclusively established, it is within the trial court's discretion to first make the factual determination of a bias or prejudice's existence. *Swap Shop v. Fortune*, 365 S.W.2d 151, 154

¹ The statutory standards for bias or prejudice are the same in civil and criminal cases. *Hyundai Motor Co. v. Vasquez*, 189 S.W.3d 743, 753 (Tex. 2006).

(Tex.1963); *Anderson v. State*, 633 S.W.2d 851, 854 (Tex. Crim. App. 1982). A juror shown to be biased or prejudiced as a matter of law must be excused if challenged, “even if he states that he can set the bias aside and provide a fair trial.” *Anderson*, 633 S.W.2d at 854.

ARGUMENT

I. Attorney General Paxton has a Constitutional Right to a Fair, Impartial Jury.

The Court’s recent Gag Order is premised on Attorney General Paxton’s constitutional right to a fair, impartial jury. Both the United States Constitution and the Texas Constitution guarantee him that right. U.S. Const. amend. VI; Tex. Const. art. 1, § 10. An impartial jury is also a fundamental requirement of due process. *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968). The jurors must be impartial and indifferent so that the verdict is based upon the evidence developed at trial. *Howard v. State*, 941 S.W.2d 102, 117 (Tex. Crim. App. 1996), *overruled on other grounds by Easley v. State*, 424 S.W.3d 535, 538 & n.23 (Tex. Crim. App. 2014). The Texas Constitution’s impartial jury guarantee provides the same level of protection as the United States Constitution’s Sixth Amendment. *Jacobs v. State*, 560 S.W.3d 205, 210 (Tex. Crim. App. 2018).

This Court presumably recused Senator Angela Paxton from participating in these proceedings largely due to these concerns. Tex. Const. art. XV; Tex. S. Res. 36, 88th Leg., 1st C.S. (2023), rule 31. That recusal was unprecedented as a matter of Texas history—though past federal impeachment proceedings have entertained motions to disqualify biased Senators from participating in the impeachment trial. S. Journal, 1st Cong., Reg. Sess. at 382-83 (1804) (Pickering Impeachment); S. Journal, 40th Cong., Reg. Sess. 2 at 809-11 (1868) (Johnson Impeachment).² Having determined that a Senator may be recused from participating in these proceedings, however, this Court has an obligation to apply that principle across the board: if

² See Procedures and Guidelines for Impeachment Trials in the United States Senate (1986), found at <https://www.govinfo.gov/content/pkg/CDOC-99sdoc33/html/CDOC-99sdoc33.htm>;

Senator Paxton may be required to step aside, Senators that have demonstrated a bias or prejudice against the Attorney General must be required to do so as well.

II. The Challenged Jurors' Bias and Prejudice Disqualifies Them as a Matter of Law.

A person who has a bias or prejudice in favor of or against a party in the case is disqualified to serve as a juror. Tex. Gov't Code § 62.105(4); Tex. Code Crim. Pro. 35.16(9). A prospective juror that admits to bias against a defendant is disqualified as a matter of law. *Anderson*, 633 S.W.2d at 854. This has been the case since at least 1925, when the Texas Court of Criminal Appeals forbade a juror to serve on a case when he, prior to hearing the evidence, expressed the opinion that the accused had committed the offenses he had been charged with. *Brown v. State*, 289 S.W. 392, 394-395 (Tex. Crim. App. 1925). The juror admitted that he held this opinion “in my mind for something like a year and a half before this trial and still had them in my mind during the trial and did not forget them.” *Id.* at 394. “I had an opinion in my mind that the defendant was violating the Prohibition Law and I still have that opinion.” *Id.* “The opinion that I had before I went into the trial of the case would have required evidence to remove it.” *Id.* The Court of Criminal Appeals held that “[t]he constitutional and statutory guaranty to every person tried for a crime that he shall have a trial before a fair and impartial jury is violated if one man of the twelve is partial and unfair.” *Id.*

Forbidden bias or prejudice does not have to be nearly so direct. A juror can be disqualified as a matter of law based on his general resentment of or prejudice against the accused. For example, in *Williams*, a juror stated during voir dire that the defendant had once drilled a well for him and it had gone poorly. *Williams v. State*, 565 S.W.2d 63, 65 (Tex. Crim. App. 1978). The juror admitted he was prejudiced against the defendant due to these prior dealings and that it could impact his

deliberations as a juror, but the trial judge denied the defendant's challenge to the juror for cause because the juror later said he thought he could set aside these past experiences. *Id.*

But the Court of Criminal Appeals disagreed, holding that the juror's negative opinion—even though it had nothing to do with the matter of the case—disqualified him from serving on the jury as a matter of law due to “clearly evinced” bias and prejudice towards the defendant. *Id.* “While a trial court may hold a juror qualified who states that he can lay aside any opinion which he may have formed, no such discretion vests in the court with reference to a juror with bias or prejudice toward an accused.” *Id.* (citing *Gonzalez v. State*, 331 S.W.2d 748 (Tex. Crim. App.1960)). “When it appears that the feeling had by the proposed juror is really one of prejudice, and that it is directed toward the accused, it is not ordinarily deemed possible for such a juror to be qualified by stating that he can lay aside such prejudice.” *Id.* (citations omitted). The Court of Criminal Appeals underscored the importance of animosity against an *individual* as more prejudicial than a stated opinion on an *issue*: while the latter may sometimes be cured, the former generally disqualifies an individual from serving on a jury.³ Three jurors have demonstrated such a bias, and they must be disqualified from participating further in these proceedings and be subjected to Rule 31's restrictions.

A. Extrinsic Evidence Conclusively Establishes Senator Menendez's Bias and Prejudice.

Senator Menendez has continuously and publicly displayed bias and prejudice against the Attorney General, including regarding some of the circumstances that will be addressed at trial.

³ Disqualification of a juror can be based on extrinsic evidence of bias or prejudice and is not limited solely to evidence of bias elucidated during the voir dire examination. Tex. Code Crim. Pro. Art. 35.18 (“Upon a challenge for cause, the examination is not confined to the answers of the juror, but other evidence may be heard for or against the challenge.”). This can include independent evidence of expressions of opinion prior to the trial. *Prewitt v. State*, 167 S.W.2d 194, 197 (1942), *overruled on other grounds by Wolfe v. State*, 178 S.W.2d 274 (1944).

Exhibit A. As recently as March 2023, Menendez publicly proclaimed his prejudice against the Attorney General: “Ken Paxton[] continues to be allowed to flaunt the laws/rules without any consequences.” Exhibit A. Within the last year, Menendez has made public statements accusing the Attorney General of bribery and wrongdoing, including one directed to the public to “elect an AG that’s NOT under indictment, FBI investigation or accused of bribery by his own staff!” Exhibit A. He has also accused the Attorney General of violating campaign finance laws and corruption, specifically referencing the former OAG employees that will be central to the upcoming trial. Exhibit A. He goes so far as to state that the Attorney General “doesn’t just give himself a pass; he doesn’t enforce the law when others break it either.” Exhibit A.

These statements are surely just the tip of the iceberg of Senator Menendez’s deep-seated prejudice against the Attorney General. His publicly displayed bias against the Attorney General has been unqualified and unequivocal since at least 2018, when he accused the Attorney General of violating the Election Code and “potentially the Penal Code” while “squander[ing] millions of taxpayer dollars tilting at political windmills.” Exhibit A. Senator Menendez, in no uncertain terms, has accused Attorney General Paxton of “illegal use” of his office, “exploit[ing] and misus[ing]” the State’s resources, failing to perform legal duties, and of “reckless and frivolous use of taxpayer’s dollars” for over five years now. Exhibit A. He has gone so far as to threaten to take legal action against the Attorney General or report him to law enforcement. Exhibit A.

All of these statements evince clear bias and prejudice both against the Attorney General individually and with regard to issues that will prove centrally important in the upcoming trial. It is obvious that Senator Menendez has not only formed an opinion regarding the charges against the Attorney General before hearing any evidence, but that he has also formed a negative opinion of the Attorney General that is irreconcilable and inconsistent with the impartial mindset a juror

must possess. Senator Menendez has a constitutionally intolerable bias and prejudice against Attorney General Paxton, and he must be disqualified from serving as a juror as a matter of law.

B. Senators Gutierrez and Johnson Have Also Demonstrated Bias and Prejudice.

Senator Menendez is not alone. Two of his fellow jurors have made prejudicial statements about the upcoming Court proceedings that exhibit prejudice, bias, and an inability to follow the Court's directives regarding impartiality and the law. Juror Gutierrez is perhaps the only juror to participate in an interview commenting on the impeachment proceedings before the gag order was issued, during which he unquestionably demonstrated bias and prejudice against the Attorney General.⁴ During the nationally televised interview, Senator Gutierrez concluded that he's "seen an abundance of misdeeds here." *Id.* "What we cannot turn away from is he is currently under indictment out of Collin County . . . he is under investigation from the FBI from some of the things that arose in this impeachment . . ." and the evidence seen by the House "could not be refuted." *Id.* He further provided the biased comment that "at some point you get to a place where there is a compounding effect, and I think that's what we have here with Paxton." "The evidence that we heard today . . . much of which was documented evidence, much of it was evidence of witnesses who came forward." "And by the way, Republican staffers of his, hand-picked staffers of his . . . he's being attacked by his own employees." He called the Attorney General's conduct during the House's impeachment proceedings "inappropriate" and accused him of jury tampering. Exhibit B (May 30, 2023). He has also accused Attorney General Paxton of "colluding to make Texas dangerous." Exhibit B.

Finally, On July 18, 2023, long after the Court issued a gag order to all Senators, Senator Nathan Johnson commented that a political contribution to the Court's presiding officer from a

⁴ See <https://www.youtube.com/watch?v=D5EkDv29Jyw>.

source that has opposed the Attorney General's impeachment was "obscene. If they're attempting to influence the carrying out of our solemn constitutional duty to act impartially, shame on them." Exhibit C. This is in line with his previously aired prejudice against the Attorney General, proclaiming that, in Johnson's view, the Attorney General was making reckless legal decisions, and that he "cares more for right-wing politics than for students and their education." Exhibit C. Senator Johnson's statements demonstrate an unacceptable bias and an inability to follow this Court's instruction to jurors to not publicly comment on the impeachment proceedings before the trial has even begun. His bias, standing alone, disqualifies Senator Johnson as a matter of law; but his inability to follow the Court's instruction compounds the issue and conclusively establishes that he is unfit to serve as a juror in this proceeding.

C. These Senators Are Disqualified as a Matter of Law and Cannot Be Rehabilitated.

For almost 100 years, the Texas Court of Criminal Appeals has continuously recognized that "a bias or prejudice *toward the accused* cannot be cured by a veniremember's statement that he can lay it aside." *Jernigan v. State*, 661 S.W.2d 936, 940 (Tex. Crim. App. 1983) (emphasis in original). When a juror has expressed a "specific prejudice directed toward [the accused] based on personal knowledge," the juror is biased as a matter of law. *Kemp v. State*, 846 S.W.2d 289, 299 (Tex. Crim. App. 1992). "[I]f the record, taken as a whole, clearly shows that a veniremember was materially biased, his or her ultimate recantation of that bias at the prodding of counsel will normally be insufficient to prevent the veniremember's disqualification." *Cortez ex rel. Est. of Puentes v. HCCI-San Antonio, Inc.*, 159 S.W.3d 87, 92 (Tex. 2005). In such instances, the trial court has no discretion and must disqualify the challenged juror. *Id.* at 93.

Senators Menendez, Gutierrez, and Johnson's own public statements convincingly establish bias and prejudice against the Attorney General. That cannot be cured. Even if it could,

in light of the nature of these proceedings, where the jurors are predetermined by the Constitution and voir dire is not expressly contemplated to vet any jurors potential or apparent bias, these jurors should be deemed disqualified by the Court and subject to the same rules restricting their participation as the Senate has imposed on Senator Angela Paxton.

III. At a Minimum, These Senators Have Demonstrated Bias or Prejudice That Requires Conducting Targeted Voir Dire.

When a juror has expressed an apparent bias that does not rise to the level of establishing disqualification as a matter of law, the juror can be rehabilitated through voir dire based on affirmations that the juror’s bias or prejudice can be set aside and the juror can decide the case on the law and evidence presented at trial. *Cortez*, 159 S.W.3d at 91–92. “If the initial apparent bias is genuine, further questioning should only reinforce that perception; if it is not, further questioning may prevent an impartial veniremember from being disqualified by mistake.” *Id.* at 92.

The Texas Court of Criminal Appeals has repeatedly held that before a juror can be excused for cause based on an apparent bias or prejudice that is not established as a matter of law, the law must be explained to the juror and the juror must be asked whether he can follow that law regardless of his personal views. *Tracy v. State*, 597 S.W.3d 502, 512 (Tex. Crim. App. 2020). This requires the party challenging an apparently biased or prejudiced juror to demonstrate that the juror “understood the requirements of the law and could not overcome his prejudice well enough to follow the law.” *Id.*

Even if the bias and prejudice exhibited by Senators Menendez, Gutierrez, and Johnson did not rise to the level required for disqualification as a matter of law (it does), the United States and Texas Constitutions require that voir dire be conducted to provide Attorney General Paxton the opportunity to substantiate his challenge for cause to these three jurors. The Sixth Amendment’s guarantee of an impartial jury includes “adequate voir dire to identify unqualified jurors.” *Franklin*

v. State, 138 S.W.3d 351, 354 (Tex. Crim. App. 2004) (citing *Morgan v. Illinois*, 504 U.S. 719, 729 (1992)). The Court of Criminal Appeals has also “consistently held that essential to the Sixth Amendment guarantees of the assistance of counsel and trial before an impartial jury ‘is the right to question veniremembers in order to intelligently exercise peremptory challenges and challenges for cause.’” *Id.* (quoting *Raby v. State*, 970 S.W.2d 1, 10 (Tex. Crim. App. 1998) (Baird, J., concurring and dissenting)). “The voir dire process is designed to insure, to the fullest extent possible, that an intelligent, alert, disinterested, impartial, and truthful jury will perform the duty assigned to it.” *Armstrong v. State*, 897 S.W.2d 361, 363 (Tex. Crim. App. 1995).

The Attorney General’s constitutional right to a fair and impartial jury will be jeopardized absent either disqualification or voir dire of Senators Menendez, Gutierrez, and Johnson. If each is not disqualified as a matter of law, the Attorney General should be afforded an opportunity to conduct a limited voir dire of each regarding their bias and prejudice, and accordingly their fitness to sit in judgment of the Attorney General at the upcoming trial.

CONCLUSION AND RELIEF REQUESTED

The Attorney General challenges for cause and moves to disqualify Senators Gutierrez, Menendez, and Johnson because each has made public statements conclusively establishing actual bias and prejudice against the Attorney General that disqualifies them as jurors as a matter of law. Each should be subject to Senate Rule 31. Alternatively, if the Court finds that one or more of the challenged jurors is not disqualified as a matter of law, the Attorney General requests the opportunity to conduct limited voir dire of Senators Gutierrez, Menendez, and Johnson. The Court should order that Senators Menendez, Gutierrez, and Johnson cannot participate in deliberations or vote on any matter or motion until after the requested voir dire is conducted.

Respectfully submitted.

/s/ Allison M. Collins

Judd E. Stone II
Christopher D. Hilton
Allison M. Collins
Amy S. Hilton
Kateland R. Jackson
Joseph N. Mazzara

STONE|HILTON PLLC
P.O. Box 150112
Austin, Texas 78715
(737) 465-7307
judd.e.stone@proton.me
christopher.d.hilton@proton.me
allison.collins23@proton.me
amy.s.hilton@proton.me
kateland.jackson@proton.me
joseph.mazzara86@proton.me

Tony Buzbee
The Buzbee Law Firm
JP Morgan Chase Tower
600 Travis Street, Suite 7500
Houston, Texas 77002
Tbuzbee@txattorneys.com

Dan Cogdell
Cogdell Law Firm
1000 Main St., Suite 2300
Houston, TX 77002
dan@cogdell-law.com

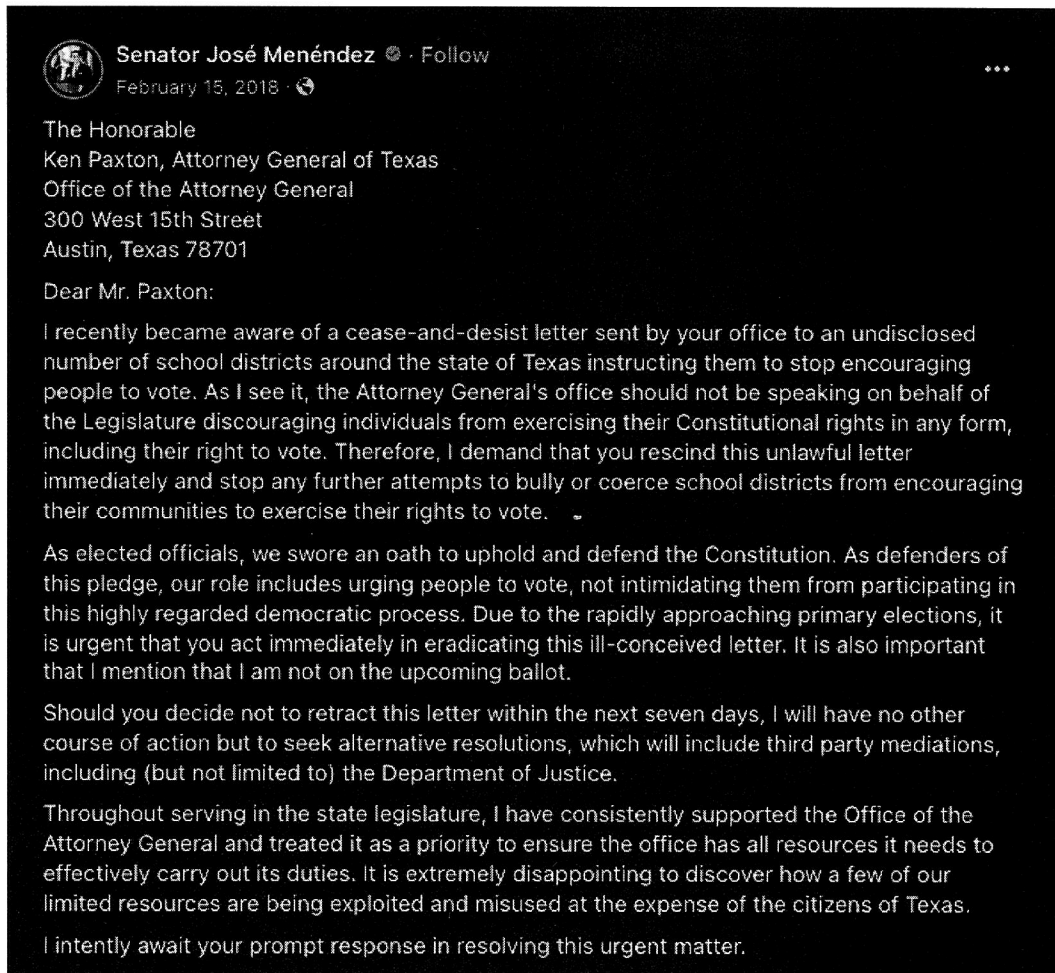
Counsel for the Attorney General

CERTIFICATE OF SERVICE

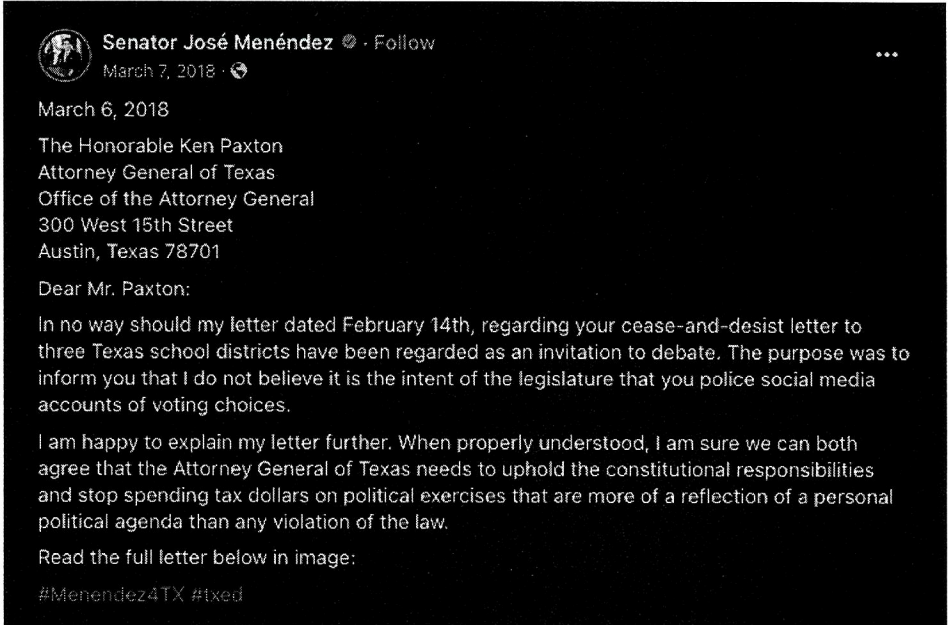
This motion was served via email on the House Board of Managers' counsel, to wit: Rusty Hardin, rhardin@rustyhardin.com, and Dick DeGuerin, ddeguerin@aol.com, on July 21, 2023.

/s/ Allison M. Collins
Allison M. Collins

Exhibit A: Juror Jose Menendez



¹ [Senator Jose Menendez: Facebook.com](https://www.facebook.com/senatorjosemenendez), Feb. 15, 2018



² [Senator Jose Menendez: Facebook.com](https://www.facebook.com/senatorjosemenendez), March 7, 2018



The Senate of The State of Texas

Senator José Menéndez

District 26

March 6, 2018

The Honorable Ken Paxton
Attorney General of Texas
Office of the Attorney General
300 West 15th Street
Austin, Texas 78701

Dear Mr. Paxton:

In no way should my letter dated February 14th, regarding your cease-and-desist letter to three Texas school districts have been regarded as an invitation to debate. The purpose was to inform you that I do not believe it is the intent of the legislature that you police social media accounts of voting choices.

I am happy to explain my letter further. When properly understood, I am sure we can both agree that the Attorney General of Texas needs to uphold the constitutional responsibilities and stop spending tax dollars on political exercises that are more of a reflection of a personal political agenda than any violation of the law.

Your letter contains several mischaracterizations:

—Regarding the “claim” that you sent letters to “an undisclosed number of school districts,” the legislature is unaware of what you are doing on a daily basis and was not informed as to whether additional letters had been sent out to the public. I was confident that you would scrutinize the content of my message rather than address the nature of its intent.

—In your letters, you make the claim that you recognize “the vital role educators play in the functioning of democracy.” If you do recognize their role, then do not contradict yourself by sending statements seeking to silence educators.

Your letters and attachments can be seen as hypocritical considering the fact that you actively advocate for political candidates and campaigns on your Twitter account. These actions violate the spirit of the Texas Election Code and potentially violate Penal Code §39.02(a)(2). See Texas Ethics Advisory Op. No.172.

CAPITOL OFFICE
P.O. Box 12868
Austin, Texas 78711
(512) 463-6126
Fax: (512) 463-2114
1-888-279-6648

DISTRICT OFFICE
4522 Fredericksburg Rd., Ste. A-1
San Antonio, Texas 78201
(210) 733-6604
Fax: (210) 733-6605

E-MAIL: jose.menendez@senate.texas.gov
Vice-Chairman Senate Hispanic Caucus
Committees: Criminal Justice • Higher Education
Intergovernmental Relations

Additionally, Texas law provides that a "state officer or employee may not use official authority or influence or permit the use of a program administered by the state agency of which the person is an officer or employee to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose." See Elec.Code §556.004.

My most serious concern with your overreaching letters is that they could have a damaging effect causing your office to suppress voter participation simply because you oppose the school districts from passing resolutions that encourage voter participation.

Unfortunately, you and your office have squandered millions of taxpayer dollars "tilting at political windmills," rather than focusing on the core functions of your office as prescribed by the Constitution and laws of Texas. Beyond my concerns about your efforts to silence educators and school districts whom you are treating as adversaries, I have grave concerns that this will be yet another "political rabbit trail" that ends up wasting taxpayers' money.

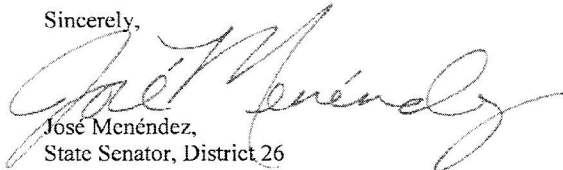
Given the number of delinquent parents on your most wanted list and the millions upon millions of dollars in back child support that are owed to women and children across Texas, I am dismayed that you spend valuable time examining the social media accounts of small school districts across the state.

Your letters qualify as bullying, and are a potential illegal use of your office, forcing cash-strapped school districts to either comply or spend money that they do not have defending themselves against your attacks.

This may be an opportunity for future legislation to provide clarity to the Office of Attorney General thereby insuring that priorities are aligned with the best interest of taxpayers.

No further reply from you is necessary at this time. In the meantime, I will follow through with my plans, as stated in my previous letter and conclude this exchange. I believe you have had ample opportunity to resolve this matter.

Sincerely,



José Menéndez,
State Senator, District 26



Senator José Menéndez · Follow

December 11, 2020 · 🌐



It's a shame that when all State agencies have been asked to cut their budgets, that AG Paxton wasted Texans' taxpayer money on a frivolous lawsuit to help advance Trump's unsubstantiated claims. The Trump campaign should reimburse the citizens of Texas for this frivolous lawsuit that SCOTUS just rejected!

<https://bit.ly/2KcVJKq>

3

³ [Senator Jose Menendez: Facebook.com](https://www.facebook.com/senatorjosemenendez), Dec. 11, 2020



Senator José Menéndez · Follow

September 13, 2021 · 🌐

Senator José Menéndez Issues Statement on Attorney General Paxton's Lawsuit Against San Antonio ISD

San Antonio, Texas - State Senator José Menéndez issued the following statement on the decision by Attorney General Paxton to sue San Antonio ISD over vaccine mandate

Senator José Menéndez released the following statement:


"Today, the Attorney General of Texas has filed suit against San Antonio ISD. The decision to take legal action against a school district for implementing scientifically based methods to protect their employees and students is reckless and a frivolous use of taxpayer's dollars! Local government is closest to the people. We should be empowering our local school districts to enact public health measures that are best suited for their community. We stand with the San Antonio ISD, and encourage the use of scientifically proven methods of protection to guide us in developing public policy, including the mandating of vaccines and masks."


#txlege #txed #SAISD #COVID19 #sanantonio #texas

4


⁴ [Senator Jose Menendez: Facebook.com](https://www.facebook.com/senatorjosemenendez), Sept. 13, 2021

← **Tweet**

 **Kolby Duhon** @KolbyDuhon · 9/26/22
Do you know how much money I would pay to see Ole Kenny boy running away from a process server? 🤔🤔

 **Texas Tribune** @TexasTrib... · 9/26/22
Texas Attorney General Ken Paxton fled his home Monday in a truck driven by his wife, state Sen. Angela Paxton, to avoid being served a subpoena, according to an affidavit filed in federal court. bit.ly/3BQ...

4 ↻ 24 📄 ↗

 **José Menéndez**
@Menendez4Texas

Please take whatever you would've paid & join me in contributing to @RochelleMGarza so Texas can have an Attorney General who isn't under indictment.

11:02 PM · 9/26/22 from Earth

5

⁵ <https://twitter.com/menendez4texas/status/1574610381745623047?t=CIqSgs20ecv--aDwABL40w>, September 26, 2022



José Menéndez
@Menendez4Texas

@RochelleMGarza has been endorsed by ALL of the major newspapers! Please make an informed decision based on facts. Let's elect an AG that's NOT under indictment, FBI investigation or accused of bribery by his own staff!




Rochelle Garza @RochelleMGarza · 10/23/22

Honored to receive the endorsements of the @Dallasnews, @statesman and @HoustonChron editorial boards this week! I've been endorsed by every major newspaper in Texas because they know what's at stake in this election. ...

2:06 PM · 10/23/22 from Earth


6

⁶ <https://twitter.com/menendez4texas/status/1584259866121494528?t=CIqSgs20ecv--aDwABL40w>, October 23, 2022

 **José Menéndez** @Menendez4Texas · Nov 6, 2022 ...
I guess, was demanding the money upfront?"


● "Three times in the past year, Paxton's campaign has failed to obey campaign finance laws and fully disclose his donors. He is also under investigation by the FBI after his top aides accused him of corruption in late 2020.

1 2 3

 **José Menéndez** @Menendez4Texas · Nov 6, 2022 ...
Enforcing campaign finance laws falls to - you guessed it - the attorney general. But Paxton doesn't just give himself a pass; he doesn't enforce the law when others break it either.

In the last three years, Paxton has not enforced fines imposed by the Ethics Commission on

1 3 6

 **José Menéndez** @Menendez4Texas ...
candidates. Nor has he defended the commission in court, which is his legal duty.

Paxton's spokesman was less than clear, but he implied Paxton doesn't think the commission and its rules are constitutional. But that's not his call to make. Paxton's job is to enforce Texas law."

10:49 AM · Nov 6, 2022

⁷ [Jose Menendez: Twitter.com](https://twitter.com/Menendez4Texas), Nov. 6, 2022



José Menéndez
@Menendez4Texas



And since we agree completely that rules and laws matter why is that TX Attorney General, Ken Paxton, continues to be allowed to flaunt the laws/rules without any consequences. Laws, rules matter and should be applied to all equally.

6:29 PM · Mar 13, 2023 · 35 Views

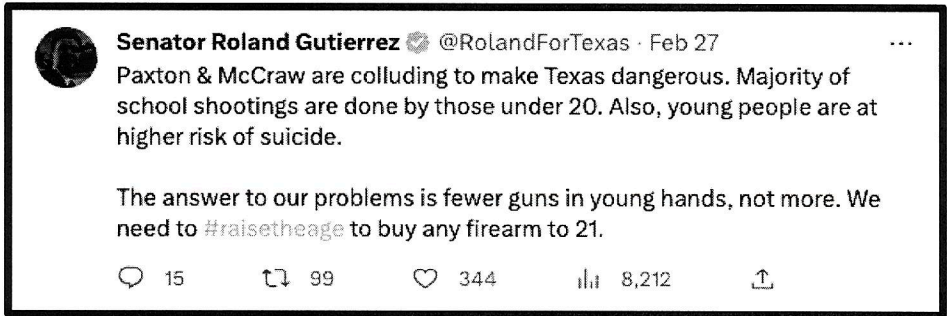
1 Like



8

⁸ <https://twitter.com/Menendez4Texas/status/1635422765665878017>. March 13, 2023

Exhibit B: Juror Roland Gutierrez



May 28, 2023 MSNBC Interview: <https://www.youtube.com/watch?v=D5EkDv29Jvw>

⁹ [Senator Roland Gutierrez: Twitter.com](https://twitter.com/RolandForTexas), Feb. 27, 2023

Paxton shifts focus to Senate

The Eagle (Bryan-College Station, Texas)

May 30, 2023 Tuesday

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Section: NEWS

Length: 1168 words

Byline: ALLIE MORRIS

Body

AUSTIN Attorney General Ken Paxton's fate is now firmly in the hands of the Texas Senate.

As the House voted to impeach Paxton because of alleged misconduct on Saturday, Paxton's allies turned their attention to the senators who will decide in a trial whether he should be ejected from statewide office.

His office delivered a thick stack of documents to senators' offices that included a defense of Paxton, according to members who received the packets and a copy obtained by The Dallas Morning News.

Among the documents is a personally addressed letter hand signed by Brent Webster, Paxton's top deputy who is now leading the agency in his stead.

Webster's letter was openly critical of the House and said senators are in an "unenviable position."

"As things stand, I believe that the Texas House's procrastination and secrecy has hobbled the Senate's ability to consider these Articles," Webster wrote in a letter dated on Saturday. "I apologize for the voluminous nature of the documents; it is unavoidable because I must get the truth and underlying supporting evidence to you."

A spokesperson for the attorney general's office did not respond to questions.

Sen. Roland Gutierrez, D-San Antonio, said such outreach from the attorney general's office is inappropriate.

"They've tried to color the jury in some way for sure," he said. Paxton "will have plenty of time to offer his defense in that proceeding."

Several senators said they don't plan to read the agency's packet, noting it's not proper in their role as jurors.

Paxton shifts focus to Senate

"I'm not going to look at anybody's until they tell me what I'm allowed to," Sen. Drew Springer, R-Muenster, said. "I'm not going to try to sit here and do my own exploratory stuff."

Lt. Gov. Dan Patrick has not publicly come to Paxton's defense, saying that to comment on the allegations would be akin to asking a judge how a case will turn out before it's been tried.

But the Senate leader will no doubt loom large over the proceedings as he holds a tight grip on the upper chamber and enjoys strong support from the state's conservative base.

Patrick's neutral tone is a contrast to the public impeachment opposition from U.S. Sen. Ted Cruz and former President Donald Trump, with whom Patrick has been closely aligned.

The chamber is riddled with potential conflicts of interest, the most notable is the attorney general's wife, Sen. Angela Paxton. The McKinney Republican has not said whether she will participate in her husband's impeachment trial.

"All 31 senators will have a vote," Patrick told WFAA-TV on Friday. "We will all be responsible as any juror would be ... and I think the members will do their duty."

All eyes on the Senate

The GOP-led House on Saturday voted overwhelmingly to impeach Paxton, alleging that numerous abuses of office made their fellow Republican unfit to serve as the state's top lawyer. The 20 articles of impeachment allege Paxton accepted bribes, including a kitchen remodel, in exchange for using the power of his office to help a campaign donor entangled in an FBI investigation.

Paxton is suspended from official duties pending an impeachment trial in the Senate. It is unclear whether he continues to receive a salary during this time.

Patrick will preside over the Senate's proceedings. Two thirds of the senators are needed to approve Paxton's removal from office.

"Today, the Texas Senate received Articles of Impeachment for Attorney General Ken Paxton," Patrick said in a statement Monday. "The Senate will follow its constitutional duty and I appointed a committee to develop proposed rules and procedures for the matter. When the rules are drafted, a date will be set for when the Senate will resolve into a court of impeachment to consider the articles."

The body, which has yet to announce a trial date, will set rules for the proceedings as well.

Many GOP Senators have taken to social media to issue statements saying they cannot discuss the trial in advance. They noted: "Know that we will faithfully follow the constitution and the law, and we will honor our sworn oaths."

After the impeachment vote on Saturday, Rep. Eddie Morales, D-Eagle Pass, asked whether more articles of impeachment could be added to address Paxton's alleged intimidation of lawmakers.

Paxton shifts focus to Senate

A member of the House ethics probe said Paxton had called some representatives before the impeachment vote threatening political consequences. Paxton has not publicly refuted this allegation.

In past impeachments, House lawmakers built in flexibility to add more articles, according to the Legislative Research Library. The articles of impeachment against Paxton also allow for additions "at any future date."

Fort Worth GOP Rep. Charlie Geren, who served on the House investigating committee that wrote the impeachment articles, told the Fort Worth Report he doesn't believe any more articles will be tacked on.

"There's a trial coming up," he told the news outlet. "A lot of things will come out."

A question of timing

Once the articles were delivered to the Senate, the chamber could then set a schedule and rules. Patrick indicated Paxton's trial in the Senate will begin in August.

The legislative session ended Monday.

But Gov. Greg Abbott called lawmakers into a special session to address issues left undone by the deadline, potentially including public education funding, property tax relief and the power grid.

If lawmakers return soon, the Senate could take up impeachment at the same time, said Brandon Rotting Haus, a University of Houston political science professor.

"My guess is that Patrick will want to get through this as quickly as possible," he said. Expediting impeachment would be good politically, Rotting Haus added, because the longer Paxton is out of office the more it hurts him "and therefore, the Republican brand." Patrick also likely wants to refocus on legislating: "I think he'd like to get back to the normal course of business."

There have only been two impeachments in Texas history and each offers a different guide.

In 1917, the Senate began a trial of Gov. James E. "Pa" Ferguson a week after receiving the articles from the House. In 1975, the Senate scheduled a trial months after the House voted to impeach Duval County district judge O.P. Carrillo.

Rules of impeachment trials

It's not clear what type of rules the Senate will adopt.

It could require its members to recuse themselves if they have conflicts of interests or are called to testify. The rules will matter especially for Paxton's wife, since spouses have different privileges against incriminating statements depending on whether the body adopts criminal trial rules.

Other senators, such as Bryan Hughes, may also get swept up in the proceedings. The Mineola Republican asked Paxton's office for a legal opinion central to one of the impeachment articles alleging misconduct by the attorney general.

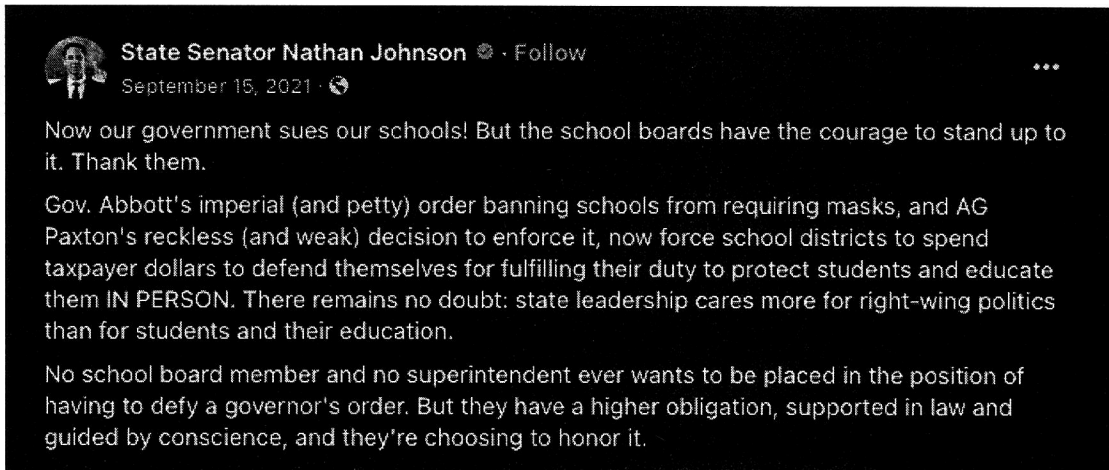
Paxton shifts focus to Senate

Hughes did not respond to a request for comment but was among the senators who issued a statement saying as a juror, he cannot "discuss the case with anyone."

Load-Date: May 30, 2023

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Exhibit C: Juror Nathan Johnson



¹⁰ [State Senator Nathan Johnson: Facebook.com](#), Sept. 15, 2021



Senator Nathan Johnson

@NathanForTexas



This is obscene. If they're attempting to influence the carrying out of our solemn constitutional duty to act impartially: shame on

@DefendTXliberty.



Patrick Svitek @PatrickSvitek · Jul 18

Pro-Paxton group gives \$3 million to impeachment trial judge Dan Patrick
texastribune.org/2023/07/18/ken... #txlege

9:16 PM · Jul 18, 2023 · **33.4K** Views

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¹¹ <https://twitter.com/NathanForTexas/status/1681488158893150208?s=20>, July 18, 2023